

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**GLOBE MACKAY CABLE AND RADIO
CORP., and HERBERT C. HENDRY,
*Petitioners,***

-versus-

**G.R. No. 81262
August 25, 1989**

**THE HONORABLE COURT OF
APPEALS and RESTITUTO M. TOBIAS,
*Respondents.***

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DECISION

CORTES, J.:

Private respondent Restituto M. Tobias was employed by petitioner Globe Mackay Cable and Radio Corporation (GLOBE MACKAY) in a dual capacity as a purchasing agent and administrative assistant to the engineering operations manager. In 1972, GLOBE MACKAY

discovered fictitious purchases and other fraudulent transactions for which it lost several thousands of pesos.

According to private respondent it was he who actually discovered the anomalies and reported them on November 10, 1972 to his immediate superior Eduardo T. Ferraren and to petitioner Herbert C. Hendry who was then the Executive Vice-President and General Manager of GLOBE MACKAY.

On November 11, 1972, one day after private respondent Tobias made the report, petitioner Hendry confronted him by stating that he was the number one suspect, and ordered him to take a one week forced leave, not to communicate with the office, to leave his table drawers open, and to leave the office keys.

On November 20, 1972, when private respondent Tobias returned to work after the forced leave, petitioner Hendry went up to him and called him a “crook” and a “swindler.” Tobias was then ordered to take a lie detector test. He was also instructed to submit specimen of his handwriting, signature, and initials for examination by the police investigators to determine his complicity in the anomalies.

On December 6, 1972, the Manila police investigators submitted a laboratory crime report (Exh. “A”) clearing private respondent of participation in the anomalies.

Not satisfied with the police report, petitioners hired a private investigator, retired Col. Jose G. Fernandez, who on December 10, 1972, submitted a report (Exh. “2”) finding Tobias guilty. This report however expressly stated that further investigation was still to be conducted.

Nevertheless, on December 12, 1972, petitioner Hendry issued a memorandum suspending Tobias from work preparatory to the filing of criminal charges against him.

On December 19, 1972, Lt. Dioscoro V. Tagle, Metro Manila Police Chief Document Examiner, after investigating other documents pertaining to the alleged anomalous transactions, submitted a second laboratory crime report (Exh. “B”) reiterating his previous finding

that the handwritings, signatures, and initials appearing in the checks and other documents involved in the fraudulent transactions were not those of Tobias. The lie detector tests conducted on Tobias also yielded negative results.

Notwithstanding the two police reports exculpating Tobias from the anomalies and the fact that the report of the private investigator, was, by its own terms, not yet complete, petitioners filed with the City Fiscal of Manila a complaint for estafa through falsification of commercial documents, later amended to just estafa. Subsequently, five other criminal complaints were filed against Tobias, four of which were for estafa through falsification of commercial document while the fifth was for violation of Article 290 of the Revised Penal Code (Discovering Secrets Through Seizure of Correspondence). Two of these complaints were refiled with the Judge Advocate General's Office, which however, remanded them to the fiscal's office. All of the six criminal complaints were dismissed by the fiscal. Petitioners appealed four of the fiscal's resolutions dismissing the criminal complaints with the Secretary of Justice, who, however, affirmed their dismissal.

In the meantime, on January 17, 1973, Tobias received a notice (Exh. "F") from petitioners that his employment has been terminated effective December 13, 1972. Whereupon, Tobias filed a complaint for illegal dismissal. The labor arbiter dismissed the complaint. On appeal, the National Labor Relations Commission (NLRC) reversed the labor arbiter's decision. However, the Secretary of Labor, acting on petitioners' appeal from the NLRC ruling, reinstated the labor arbiter's decision. Tobias appealed the Secretary of Labor's order with the Office of the President. During the pendency of the appeal with said office, petitioners and private respondent Tobias entered into a compromise agreement regarding the latter's complaint for illegal dismissal.

Unemployed, Tobias sought employment with the Republic Telephone Company (RETELCO). However, petitioner Hendry, without being asked by RETELCO, wrote a letter to the latter stating that Tobias was dismissed by GLOBE MACKAY due to dishonesty.

Private respondent Tobias filed a civil case for damages anchored on alleged unlawful, malicious, oppressive, and abusive acts of petitioners. Petitioner Hendry, claiming illness, did not testify during the hearings. The Regional Trial Court (RTC) of Manila, Branch IX, through Judge Manuel T. Reyes rendered judgment in favor of private respondent by ordering petitioners to pay him eighty thousand pesos (P80,000.00) as actual damages, two hundred thousand pesos (P200,000.00) as moral damages, twenty thousand pesos (P20,000.00) as exemplary damages, thirty thousand pesos (P30,000.00) as attorney's fees, and costs. Petitioners appealed the RTC decision to the Court of Appeals. On the other hand, Tobias appealed as to the amount of damages. However, the Court of Appeals, in a decision dated August 31, 1987,^[**] affirmed the RTC decision in toto. Petitioners' motion for reconsideration having been denied, the instant petition for review on certiorari was filed.

The main issue in this case is whether or not petitioners are liable for damages to private respondent.

Petitioners contend that they could not be made liable for damages in the lawful exercise of their right to dismiss private respondent.

On the other hand, private respondent contends that because of petitioners' abusive manner in dismissing him as well as for the inhuman treatment he got from them, the petitioners must indemnify him for the damage that he had suffered.

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 which provides:

Art. 19. 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.

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, 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.

Article 20, which pertains to damage arising from a violation of law, provides that:

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

However, in the case at bar, petitioners claim that they did not violate any provision of law since they were merely exercising their legal right to dismiss private respondent. This does not, however, leave private respondent with no relief because Article 21 of the Civil Code provides that:

Art. 21. Any person who wilfully 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.

This article, adopted to remedy the “countless gaps in the statutes, which leave so many victims of moral wrongs helpless, even though they have actually suffered material and moral injury” (Id.) should “vouchsafe adequate legal remedy for that untold number of moral wrongs which it is impossible for human foresight to provide for specifically in the statutes” (Id., at p. 40; See also *PNB vs. CA*, G.R. No. L-27155, May 18, 1978, 83 SCRA 237, 247).

In determining whether or not the principle of abuse of rights may be invoked, there is no rigid test which can be applied. While the Court has not hesitated to apply Article 19 whether the legal and factual circumstances called for its application (See for e.g., *Velayo vs. Shell Co. of the Phil., Ltd.*, 100 Phil. 186 (1956); *PNB vs. CA*, supra; *Grand Union Supermarket, Inc. vs. Espino, Jr.*, G.R. No. L-48250, December 28, 1979, 94 SCRA 953; *PAL vs. CA*, G.R. No. L-46558, July 31, 1981, 106 SCRA 391; *United General Industries, Inc. vs. Paler*, G.R. No. L-30205, March 15, 1982, 112 SCRA 404; *Rubio vs. CA*, G.R. No. 50911, August 21, 1987, 153 SCRA 183) the question of whether or not the principle of abuse of rights has been violated resulting in damages under Article 20 or Article 21 or other applicable provision of law, depends on the circumstances of each case. And in the instant case, the Court, after examining the record and considering certain significant circumstances, finds that petitioners have indeed abused the right that they invoke, causing damage to private respondent and for which the latter must now be indemnified.

The trial court made a finding that notwithstanding the fact that it was private respondent Tobias who reported the possible existence of anomalous transactions, petitioner Hendry “showed belligerence and told plaintiff (private respondent herein) that he was the number one suspect and to take a one week vacation leave, not to communicate with the office, to leave his table drawers open, and to leave his keys to said defendant (petitioner Hendry)” (RTC Decision, p. 2; Rollo, p. 232). This, petitioners do not dispute. But regardless of whether or not it was private respondent Tobias who reported the anomalies to petitioners, the latter’s reaction towards the former upon uncovering

the anomalies was less than civil. An employer who harbors suspicions that an employee has committed dishonesty might be justified in taking the appropriate action such as ordering an investigation and directing the employee to go on a leave. Firmness and the resolve to uncover the truth would also be expected from such employer. But the high-handed treatment accorded Tobias by petitioners was certainly uncalled for. And this reprehensible attitude of petitioners was to continue when private respondent returned to work on November 20, 1972 after his one week forced leave. Upon reporting for work, Tobias was confronted by Hendry who said, "Tobby, you are the crook and swindler in this company." Considering that the first report made by the police investigators was submitted only on December 10, 1972 (See Exh. "A") the statement made by petitioner Hendry was baseless. The imputation of guilt without basis and the pattern of harassment during the investigations of Tobias transgress the standards of human conduct set forth in Article 19 of the Civil Code. The Court has already ruled that the right of the employer to dismiss an employee should not be confused with the manner in which the right is exercised and the effects flowing therefrom. If the dismissal is done abusively, then the employer is liable for damages to the employee (*Quisaba vs. Sta. Ines-Melale Veneer and Plywood Inc.*, G.R. No. L-38088, August 30, 1974, 58 SCRA 771; See also *Philippine Refining Co., Inc. vs. Garcia*, G.R. No. L-21871, September 27, 1966, 18 SCRA 107). Under the circumstances of the instant case, the petitioners clearly failed to exercise in a legitimate manner their right to dismiss Tobias, giving the latter the right to recover damages under Article 19 in relation to Article 21 of the Civil Code.

But petitioners were not content with just dismissing Tobias. Several other tortious acts were committed by petitioners against Tobias after the latter's termination from work. Towards the latter part of January, 1973, after the filing of the first of six criminal complaints against Tobias, the latter talked to Hendry to protest the actions taken against him. In response, Hendry cut short Tobias' protestations by telling him to just confess or else the company would file a hundred more cases against him until he landed in jail. Hendry added that, "You Filipinos cannot be trusted." The threat unmasked petitioner's bad faith in the various actions taken against Tobias. On the other hand, the scornful remark about Filipinos as well as Hendry's earlier

statements about Tobias being a “crook” and “swindler” are clear violations of Tobias’ personal dignity (See Article 26, Civil Code).

The next tortious act committed by petitioners was the writing of a letter to RETELCO sometime in October 1974, stating that Tobias had been dismissed by GLOBE MACKAY due to dishonesty. Because of the letter, Tobias failed to gain employment with RETELCO and as a result of which, Tobias remained unemployed for a longer period of time. For this further damage suffered by Tobias, petitioners must likewise be held liable for damages consistent with Article 2176 of the Civil Code. Petitioners, however, contend that they have a “moral, if not legal, duty to forewarn other employers of the kind of employee the plaintiff (private respondent herein) was.” (Petition, p. 14; Rollo, p. 15). Petitioners further claim that “it is the accepted moral and societal obligation of every man to advise or warn his fellowmen of any threat or danger to the latter’s life, honor or property. And this includes warning one’s brethren of the possible dangers involved in dealing with, or accepting into confidence, a man whose honesty and integrity is suspect” (Id.). These arguments, rather than justify petitioners’ act, reveal a seeming obsession to prevent Tobias from getting a job, even after almost two years from the time Tobias was dismissed.

Finally, there is the matter of the filing by petitioners of six criminal complaints against Tobias. Petitioners contend that there is no case against them for malicious prosecution and that they cannot be “penalized for exercising their right and prerogative of seeking justice by filing criminal complaints against an employee who was their principal suspect in the commission of forgeries and in the perpetration of anomalous transactions which defrauded them of substantial sums of money” (Petition, p. 10, Rollo, p. 11).

While sound principles of justice and public policy dictate that persons shall have free resort to the courts for redress of wrongs and vindication of their rights (Buenaventura vs. Sto. Domingo, 103 Phil. 239 (1958)), the right to institute criminal prosecutions can not be exercised maliciously and in bad faith (Ventura vs. Bernabe, G.R. No. L-26760, April 30, 1971, 38 SCRA 587). Hence, in Yutuk vs. Manila Electric Co., G.R. No. L-13016, May 31, 1961, 2 SCRA 337, the Court held that the right to file criminal complaints should not be used as a

weapon to force an alleged debtor to pay an indebtedness. To do so would be a clear perversion of the function of the criminal processes and of the courts of justice. And in *Hawpia vs. CA*, G.R. No. L-20047, June 30, 1967, 20 SCRA 536, the Court upheld the judgment against the petitioner for actual and moral damages and attorney's fees after making a finding that petitioner, with persistence, filed at least six criminal complaints against respondent, all of which were dismissed.

To constitute malicious prosecution, there must be proof that the prosecution was prompted by a design to vex and humiliate a person and that it was initiated deliberately by the defendant knowing that the charges were false and groundless (*Manila Gas Corporation vs. CA*, G.R. No. L-44190, October 30, 1980, 100 SCRA 602). Concededly, the filing of a suit, by itself, does not render a person liable for malicious prosecution (*Inhelder Corporation vs. CA*, G.R. No. 52358, May 30, 1983, 122 SCRA 576). The mere dismissal by the fiscal of the criminal complaint is not a ground for an award of damages for malicious prosecution if there is no competent evidence to show that the complainant had acted in bad faith (*Sison vs. David*, G.R. No. L-11268, January 28, 1961, 1 SCRA 60).

In the instant case, however, the trial court made a finding that petitioners acted in bad faith in filing the criminal complaints against Tobias, observing that:

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Defendants (petitioners herein) filed with the Fiscal's Office of Manila a total of six (6) criminal cases, five (5) of which were for estafa thru falsification of commercial document and one for violation of Art. 290 of the Revised Penal Code "discovering secrets thru seizure of correspondence," and all were dismissed for insufficiency or lack of evidence." The dismissal of four (4) of the cases was appealed to the Ministry of Justice, but said Ministry invariably sustained the dismissal of the cases. As above adverted to, two of these cases were refiled with the Judge Advocate General's Office of the Armed Forces of the Philippines to railroad plaintiffs arrest and detention in the military stockade, but this was frustrated by a presidential

decree transferring criminal cases involving civilians to the civil courts.

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To be sure, when despite the two (2) police reports embodying the findings of Lt. Dioscoro Tagle, Chief Document Examiner of the Manila Police Department, clearing plaintiff of participation or involvement in the fraudulent transactions complained of, despite the negative results of the lie detector tests which defendants compelled plaintiff to undergo, and although the police investigation was “still under follow-up and a supplementary report will be submitted after all the evidence has been gathered,” defendants hastily filed six (6) criminal cases with the city Fiscal’s Office of Manila, five (5) for estafa thru falsification of commercial document and one (1) for violation of Art. 290 of the Revised Penal Code, so much so that as was to be expected, all six (6) cases were dismissed, with one of the investigating fiscals, Asst. Fiscal de Guia, commenting in one case that, “Indeed, the haphazard way this case was investigated is evident. Evident likewise is the flurry and haste in the filing of this case against respondent Tobias,” there can be no mistaking that defendants would not but be motivated by malicious and unlawful intent to harass, oppress, and cause damage to plaintiff.

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(RTC Decision, pp. 5-6; Rollo, pp. 235-236).

In addition to the observations made by the trial court, the Court finds it significant that the criminal complaints were filed during the pendency of the illegal dismissal case filed by Tobias against petitioners. This explains the haste in which the complaints were filed, which the trial court earlier noted. But petitioners, to prove their good faith, point to the fact that only six complaints were filed against Tobias when they could have allegedly filed one hundred cases, considering the number of anomalous transactions committed against GLOBE MACKAY. However, petitioners’ good faith is belied by the threat made by Hendry after the filing of the first complaint that one hundred more cases would be filed against Tobias. In effect,

the possible filing of one hundred more cases was made to hang like the sword of Damocles over the head of Tobias. In fine, considering the haste in which the criminal complaints were filed, the fact that they were filed during the pendency of the illegal dismissal case against petitioners, the threat made by Hendry, the fact that the cases were filed notwithstanding the two police reports exculpating Tobias from involvement in the anomalies committed against GLOBE MACKAY, coupled by the eventual dismissal of all the cases, the Court is led into no other conclusion than that petitioners were motivated by malicious intent in filing the six criminal complaints against Tobias.

Petitioners next contend that the award of damages was excessive. In the complaint filed against petitioners, Tobias prayed for the following: one hundred thousand pesos (P100,000.00) as actual damages; fifty thousand pesos (P50,000.00) as exemplary damages; eight hundred thousand pesos (P800,000.00) as moral damages; fifty thousand pesos (P50,000.00) as attorney's fees; and costs. The trial court, after making a computation of the damages incurred by Tobias (See RTC Decision, pp. 7-8; Rollo, pp. 154-155), awarded him the following: eighty thousand pesos (P80,000.00) as actual damages; two hundred thousand pesos (P200,000.00) as moral damages; twenty thousand pesos (P20,000.00) as exemplary damages; thirty thousand pesos (P30,000.00) as attorney's fees; and, costs. It must be underscored that petitioners have been guilty of committing several actionable tortious acts, i.e., the abusive manner in which they dismissed Tobias from work including the baseless imputation of guilt and the harassment during the investigations; the defamatory language heaped on Tobias as well as the scornful remark on Filipinos; the poison letter sent to RETELCO which resulted in Tobias' loss of possible employment; and, the malicious filing of the criminal complaints. Considering the extent of the damage wrought on Tobias, the Court finds that, contrary to petitioners' contention, the amount of damages awarded to Tobias was reasonable under the circumstances.

Yet, petitioners still insist that the award of damages was improper, invoking the principle of *damnum absque injuria*. It is argued that "(t)he only probable actual damage that plaintiff (private respondent herein) could have suffered was a direct result of his having been

dismissed from his employment, which was a valid and legal act of the defendants-appellants (petitioners herein).” (Petition, p. 17; Rollo, p. 18).

According to the principle of *damnum absque injuria*, damage or loss which does not constitute a violation of a legal right or amount to a legal wrong is not actionable (*Escano vs. CA*, G. R. No. L-47207, September 25, 1980, 100 SCRA 197; See also *Gilchrist vs. Cuddy*, 29 Phil. 542 (1915); *The Board of Liquidators vs. Kalaw*, G.R. No. L-18805, August 14, 1967, 20 SCRA 987). This principle finds no application in this case. It bears repeating that even granting that petitioners might have had the right to dismiss Tobias from work, the abusive manner in which that right was exercised amounted to a legal wrong for which petitioners must now be held liable. Moreover, the damage incurred by Tobias was not only in connection with the abusive manner in which he was dismissed but was also the result of several other quasi-delictual acts committed by petitioners.

Petitioners next question the award of moral damages. However, the Court has already ruled in *Wassmer vs. Velez*, G.R. No. L-20089, December 26, 1964, 12 SCRA 648, 653, that “(p)er express provision of Article 2219 (10) of the New Civil Code, moral damages are recoverable in the cases mentioned in Article 21 of said Code.” Hence, the Court of Appeals committed no error in awarding moral damages to Tobias.

Lastly, the award of exemplary damages is impugned by petitioners. Although Article 2231 of the Civil Code provides that “(i)n quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence,” the Court, in *Zulueta vs. Pan American World Airways, Inc.*, G.R. No. L-28589, January 8, 1973, 49 SCRA 1, ruled that if gross negligence warrants the award of exemplary damages, with more reason is its imposition justified when the act performed is deliberate, malicious and tainted with bad faith. As in the *Zulueta* case, the nature of the wrongful acts shown to have been committed by petitioners against Tobias is sufficient basis for the award of exemplary damages to the latter.

WHEREFORE, the Petition is hereby **DENIED** and the Decision of the Court of Appeals in CA-G.R. CV No. 09055 is **AFFIRMED**.

SO ORDERED.

**Fernan, C.J., Gutierrez, Jr. and Bidin, JJ., concur.
Feliciano, J., took no part.**

[**] Penned by Justice Jorge R. Coquia and concurred in by Justice Josue N. Bellosillo and Justice Venancio D. Aldecoa, Jr.

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