

PAULINO S. ASILO, JR., PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND SPOUSES VISITACION AND CESAR C. BOMBASI, RESPONDENTS.

G.R. Nos. 159017-18. March 09, 2011

Ponente: PEREZ, J.

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PEREZ, J.:

At bench are appeals by certiorari[1] from the Decision[2] of the Fourth Division of the Sandiganbayan; (1) finding Demetrio T. Comendador[3] (Mayor Comendador) and Paulino S. Asilo, Jr.[4] guilty beyond reasonable doubt of violation of Sec. 3(e) of Republic Act No. 3019; (2) dismissing the cases against accused Alberto S. Angeles[5] (3) ordering the defendants Municipality of Nagcarlan, Laguna, Demetrio T. Comendador and Paulino S. Asilo, Jr. to pay the plaintiffs now respondents Visitacion C. Bombasi (Visitacion) and Cesar C. Bombasi damages; and (4) dismissing the cases against the spouses Alida and Teddy Coroza[6] and Benita and Isagani Coronado.[7]

The factual antecedents of the case are:

On 15 March 1978, Private Respondent Visitacion's late mother Marciana Vda. De Coronado (Vda. De Coronado) and the Municipality of Nagcarlan, Laguna (represented by the then Municipal Mayor Crisostomo P. Manalang) entered into a lease contract whereby the Municipality allowed the use and enjoyment of property comprising of a lot and a store located at the corner of Coronado and E. Fernandez Sts. at Poblacion, Nagcarlan, Laguna, in favor of the respondent's mother for a period of twenty (20) years beginning on 15 March 1978 until 15 March 1998, extendible for another 20 years.[8]

The lease contract provided that the late Vda. De Coronado could build a firewall on her rented property which must be at least as high as the store; and in case of modification of the public market, she or her heir/s would be given preferential rights.

Visitacion took over the store when her mother died sometime in 1984.[9] From then on up to January 1993, Visitacion secured the yearly Mayor's permits.[10]

Sometime in 1986, a fire razed the public market of Nagcarlan. Upon Visitacion's request for inspection on 15 May 1986, District Engineer Marcelino B. Gorospe (Engineer Gorospe) of the then Ministry of Public Works and Highways,[11] Regional Office No. IV-A, found that the store of Visitacion remained intact and stood strong. This finding of Engineer Gorospe was contested by the Municipality of Nagcarlan.

The store of Visitacion continued to operate after the fire until 15 October 1993.

On 1 September 1993, Visitacion received a letter[12] from Mayor Comendador directing her to demolish her store within five (5) days from notice. Attached to the letter were copies of Sangguniang Bayan Resolution No. 156[13] dated 30 August 1993 and a Memorandum issued by Asst. Provincial Prosecutor Marianito Sasondoncillo of Laguna.

The relevant provisos of the Resolution No. 156 states that:

NOW THEREFORE, be it RESOLVED, as it hereby resolved to authorize Hon. Demetrio T. Comendador to enforce and order the Coronado's to demolish the building constructed on the space previously rented to them in order to give way for the construction of a new municipal market building.

RESOLVED FURTHER, to authorize Demetrio T. Comendador, Honorable Mayor of Nagcarlan to file an Unlawful Detainer Case with damages for the expenses incurred due to the delay in the completion of the project if the Coronado's continuously resists the order.

On 3 September 1993, Visitacion wrote a reply letter to Mayor Comendador saying that: (1) the lease contract was still existing and legally binding; (2) she was willing to vacate the store as long as same place and area would be given to her in the new public market; and (3) in case her proposals are not acceptable to Mayor Comendador, for the latter to just file an unlawful detainer case against her pursuant to Sangguniang Bayan Resolution No. 156. Pertinent portions of the letter read:

x x x With all due respect to the resolution of the Municipal Council and the opinion rendered by the Laguna Asst. Provincial Prosecutor, it is my considered view, however, arrived at after consultation with my legal counsel, that our existing lease contract is still legally binding and in full force and effect. Lest I appear to be defiant, let me reiterate to you and the council that we are willing to vacate the said building provided that a new contract is executed granting to us the same space or lot and the same area. I believe that our proposal is most reasonable and fair under the circumstance. If you are not amenable to the said proposal, I concur with the position taken by the Council for you to file the appropriate action in court for unlawful detainer to enable our court to finally thresh out our differences.[14]

On 15 September 1993, Asst. Provincial Prosecutor Florencio Buyser sent a letter to Visitacion ordering her to vacate the portion of the public market she was occupying within 15 days from her receipt of the letter; else, a court action will be filed against her.

On 11 October 1993, the Sangguniang Bayan of Nagcarlan, Laguna issued Resolution No. 183 authorizing Mayor Comendador to demolish the store being occupied by Visitacion using legal means. The significant portion of the Resolution reads:

Kung kaya ang Sangguniang Bayan ay buong pagkakaisang IPINASIYA: Ang pagbibigay kapangyarihan kay Kgg. Demetrio T. Comendador na ipagiba ang anumang istrakturang nagiging sagabal sa mabilis at maayos na pagbabangon ng pamilihang bayan.[15]

On 14 October 1993, Municipal Administrator Paulino S. Asilo, Jr. (Asilo) also sent a letter[16] to Visitacion informing her of the impending demolition of her store the next day. Within the same day, Visitacion wrote a reply letter[17] to Asilo, alleging that there is no legal right to demolish the store in the absence of a court order and that the Resolutions did not sanction the demolition of her store but only the filing of an appropriate unlawful detainer case against her. She further replied that if the demolition will take place, appropriate administrative, criminal and civil actions will be filed against Mayor Comendador, Asilo and all persons who will take part in the demolition.

On 15 October 1993, Mayor Comendador relying on the strength of Sangguniang Bayan Resolution Nos. 183 and 156 authorized the demolition of the store with Asilo and Angeles supervising the work.

Engineer Winston Cabrega (Engineer Cabrega), a licensed civil engineer, estimated the cost of the demolished property as amounting to P437,900.00[18]

On 19 August 1994, Visitacion, together with her husband Cesar Bombasi (Spouses Bombasi) filed with the

Regional Trial Court of San Pablo City, Laguna a Civil Case[19] for damages with preliminary injunction against the Municipality of Nagcarlan, Laguna, Mayor Demetrio T. Comendador, Paulino S. Asilo, Jr., and Alberto S. Angeles. The complaint was soon after amended to include the Spouses Benita and Isagani Coronado and Spouses Alida and Teddy Corozza as formal defendants because they were then the occupants of the contested area.

The spouses prayed for the following disposition:

- RESTRAINING or ENJOINING defendant Municipality and defendant Municipal Mayor from leasing the premises subject of lease Annex "A" hereof, part of which is now occupied by PNP Outpost and by the Municipal Collectors' Office, and the equivalent adjacent area thereof, and to cause the removal of said stalls;
- UPHOLDING the right of plaintiffs to occupy the equivalent corner area of the leased areas being now assigned to other persons by defendants Municipality and/or by defendant Municipal Mayor, and to allow plaintiffs to construct their stalls thereon;
- MAKING the injunction permanent, after trial;
- ORDERING defendants to pay plaintiffs, jointly and severally, the following -
 - (a) P437,900.00 for loss of building/store and other items therein;
 - (b) P200,000.00 for exemplary damages;
 - (c) P200,000.00 for moral damages;
 - (d) P30,000.00 for attorney's fees and P700.00 for every attendance of counsel in court.
- GRANTING further reliefs upon plaintiffs as justice and equity may warrant in the premises.[20]

Spouses Bombasi, thereafter, filed a criminal complaint[21] against Mayor Comendador, Asilo and Angeles for violation of Sec. 3(e) of Republic Act No. 3019 otherwise known as the "Anti-Graft and Corrupt Practices Act" before the Office of the Ombudsman. On 22 February 1996, an Information[22] against Mayor Comendador, Asilo and Angeles was filed, which reads:

That on or about October 15, 1993, at Nagcarlan, Laguna, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, accused Demetrio T. Comendador, being then the Municipal Mayor, accused Paulino S. Asilo, Jr. being then the Municipal Administrator and accused Alberto S. Angeles being then the Municipal Planning and Development Coordinator, all of the Municipality of Nagcarlan, Laguna, committing the crime herein charged in relation to, while in the performance and taking advantage of their official functions, conspiring and confederating with each other, and with evident bad faith, manifest partiality or through gross inexcusable negligence, did then and there willfully, unlawfully, criminally cause the demolition of a public market stall leased by the municipal government in favor of one Visitacion Coronado-Bombasi without legal or justifiable ground therefor, thus, causing undue injury to the latter in the amount of PESOS: FOUR HUNDRED THIRTY SEVEN THOUSAND AND NINE HUNDRED ONLY (P437,900.00).

Upon their arraignments, all the accused entered their separate pleas of "Not Guilty."

On 4 March 1997, the Sandiganbayan promulgated a Resolution ordering the consolidation of Civil Case No. SP-4064 (94)[23] with Criminal Case No. 23267 pending before the Third Division pursuant to Section 4, Presidential Decree No. 1606, which pertinently reads:

Any provision of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability arising from the offense charged shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by the Sandiganbayan or the appropriate courts, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action shall be

recognized; Provided, however, that where the civil action had heretofore been filed separately but judgment therein has not yet been rendered, and the criminal case is hereafter filed with the Sandiganbayan or the appropriate court, said civil action shall be transferred to the Sandiganbayan or the appropriate court as the case may be, for consolidation and joint determination with the criminal action, otherwise the separate civil action shall be deemed abandoned.[24]

During the pendency of the case, Alberto S. Angeles died on 16 November 1997. Accordingly, the counsel of Angeles filed a motion to drop accused Angeles. On 22 September 1999, the Third Division of Sandiganbayan issued an Order[25] DISMISSING the case against Angeles. The germane portion of the Order reads:

In view of the submission of the death certificate of accused/defendant Alberto S. Angeles, and there being no objection on the part of the Public Prosecutor, cases against deceased accused/defendant Angeles only, are hereby DISMISSED.

The death of Mayor Comendador followed on 17 September 2002. As a result, the counsel of the late Mayor filed on 3 March 2003 a Manifestation before the Sandiganbayan informing the court of the fact of Mayor Comendador's death.

On 28 April 2003, the Sandiganbayan rendered a decision, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

In Criminal Case No. 23267, the court finds accused Demetrio T. Comendador and Paulino S. Asilo, Jr. guilty beyond reasonable doubt of violation of Sec. 3(e) of Republic Act. No. 3019 as amended, and in the absence of aggravating and mitigating circumstances, applying the Indeterminate Sentence Law, said accused are sentenced to suffer the indeterminate penalty of 6 years and 2 months imprisonment as minimum to 10 years and 1 day as maximum.

The order of the court dated September 22, 1999 dismissing the cases against the accused Alberto S. Angeles, who died on November 16, 1997 is hereby reiterated.

In Civil Case No. 4064, defendants Municipality of Nagcarlan, Laguna, Demetrio T. Comendador and Paulino S. Asilo, Jr. are hereby ordered jointly and severally to pay plaintiff P437,900.00 as actual damages for the destruction of the store; P100,000.00 as moral damages; P30,000.00 as attorney's fees, and to pay the cost of the suit. The prayer for exemplary damages is denied as the court found no aggravating circumstances in the commission of the crime.

In view of this court's finding that the defendant spouses Alida and Teddy Coroza are lawful occupants of the subject market stalls from which they cannot be validly ejected without just cause, the complaint against them is dismissed. The complaint against defendant spouses Benita and Isagani Coronado is likewise dismissed, it appearing that they are similarly situated as the spouses Coroza. Meanwhile, plaintiff Visitacion Bombasi is given the option to accept market space being given to her by the municipality, subject to her payment of the appropriate rental and permit fees.

The prayer for injunctive relief is denied, the same having become moot and academic.

The compulsory counterclaim of defendant Comendador is likewise denied for lack of merit.[26]

Within the same day, Asilo, through his counsel, filed a Motion for Reconsideration[27] of the Decision alleging that there was only an error of judgment when he complied with and implemented the order of his superior, Mayor Comendador. He likewise alleged that there is no liability when a public officer commits in good faith an error of judgment. The Sandiganbayan, on its Resolution[28] dated 21 July 2003 denied the Motion for Reconsideration on the ground that good faith cannot be argued to support his cause in the face of the court's

finding that bad faith attended the commission of the offense charged. The Court further explained that the invocation of compliance with an order of a superior is of no moment for the "demolition [order] cannot be described as having the semblance of legality inasmuch as it was issued without the authority and therefore the same was patently illegal." [29]

The counsel for the late Mayor also filed its Motion for Reconsideration [30] on 12 May 2003 alleging that the death of the late Mayor had totally extinguished both his criminal and civil liability. The Sandiganbayan on its Resolution [31] granted the Motion insofar as the extinction of the criminal liability is concerned and denied the extinction of the civil liability holding that the civil action is an independent civil action.

Hence, these Petitions for Review on Certiorari. [32]

Petitioner Asilo argues that in order to sustain conviction under Sec. 3(e) of Republic Act No. 3019 or "The Anti-Graft and Corrupt Practices Act," the public officer must have acted with manifest partiality, evident bad faith or gross negligence. He also contended that he and his co-accused acted in good faith in the demolition of the market and, thereby, no liability was incurred.

On the other hand, Petitioner Victoria argues that the death of Mayor Comendador prior to the promulgation of the decision extinguished NOT ONLY Mayor Comendador's criminal liability but also his civil liability. She also asserted good faith on the part of the accused public officials when they performed the demolition of the market stall. Lastly, she contended that assuming *arguendo* that there was indeed liability on the part of the accused public officials, the actual amount of damages being claimed by the Spouses Bombasi has no basis and was not duly substantiated.

Liability of the accused public officials
under Republic Act No. 3019

Section 3(e) of Republic Act No. 3019 provides:

In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The elements of the offense are as follows: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they caused undue injury to any party, whether the Government or a private party; (4) OR that such injury is caused by giving unwarranted benefits, advantage or preference to the other party; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence. [33]

We sustain the Sandiganbayan in its finding of criminal and civil liabilities against petitioner Asilo and petitioner Mayor Comendador as here represented by his widow Victoria Bueta.

We agree with the Sandiganbayan that it is undisputable that the first two requisites of the criminal offense were present at the time of the commission of the complained acts and that, as to the remaining elements, there is

sufficient amount of evidence to establish that there was an undue injury suffered on the part of the Spouses Bombasi and that the public officials concerned acted with evident bad faith when they performed the demolition of the market stall.

Causing undue injury to any party, including the government, could only mean actual injury or damage which must be established by evidence.[34]

In jurisprudence, "undue injury" is consistently interpreted as "actual." Undue has been defined as "more than necessary, not proper, [or] illegal;" and injury as "any wrong or damage done to another, either in his person, rights, reputation or property [that is, the] invasion of any legally protected interest of another." Actual damage, in the context of these definitions, is akin to that in civil law.[35]

It is evident from the records, as correctly observed by the Sandiganbayan, that Asilo and Mayor Comendador as accused below did not deny that there was indeed damage caused the Spouses Bombasi on account of the demolition. We affirm the finding that:

xxx. Clearly, the demolition of plaintiff's store was carried out without a court order, and notwithstanding a restraining order which the plaintiff was able to obtain. The demolition was done in the exercise of official duties which apparently was attended by evident bad faith, manifest partiality or gross inexcusable negligence as there is nothing in the two (2) resolutions which gave the herein accused the authority to demolish plaintiff's store.

"Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will.[36] [It] contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.[37]

It is quite evident in the case at bar that the accused public officials committed bad faith in performing the demolition.

First, there can be no merit in the contention that respondents' structure is a public nuisance. The abatement of a nuisance without judicial proceedings is possible if it is nuisance per se.[38] Nuisance per se is that which is nuisance at all times and under any circumstance, regardless of location and surroundings.[39] In this case, the market stall cannot be considered as a nuisance per se because as found out by the Court, the buildings had not been affected by the 1986 fire. This finding was certified to by Supervising Civil Engineer Wilfredo A. Sambrano of the Laguna District Engineer Office.[40] To quote:

An inspection has been made on the building (a commercial establishment) cited above and found out the following:

- It is a two-storey building, sketch of which is attached.
- It is located within the market site.
- The building has not been affected by the recent fire.
- The concrete wall[s] does not even show signs of being exposed to fire.[41]

Second, the Sangguniang Bayan resolutions are not enough to justify demolition. Unlike its predecessor law,[42] the present Local Government Code[43] does not expressly provide for the abatement of nuisance.[44] And even assuming that the power to abate nuisance is provided for by the present code, the accused public officials were under the facts of this case, still devoid of any power to demolish the store. A closer look at the contested resolutions reveals that Mayor Comendador was only authorized to file an unlawful detainer case in case of

resistance to obey the order or to demolish the building using legal means. Clearly, the act of demolition without legal order in this case was not among those provided by the resolutions, as indeed, it is a legally impossible provision.

Furthermore, the Municipality of Nagcarlan, Laguna, as represented by the then Mayor Comendador, was placed in estoppel after it granted yearly business permits[45] in favor of the Spouses Bombasi. Art. 1431 of the New Civil Code provides that, through estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. The representation made by the municipality that the Spouses Bombasi had the right to continuously operate its store binds the municipality. It is utterly unjust for the Municipality to receive the benefits of the store operation and later on claim the illegality of the business.

The bad faith of the petitioners completes the elements of the criminal offense of violation of Sec. 3(e) of Republic Act No. 3019. The same bad faith serves as the source of the civil liability of Asilo, Angeles, and Mayor Comendador.

It must be noted that when Angeles died on 16 November 1997, a motion to drop him as an accused was filed by his counsel with no objection on the part of the prosecution. The Sandiganbayan acted favorably on the motion and issued an Order dismissing all the cases filed against Angeles. On the other hand, when Mayor Comendador died and an adverse decision was rendered against him which resulted in the filing of a motion for reconsideration by Mayor Comendador's counsel, the prosecution opposed the Motion specifying the ground that the civil liability did not arise from delict, hence, survived the death of the accused. The Sandiganbayan upheld the opposition of the prosecution which disposition was not appealed.

We note, first off, that the death of Angeles and of Mayor Comendador during the pendency of the case extinguished their criminal liabilities.

We now hold, as did the Sandiganbayan that the civil liability of Mayor Comendador survived his death; and that of Angeles could have likewise survived had it not been for the fact that the resolution of the Sandiganbayan that his death extinguished the civil liability was not questioned and lapsed into finality.

We laid down the following guidelines in *People v. Bayotas*:[46]

Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, i.e., civil liability *ex delicto* in *senso strictiore*."

Corollarily, the claim for civil liability survives notwithstanding the death of (the) accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

- a) Law
- b) Contracts
- c) Quasi-contracts
- d) Acts or omissions punished by law; and
- e) Quasi-delicts. (Emphasis ours)

Where the civil liability survives, as explained [above], an action for recovery therefore may be pursued but only by way of filing a separate civil action[47] and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the

executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the New Civil Code, which should thereby avoid any apprehension on a possible privation of right by prescription.

Upon death of the accused pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused; the civil action instituted therein for recovery of civil liability ex delicto is ipso facto extinguished, grounded as it is on the criminal.[48]

The New Civil Code provisions under the Chapter, Human Relations, were cited by the prosecution to substantiate its argument that the civil action based therein is an independent one, thus, will stand despite the death of the accused during the pendency of the case.

On the other hand, the defense invoked Section 4 of Presidential Decree No. 1606, as amended by Republic Act No. 8249, in support of its argument that the civil action was dependent upon the criminal action, thus, was extinguished upon the death of the accused. The law provides that:

Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability arising from the offense charged shall at all times be simultaneously instituted with, and jointly determined in the same proceeding by, the Sandiganbayan, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such action shall be recognized. (Emphasis ours)

We agree with the prosecution.

Death of Mayor Comendador during the pendency of the case could have extinguished the civil liability if the same arose directly from the crime committed. However, in this case, the civil liability is based on another source of obligation, the law on human relations.[49] The pertinent articles follow:

Art. 31 of the Civil Code states:

When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter.

And, Art. 32(6) states:

Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

(6) The right against deprivation of property without due process of law;

x x x x

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.

As held in *Aberca v. Ver*:

It is obvious that the purpose of the above codal provision [Art. 32 of the New Civil Code] is to provide a sanction to the deeply cherished rights and freedoms enshrined in the Constitution. Its message is clear; no man may seek to violate those sacred rights with impunity. x x x.[50]

Indeed, the basic facts of this case point squarely to the applicability of the law on human relations. First, the complaint for civil liability was filed way AHEAD of the information on the Anti-Graft Law. And, the complaint for damages specifically invoked defendant Mayor Comendador's violation of plaintiff's right to due process. Thus:

x x x x

In causing or doing the forcible demolition of the store in question, the individual natural defendants did not only act with grave abuse of authority but usurped a power which belongs to our courts of justice; such actuations were done with malice or in bad faith and constitute an invasion of the property rights of plaintiff(s) without due process of law.

x x x x

The Court is in one with the prosecution that there was a violation of the right to private property of the Spouses Bombasi. The accused public officials should have accorded the spouses the due process of law guaranteed by the Constitution and New Civil Code. The Sangguniang Bayan Resolutions as asserted by the defense will not, as already shown, justify demolition of the store without court order. This Court in a number of decisions[51] held that even if there is already a writ of execution, there must still be a need for a special order for the purpose of demolition issued by the court before the officer in charge can destroy, demolish or remove improvements over the contested property.[52] The pertinent provisions are the following:

Before the removal of an improvement must take place, there must be a special order, hearing and reasonable notice to remove. Section 10(d), Rule 39 of the Rules of Court provides:

(d) Removal of improvements on property subject of execution. - When the property subject of execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.

The above-stated rule is clear and needs no interpretation. If demolition is necessary, there must be a hearing on the motion filed and with due notices to the parties for the issuance of a special order of demolition.[53]

This special need for a court order even if an ejectment case has successfully been litigated, underscores the independent basis for civil liability, in this case, where no case was even filed by the municipality.

The requirement of a special order of demolition is based on the rudiments of justice and fair play. It frowns upon arbitrariness and oppressive conduct in the execution of an otherwise legitimate act. It is an amplification of the provision of the Civil Code that every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.[54]

Notably, the fact that a separate civil action precisely based on due process violations was filed even ahead of the criminal case, is complemented by the fact that the deceased plaintiff Comendador was substituted by his widow, herein petitioner Victoria who specified in her petition that she has "substituted him as petitioner in the above captioned case." Section 1, Rule III of the 1985 Rules in Criminal Procedure mentioned in Bayotas is, therefore, not applicable. Truly, the Sandiganbayan was correct when it maintained the separate docketing of the civil and

criminal cases before it although their consolidation was erroneously based on Section 4 of Presidential Decree No. 1606 which deals with civil liability "arising from the offense charged."

We must, however, correct the amount of damages awarded to the Spouses Bombasi.

To seek recovery of actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable.[55] In this case, the Court finds that the only evidence presented to prove the actual damages incurred was the itemized list of damaged and lost items[56] prepared by Engineer Cabrega, an engineer commissioned by the Spouses Bombasi to estimate the costs.

As held by this Court in *Marikina Auto Line Transport Corporation v. People of the Philippines*,[57]

x x x [W]e agree with the contention of petitioners that respondents failed to prove that the damages to the terrace caused by the incident amounted to P100,000.00. The only evidence adduced by respondents to prove actual damages claimed by private respondent were the summary computation of damage made by Engr. Jesus R. Regal, Jr. amounting to P171,088.46 and the receipt issued by the BB Construction and Steel Fabricator to private respondent for P35,000.00 representing cost for carpentry works, masonry, welding, and electrical works. Respondents failed to present Regal to testify on his estimation. In its five-page decision, the trial court awarded P150,000.00 as actual damages to private respondent but failed to state the factual basis for such award. Indeed, the trial court merely declared in the decretal portion of its decision that the "sum of P150,000.00 as reasonable compensation sustained by plaintiff for her damaged apartment." The appellate court, for its part, failed to explain how it arrived at the amount of P100,000.00 in its three-page decision. Thus, the appellate court merely declared:

With respect to the civil liability of the appellants, they contend that there was no urgent necessity to completely demolish the apartment in question considering the nature of the damages sustained as a result of the accident. Consequently, appellants continue, the award of P150,000.00 as compensation sustained by the plaintiff-appellee for her damaged apartment is an unconscionable amount.

Further, in one case,[58] this Court held that the amount claimed by the respondent-claimant's witness as to the actual amount of damages "should be admitted with extreme caution considering that, because it was a bare assertion, it should be supported by independent evidence." The Court further said that whatever claim the respondent witness would allege must be appreciated in consideration of his particular self-interest.[59] There must still be a need for the examination of the documentary evidence presented by the claimants to support its claim with regard to the actual amount of damages.

The price quotation made by Engineer Cabrega presented as an exhibit[60] partakes of the nature of hearsay evidence considering that the person who issued them was not presented as a witness.[61] Any evidence, whether oral or documentary, is hearsay if its probative value is not based on the personal knowledge of the witness but on the knowledge of another person who is not on the witness stand. Hearsay evidence, whether objected to or not, has no probative value unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule.[62] Further, exhibits do not fall under any of the exceptions provided under Sections 37 to 47 of Rule 130 of the Rules of Court.

Though there is no sufficient evidence to award the actual damages claimed, this Court grants temperate damages for P200,000.00 in view of the loss suffered by the Spouses Bombasi. Temperate damages are awarded in accordance with Art. 2224 of the New Civil Code when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proven with certainty. The amount of temperate or moderated damages is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that the temperate damages should be more than nominal but less than compensatory.[63] Without a doubt,

the Spouses Bombasi suffered some form of pecuniary loss in the impairment of their store. Based on the record of the case,[64] the demolished store was housed on a two-story building located at the market's commercial area and its concrete walls remained strong and not affected by the fire. However, due to the failure of the Spouses Bombasi to prove the exact amount of damage in accordance with the Rules of Evidence,[65] this court finds that P200,000.00 is the amount just and reasonable under the circumstances.

WHEREFORE, the instant appeal is DENIED. Accordingly, the Decision of the Sandiganbayan dated 28 April 2003 is hereby AFFIRMED WITH MODIFICATION. The Court affirms the decision finding the accused Paulino S. Asilo, Jr. and Demetrio T. Comendador guilty of violating Section 3(e) of Republic Act No. 3019. We declare the finality of the dismissal of both the criminal and civil cases against Alberto S. Angeles as the same was not appealed. In view of the death of Demetrio T. Comendador pending trial, his criminal liability is extinguished; but his civil liability survives. The Municipality of Nagcarlan, Paulino Asilo and Demetrio T. Comendador, as substituted by Victoria Bueta Vda. De Comendador, are hereby declared solidarily liable to the Spouses Bombasi for temperate damages in the amount of P200,000.00 and moral damages in the amount of P100,000.00.

Costs against the petitioners-appellants.

SO ORDERED.

Corona, C.J., (Chairperson), Carpio Morales,[*] Velasco, Jr., and Del Castillo, JJ., concur.

[*] Additional member in lieu of Associate Justice Teresita J. Leonardo-De Castro per raffle dated 7 March 2011.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] The Decision dated 28 April 2003 was penned by Associate Justice Rodolfo G. Palattao with Associate Justices Gregory S. Ong and Ma. Cristina G. Cortez-Estrada, concurring. Rollo (G.R. No. 159017-18), pp. 40-71.

[3] Municipal Mayor of Nagcarlan, Laguna.

[4] Municipal Administrator of Nagcarlan, Laguna.

[5] Municipal Planning and Development Coordinator of Nagcarlan, Laguna.

[6] Present occupants of the premises being claimed by Spouses Cesar and Visitacion Bombasi.

[7] Id.

[8] Kasulatan ng Kasunduan.

[9] TSN, 11 August 1997, p. 24.

[10] TSN, 31 July 1997, pp. 30-32.

[11] Now Department of Public Works and Highways.

[12] Formal Offer of Evidence as admitted by the Sandiganbayan, Exhibit "H-5."

[13] Rollo (G.R. No. 159059), pp. 112-113.

[14] Rollo (G.R. No. 159017-18), pp. 17-18.

[15] Rollo (G.R. No. 159059), p. 115.

[16] Id. at 116.

- [17] Rollo (G.R. No. 159017-18), p. 147.
- [18] P400,000.00 representing the cost of the concrete building; P37,900.00 representing the cost of damage and loss inside the building.
- [19] Civil Case No. SP-4064 (94).
- [20] Rollo (G.R. No. 159017-18), p. 91.
- [21] Docketed as Criminal Case No. 23267.
- [22] Records, pp. 1-2.
- [23] Then pending with the Regional Trial Court of San Pablo City, Laguna.
- [24] Rollo (G.R. No. 159059), p. 77.
- [25] Id. at 22.
- [26] Id. at 73-74.
- [27] Rollo (G.R. 159017-18), p. 72.
- [28] Id. at 81.
- [29] Resolution (Re: Motion for Reconsideration) of the Sandiganbayan, Fourth Division, dated 21 July 2003.
- [30] Rollo (G.R. No. 159059), pp. 81-87.
- [31] Id. at 75-80, dated 21 July 2003.
- [32] Rollo (G.R. No. 159017-18), pp. 3-39, dated 25 July 2003 filed by Paulino S. Asilo; Rollo (G.R. No. 159059), pp. 12-43, dated 5 September 2003 filed by Victoria Bueta Vda. De Comendador, widow of the late Mayor Comendador.
- [33] Bustillo v. People, G.R. No. 160718, 12 May 2010.
- [34] Avila, Sr. v. Sandiganbayan, 366 Phil. 698, 703 (1999).
- [35] Llorente v. Sandiganbayan, 350 Phil. 820 (1998).
- [36] Sistoza v. Desierto, 437 Phil. 117, 132 (2002).
- [37] Air France v. Carrascoso, 124 Phil. 722, 737 (1966).
- [38] Parayno v. Jovellanos, G.R. No. 148408, 14 July 2006, 495 SCRA 85, 93.
- [39] Jurado, Civil Law Reviewer, 20[th] ed., 2006, p. 411.
- [40] Exhibit C-1 of the Prosecution. Records, Vol. II, p. 215.
- [41] Records, Vol. III, p. 180.
- [42] Local Government Code of 1983, Batas Pambansa Blg. 337.
- [43] Republic Act No. 7160.
- [44] Section 149 of Local Government Code of 1983. Powers and Duties. -
(I) The sangguniang bayan shall:

x x x x

(ee) Provide for the abatement of nuisance;

[45] Records, Vol. III, pp. 187-196.

[46] G.R. No. 102007, 2 September 1994, 236 SCRA 239, 255-256.

[47] It must be noted that the independent civil action was instituted ahead of the criminal case before both cases were jointly heard before the Sandiganbayan.

[48] *People v. Bayotas*, supra note 58 at 251.

[49] Preliminary Title, Chapter 2, Civil Code of the Philippines.

[50] G.R. No. L-69866, 15 April 1988, 160 SCRA 590, 601, as quoted from Joseph Charmont French Legal Philosophy, Mcmillan Co., New York, 1921, pp. 72-73.

[51] *Guariño v. Ragsac*, A.M. No. P-08-2571, 27 August 2009, 597 SCRA 235; *Torres v. Sicat, Jr.*, 438 Phil. 109 (2002).

[52] Sec. 10, Rule 39(d), Rules of Court.

[53] *Guariño v. Ragsac*, supra note 65 at 236.

[54] *Id.* at 236-237.

[55] *Polo v. People*, G.R. No. 160541, 24 October 2008, 570 SCRA 80, 84 citing *People v. Tigle*, 465 Phil. 368 (2004).

[56] Exhibits "I" and "I-1" formally offered by the prosecution.

[57] G.R. No. 152040, 31 March 2006, 486 SCRA 284, 296-297.

[58] *PNOC Shipping and Transport Corporation v. Court of Appeals*, 358 Phil. 38 (1998).

[59] *Id.* at 55.

[60] Records, Vol. III, p. 217; Exhibit "I."

[61] *People v. Narciso*, 330 Phil. 527, 536 (1996).

[62] *Philippine Home Assurance Corporation v. Court of Appeals*, 327 Phil. 255, 267-268 (1996) citing *Baguio v. Court of Appeals*, G.R. No. 93417, 14 September 1993, 226 SCRA 366, 370.

[63] *College Assurance Plan v. Belfranlt Development, Inc.*, G.R. No. 155604, 22 November 2007, 538 SCRA 27, 40-41.

[64] Memorandum Letter of Laguna District Engineer Wilfredo A. Sambrano. Records, Vol. III, p. 181.

[65] Rule 132, Section 20, Proof of private document. -- Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

(a) By anyone who saw the document executed or written; or

(b) By evidence of the genuineness of the signature or handwriting of the maker.

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