Supreme Court E-Library

FIRST DIVISION

[G.R. No. 128690. January 21, 1999]

ABS-CBN BROADCASTING CORPORATION, *petitioners, vs.* **HONORABLE COURT OF APPEALS, REPUBLIC BROADCASTING CORP., VIVA PRODUCTIONS, INC., and VICENTE DEL ROSARIO,** *respondents.*

SYNOPSIS

In 1990, ABS-CBN and VIVA executed a Film Exhibition Agreement whereby the latter gave the former an exclusive right to exhibit 24 VIVA Films for TV telecast. Later, VIVA, through respondent Vincent del Rosario, offered ABS-CBN a list of 3 film packages (36 titles) from which the latter may exercise its right of first refusal under their agreement. ABS-CBN ticked off 10 titles therefrom. Thereafter, in February 1992, Del Rosario offered ABS-CBN airing rights over a package of 104 movies for P60 million. In April, 1992, Del Rosario, and Eugenio Lopez of ABS-CBN, met at a restaurant to discuss the package proposal. According to Lopez, however, what they agreed upon was ABS-CBN's exclusive film rights to 14 films for ₱36 million. Del Rosario denied the same. He insisted that the discussion was on VIVA's offer of 104 films for ₱60 million, to which ABS-CBN later made a counter proposal but rejected by VIVA's Board of Directors. Hence, VIVA later granted RBS the exclusive right to air the 104 VIVA films, including the 14 films supposedly granted to ABS-CBN. ABS-CBN then filed a complaint for specific performance with prayer for injunction. The RTC granted the prayer and required ABS-CBN post a ₱35 million bond. But while ABS-CBN was moving for reduction of the bond, RBS offered to put up a counterbond and was allowed to post ₱30 million. Later, the RTC rendered a decision in favor of RBS and VIVA, ordering ABS-CBN to pay RBS the amount it paid for the print advertisement and premium on the counterbond, moral damages, exemplary damages and attorney's fee. ABS-CBN appealed to the Court of Appeals. Viva and Del Rosario also appealed seeking moral and exemplary damages and additional

Supreme Court E-Library

attorney's fees. The Court of Appeals affirmed the RTC decision and sustained the monetary awards, VIVA's and Del Rosario's appeals were denied.

The key issues are: 1. Whether there was a perfected contract between VIVA and ABS-CBN; and 2. Whether RBS is entitled to damages and attorney's fees.

The first issue is resolved against ABS-CBN, in the absence of the requisites to make a valid contract. The alleged agreement on the 14 films, if there is one, is not binding to VIVA as it is not manifested that Del Rosario has an authority to bind VIVA. Thus, when ABS-CBN made a counter-proposal to VIVA, the same was submitted to its Board of Directors, who rejected the same. Further, the Court agreed that the alleged agreement is not a continuation of the 1990 Contract as the right of first refusal under the said contract had already been exercised by ABS-CBN. However, on the issue of damages, the Court found ABS-CBN. RBS is not entitled to actual damages as the claim thereof did not arise from that which allows the same to be recovered. Neither is RBS entitled to attorney's fees as there is no showing of bad faith in the other party's persistence in his case. Also, being a corporation, RBS is not entitled to moral damages as the same is awarded to compensate actual injuries suffered. Lastly, exemplary damages cannot be awarded in the absence of proof that ABS-CBN was inspired by malice or bad faith.

SYLLABUS

1. CIVIL LAW; CONTRACT; ELUCIDATED. — A contract is a meeting of minds between two persons whereby one binds himself to give something or to render some service to another for a consideration. There is no contract unless the following requisites concur: (1) consent of the contracting parties; (2) object certain which is the subject of the contract; and (3) cause of the obligation, which is established. A contract undergoes three stages: (a) preparation, conception, or generation, which is the period of negotiation and bargaining, ending at the moment of agreement of the parties; (b) perfection or birth of the contract, which is the moment when the parties come to agree on the terms of the contract; and (c) consummation or

Supreme Court E-Library

death, which is the fulfillment or performance of the terms agreed upon in the contract. Contracts that are consensual in nature are perfected upon mere meeting of the minds. Once there is concurrence between the offer and the acceptance upon the subject matter, consideration, and terms of payment, a contract is produced. The offer must be certain. To convert the offer into a contract, the acceptance must be absolute and must not qualify the terms of the offer; it must be plain, unequivocal, unconditional, and without variance of any sort from the proposal. A qualified acceptance, or one that involves a new proposal, constitutes a counter-offer and is a rejection of the original offer. Consequently, when something is desired which is not exactly what is proposed in the offer, such acceptance is not sufficient to generate consent because any modification or variation from the terms of the offer annuls the offer.

2. **CORPORATION LAW; BOARD OF DIRECTORS; POWER TO ENTER INTO CONTRACTS; DELEGATION; VALIDITY THEREOF.** — Under the Corporation Code, unless otherwise provided by said Code, corporate powers, such as the power to enter into contracts, are exercised by the Board of Directors. However, the Board may delegate such powers to either an executive committee or officials or contracted managers. The delegation, except for the executive committee, must be for specific purposes. Delegation to officers makes the latter agents of the corporation; accordingly, the general rules of agency as to the binding effects of their acts would apply. For such officers to be deemed fully clothed by the corporation to exercise a power of the Board, did not have the authority to accept ABS-CBN's counter-offer was best evidenced by his submission of the draft contract to VIVA'S Board of Directors for the latter's approval. In any event, there was between Del Rosario and Lopez III no meeting of minds.

3. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; DAMAGES; ACTUAL DAMAGES; ELABORATED.** — Chapter 2, Title XVIII, Book IV of the Civil Code is the specific law on actual or compensatory damages. Except as provided by law or by stipulation, one is entitled to compensation for actual damages only for such pecuniary loss suffered by him as he has duly proved. The indemnification shall comprehend not only the value of the loss suffered, but also that of the profits that the

Supreme Court E-Library

obligee failed to obtain. In contracts and quasi-contracts the damages which may be awarded are dependent on whether the obligor acted with good faith or otherwise. In case of good faith, the damages recoverable are those which are the natural and probable consequences of the breach of the obligation and which the parties have foreseen or could have reasonably foreseen at the time of the constitution of the obligation. If the obligor acted with fraud, bad faith, malice, or wanton attitude, he shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation. In crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of, whether or not such damages have been foreseen or could have reasonably been foreseen by the defendant. Actual damages may likewise be recovered for loss or impairment of earning capacity in cases of temporary or permanent personal injury, or for injury to the plaintiff's business standing or commercial credit.

4. ID.; ID.; ID.; ID.; CASE AT BAR. — The claim of RBS for actual damages did not arise from contract, quasi- contract, delict, or quasi-delict. It arose from the fact of filing of the complaint despite ABS-CBN's alleged knowledge of lack of cause of action. Needless to state, the award of actual damages cannot be comprehended under the law on actual damages. RBS could only probably take refuge under Articles 19, 20, and 21 of the Civil Code. It may further be observed that in cases where a writ of preliminary injunction is issued, the damages which the defendant may suffer by reason of the writ are recoverable from the injunctive bond. In this case, ABS-CBN had not yet filed the required bond; as a matter of fact, it asked for reduction of the bond and even went to the Court of Appeals to challenge the order on the matter. Clearly then, it was not necessary for RBS to file a counterbond. Hence, ABS-CBN cannot be held responsible for the premium RBS paid for the counterbond. Neither could ABS-CBN be liable for the print advertisements for "*Maging Sino Ka Man*" for lack of sufficient legal basis. The RTC issued a temporary restraining order and later, a writ of preliminary injunction on the basis of its determination that there existed sufficient grounds for the issuance thereof. Notably, the RTC did not dissolve the injunction on the ground of lack of legal and factual basis, but because of the plea of RBS that it be allowed to put up a counterbond.

Supreme Court E-Library

5. **ID.; ID.; ID.; ID.; ATTORNEY'S FEES; ELABORATED.**— As regards attorney's fees, the law is clear that in the absence of stipulation, attorney's fees may be recovered as actual or compensatory damages under any of the circumstances provided for in Article 2208 of the Civil Code. The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right of litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.

6. **ID.; ID.; ID.; MORAL DAMAGES; ELABORATED.** — As to moral damages the law is Section 1, Chapter 3, Title XVIII, Book IV of the Civil Code. Article 2217 thereof defines what are included in moral damages, while Article 2219 enumerates the cases where they may be recovered. Article 2220 provides that moral damages may be recovered in breaches of contract where the defendant acted fraudulently or in bad faith. Moral damages are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer. The award is not meant to enrich the complainant at the expense of the defendant, but to enable the injured party to obtain means, diversion, or amusements that will serve to obviate the moral suffering he has undergone. It is aimed at the restoration, within the limits of the possible, of the spiritual *status quo ante*, and should be proportionate to the suffering inflicted. Trial courts must then guard against the award of exorbitant damages; they should exercise balanced restrained and measured objectivity to avoid suspicion that it was due to passion, prejudice, or corruption on the part of the trial court.

7. **ID.; ID.; ID.; ID.; CASE AT BAR.** — RBS's claim for moral damages could possibly fall only under item (10) of Article 2219, thereof which reads: (10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35. However, the award of moral damages cannot be granted in favor of a corporation because,

Supreme Court E-Library

being an artificial person and having existence only in legal contemplation, it has no feelings, no emotions, no senses. It cannot, therefore, experience physical suffering and mental anguish, which can be experienced only by one having a nervous system. The statement in *People v. Manero* and *Mambulao Lumber Co. v. PNB* that a corporation may recover moral damages if it "has a good reputation that is debased, resulting in social humiliation" is an *obiter dictum*. On this score alone the award for damages must be set aside, since RBS is a corporation.

8. ID.; ID.; ID.; EXEMPLARY DAMAGES; ELUCIDATED. — The basic law on exemplary damages is Section 5, Chapter 3, Title XVIII, Book IV of the Civil Code. These are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated, or compensatory damages. They are recoverable in criminal cases as part of the civil liability when the crime was committed with one or more aggravating circumstances; in *quasi-delicts*, if the defendant acted with gross negligence; and in contracts and quasi-contracts, if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

9. ID.; ID.; ID.; ID.; CASE AT BAR. — The claim of RBS against ABS-CBN is not based on contract, quasi-contract, delict, or quasi-delict. Hence, the claims for moral and exemplary damages can only be based on Articles 19, 20, and 21 of the Civil Code. The elements of abuse of right under Article 19 are the following: (1) the existence of a legal right or duty, (2) which is exercised in bad faith, and (3) for the sole intent of prejudicing or injuring another. Article 20 speaks of the general sanction for all other provisions of law which do not especially provide for their own sanction; while Article 21 deals with acts *contra bonus mores*, and has the following elements: (1) there is an act which is legal, (2) but which is contrary to morals, good custom, public order, or public policy, and (3) and it is done with intent to injure. Verily then, malice or bad faith is at the core of Articles 19, 20, and 21. Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity. Such must be substantiated by evidence. There is no adequate proof that ABS-CBN was inspired by malice or bad faith. It was honestly convinced of the merits of its cause

Supreme Court E-Library

after it had undergone serious negotiations culminating in its formal submission of a draft contract. Settled is the rule that the adverse result of an action does not *per se* make the action wrongful and subject the actor to damages, for the law could not have meant to impose a penalty on the right to litigate. If damages result from a person's exercise of a right, it is *damnum absque injuria.*

APPEARANCES OF COUNSEL

Gangayco Law Offices for petitioner.

Penaflor & Perez Law Offices for Republic Broadcasting System, Inc.

Bengzon Narciso Cudala Jimenez Gonzales & Liwanag for VIVA Productions and V. del Rosario.

Belo Gozon Elma Parel Asuncion & Lucila for Republic Broadcasting System, Inc.

D E C I S I O N

DAVIDE, JR., *C.J.*:

In this petition for review on *certiorari*, petitioner ABS-CBN Broadcasting Corp. (hereafter ABS-CBN) seeks to reverse and set aside the decision[1] of 31 October 1996 and the resolution[2] of 10 March 1997 of the Court of Appeals in CA-G.R. CV No. 44125. The former affirmed with modification the decision[3] of 28 April 1993 of the Regional Trial Court (RTC) of Quezon City, Branch 80, in Civil Case No. Q-92-12309. The latter denied the motion to reconsider the decision of 31 October 1996.

The antecedents, as found by the RTC and adopted by the Court of Appeals, are as follows:

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[1] Per Adefuin-De la Cruz, *J.*, with Lantin and Tayao-Jaguros, *JJ.*, concurring; *Rollo*, 49-60.

[2] *Rollo*, 62

[3] Per Judge Efren N. Ambrosio; *Rollo*, 134-161.

Supreme Court E-Library

In 1990, ABS-CBN and Viva executed a Film Exhibition Agreement (Exh. "A") whereby Viva gave ABS-CBN an exclusive right to exhibit some Viva films. Sometime in December 1991, in accordance with paragraph 2.4 [*sic*] of said agreement stating that —

> 1.4 ABS-CBN shall have the right of first refusal to the next twenty-four (24) Viva films for TV telecast under such terms as may be agreed upon by the parties hereto, provided, however, that such right shall be exercised by ABS-CBN from the actual offer in writing.

Viva, through defendant Del Rosario, offered ABS-CBN, through its vice-president Charo Santos-Concio, a list of three (3) film packages (36 title) from which ABS-CBN may exercise its right of first refusal under the afore-said agreement (Exhs. "1" par. 2, "2", "2-A" and "2-B" – Viva). ABS-CBN, however through Mrs. Concio, "can tick off only ten (10) titles" (from the list) "we can purchase" (Exh. "3" – Viva) and therefore did not accept said list (TSN., June 8, 1992, pp. 9-10). The titles ticked off by Mrs. Concio are not the subject of the case at bar except the film "Maging Sino Ka Man."

For further enlightenment, this rejection letter dated January 06, 1992 (Exh "3" – Viva) is hereby quoted:

> 6 January 1992
>
> Dear Vic,
>
> This is not a very formal business letter I am writing to you as I would like to express my difficulty in recommending the purchase of the three film packages you are offering ABS-CBN.
>
> From among the three packages I can only tick off 10 titles we can purchase. Please see attached. I hope you will understand my position. Most of the action pictures in the list do not have big action stars in the cast. They are not for primetime. In line with this I wish to mention that I have not scheduled for telecast several action pictures in our very first contract because of the cheap production value of these movies as well as the lack of big action stars. As a film producer, I am sure you understand what I am trying to say as Viva produces only big action pictures.

Supreme Court E-Library

In fact, I would like to request two (2) additional runs for these movies as I can only schedule them in our non-primetime slots. We have to cover the amount that was paid for these movies because as you very well know that non-primetime advertising rates are very low. These are the unaired titles in the first contract.

1. Kontra Persa [*sic*]
2. Raider Platoon
3. Underground guerillas
4. Tiger Command
5. Boy de Sabog
6. Lady Commando
7. Batang Matadero
8. Rebelyon

I hope you will consider this request of mine.

The other dramatic films have been offered to us before and have been rejected because of the ruling of MTRCB to have them aired at 9:00 p.m. due to their very adult themes.

As for the 10 titles I have choosen [*sic*] from the 3 packages please consider including all the other Viva movies produced last year, I have quite an attractive offer to make.

Thanking you and with my warmest regards.

(Signed)
Charo Santos-Concio

On February 27, 1992, defendant Del Rosario approached ABS-CBN's Ms. Concio, with a list consisting of 52 original movie titles (*i.e.*, not yet aired on television) including the 14 titles subject of the present case, as well as 104 re-runs (previously aired on television) from which ABS-CBN may choose another 52 titles, as a total of 156 titles, proposing to sell to ABS-CBN airing rights over this package of 52 originals and 52 re-runs for ₱60,000,000.00 of which ₱30,000,000.00 will be in cash and ₱30,000,000.00 worth of television spots (Exh. "4" to "4-C" – Viva; "9" – Viva).

On April 2, 1992, defendant Del Rosario and ABS-CBN's general manager, Eugenio Lopez III, met at the Tamarind Grill Restaurant in Quezon City to discuss the package proposal of Viva. What transpired in that lunch meeting is the subject of conflicting versions. Mr. Lopez

Supreme Court E-Library

testified that he and Mr. Del Rosario allegedly agreed that ABS-CBN was granted exclusive film rights to fourteen (14) films for a total consideration of ₱36 million; that he allegedly put this agreement as to the price and number of films in a "napkin" and signed it and gave it to Mr. Del Rosario (Exh. D; TSN, pp. 24-26, 77-78, June 8, 1992). On the other hand, Del Rosario denied having made any agreement with Lopez regarding the 14 Viva films; denied the existence of a napkin in which Lopez wrote something; and insisted that what he and Lopez discussed at the lunch meeting was Viva's film package offer of 104 films (52 originals and 52 re-runs) for a total price of P60 million. Mr. Lopez promising [*sic*]to make a counter proposal which came in the form of a proposal contract Annex "C" of the complaint (Exh. "1" – Viva; Exh "C" – ABS-CBN).

On April 06, 1992, Del Rosario and Mr. Graciano Gozon of RBS Senior vice-president for Finance discussed the terms and conditions of Viva's offer to sell the 104 films, after the rejection of the same package by ABS-CBN.

On April 07, 1992, defendant Del Rosario received through his secretary, a handwritten note from Ms. Concio, (Exh. "5" – Viva), which reads: "Here's the draft of the contract. I hope you find everything in order," to which was attached a draft exhibition agreement (Exh. "C" – ABS-CBN; Exh. "9" – Viva p. 3) a counter-proposal covering 53 films, 52 of which came from the list sent by defendant Del Rosario and one film was added by Ms. Concio, for a consideration of P35 million. Exhibit "C" provides that ABS-CBN is granted film rights to 53 films and contains a right of first refusal to "1992 Viva Films." The said counter proposal was however rejected by Viva's Board of Directors [in the] evening of the same day, April 7, 1992, as Viva would not sell anything less than the package of 104 films for ₱60 million pesos (Exh. "9" – Viva), and such rejection was relayed to Ms. Concio.

On April 29, 1992, after the rejection of ABS-CBN and following several negotiations and meetings defendant Del Rosario and Viva's President Teresita Cruz, in consideration of P60 million, signed a letter of agreement dated April 24, 1992, granting RBS the exclusive right to air 104 Viva-produced and/or acquired films (Exh. "7-A" — RBS; Exh. "4" – RBS) including the fourteen (14) films subject of the present case.[4]

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[4] RTC Decision, *Rollo*, 146-149.

Supreme Court E-Library

On 27 May 1992, ABS-CBN filed before the RTC a complaint for specific performance with a prayer for a writ of preliminary injunction and/or temporary restraining order against private respondents Republic Broadcasting Corporation[5] (hereafter RBS), Viva Production (hereafter VIVA), and Vicente del Rosario. The complaint was docketed as Civil Case No. Q-92-12309.

On 28 May 1992, the RTC issued a temporary restraining order[6] enjoining private respondents from proceeding with the airing, broadcasting, and televising of the fourteen VIVA films subject of the controversy, starting with the film *Maging Sino Ka Man*, which was scheduled to be shown on private respondent RBS' channel 7 at seven o'clock in the evening of said date.

On 17 June 1992, after appropriate proceedings, the RTC issued an order[7] directing the issuance of a writ of preliminary injunction upon ABS-CBN's posting of a ₱35 million bond. ABS-CBN moved for the reduction of the bond,[8] while private respondents moved for reconsideration of the order and offered to put up a counterbond.[9]

In the meantime, private respondents filed separate answers with counterclaim.[10] RBS also set up a cross-claim against VIVA.

On 3 August 1992, the RTC issued an order[11] dissolving the writ of preliminary injunction upon the posting by RBS of a ₱30 million counterbond to answer for whatever damages ABS-

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[5] This should be Republic Broadcasting System, now GMA Network Inc., upon approval by the Securities and Exchange Commission of the change in corporate name on 20 February 1996.

[6] Vol 1. Original Record (OR), Civil Case No. Q-92-12309, 27-28. Hereafter, OR shall refer to the record of this case.

[7] Vol. 1, OR, 170-173.

[8] Vol. 1, OR, 217-220.

[9] *Id.*, 184-216.

[10] *Id.*, 177-183 (VIVA and Del Rosario); 222-228 (RBS).

[11] *Id.*, 331-332.

Supreme Court E-Library

CBN might suffer by virtue of such dissolution. However, it reduced petitioner's injunction bond to ₱15 million as a condition precedent for the reinstatement of the writ of preliminary injunction should private respondents be unable to post a counterbond.

At the pre-trial[12] on 6 August 1992, the parties, upon suggestion of the court, agreed to explore the possibility of an amicable settlement. In the meantime, RBS prayed for and was granted reasonable time within which to put up a ₱30 million counterbond in the event that no settlement would be reached.

As the parties failed to enter into an amicable settlement, RBS posted on 1 October 1992 a counterbond, which the RTC approved in its Order of 15 October 1992.[13]

On 19 October 1992, ABS-CBN filed a motion for reconsideration[14] of the 3 August and 15 October 1992 Orders, which RBS opposed.[15]

On 29 October 1992, the RTC conducted a pre-trial.[16]

Pending resolution of its motion for reconsideration, ABS-CBN filed with the Court of Appeals a petition[17] challenging the RTC's Order of 3 August and 15 October 1992 and praying for the issuance of a writ of preliminary injunction to enjoin the RTC from enforcing said orders. The case was docketed as CA-G.R. SP No. 29300.

On 3 November 1992, the Court of Appeals issued a temporary restraining order[18] to enjoin the airing, broadcasting, and televising of any or all of the films involved in the controversy.

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[12] *Id.*, 369.

[13] *Id.*, 397.

[14] *Id.*, 398-402, 403-404.

[15] *Id.*, 406-409.

[16] *Id.*, 453-454.

[17] Vol. 2, OR, 465-484.

[18] *Id.*,464.

Supreme Court E-Library

On 18 December 1992, the Court of Appeals promulgated a decision[19] dismissing the petition in CA-G.R. SP No. 29300 for being premature. ABS-CBN challenged the dismissal in a petition for review filed with this Court on 19 January 1993, which was docketed as G.R. No. 108363.

In the meantime the RTC received the evidence for the parties in Civil Case No. Q-92-12309. Thereafter, on 28 April 1993, it rendered a decision[20] in favor of RBS and VIVA and against ABS-CBN disposing as follows:

WHEREFORE, under cool reflection and prescinding from the foregoing, judgment is rendered in favor of defendants and against the plaintiff.

(1) The complaint is hereby dismissed;

(2) Plaintiff ABS-CBN is ordered to pay defendant RBS the following:

a) ₱107,727.00 the amount of premium paid by RBS to the surety which issued defendant RBS's bond to lift the injunction;

b) ₱191,843.00 for the amount of print advertisement for "*Maging Sino Ka Man*" in various newspapers;

c) Attorney's fees in the amount of P1 million;

d) ₱5 million as and by way of moral damages;

e) ₱5 million as and by way of exemplary damages;

(3) For defendant VIVA, plaintiff ABS-CBN is ordered to pay ₱212,000.00 by way of reasonable attorney's fees.

(4) The cross-claim of defendant RBS against defendant VIVA is dismissed.

(5) Plaintiff to pay the costs.

According to the RTC, there was no meeting of minds on the price and terms of the offer. The alleged agreement between

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[19] *Id.*, 913-928.

[20] *Id.*, 1140-1166; *Rollo*, 134-161.

Supreme Court E-Library

Lopez III and Del Rosario was subject to the approval of the VIVA Board of Directors, and said agreement was disapproved during the meeting of the Board on 7 April 1992. Hence, there was no basis for ABS-CBN's demand that VIVA signed the 1992 Film Exhibition Agreement. Furthermore, the right of first refusal under the 1990 Film Exhibition Agreement had previously been exercised per Ms. Concio's letter to Del Rosario ticking off ten titles acceptable to them, which would have made the 1992 agreement an entirely new contract.

On 21 June 1993, this Court denied[21] ABS-CBN's petition for review in G.R. No. 108363, as no reversible error was committed by the Court of Appeals in its challenged decision and the case had "become moot and academic in view of the dismissal of the main action by the court *a quo* in its decision" of 28 April 1993.

Aggrieved by the RTC's decision, ABS-CBN appealed to the Court of Appeals claiming that there was a perfected contract between ABS-CBN and VIVA granting ABS-CBN the exclusive right to exhibit the subject films. Private respondents VIVA and Del Rosario also appealed seeking moral and exemplary damages and additional attorney's fees.

In its decision of 31 October 1996, the Court of Appeals agreed with the RTC that the contract between ABS-CBN and VIVA had not been perfected, absent the approval by the VIVA Board of Directors of whatever Del Rosario, it's agent, might have agreed with Lopez III. The appellate court did not even believe ABS-CBN's evidence that Lopez III actually wrote down such an agreement on a "*napkin*," as the same was never produced in court. It likewise rejected ABS-CBN's insistence on its right of first refusal and ratiocinated as follows:

> As regards the matter of right of first refusal, it may be true that a Film Exhibition Agreement was entered into between Appellant ABS-CBN and appellant VIVA under Exhibit "A" in 1990, and that parag. 1.4 thereof provides:

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[21] Vol. 2, OR, 2030-2035.

Supreme Court E-Library

> 1.4 ABS-CBN shall have the right of first refusal to the next twenty-four (24) VIVA films for TV telecast under such terms as may be agreed upon by the parties hereto, provided, however, that such right shall be exercised by ABS-CBN within a period of fifteen (15) days from the actual offer in writing (Records, p. 14).

[H]owever, it is very clear that said right of first refusal in favor of ABS-CBN shall still be subject to such terms as may be agreed upon by the parties thereto, and that the said right shall be exercised by ABS-CBN within fifteen (15) days from the actual offer in writing.

Said parag. 1.4 of the agreement Exhibit "A" on the right of first refusal did not fix the price of the film right to the twenty-four (24) films, nor did it specify the terms thereof. The same are still left to be agreed upon by the parties.

In the instant case, ABS-CBN's letter of rejection Exhibit 3 (Records, p. 89) stated that it can only tick off ten (10) films, and the draft contract Exhibit "C" accepted only fourteen (14) films, while parag. 1.4 of Exhibit "A" speaks of the next twenty-four (24) films.

The offer of VIVA was sometime in December 1991 Exhibits 2, 2-A, 2-B; Records, pp. 86-88; Decision, p. 11, Records, p. 1150), when the first list of VIVA films was sent by Mr. Del Rosario to ABS-CBN. The Vice President of ABS-CBN, Mrs. Charo Santos-Concio, sent a letter dated January 6, 1992 (Exhibit 3, Records, p. 89) where ABS-CBN exercised its right of refusal by rejecting the offer of VIVA. As aptly observed by the trial court, with the said letter of Mrs. Concio of January 6, 1992, ABS-CBN had lost its right of first refusal. And even if We reckon the fifteen (15) day period from February 27, 1992 (Exhibit 4 to 4-C) when another list was sent to ABS-CBN after the letter of Mrs. Concio, still the fifteen (15) day period within which ABS-CBN shall exercise its right of first refusal has already expired.[22]

Accordingly, respondent court sustained the award of actual damages consisting in the cost of print advertisements and the premium payments for the counterbond, there being adequate proof of the pecuniary loss which RBS had suffered as a result of the filing of the complaint by ABS-CBN. As to the award of moral damages, the Court of Appeals found reasonable basis

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[22] *Rollo*, 55.

Supreme Court E-Library

therefor, holding that RBS's reputation was debased by the filing of the complaint in Civil Case No. Q-92-12309 and by the non-showing of the film "*Maging Sino Ka Man.*" Respondent court also held that exemplary damages were correctly imposed by way of example or correction for the public good in view of the filing of the complaint despite petitioner's knowledge that the contract with VIVA had not been perfected. It also upheld the award of attorney's fees, reasoning that with ABS-CBN's act of instituting Civil Case No. Q-92-12309, RBS was "unnecessarily forced to litigate." The appellate court, however, reduced the awards of moral damages to ₱2 million, exemplary damages to ₱2 million, and attorney's fees to ₱500,000.00.

On the other hand, respondent Court of Appeals denied VIVA and Del Rosario's appeal because it was "RBS and not VIVA which was actually prejudiced when the complaint was filed by ABS-CBN."

Its motion for reconsideration having been denied, ABS-CBN filed the petition in this case, contending that the Court of Appeals gravely erred in

I

... RULING THAT THERE WAS NO PERFECTED CONTRACT BETWEEN PETITIONER AND PRIVATE RESPONDENT VIVA NOTWITHSTANDING PREPONDERANCE OF EVIDENCE ADDUCED BY PETITIONER TO THE CONTRARY.

II

... IN AWARDING ACTUAL AND COMPENSATORY DAMAGES IN FAVOR OF PRIVATE RESPONDENT RBS.

III

... IN AWARDING MORAL AND EXEMPLARY DAMAGES IN FAVOR OF PRIVATE RESPONDENT RBS.

IV

... IN AWARDING ATTORNEY'S FEES IN FAVOR OF RBS.

Supreme Court E-Library

ABS-CBN claims that it had yet to fully exercise its right of first refusal over twenty-four titles under the 1990 Film Exhibition Agreement, as it had chosen only ten titles from the first list. It insists that we give credence to Lopez's testimony that he and Del Rosario met at the Tamarind Grill Restaurant, discussed the terms and conditions of the second list (the 1992 Film Exhibition Agreement) and upon agreement thereon, wrote the same on a paper napkin. It also asserts that the contract has already been effective, as the elements thereof, namely, consent, object, and consideration were established. It then concludes that the Court of Appeals' pronouncements were not supported by law and jurisprudence, as per our decision of 1 December 1995 in *Limketkai Sons Milling, Inc. v. Court of Appeals*,[23] which cited *Toyota Shaw, Inc. v. Court of Appeals*;[24] *Ang Yu Asuncion v. Court of Appeals*,[25] and *Villonco Realty Company v. Bormaheco, Inc.*[26]

Anent the actual damages awarded to RBS, ABS-CBN disavows liability therefor. RBS spent for the premium on the counterbond of its own volition in order to negate the injunction issued by the trial court after the parties had ventilated their respective positions during the hearings for the purpose. The filing of the counterbond was an option available to RBS, but it can hardly be argued that ABS-CBN compelled RBS to incur such expense. Besides, RBS had another available option, *i.e.*, move for the dissolution of the injunction; or if it was determined to put up a counterbond, it could have presented a cash bond. Furthermore under Article 2203 of the Civil Code, the party suffering loss or injury is also required to exercise the diligence of a good father of a family to minimize the damages resulting from the act or omission. As regards the cost of print advertisements, RBS had not convincingly established that this was a loss attributable to the non-showing of "*Maging Sino*

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[23] 250 SCRA 523 [1995].

[24] 244 SCRA 320 [1995].

[25] 238 SCRA 602 [1994].

[26] 65 SCRA 352 [1975].

Supreme Court E-Library

Ka Man"; on the contrary, it was brought out during trial that with or without the case or the injunction, RBS would have spent such an amount to generate interest in the film.

ABS-CBN further contends that there was no clear basis for the awards of moral and exemplary damages. The controversy involving ABS-CBN and RBS did not in any way originate from business transaction between them. The claims for such damages did not arise from any contractual dealings or from specific acts committed by ABS-CBN against RBS that may be characterized as wanton, fraudulent, or reckless; they arose by virtue only of the filing of the complaint. An award of moral and exemplary damages is not warranted where the record is bereft of any proof that a party acted maliciously or in bad faith in filing an action.[27] In any case, free resort to courts for redress of wrongs is a matter of public policy. The law recognizes the right of every one to sue for that which he honestly believes to be his right without fear of standing trial for damages where by lack of sufficient evidence, legal technicalities, or a different interpretation of the laws on the matter, the case would lose ground.[28] One who makes use of his own legal right does no injury.[29] If damage results from the filing of the complaint, it is *damnum absque injuria*.[30] Besides, moral damages are generally not awarded in favor of a juridical person, unless it enjoys a good reputation that was debased by the offending party resulting in social humiliation.[31]

As regards the award of attorney's fees, ABS-CBN maintains that the same had no factual, legal, or equitable justification. In sustaining the trial court's award, the Court of Appeals acted

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[27] *Citing Francel Realty Corp. v. Court of Appeals*, 252 SCRA 127, 134 [1996].

[28] *Citing Tan v. Court of Appeals*, 131 SCRA 397, 404 [1984].

[29] *Citing Auyong Hian v. Court of Tax Appeals*, 59 SCRA 110, 134[1974].

[30] *Citing Ilocos Norte Electric Company v. Court of Appeals*, 179 SCRA 5 [1989].

[31] *Citing People v. Manero*, 218 SCRA 85, 96-97 [1993]; *citing Simex International (Manila) Inc. v. Court of Appeals*, 183 SCRA 360 [1990].

Supreme Court E-Library

in clear disregard of the doctrine laid down in *Buan v. Camaganacan*[32] that the text of the decision should state the reason why attorney's fees are being awarded; otherwise, the award should be disallowed. Besides, no bad faith has been imputed on, much less proved as having been committed by, ABS-CBN. It has been held that "where no sufficient showing of bad faith would be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause, attorney's fees shall not be recovered as cost."[33]

On the other hand, RBS asserts that there was no perfected contract between ABS-CBN and VIVA absent meeting of minds between them regarding the object and consideration of the alleged contract. It affirms that ABS-CBN's claim of a right of first refusal was correctly rejected by the trial court. RBS insists the premium it had paid for the counterbond constituted a pecuniary loss upon which it may recover. It was obliged to put up the counterbond due to the injunction procured by ABS-CBN. Since the trial court found that ABS-CBN had no cause of action or valid claim against RBS and, therefore not entitled to the writ of injunction, RBS could recover from ABS-CBN the premium paid on the counterbond. Contrary to the claim of ABS-CBN, the cash bond would prove to be more expensive, as the loss would be equivalent to the cost of money RBS would forego in case the ₱30 million came from its funds or was borrowed from banks.

RBS likewise asserts that it was entitled to the cost of advertisements for the cancelled showing of the film "*Maging Sino Ka Man*" because the print advertisements were put out to announce the showing on a particular day and hour on Channel 7, *i.e.*, in its entirety at one time, not as series to be shown on a periodic basis. Hence, the print advertisements were good and relevant for the particular date of showing, and since the film could not be shown on that particular date and

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[32] 16 SCRA 321 [1966].

[33] *See Gonzales v. National Housing Corp.*, 94 SCRA 786 [1979]; *Servicewide Specialist, Inc. v. Court of Appeals*, 256 SCRA 649 [1996].

Supreme Court E-Library

hour because of the injunction, the expenses for the advertisements had gone to waste.

As regards moral and exemplary damages, RBS asserts that ABS-CBN filed the case and secured injunctions purely for the purpose of harassing and prejudicing RBS. Pursuant then to Articles 19 and 21 of the Civil Code, ABS-CBN must be held liable for such damages. Citing *Tolentino*,[34] damages may be awarded in cases of abuse of rights even if the act done is not illicit, and there is abuse of rights where a plaintiff institutes an action purely for the purpose of harassing or prejudicing the defendant.

In support of its stand that a juridical entity can recover moral and exemplary damages, private respondent RBS cited *People v. Manero*,[35] where it was stated that such entity may recover moral and exemplary damages if it has a good reputation that is debased resulting in social humiliation. It then ratiocinates; thus:

> There can be no doubt that RBS' reputation has been debased by ABS-CBN's acts in this case. When RBS was not able to fulfill its commitment to the viewing public to show the film "*Maging Sino Ka Man*" on the scheduled dates and times (and on two occasions that RBS advertised), it suffered serious embarrassment and social humiliation. When the showing was cancelled, irate viewers called up RBS' offices and subjected RBS to verbal abuse ("*Announce kayo ng announce, hindi ninyo naman ilalabas,*" "*nanloloko yata kayo*") (Exh. 3-RBS, par.3). This alone was not something RBS brought upon itself. It was exactly what ABS-CBN had planned to happen.
>
> The amount of moral and exemplary damages cannot be said to be excessive. Two reasons justify the amount of the award.
>
> The first is that the humiliation suffered by RBS is national in extent. RBS' operations as a broadcasting company is [*sic*] nationwide. Its clientele, like that of ABS-CBN, consists of those who own and

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[34] I ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 63, 66 (1983 ed.).

[35] *Supra* note 31.

Supreme Court E-Library

watch television. It is not an exaggeration to state, and it is a matter of judicial notice that almost every other person in the country watches television. The humiliation suffered by RBS is multiplied by the number of televiewers who had anticipated the showing of the film, "Maging Sino Ka Man" on May 28 and November 3, 1992 but did not see it owing to the cancellation. Added to this are the advertisers who had placed commercial spots for the telecast and to whom RBS had a commitment in consideration of the placement to show the film in the dates and times specified.

The second is that it is a competitor that caused RBS to suffer the humiliation. The humiliation and injury are far greater in degree when caused by an entity whose ultimate business objective is to lure customers (viewers in this case) away from the competition.[36]

For their part, VIVA and Vicente del Rosario contend that the findings of fact of the trial court and the Court of Appeals do not support ABS-CBN's claim that there was a perfected contract. Such factual findings can no longer be disturbed in this petition for review under Rule 45, as only questions of law can be raised, not questions of fact. On the issue of damages and attorneys fees, they adopted the arguments of RBS.

The key issues for our consideration are (1) whether there was a perfected contract between VIVA and ABS-CBN, and (2) whether RBS is entitled to damages and attorney's fees. It may be noted that the award of attorney's fees of ₱212,000 in favor of VIVA is not assigned as another error.

The first issue should be resolved against ABS-CBN. A contract is a meeting of minds between two persons whereby one binds himself to give something or to render some service to another[37] for a consideration. There is no contract unless the following requisites concur: (1) consent of the contracting parties; (2) object certain which is the subject of the contract; and (3) cause of the obligation, which is established.[38] A contract undergoes three stages:

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[36] *Rollo*, 191.

[37] Art. 1305, Civil Code.

[38] Art. 1318, Civil Code.

Supreme Court E-Library

(a) preparation, conception, or generation, which is the period of negotiation and bargaining, ending at the moment of agreement of the parties;

(b) perfection or birth of the contract, which is the moment when the parties come to agree on the terms of the contract; and

(c) consummation or death, which is the fulfillment or performance of the terms agreed upon in the contract.[39]

Contracts that are consensual in nature are perfected upon mere meeting of the minds. Once there is concurrence between the offer and the acceptance upon the subject matter, consideration, and terms of payment a contract is produced. The offer must be certain. To convert the offer into a contract, the acceptance must be absolute and must not qualify the terms of the offer; it must be plain, unequivocal, unconditional, and without variance of any sort from the proposal. A qualified acceptance, or one that involves a new proposal, constitutes a counter-offer and is a rejection of the original offer. Consequently, when something is desired which is not exactly what is proposed in the offer, such acceptance is not sufficient to generate consent because any modification or variation from the terms of the offer annuls the offer.[40]

When Mr. Del Rosario of VIVA met with Mr. Lopez of ABS-CBN at the Tamarind Grill on 2 April 1992 to discuss the package of films, said package of 104 VIVA films was VIVA's offer to ABS-CBN to enter into a new Film Exhibition Agreement. But ABS-CBN, sent through Ms. Concio, a counter-proposal in the form of a draft contract proposing exhibition of 53 films for a consideration of ₱35 million. This counter-proposal could be nothing less than the counter-offer of Mr. Lopez during his conference with Del Rosario at Tamarind Grill Restaurant. Clearly, there was no acceptance of VIVA's offer, for it was

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[39] *Toyota Shaw, Inc. v. Court of Appeals, Supra* note 24, at 329.

[40] See IV ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 450 (6th ed., 1996).

Supreme Court E-Library

met by a counter-offer which substantially varied the terms of the offer.

ABS-CBN's reliance in *Limketkai Sons Milling, Inc. v. Court of Appeals*[41] and *Villonco Realty Company v. Bormaheco, Inc.*,[42] is misplaced. In these cases, it was held that an acceptance may contain a request for certain changes in the terms of the offer and yet be a binding acceptance as long as "it is clear that the meaning of the acceptance is positively and unequivocally to accept the offer, whether such request is granted or not." This ruling was, however, reversed in the resolution of 29 March 1996,[43] which ruled that the acceptance of an offer must be unqualified and absolute, *i.e.*, it "must be identical in all respects with that of the offer so as to produce consent or meetings of the minds."

On the other hand, in *Villonco*, cited in *Limketkai*, the alleged changes in the revised counter-offer were not material but merely clarificatory of what had previously been agreed upon. It cited the statement in *Stuart v. Franklin Life Insurance Co.*[44]that "a vendor's change in a phrase of the offer to purchase, which change does not essentially change the terms of the offer, does not amount to a rejection of the offer and the tender of a counter-offer."[45] However, when any of the elements of the contract is modified upon acceptance, such alteration amounts to a counter-offer.

In the case at bar, ABS-CBN made no unqualified acceptance of VIVA's offer. Hence, they underwent a period of bargaining. ABS-CBN then formalized its counter-proposals or counter-offer in a draft contract. VIVA through its Board of Directors, rejected such counter-offer. Even if it be conceded *arguendo*

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[41] *Supra* note 23.

[42] *Supra* note 26.

[43] 255 SCRA 626, 639 [1996].

[44] 165 Fed. 2nd 965, *citing* Sec. 79 Williston on Contracts.

[45] *Villonco Realty Company v. Bormaheco, Inc. Supra* note 25, at 365-366.

Supreme Court E-Library

that Del Rosario had accepted the counter-offer, the acceptance did not bind VIVA, as there was no proof whatsoever that Del Rosario had the specific authority to do so.

Under the Corporation Code,[46] unless otherwise provided by said Code, corporate powers, such as the power to enter into contracts, are exercised by the Board of Directors. However, the Board may delegate such powers to either an executive committee or officials or contracted managers. The delegation, except for the executive committee, must be for specific purposes.[47] Delegation to officers makes the latter agents of the corporation; accordingly, the general rules of agency as to the binding effects of their acts would apply.[48] For such officers to be deemed fully clothed by the corporation to exercise a power of the Board, the latter must specially authorize them to do so. That Del Rosario did not have the authority to accept ABS-CBN's counter-offer was best evidenced by his submission of the draft contract to VIVA's Board of Directors for the latter's approval. In any event, there was between Del Rosario and Lopez III no meeting of minds. The following findings of the trial court are instructive:

> A number of considerations militate against ABS-CBN's claim that a contract was perfected at that lunch meeting on April 02, 1992 at the Tamarind Grill.
>
> FIRST, Mr. Lopez claimed that what was agreed upon at the Tamarind Grill referred to the price and the number of films, which he wrote on a napkin. However, Exhibit "C" contains *numerous provisions which were not discussed at the Tamarind Grill*, if Lopez testimony was to be believed nor could they have been physically written on a napkin. There was even doubt as to whether it was a paper napkin or a cloth napkin. In short what were written in Exhibit "C" were not discussed, and therefore could not have been agreed

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[46] B.P. Blg. 68, Sec. 23.

[47] JOSE C. Vitug, PANDECT OF COMMERCIAL LAW AND JURISPRUDENCE 356 (Revised ed. 1990).

[48] I JOSE C. CAMPOS, Jr., and MARIA CLARA LOPEZ-CAMPOS, THE CORPORATION CODE 384-385 (1990 ed.).

Supreme Court E-Library

upon, by the parties. How then could this court compel the parties to sign Exhibit "C" when the provisions thereof were not previously agreed upon?

SECOND, Mr. Lopez claimed that what was agreed upon as the subject matter of the contract was 14 films. The complaint in fact prays for delivery of 14 films. But Exhibit "C" mentions 53 films as its subject matter. Which is which? If Exhibit "C" reflected the true intent of the parties, then ABS-CBN's claim for 14 films in its complaint is false or if what it alleged in the complaint is true, then Exhibit "C" did not reflect what was agreed upon by the parties. This underscores the fact that there was no meeting of the minds as to the subject matter of the contract, so as to preclude perfection thereof. For settled is the rule that there can be no contract where there is no object certain which is its subject matter (Art. 1318, NCC).

THIRD, Mr. Lopez [*sic*] answer to question 29 of his affidavit testimony (Exh. "D") states:

> "We were able to reach an agreement. VIVA gave us the exclusive license to show these fourteen (14) films, and we agreed to pay Viva the amount of ₱16,050,000.00 as well as grant Viva commercial slots worth ₱19,950,000.00. We had already earmarked this ₱16,050,000.00."

which gives a total consideration of ₱36 million (₱19,950,000.00 plus ₱16,050,000.00 equals ₱36,000,000.00).

On cross-examination Mr. Lopez testified:

Q What was written in this napkin?

A The total price, the breakdown the known Viva movies, the 7 blockbuster movies and the other 7 Viva movies because the price was broken down accordingly. The none [*sic*] Viva and the seven other Viva movies and the sharing between the cash portion and the concerned spot portion in the total amount of ₱35 million pesos.

Now, which is which? ₱36 million or ₱35 million? This weakens ABS-CBN's claim.

FOURTH. Mrs. Concio, testifying for ABS-CBN stated that she transmitted Exhibit "C" to Mr. Del Rosario with a handwritten note, describing said Exhibit "C" as a draft." (Exh. "5" – Viva; tsn pp. 23-24, June 08, 1992). The said draft has a well defined meaning.

Supreme Court E-Library

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Since Exhibit "C" is only a draft, or a tentative, provisional or preparatory writing prepared for discussion, the terms and conditions thereof could not have been previously agreed upon by ABS-CBN and Viva. Exhibit "C" could not therefore legally bind Viva, not having agreed thereto. In fact, Ms. Concio admitted that the terms and conditions embodied in Exhibit "C" were prepared by ABS-CBN's lawyers and there was no discussion on said terms and conditions....

As the parties had not yet discussed the proposed terms and conditions in Exhibit "C", and there was no evidence whatsoever that Viva agreed to the terms and conditions thereof, said document cannot be a binding contract. The fact that Viva refused to sign Exhibit "C" reveals only two [*sic*] well that it did not agree on its terms and conditions, and this court has no authority to compel Viva to agree thereto.

FIFTH. Mr. Lopez understand [*sic*] that what he and Mr. Del Rosario agreed upon at the Tamarind Grill was only provisional, in the sense that it was subject to approval by the Board of Directors of Viva. He testified:

Q Now, Mr. Witness, and after that Tamarind meeting ... the second meeting wherein you claimed that you have the meeting of the minds between you and Mr. Vic del Rosario, what happened?

A Vic Del Rosario was supposed to call us up and tell us specifically the result of the discussion with the Board of Directors.

Q And you are referring to the so-called agreement which you wrote in [*sic*] a piece of paper?

A Yes, sir.

Q So, he was going to forward that to the board of Directors for approval?

A Yes, sir (Tsn, pp. 42-43, June 8, 1992)

. . . . . .

Q Did Mr. Del Rosario tell you that he will submit it to his Board for approval?

A Yes, sir. (Tsn, p. 69, June 8, 1992).

Supreme Court E-Library

The above testimony of Mr. Lopez shows beyond doubt that he knew Mr. Del Rosario had no authority to bind Viva to a contract with ABS-CBN until and unless its Board of Directors approved it. The complaint, in fact, alleges that Mr. Del Rosario "is the Executive Producer of defendant Viva" which "is a corporation." (par. 2, complaint). As a mere agent of Viva, Del Rosario could not bind Viva unless what he did is ratified by its Board of Directors. (*Vicente vs. Geraldez*, 52 SCRA 210; *Arnold vs. Willets and Paterson*, 44 Phil. 634). As a mere agent, recognized as such by plaintiff, Del Rosario could not be held liable jointly and severally with Viva and his inclusion as party defendant has no legal basis. (*Salonga vs. Warner Barner* [*sic*], COLTA, 88 Phil. 125; *Salmon vs. Tan*, 36 Phil. 556).

The testimony of Mr. Lopez and the allegations in the complaint are clear admissions that what was supposed to have been agreed upon at the Tamarind Grill between Mr. Lopez and Del Rosario was not a binding agreement. It is as it should be because corporate power to enter into a contract is lodged in the Board of Directors. (Sec. 23, Corporation Code). Without such board approval by the Viva board, whatever agreement Lopez and Del Rosario arrived at could not ripen into a valid contract binding upon Viva (Yao Ka Sin Trading *vs.* Court of Appeals, 209 SCRA 763). The evidence adduced shows that the Board of Directors of Viva rejected Exhibit "C" and insisted that the film package for 104 films be maintained (Exh. "7-1 – Viva).[49]

The contention that ABS-CBN had yet to fully exercise its right of first refusal over twenty-four films under the 1990 Film Exhibition Agreement and that the meeting between Lopez and Del Rosario was a continuation of said previous contract is untenable. As observed by the trial court, ABS-CBN's right of first refusal had already been exercised when Ms. Concio wrote to Viva ticking off ten films. Thus:

[T]he subsequent negotiation with ABS-CBN two (2) months after this letter was sent, was for an entirely different package. Ms. Concio herself admitted on cross-examination to having used or exercised the right of first refusal. She stated that the list was not acceptable and was indeed not accepted by ABS-CBN, (Tsn, June 8, 1992, pp. 8-10). Even Mr. Lopez himself admitted that the right of first refusal

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[49] RTC Decision, *Rollo*, 153-156.

Supreme Court E-Library

may have been already exercised by Ms. Concio (as she had). (TSN, June 8, 1992, pp. 71-75). Del Rosario himself knew and understand [*sic*] that ABS-CBN has lost its right of first refusal when his list of 36 titles were rejected (Tsn, June 9, 1992, pp. 10-11).[50]

II

However, we find for ABS-CBN on the issue of damages. We shall first take up actual damages. Chapter 2, Title XVIII, Book IV of the Civil Code is the specific law on actual or compensatory damages. Except as provided by law or by stipulation, one is entitled to compensation for actual damages only for such pecuniary loss suffered by him as he has duly proved.[51] The indemnification shall comprehend not only the value of the loss suffered, but also that of the profits that the obligee failed to obtain.[52] In contracts and quasi-contracts the damages which may be awarded are dependent on whether the obligor acted with good faith or otherwise. In case of good faith, the damages recoverable are those which are the natural and probable consequences of the breach of the obligation and which the parties have foreseen or could have reasonably foreseen at the time of the constitution of the obligation. If the obligor acted with fraud, bad faith, malice, or wanton attitude, he shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.[53] In crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of, whether or not such damages have been foreseen or could have reasonably been foreseen by the defendant.[54]

Actual damages may likewise be recovered for loss or impairment of earning capacity in cases of temporary or

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[50] *Id.*, 158.

[51] Article 2199, Civil Code.

[52] Article 2200, *id.*,

[53] Article 2201, *id.*

[54] Article 2202, *id.*

Supreme Court E-Library

permanent personal injury, or for injury to the plaintiff's business standing or commercial credit.[55]

The claim of RBS for actual damages did not arise from contract, quasi-contract, delict, or quasi-delict. It arose from the fact of filing of the complaint despite ABS-CBN's alleged knowledge of lack of cause of action. Thus paragraph 12 of RBS's Answer with Counterclaim and Cross-claim under the heading COUNTERCLAIM specifically alleges:

> 12. ABS-CBN filed the complaint knowing fully well that it has no cause of action against RBS. As a result thereof, RBS suffered actual damages in the amount of P6,621,195.32.[56]

Needless to state the award of actual damages cannot be comprehended under the above law on actual damages. RBS could only probably take refuge under Articles 19, 20, and 21 of the Civil Code, which read as follows:

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

It may further be observed that in cases where a writ of preliminary injunction is issued, the damages which the defendant may suffer by reason of the writ are recoverable from the injunctive bond.[57] In this case, ABS-CBN had not yet filed the required bond; as a matter of fact, it asked for reduction of the bond and even went to the Court of Appeals to challenge the order on the matter. Clearly then, it was not necessary for

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[55] Article 2205, *id.*

[56] Vol. 1, OR, 225.

[57] Section 4 in relation to Section 8, Rule 58, 1997 Rules of Civil Procedure.

Supreme Court E-Library

RBS to file a counterbond. Hence, ABS-CBN cannot be held responsible for the premium RBS paid for the counterbond.

Neither could ABS-CBN be liable for the print advertisements for "Maging Sino Ka Man" for lack of sufficient legal basis. The RTC issued a temporary restraining order and later, a writ of preliminary injunction on the basis of its determination that there existed sufficient ground for the issuance thereof. Notably, the RTC did not dissolve the injunction on the ground of lack of legal and factual basis, but because of the plea of RBS that it be allowed to put up a counterbond.

As regards attorney's fees, the law is clear that in the absence of stipulation, attorney's fees may be recovered as actual or compensatory damages under any of the circumstances provided for in Article 2208 of the Civil Code.[58]

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[58] It reads as follows:

ART. 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.

Supreme Court E-Library

The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate.[59] They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification.[60] Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.[61]

As to moral damages the law is Section 1, Chapter 3, Title XVIII, Book IV of the Civil Code. Article 2217 thereof defines what are included in moral damages, while Article 2219 enumerates the cases where they may be recovered. Article 2220 provides that moral damages may be recovered in breaches of contract where the defendant acted fraudulently or in bad faith. RBS's claim for moral damages could possibly fall only under item (10) of Article 2219, thereof which reads:

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

Moral damages are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer.[62] The award is not meant to enrich the complainant at the expense of the defendant, but to enable the injured party to obtain means, diversion, or amusements that will serve to obviate the moral suffering he

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[59] *Firestone Tire & Rubber Company of the Philippines v. Ines Chaves & Co. Ltd.*, 18 SCRA 356, 358 [1996]; *Philippine Air Lines v. Miano*, 242 SCRA 235, 240 [1995].

[60] *Scott Consultants & Resource Development Corporation, Inc. v. Court of Appeals*, 242 SCRA 393, 406 [1995].

[61] *Gonzales v. National Housing Corp.*, 94 SCRA 786, 792 [1979]; *Servicewide Specialist, Inc. v. Court of Appeals*, *supra* note 33, at 655.

[62] *Pagsuyuin v. Intermediate Appellate Court*, 193 SCRA 547, 555 [1991].

Supreme Court E-Library

has undergone. It is aimed at the restoration, within the limits of the possible, of the spiritual *status quo ante*, and should be proportionate to the suffering inflicted.[63] Trial courts must then guard against the award of exorbitant damages; they should exercise balanced restrained and measured objectivity to avoid suspicion that it was due to passion, prejudice, or corruption on the part of the trial court.[64]

The award of moral damages cannot be granted in favor of a corporation because, being an artificial person and having existence only in legal contemplation, it has no feelings, no emotions, no senses. It cannot, therefore, experience physical suffering and mental anguish, which can be experienced only by one having a nervous system.[65] The statement in *People v. Manero*[66] and *Mambulao Lumber Co. v. PNB*[67] that a corporation may recover moral damages if it "has a good reputation that is debased, resulting in social humiliation" is an *obiter dictum*. On this score alone the award for damages must be set aside, since RBS is a corporation.

The basic law on exemplary damages is Section 5, Chapter 3, Title XVIII, Book IV of the Civil Code. These are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated, or compensatory damages.[68] They are recoverable in criminal cases as part of the civil liability

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[63] *Visayan Sawmill Company v. Court of Appeals*, 219 SCRA 378, 392 [1993]. *Citing R & B Security, Insurance Co., Inc. v. Intermediate Appellate Court*, 129 SCRA 736 [1984]; *De la Serna v. Court of Appeals*, 233 SCRA 325, 329-330 [1994].

[64] *People v. Wenceslao*, 212 SCRA 560, 569 [1992], *citing Filinvest Credit Corp. v. Intermediate Appellate Court*, 166 SCRA 155 [1988].

[65] *Prime White Cement Corp. v. Intermediate Appellate Court*, 220 SCRA 103, 113-114 [1993]; *LBC Express Inc. v. Court of Appeals*, 236 SCRA 602 [1994]; *Acme Shoe, Rubber and Plastic Corp. v. Court of Appeals*, 260 SCRA 714, 722 [1996].

[66] *Supra* note 31.

[67] 130 Phil. 366 [1968].

[68] Article 2229, Civil Code.

Supreme Court E-Library

when the crime was committed with one or more aggravating circumstances;[69] in quasi-delicts, if the defendant acted with gross negligence;[70] and in contracts and quasi-contracts, if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.[71]

It may be reiterated that the claim of RBS against ABS-CBN is not based on contract, quasi-contract, delict, or quasi-delict. Hence, the claims for moral and exemplary damages can only be based on Articles 19, 20, and 21 of the Civil Code.

The elements of abuse of right under Article 19 are the following: (1) the existence of a legal right or duty, (2) which is exercised in bad faith, and (3) for the sole intent of prejudicing or injuring another. Article 20 speaks of the general sanction for all provisions of law which do not especially provide for their own sanction; while Article 21 deals with acts *contra bonus mores*, and has the following elements: (1) there is an act which is legal, (2) but which is contrary to morals, good custom, public order, or public policy, and (3) and it is done with intent to injure.[72]

Verily then, malice or bad faith is at the core of Articles 19, 20, and 21. Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity.[73] Such must be substantiated by evidence.[74]

There is no adequate proof that ABS-CBN was inspired by malice or bad faith. It was honestly convinced of the merits of its cause after it had undergone serious negotiations

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[69] Article 2230, *Id.*

[70] Article 2231, *Id.*

[71] Article 2232, *Id.*

[72] *Albenson Enterprises Corp. v. Court of Appeals*, 217 SCRA 16, 25 [1993].

[73] *Far East Bank and Trust Company, v. Court of Appeals*, 241 SCRA 671, 675 [1995].

[74] *Philippine Air Lines v. Miano, supra* note 59.

Supreme Court E-Library

culminating in its formal submission of a draft contract. Settled is the rule that the adverse result of an action does not *per se* make the action wrongful and subject the actor to damages, for the law could not have meant to impose a penalty on the right to litigate. If damages result from a person's exercise of a right, it is *damnum absque injuria*.[75]

WHEREFORE, the instant petition is *GRANTED*. The challenged decision of the Court of Appeals in CA-G.R. CV No. 44125 is hereby *REVERSED* except as to unappealed award of attorney's fees in favor of VIVA Productions, Inc.

No pronouncement as to costs.

SO ORDERED.

Melo, Kapunan, Martinez, and *Pardo, JJ.,* concur.

SECOND DIVISION

[G.R. No. 130756. January 21, 1999]

ESTER B. MARALIT, *petitioner, vs.* **JESUSA CORAZON L. IMPERIAL,** *respondent.*

SYNOPSIS

Petitioner Ester B. Maralit filed three complaints for estafa through falsification of commercial documents through reckless imprudence against respondent Jesusa Corazon L. Imperial. Maralit alleged that she was the assistant manager of the Naga City Branch of the Philippine National Bank (PNB); That respondent deposited in her savings account at the PNB three United States Treasury Warrants and withdrew their peso

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[75] *Tierra International Construction Corp. v. NLRC*, 211 SCRA 73, 81 [1992], *citing Saba v. Court of Appeals*, 189 SCRA 50, 55 [1990].