



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JOYCE V. ARDIENTE,
Petitioner,

G.R. No. 161921

Present:

- versus -

VELASCO, JR., J., Chairperson,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, JJ.

SPOUSES JAVIER and MA.
THERESA PASTORFIDE,
CAGAYAN DE ORO WATER
DISTRICT and GASPAR
GONZALEZ,* JR.,

Promulgated:

Respondents.

JUL 17 2013 *Macapreant*

X-----X

DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision¹ and Resolution² of the Court of Appeals (CA), dated August 28, 2003 and December 17, 2003, respectively, in CA-G.R. CV No. 73000. The CA Decision affirmed with modification the August 15, 2001 Decision³ of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 24, while the CA Resolution denied petitioner's Motion for Reconsideration.

The facts, as summarized by the CA, are as follows:

* Spelled as Gonzales in other parts of the *rollo* and records.

¹ Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Edgardo P. Cruz and Noel G. Tijam, concurring; *rollo*, pp. 60-67.

² *Id.* at 68.

³ Penned by Judge Leonardo N. Demecillo, *id.* at 27-37.

[Herein petitioner] Joyce V. Ardiente and her husband Dr. Roberto S. Ardiente are owners of a housing unit at Emily Homes, Balulang, Cagayan de Oro City with a lot area of one hundred fifty-three (153) square meters and covered by Transfer Certificate of Title No. 69905.

On June 2, 1994, Joyce Ardiente entered into a Memorandum of Agreement (Exh. "B", pp. 470-473, Records) selling, transferring and conveying in favor of [respondent] Ma. Theresa Pastorfide all their rights and interests in the housing unit at Emily Homes in consideration of ₱70,000.00. The Memorandum of Agreement carries a stipulation:

"4. That the water and power bill of the subject property shall be for the account of the Second Party (Ma. Theresa Pastorfide) effective June 1, 1994." (Records, p. 47)

vis-a-vis Ma. Theresa Pastorfide's assumption of the payment of the mortgage loan secured by Joyce Ardiente from the National Home Mortgage (Records, Exh. "A", pp. 468-469)

For four (4) years, Ma. Theresa's use of the water connection in the name of Joyce Ardiente was never questioned nor perturbed (T.S.N., October 31, 2000, pp. 7-8) until on March 12, 1999, without notice, the water connection of Ma. Theresa was cut off. Proceeding to the office of the Cagayan de Oro Water District (COWD) to complain, a certain Mrs. Madjos told Ma. Theresa that she was delinquent for three (3) months corresponding to the months of December 1998, January 1999, and February 1999. Ma. Theresa argued that the due date of her payment was March 18, 1999 yet (T.S.N., October 31, 2000, pp. 11-12). Mrs. Madjos later told her that it was at the instance of Joyce Ardiente that the water line was cut off (T.S.N., February 5, 2001, p. 31).

On March 15, 1999, Ma. Theresa paid the delinquent bills (T.S.N., October 31, 2000, p. 12). On the same date, through her lawyer, Ma. Theresa wrote a letter to the COWD to explain who authorized the cutting of the water line (Records, p. 160).

On March 18, 1999, COWD, through the general manager, [respondent] Gaspar Gonzalez, Jr., answered the letter dated March 15, 1999 and reiterated that it was at the instance of Joyce Ardiente that the water line was cut off (Records, p. 161).

Aggrieved, on April 14, 1999, Ma. Theresa Pastorfide [and her husband] filed [a] complaint for damages [against petitioner, COWD and its manager Gaspar Gonzalez] (Records, pp. 2-6).

In the meantime, Ma. Theresa Pastorfide's water line was only restored and reconnected when the [trial] court issued a writ of preliminary mandatory injunction on December 14, 1999 (Records, p. 237).⁴

After trial, the RTC rendered judgment holding as follows:

X X X X

⁴

Rollo, pp. 60-62.

In the exercise of their rights and performance of their duties, defendants did not act with justice, gave plaintiffs their due and observe honesty and good faith. Before disconnecting the water supply, defendants COWD and Engr. Gaspar Gonzales did not even send a disconnection notice to plaintiffs as testified to by Engr. Bienvenido Batar, in-charge of the Commercial Department of defendant COWD. There was one though, but only three (3) days after the actual disconnection on March 12, 1999. The due date for payment was yet on March 15. Clearly, they did not act with justice. Neither did they observe honesty.

They should not have been swayed by the prodding of Joyce V. Ardiente. They should have investigated first as to the present ownership of the house. For doing the act because Ardiente told them, they were negligent. Defendant Joyce Ardiente should have requested before the cutting off of the water supply, plaintiffs to pay. While she attempted to tell plaintiffs but she did not have the patience of seeing them. She knew that it was plaintiffs who had been using the water four (4) years ago and not hers. She should have been very careful. x x x⁵

The dispositive portion of the trial court's Decision reads, thus:

WHEREFORE, premises considered, judgment is hereby rendered ordering defendants [Ardiente, COWD and Gonzalez] to pay jointly and severally plaintiffs, the following sums:

- (a) ₱200,000.00 for moral damages;
- (b) 200,000.00 for exemplary damages; and
- (c) 50,000.00 for attorney's fee.

The cross-claim of Cagayan de Oro Water District and Engr. Gaspar Gonzales is hereby dismissed. The Court is not swayed that the cutting off of the water supply of plaintiffs was because they were influenced by defendant Joyce Ardiente. They were negligent too for which they should be liable.

SO ORDERED.⁶

Petitioner, COWD and Gonzalez filed an appeal with the CA.

On August 28, 2003, the CA promulgated its assailed Decision disposing as follows:

IN VIEW OF ALL THE FOREGOING, the appealed decision is **AFFIRMED**, with the **modification** that the awarded damages is reduced to ₱100,000.00 each for moral and exemplary damages, while attorney's fees is lowered to ₱25,000.00. Costs against appellants.

SO ORDERED.⁷

⁵ *Id.* at 35-36.

⁶ *Id.* at 37.

⁷ *Id.* at 67. (Emphasis in the original)

The CA ruled, with respect to petitioner, that she has a “legal duty to honor the possession and use of water line by Ma. Theresa Pastorfide pursuant to their Memorandum of Agreement” and “that when [petitioner] applied for its disconnection, she acted in bad faith causing prejudice and [injury to] Ma. Theresa Pastorfide.”⁸

As to COWD and Gonzalez, the CA held that they “failed to give a notice of disconnection and derelicted in reconnecting the water line despite payment of the unpaid bills by the [respondent spouses Pastorfide].”⁹

Petitioner, COWD and Gonzalez filed their respective Motions for Reconsideration, but these were denied by the CA in its Resolution dated December 17, 2003.

COWD and Gonzalez filed a petition for review on *certiorari* with this Court, which was docketed as *G.R. No. 161802*. However, based on technical grounds and on the finding that the CA did not commit any reversible error in its assailed Decision, the petition was denied via a Resolution¹⁰ issued by this Court on March 24, 2004. COWD and Gonzalez filed a motion for reconsideration, but the same was denied with finality through this Court's Resolution¹¹ dated June 28, 2004.

Petitioner, on the other hand, timely filed the instant petition with the following Assignment of Errors:

7.1 HONORABLE COURT OF APPEALS (ALTHOUGH IT HAS REDUCED THE LIABILITY INTO HALF) HAS STILL COMMITTED GRAVE AND SERIOUS ERROR WHEN IT UPHELD THE JOINT AND SOLIDARY LIABILITY OF PETITIONER JOYCE V. ARDIENTE WITH CAGAYAN DE ORO WATER DISTRICT (COWD) AND ENGR. GASPAR D. GONZALES FOR THE LATTER'S FAILURE TO SERVE NOTICE UPON RESPONDENTS SPOUSES PASTORFIDE PRIOR TO THE ACTUAL DISCONNECTION DESPITE EVIDENCE ADDUCED DURING TRIAL THAT EVEN WITHOUT PETITIONER'S REQUEST, COWD WAS ALREADY SET TO EFFECT DISCONNECTION OF RESPONDENTS' WATER SUPPLY DUE TO NON-PAYMENT OF ACCOUNT FOR THREE (3) MONTHS.

7.2 THE HONORABLE COURT OF APPEALS COMMITTED GRAVE AND SERIOUS ERROR WHEN IT RULED TOTALLY AGAINST PETITIONER AND FAILED TO FIND THAT RESPONDENTS ARE GUILTY OF CONTRIBUTORY NEGLIGENCE WHEN THEY FAILED TO PAY THEIR WATER BILLS FOR THREE MONTHS AND TO MOVE FOR THE TRANSFER OF THE COWD ACCOUNT IN THEIR

⁸ *Id.* at 65.

⁹ *Id.* at 64.

¹⁰ *Id.* at 219.

¹¹ *Id.* at 220.

NAME, WHICH WAS A VIOLATION OF THEIR MEMORANDUM OF AGREEMENT WITH PETITIONER JOYCE V. ARDIENTE. RESPONDENTS LIKewise DELIBERATELY FAILED TO EXERCISE DILIGENCE OF A GOOD FATHER OF THE FAMILY TO MINIMIZE THE DAMAGE UNDER ART. 2203 OF THE NEW CIVIL CODE.

7.3 THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT DISREGARDED THE FACT THAT RESPONDENT SPOUSES PASTORFIDE ARE LIKewise BOUND TO OBSERVE ARTICLE 19 OF THE NEW CIVIL CODE, i.e., IN THE EXERCISE OF THEIR RIGHTS AND IN THE PERFORMANCE OF THEIR DUTIES TO ACT WITH JUSTICE, GIVE EVERYONE HIS DUE AND OBSERVE HONESTY AND GOOD FAITH.

7.4 THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT GRANTED AN AWARD OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES AS AGAINST PETITIONER ARDIENTE.¹²

At the outset, the Court noticed that COWD and Gonzalez, who were petitioner's co-defendants before the RTC and her co-appellants in the CA, were impleaded as respondents in the instant petition. This cannot be done. Being her co-parties before the RTC and the CA, petitioner cannot, in the instant petition for review on *certiorari*, make COWD and Gonzalez, adversary parties. It is a grave mistake on the part of petitioner's counsel to treat COWD and Gonzalez as respondents. There is no basis to do so, considering that, in the first place, there is no showing that petitioner filed a cross-claim against COWD and Gonzalez. Under Section 2, Rule 9 of the Rules of Court, a cross-claim which is not set up shall be barred. Thus, for failing to set up a cross-claim against COWD and Gonzalez before the RTC, petitioner is already barred from doing so in the present petition.

More importantly, as shown above, COWD and Gonzalez's petition for review on *certiorari* filed with this Court was already denied with finality on June 28, 2004, making the presently assailed CA Decision final and executory insofar as COWD and Gonzalez are concerned. Thus, COWD and Gonzalez are already precluded from participating in the present petition. They cannot resurrect their lost cause by filing pleadings this time as respondents but, nonetheless, reiterating the same prayer in their previous pleadings filed with the RTC and the CA.

As to the merits of the instant petition, the Court likewise noticed that the main issues raised by petitioner are factual and it is settled that the resolution of factual issues is the function of lower courts, whose findings on these matters are received with respect and considered binding by the Supreme Court subject only to certain exceptions, none of which is present

¹² *Id.* at 14.

in this instant petition.¹³ This is especially true when the findings of the RTC have been affirmed by the CA as in this case.¹⁴

In any case, a perusal of the records at hand would readily show that the instant petition lacks merit.

Petitioner insists that she should not be held liable for the disconnection of respondent spouses' water supply, because she had no participation in the actual disconnection. However, she admitted in the present petition that it was she who requested COWD to disconnect the Spouses Pastorfide's water supply. This was confirmed by COWD and Gonzalez in their cross-claim against petitioner. While it was COWD which actually discontinued respondent spouses' water supply, it cannot be denied that it was through the instance of petitioner that the Spouses Pastorfide's water supply was disconnected in the first place.

It is true that it is within petitioner's right to ask and even require the Spouses Pastorfide to cause the transfer of the former's account with COWD to the latter's name pursuant to their Memorandum of Agreement. However, the remedy to enforce such right is not to cause the disconnection of the respondent spouses' water supply. The exercise of a right must be in accordance with the purpose for which it was established and must not be excessive or unduly harsh; there must be no intention to harm another.¹⁵ Otherwise, liability for damages to the injured party will attach.¹⁶ In the present case, intention to harm was evident on the part of petitioner when she requested for the disconnection of respondent spouses' water supply without warning or informing the latter of such request. Petitioner claims that her request for disconnection was based on the advise of COWD personnel and that her intention was just to compel the Spouses Pastorfide to comply with their agreement that petitioner's account with COWD be transferred in respondent spouses' name. If such was petitioner's only intention, then she should have advised respondent spouses before or immediately after submitting her request for disconnection, telling them that her request was simply to force them to comply with their obligation under their Memorandum of Agreement. But she did not. What made matters worse is the fact that COWD undertook the disconnection also without prior notice and even failed to reconnect the Spouses Pastorfide's water supply despite payment of their arrears. There was clearly an abuse of right on the part of petitioner, COWD and Gonzalez. They are guilty of bad faith.

¹³ *Philippine National Bank v. DKS International, Inc.*, G.R. No. 179161, January 22, 2010, 610 SCRA 603, 621.

¹⁴ *Id.*

¹⁵ *Uypitching v. Quiamco*, G.R. No. 146322, December 6, 2006, 510 SCRA 172, 179.

¹⁶ *Id.*

The principle of abuse of rights as enshrined in Article 19 of the Civil Code provides 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.

In this regard, the Court's ruling in *Yuchengco v. The Manila Chronicle Publishing Corporation*¹⁷ is instructive, to wit:

x x x x

This provision of law sets standards which must be observed in the exercise of one's rights as well as in the performance of its duties, to wit: to act with justice; give everyone his due; and observe honesty and good faith.

In *Globe Mackay Cable and Radio Corporation v. Court of Appeals*, it was elucidated that while Article 19 "lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation. Generally, an action for damages under either Article 20 or Article 21 would be proper." The Court said:

One of the more notable innovations of the New Civil Code is the codification of "some basic principles that are to be observed for the rightful relationship between human beings and for the stability of the social order." [REPORT ON THE CODE COMMISSION ON THE PROPOSED CIVIL CODE OF THE PHILIPPINES, p. 39]. The framers of the Code, seeking to remedy the defect of the old Code which merely stated the effects of the law, but failed to draw out its spirit, incorporated certain fundamental precepts which were "designed to indicate certain norms that spring from the fountain of good conscience" and which were also meant to serve as "guides for human conduct [that] should run as golden threads through society, to the end that law may approach its supreme ideal, which is the sway and dominance of justice." (*Id.*) Foremost among these principles is that pronounced in Article 19 x x x.

x x x x

This article, known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which must be observed not only in the exercise of one's rights, but also in the performance of one's duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. The law, therefore, recognizes a primordial limitation on all rights; that in their exercise, the norms of human conduct set forth in Article 19 must be observed. **A right,**

¹⁷

G.R. No. 184315, November 28, 2011, 661 SCRA 392.

though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. But while Article 19 lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation. Generally, an action for damages under either Article 20 or Article 21 would be proper.

Corollarilly, Article 20 provides that “every person who, contrary to law, willfully or negligently causes damage to another shall indemnify the latter for the same.” It speaks of the general sanctions of all other provisions of law which do not especially provide for its own sanction. When a right is exercised in a manner which does not conform to the standards set forth in the said provision and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be responsible. Thus, if the provision does not provide a remedy for its violation, an action for damages under either Article 20 or Article 21 of the Civil Code would be proper.

The question of whether or not the principle of abuse of rights has been violated resulting in damages under Article 20 or other applicable provision of law, depends on the circumstances of each case. x x x¹⁸

To recapitulate, petitioner's acts which violated the abovementioned provisions of law is her unjustifiable act of having the respondent spouses' water supply disconnected, coupled with her failure to warn or at least notify respondent spouses of such intention. On the part of COWD and Gonzalez, it is their failure to give prior notice of the impending disconnection and their subsequent neglect to reconnect respondent spouses' water supply despite the latter's settlement of their delinquent account.

On the basis of the foregoing, the Court finds no cogent reason to depart from the ruling of both the RTC and the CA that petitioner, COWD and Gonzalez are solidarily liable.

The Spouses Pastorfide are entitled to moral damages based on the provisions of Article 2219,¹⁹ in connection with Articles 20²⁰ and 21²¹ of the Civil Code.

¹⁸ *Id.* at 402-404. (Emphasis supplied)

¹⁹ Art. 2219. Moral damages may be recovered in the following and analogous cases:

x x x x

(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34 and 35.

x x x x

²⁰ Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.


²¹ Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

As for exemplary damages, Article 2229 provides that exemplary damages may be imposed by way of example or correction for the public good. Nonetheless, exemplary damages are imposed not to enrich one party or impoverish another, but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.²² In the instant case, the Court agrees with the CA in sustaining the award of exemplary damages, although it reduced the amount granted, considering that respondent spouses were deprived of their water supply for more than nine (9) months, and such deprivation would have continued were it not for the relief granted by the RTC.

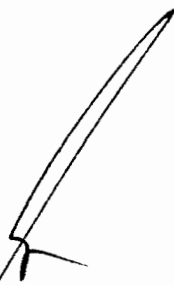
With respect to the award of attorney's fees, Article 2208 of the Civil Code provides, among others, that such fees may be recovered when exemplary damages are awarded, when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest, and where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs' plainly valid, just and demandable claim.

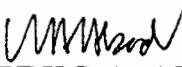
WHEREFORE, instant petition for review on *certiorari* is **DENIED**. The Decision and Resolution of the Court of Appeals, dated August 28, 2003 and December 17, 2003, respectively, in CA-G.R. CV No. 73000 are **AFFIRMED**.

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


ROBERTO A. ABAD
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice

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Yuchengco v. The Manila Chronicle Publishing Corporation, *supra* note 17, at 405.



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

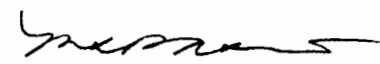
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice