



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated August 22, 2022, which reads as follows:

“G.R. No. 259415 (*Gemma A. Vda. de Liwag v. Rudy P. Cruz [deceased] and Rosalina Laron Cruz, doing business under the business name of FUNENARIA CRUZ, under Act No. 3883, as amended, otherwise known as the Business Name Law, with Principal Business and Office at 2620 Severino Reyes Street, Blumentritt, Sta. Cruz, Manila*).— This Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court inveighs against the Decision² dated 29 June 2020 and the Resolution³ dated 13 December 2021 of the Court of Appeals (CA) in CA-G.R. CV No. 112252, which affirmed with modification the Decision⁴ dated 3 August 2018 and the Order⁵ dated 29 November 2018 of the Regional Trial Court (RTC) of Cavite, Branch 18. The RTC awarded damages in favor of petitioner Gemma A. Vda. De Liwag (Gemma).

ANTECEDENTS

This case has its precursor in the Complaint for damages and attorney’s fees filed by Gemma against respondents Rudy Cruz and Rosalina Cruz, who were the owners of Funeraria Cruz. On 23 November 2011, Gemma’s husband, Rodelio Liwag (Rodelio), died after committing suicide. His body was brought to Funeraria Cruz for autopsy. Thereafter, the sales executive of Funeraria Cruz convinced Gemma to avail of their funeral services. Gemma accepted the offer and chose the first-class funeral service worth ₱154,000.00, which included one metal casket, embalming process good for seven days, transfer of cadaver from the hospital to the morgue,

¹ *Rollo*, pp. 11-101.

² *Id.* at 103-120; Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Nina G. Antonio-Valenzuela and Tita Marilyn B. Payoyo-Villordon, concurring.

³ *Id.* at 121-124; Penned by Associate Tita Marilyn B. Payoyo-Villordon with Associate Justices Eduardo B. Peralta, Jr. and Nina G. Antonio-Valenzuela, concurring.

⁴ *Id.* at 269-274. Penned by Acting Presiding Judge Jaime B. Santiago.

⁵ *Id.* at 309-310. Penned by Acting Presiding Judge Jaime B. Santiago.

service arrangement at the family residence in Silang, Cavite, sanitary permit for transfer, one funeral car (hearse) for interment, and one set of flowers.⁶

As provided for in their contract, Gemma paid in full the cost of her husband's funeral service. In turn, respondents assured her that the funeral crew and hearse shall be at their residence in Silang, Cavite at 11:00 a.m. of 29 November 2011 for Rodelio's interment. However, by eleven o'clock, respondents' crew were nowhere in sight. At 11:30 in the morning, two of respondents' staff arrived to inform Gemma that the funeral car was stuck in Imus, Cavite. Not wanting to miss the necrological service for Rodelio, which was scheduled at 12:30 p.m., Gemma and her relatives decided to carry the casket on foot to the memorial park around one kilometer away from their residence.⁷

Because of respondents' breach of contract, Gemma sent a demand to pay actual and moral damages for her suffering, anguish, and anxiety. Yet, respondents purportedly remained indifferent to her pain and suffering. Thus, Gemma filed the Complaint, praying for the return of the ₱154,000.00 cost of the services she availed; ₱1,000,000.00 moral damages; ₱100,000.00 exemplary damages; ₱100,000.00 nominal damages; ₱100,000.00 attorney's fees and ₱5,000.00 per appearance fee.⁸

Ensuingly, respondents were declared in default resulting in Gemma's presentation of her evidence *ex parte*.⁹

On 29 November 2018, the RTC of Cavite, Branch 18 rendered its Judgment in favor of Gemma and awarded to her the following: (1) ₱154,000.00 as actual damages; (2) ₱100,000.00 as moral damages; (3) ₱50,000.00 as exemplary damages; and (4) ₱50,000.00 as attorney's fees.¹⁰ The RTC gave credence to Gemma's postulation that respondents breached their contract in bad faith when they failed to send a funeral hearse at the agreed time giving rise to her entitlement to damages.¹¹

Aggrieved, respondents interposed an Appeal to the CA. They disagreed with the RTC's award of the whole ₱154,000.00 as actual damages. Negating bad faith, respondents averred that the funeral hearse was not able to arrive in time for the interment because it figured in an accident in Imus, Cavite. In fact, as a gesture of goodwill, respondents

⁶ Id. at 104-105.

⁷ Id. at 105.

⁸ Id. at 106.

⁹ Id. at 107.

¹⁰ Id. at 274.

¹¹ Id. at 272-273.

offered to pay ₱50,000.00 to Gemma, which she declined. Thusly, they averred that the awards of moral and exemplary damages, as well as attorney's fees, were improper.¹²

Partly granting the Appeal, the CA affirmed the RTC's decision albeit with modification. The CA ordered respondents to pay moral damages in the amount of ₱100,000.00; attorney's fees amounting to ₱50,000.00; and temperate damages, in lieu of actual damages, in the amount of ₱50,000.00.¹³

In refusing to reimburse the ₱154,000.00 cost of funeral services, the CA noted that out of the whole funeral package, respondents only failed to send a funeral hearse in Cavite. Hence, it would be unjust enrichment for Gemma to be reimbursed the whole ₱154,000.00.¹⁴ The CA ruled that the value corresponding to the use of the funeral hearse, which respondents failed to provide, cannot be determined with certainty. Hence, the CA saw it fit to award temperate damages, in lieu of actual damages, in the amount of ₱50,000.00.¹⁵ The CA deleted the ₱50,000.00 exemplary damages because Gemma failed to prove respondents' bad faith.¹⁶ Nevertheless, the CA retained the ₱100,000.00 award for moral damages considering Gemma's physical suffering, mental anguish, and serious anxiety brought about by respondents' breach. The attorney's fees amounting to ₱50,000.00 was also sustained since Gemma was compelled to litigate to protect her rights.¹⁷

Ineluctably, the CA stressed that Gemma cannot pray for an increase in the award of moral damages in her Appellee's Brief since she was not the appellant. A party who does not appeal is not entitled to affirmative relief.¹⁸

Gemma filed her motion for reconsideration which was denied in the assailed Resolution.¹⁹

Undaunted, Gemma filed the instant Petition for Review on *Certiorari*, insisting on her prayer for the increase of the award of moral damages to ₱1,000,000.00; and reinstatement of actual damages and exemplary damages in the amounts of ₱154,000.00 and ₱50,000.00, respectively.²⁰

¹² Id. at 109-110.

¹³ Id. at 118.

¹⁴ Id. at 112-113.

¹⁵ Id. at 114.

¹⁶ Id. at 114-115.

¹⁷ Id. at 116-117.

¹⁸ Id. at 117.

¹⁹ *Supra* note 3.

²⁰ *Rollo*, pp. 86-97.

THE COURT'S RULING

The Petition is bereft of merit.

As succinctly held by the CA, an appellee who has not himself appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the decision of the trial court. A non-appellant cannot impugn the correctness of a judgment. He cannot assign errors that are designed to have the judgment modified. All that the appellee can do is to make a counter-assignment of errors or to argue on issues raised at the trial only for the purpose of sustaining the judgment in his favor.²¹

In the case at bench, Gemma, not having appealed the decision of the RTC, cannot ask for an increase of the moral damages awarded to ₱1,000,000.00. Besides, moral damages are not punitive in nature but instead a type of award designed to compensate the claimant for actual injury suffered.²² They are not meant to enrich Gemma at the expense of respondents.

On the contrary, this Court finds it improper for the RTC and the CA to award moral damages in Gemma's favor. The Court is not unaware that only questions of law should be raised in petitions filed under Rule 45²³ of the Rules of Court. Nevertheless, this general rule admits of exceptions.²⁴ In the case at bench, the factual findings of the RTC and the CA regarding respondents' bad faith are contradictory. Hence, the Court may exceptionally tackle this particular factual issue.

Under Article 2220 of the Civil Code, moral damages may only be awarded in breaches of contract when the defendant acted **fraudulently or**

²¹ See *Cruz v. MIAA*, 717 Phil. 461, 467 (2013) citing *Medida v. CA*, 284-A Phil. 404, 415-416 (1992).

²² See *Guy v. Tulfo, et al.*, G.R. No. 213023, 10 April 2019.

²³ Section 1. Filing of petition with Supreme Court. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise **only questions of law** which must be distinctly set forth. (Emphasis supplied.)

²⁴ (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record; See *Medina v. Mayor Asistio, Jr.*, G.R. No. 75450, 8 November 1990.

in bad faith.²⁵ Bad faith, in this context, includes gross, but not simple, negligence.²⁶ Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that malice or bad faith contemplates a state of mind affirmatively operating with furtive design or ill will.²⁷

In the assailed decision, the CA brushed aside Gemma's claim of bad faith against respondents. Invariably, the CA deleted the award of exemplary damages considering Gemma's failure to prove respondents' fraudulent intent and malevolent design.

The Court agrees with the CA.

A percipient study of the case would show that on the date of Rodelio's interment, respondents sent a funeral hearse to Silang, Cavite. Unfortunately, it did not reach Gemma's residence in Imus, Cavite after figuring in an accident. Aware of their obligation, they immediately sent two of their crews to inform Gemma's family about the unforeseen event. Contrary to Gemma's claim, respondents profusely apologized to her after the burial and even offered to pay ₱50,000.00 out of benevolence and in order to appease Gemma. These circumstances are inconsistent with the imputation of bad faith against respondents.²⁸

In the absence of clear proof of bad faith, the presumption of good faith stands. On this score, the Court deletes the award of moral damages in the amount of ₱100,000.00.

By the same token, the CA's deletion of the award of exemplary damages is in order. Under Article 2232 of the Civil Code, courts may only award exemplary damages in cases of breach of contract when the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. Given that respondents were not in bad faith, exemplary damages cannot be awarded.

Anent the deletion of actual damages, the Court agrees with the CA that Gemma cannot be reimbursed for the whole ₱154,000.00 cost of the funeral package. It must be recalled that the funeral services which Gemma availed included one metal casket, embalming process good for seven days,

²⁵ ARTICLE 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

²⁶ See *Far East Bank and Trust Co. v. Court of Appeals*, G.R. No. 108164, 23 February 1995.

²⁷ *Id.*

²⁸ *Rollo*, p. 115.

transfer of cadaver from the hospital to the morgue, service arrangement at the family residence in Silang, Cavite, sanitary permit for transfer, one funeral car (hearse) for interment, and one set of flowers. Respondents were able to deliver all other items in the package except for the funeral hearse. In sooth, reimbursing Gemma for the whole ₱154,000.00 is tantamount to unjust enrichment. Considering that the package was not itemized and there was no proof of the corresponding value of the funeral hearse, the CA properly awarded ₱50,000.00 temperate damages in lieu of actual damages.

The Court likewise finds the award of attorney's fees devoid of legal mooring. The case does not fall under any of the items under Article 2208²⁹ where attorney's fees may be recovered. Besides, attorney's fees cannot be granted simply because one was compelled to sue to protect and enforce one's right. The grant must be proven by facts; it cannot depend on mere speculation or conjecture — its basis must be stated in the text of the decision.³⁰ Here, the RTC and CA merely awarded attorney's fees because Gemma was compelled to litigate *sans* any explanation why the award was proper. Thusly, the award of attorney's fees should be deleted.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED**. The Decision³¹ dated 29 June 2020 and the Resolution³² dated 13 December 2021 of the Court of Appeals (CA) in CA-G.R. CV No. 112252 are **AFFIRMED with MODIFICATION**. Respondents Rudy Cruz and Rosalina Laron Cruz are ordered to pay temperate damages, in lieu of actual damages, in the amount of ₱50,000.00. The awards of moral damages and attorney's fees are hereby **DELETED**.

²⁹ ARTICLE 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

³⁰ See *Mindex Resources Development v. Morillo*, G.R. No. 138123, 12 March 2002.

³¹ Supra note 2.

³² Supra note 3.

SO ORDERED.”

By authority of the Court:

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