Supreme Court E-Library

THIRD DIVISION

[G.R. No. 79184. May 6, 1992]

ERLINDA L. PONCE, *petitioner, vs.* **VALENTINO L. LEGASPI and THE HON. COURT OF APPEALS,** *respondents.*

SYLLABUS

1. CIVIL LAW; DAMAGES; CLAIM THEREOF BASED ON THE GROUND OF MALICIOUS PROSECUTION; DISBARMENT PROCEEDINGS MAY BE THE BASIS FOR A SUBSEQUENT ACTION FOR MALICIOUS PROSECUTION.— Both the Court of Appeals and the petitioner are of the belief that the suit for damages filed by Atty. Legaspi is not one arising from malicious prosecution because "a disbarment proceeding is not a criminal action. (*De Jesus-Paras v. Vailoces*, 1 SCRA 954 [1961])." The obvious inference is that only an unsuccessful criminal action may subsequently give rise to a claim for damages based on malicious prosecution. This is not correct. While generally, malicious prosecution refers to unfounded criminal actions and has been expanded to include unfounded civil suits just to vex and humiliate the defendant despite the absence of a cause of action or probable cause (*Equitable Banking Corporation v. Intermediate Appellate Court*, 133 SCRA 13B [1984]) the foundation of an action for malicious prosecution is an original proceeding, judicial in character. A disbarment proceeding is, without doubt, judicial in character and therefore may be the basis for a subsequent action for malicious prosecution.

2. ID.; ID.; ID.; COVERAGE.— An action for damages arising from malicious prosecution is anchored on the provisions of Article 21, 2217 and 2219 [8] of the New Civil Code. Under these Articles: "Article 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for damages. "Article 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury. Though incapable of pecuniary computation,

Supreme Court E-Library

moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission. "Article 2219. Moral damages may be recovered in the following and analogous cases: xxx (8) Malicious prosecution."

3. **ID.; ID.; INJURY SUFFERED AS A CONSEQUENCE OF A PERSON'S RIGHT TO LITIGATE; WILL NOT AUTOMATICALLY RISE THERETO.—** Atty. Legaspi may have suffered injury as a consequence of the disbarment proceedings. But the adverse result of an action does not per se make the action wrongful and subject the actor to make payment of damages for the law could not have meant to impose a penalty on the right to litigate (*Saba v. Court of Appeals*, 189 SCRA 50 [1990], citing *Rubio v. Court of Appeals*, 141 SCRA 488 [1986]). If damage results from a person's exercising his legal rights, it is *damnum absque injuria.*

4. **CRIMINAL LAW; MALICIOUS PROSECUTION; REQUISITES; PURPOSE THEREOF.—** For the malicious prosecution suit to prosper, the plaintiff must prove: (1) the fact of the prosecution and the further fact that the defendant was himself the prosecutor, and that the action finally terminated with an acquittal; (2) that in bringing the action, the prosecutor acted without probable cause; and (3) that the prosecutor was actuated or impelled by legal malice, that is by improper or sinister motive. (*Lao v. Court of Appeals*, 199 SCRA 58 [1991] and other cases.) The foregoing requisites are necessary safeguards to preserve a person's right to litigate which may otherwise be emasculated by the undue filing of malicious prosecution cases.

5. **ID.; ID.; ELEMENTS OF MALICE AND WANT OF PROBABLE CAUSE; ESSENTIAL FOR THE MAINTENANCE OF AN ACTION THEREOF.—** As held in the case of *Buchanan v. Viuda de Esteban*, (32 Phil. 263) "Malice is essential to the maintenance of an action for malicious prosecution and not merely to the recovery of exemplary damages. But malice alone does not make one liable for malicious prosecution, where probable cause is shown, even where it appears that the suit was brought for the mere purpose of vexing, harassing and injuring his adversary. *In other words malice and want of probable cause* must both exist in order to justify the action." Facts and circumstances existed which excited belief in Mrs. Ponce's mind that the respondent indeed

Supreme Court E-Library

committed unethical acts which warranted the imposition of administrative sanctions. Whether or not the petitioner's perception of these facts and circumstances is actually correct is irrelevant to our inquiry, the only issue being whether or not the petitioner had probable cause in filing the complaint.

6. ID.; ID.; ID.; "PROBABLE CAUSE," DEFINED.— Probable cause is the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime (or in this case, the wrongdoing) for which he was prosecuted.

7. ID.; ID.; ID.; ID.; EXISTENCE THEREOF, SUFFICIENT TO DEFEAT THE CHARGE THEREOF.— We adjudge that petitioner Ponce was moved by probable cause, we need not anymore ascertain whether or not the petitioner acted with malice in filing the complaint. The existence of probable cause alone, regardless of considerations of malice, is sufficient to defeat the charge of malicious prosecution.

8. ID.; ID.; ID.; ABSENCE THEREOF WILL GIVE RISE TO CLAIM FOR DAMAGES.— The general rule is well settled that one cannot be held liable in damages for maliciously instituting a prosecution where he acted with probable cause. In other words, a suit will lie only in cases where a legal prosecution has been carried on without probable cause.

9. COMMERCIAL LAW; CORPORATIONS; OFFICERS THEREOF OCCUPYING FIDUCIARY POSITIONS; LIMITATIONS ON THE POWER THEREOF; CASE AT BAR.— We take exception to the respondent's comment that, assuming the petitioner's accusation to be true, "there is nothing in Philippine law which considers as unethical the formation of competitive corporations and neither can it be considered with evident bad faith and absolute lack of fidelity." (Records, Administrative Case No. 1819, p. 69). The circumstances of the case do not depict a simple case of formation of competitive corporations. What the petitioner objects to is the fact that both the respondent lawyer and Porter are fiduciaries of L'NOR and are at the same time fiduciaries of YRASPORT, both of which are engaged in the same line of business. The Corporation Law did not prohibit a director or any other person occupying a fiduciary position in the corporate hierarchy from engaging

Supreme Court E-Library

in a venture which competed with that of the corporation. But as a lawyer, Atty. Legaspi should have known that while some acts may appear to be permitted through sheer lack of statutory prohibition, these acts are nevertheless circumscribed upon ethical and moral considerations. And had Atty. Legaspi turned to American jurisprudence which then, as now, wielded a persuasive influence on our law on corporations, he would have known that it was unfair for him or for Porter, acting as fiduciary, to take advantage of an opportunity when the interest of the corporation justly calls for protection.

10. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; ALLEGATIONS AND AVERMENTS THEREIN; TREATED AS ABSOLUTELY PRIVILEGED; CASE AT BAR.— Allegations and averments in pleadings are absolutely privileged as long as they are relevant or pertinent to the issues (See *Montenegro v. Medina*, 73 Phil. 602 [1942]). The test of good faith applies only to a qualified privileged communication. Had the respondent court studied the Deles case more closely, it would have traced the "*bona fides*" test to the case of *U.S. v. Bustos*, (37 Phil. 731 [1918]). In the latter case, the Court was referring to a qualified privileged communication when it formulated the "*bona fides*" test. The test to break through the protective barrier of an absolutely privileged communication is not "*bona fides*" but relevance. In the present case, Atty. Legaspi's complaint nowhere alleged that the statements made by the petitioner were irrelevant. Thus, we find that the petitioner's complaint for disbarment is still covered by the privilege and may not be the basis of a damage suit arising from libel.

APPEARANCES OF COUNSEL

F.S. Farolan & Associates Law Offices for petitioner.

D E C I S I O N

GUTIERREZ, JR., *J.*:

This controversy calls for the balancing of two conflicting interests: the petitioner's right to litigate versus the respondent's right to be protected from malicious prosecution.

Supreme Court E-Library

The present case stemmed from the filing before the Supreme Court on October 3, 1977 of a complaint for disbarment against respondent Atty. Valentino Legaspi by petitioner Erlinda Ponce.

At the time of the filing of the disbarment proceedings, petitioner Ponce, together with her husband Manuel, owned forty three percent (43%) of the stockholdings of L'NOR Marine Services, Inc. (L'NOR). She was then Treasurer and director of the Board of Directors of L'NOR while her husband was a director. Forty eight percent (48%)) of L'NOR's stocks was owned by the spouses Edward and Norma Porter who were then serving as President/General Manager and Secretary respectively.

The pertinent portions of the complaint are reproduced below:

xxx xxx xxx

"10. During the time or period while respondent is the legal counsel of the aforecited corporation, there occurred certain fraudulent manipulations, anomalous management and prejudicial operations by certain officers of said corporation, namely: Edward J. Porter, President/General Manager; Norma Y. Porter, Secretary; and Zenaida T. Manaloto, Director, who caused great damage and prejudice which will be related hereunder;

xxx xxx xxx

"14. About July, 1976, said spouses Edward J. Porter and Norma Y. Porter, together with Zenaida T. Manaloto, facilitated, assisted and aided by herein respondent Legaspi (Annexes "B" and "B-1" herewith), incorporated the Yrasport Drydocks, Inc., hereinafter designated YRASPORT, which they control with the following stockholdings:

Edward J. Porter	180 shares
Norma Y. Porter	180 shares
Eriberto F. Yrastorza	16 shares
Zenaida T. Manaloto	8 shares
Roman M. Maceda	8 shares
Andres A. Nombrado	8 shares

and whose line of business is in direct competition with L'NOR;

Supreme Court E-Library

15. YRASPORT, like Yrasport Enterprises, was launched without the knowledge of the minority stockholders owning 43% of L'NOR, and was really designed to compete, if not eliminate, L'NOR as a competitor;

16. That as a matter of fact attempts were made to secure one of L'NOR jobs in favor of YRASPORT, which fraudulent scheme was however frustrated only by the timely opposition of herein complainant;

17. YRASPORT likewise availed of and used the office space, equipment, personnel, funds, other physical facilities, and goodwill of L'NOR while competing at the same time against and causing the latter great damage and irreparable injury;

xxx xxx xxx

21. Edward J. Porter, President-General Manager of L'NOR, purchased from ISECOR (Industrial Supply Corporation) on November 3, 1974 one skaagit winch with its cables for ₱10,000.00; that on November 18, 1974 said Edward J. Porter assigned the purchase of said skaagit winch with its cables in favor of L'NOR at the price of ₱10,000.00; and that the latter corporation then assumed the agreed obligation covering the ₱10,000.00 purchase price in favor of ISECOR;

22. Subsequently, on or about October 18, 1975, said President-General Manager Edward J. Porter misrepresented facts regarding the acquisition cost of said skaagit winch with its cables to the effect that the same was sold by ISECOR at the cost of ₱20,000.00; that he collected the sum from L'NOR for direct payment to ISECOR allegedly to liquidate in full the obligation of ₱20,000.00 in favor of ISECOR, when, in truth and in fact, the obligation is only ₱10,000.00 and not more;

23. On account of the aforecited flagrant fraud, a charge of Estafa was filed against Edward J. Porter and the office of the City Fiscal handed down a resolution to prosecute him in court, copy of pertinent exhibits herewith marked as Annexes "C", "C-1", "C-2", "C-3", "C-4" and "C-5";

24. In view of the aforesaid illegal manipulations, illicit schemes, palpable frauds and estafa committed by said President-General Manager Edward J. Porter, in confabulation and conspiracy with the other officers of the corporation, namely: his wife Norma Y. Porter and Zenaida T. Manaloto, herein complainant requested

Supreme Court E-Library

respondent Valentino Legaspi to take and pursue appropriate legal steps and seasonable actions in order to protect the paramount interest of L'NOR of which he is the legal counsel by retainer, but the latter, without any valid excuse whatsoever, refused to do so, although he is still collecting his monthly retainer;

25. On account of the refusal of said corporate attorney of L'NOR, respondent Legaspi, complainant was forced to retain the services of another counsel to prosecute the appropriate derivative suit in the Court of First Instance of Cebu, copy herewith marked Annex "D"; and that, in opposition to the same, respondent Legaspi appeared as legal counsel and attorney of Edward J. Porter and, his confederates, copy of exhibits marked Annex "D-1" herewith;

26. In the Criminal Case filed against Edward J. Porter for Estafa (Annex "C" *supra*), respondent Legaspi likewise appeared as counsel for respondent Porter despite the fact that he is the legal counsel of L'NOR which is the prejudiced party and for whose benefit the criminal case was really being prosecuted, copy of letter of respondent, marked as Annex "C-6" herewith;

27. Up to the present time respondent is still collecting his monthly retainer, and for his appearance for Edward J. Porter, *et al*. in the derivative suit, he collected the sum of ₱2,000.00 from L'NOR as payment for his illicit legal services in defending the Porters and Manaloto against the very interest of the corporation paying him monthly retainer;

28. Said Edward J. Porter and his confederates, in their respective capacity as such officers of L'NOR, continue and persist in perpetrating malicious acts, anomalous management and fraudulent operations against the interest of L'NOR, and that respondent Legaspi was duly advised verbally and also in writing by complainant to take the necessary action in his capacity as legal counsel of L'NOR to protect zealously the interest of the latter, but respondent Legaspi has done absolutely nothing, and grossly neglected and flagrantly violated his duties as legal counsel up to the present time, pertinent exhibits herewith marked as Annexes "E", "E1", "E-2", "E-4", "E-5", "E-6";

29. That, on the contrary, respondent Legaspi in his dual capacity as legal counsel of L'NOR and YRASPORT, and at the same time acting in his capacity as corporate secretary of YRASPORT, facilitated, assisted, aided or otherwise abetted the illegal manipulations, illicit schemes, fraudulent operations and grave frauds committed by said

Supreme Court E-Library

Edward J. Porter and his confederates who are officers of L'NOR against the interest of the latter and to further the malicious competitive sabotage of YRASPORT alleged heretofore; and

30. That, upon the foregoing, we most respectfully prefer against respondent Valentino Legaspi the following charges:

First Specification:

That respondent Valentino Legaspi has committed gross misconduct in office as a practicing lawyer and member of the Philippine Bar, because, as legal counsel, he violated his duty to and the trust of his client, L'NOR Marine Services, Inc., whom he is professionally duty bound to represent with entire devotion faithfully as such attorney, and whose paramount interest he should protect in all good faith with absolute fidelity, but that, in truth and in fact, he did not do so.

Second Specification:

That respondent Valentino Legaspi, while acting as legal counsel of L'NOR under continuing monthly retainer, has acted at the same time as lawyer of Edward J. Porter, *et al*., who have committed anomalous acts, prejudicial manipulations and grave frauds against his client L'NOR Marine Services, Inc., that he therefore represented professionally conflicting interest; and that he committed grave malpractice that is in flagrant violation of the recognized canons of legal ethics.

Third Specification:

That respondent Valentino Legaspi committed grossly corrupt or dishonest conduct while under retainer and acting as attorney of L'NOR Marine Services, Inc., when he facilitated, assisted, aided or otherwise abetted the organization, registration and operation of another competing entity, Yrasport Drydocks, Inc., in which he is also the lawyer and corporate Secretary, at the expense of and to which the business and transactions of L'NOR are being diverted or otherwise appropriated, including the pirating of skilled personnel and also facilities, and that respondent committed the same with evident bad faith and absolute lack of fidelity to his client L'NOR, thereby degrading the good esteem, integrity and honor of the profession." (Records, Administrative Case No. 1819, pp. 4-13).

Supreme Court E-Library

In his comment, Atty. Legaspi denied the allegations in paragraphs 10, 21, 22, 23, 24, 28, 29 and 30. He qualifiedly admitted the allegations in paragraphs 14 and 15, stating that Yrasport was not organized to compete directly with L'NOR. He averred that L'NOR could not cope up with the business and Yrasport was formed for the purpose of complementing L'NOR's business. He added that there is nothing in the law nor contract which prohibits a stockholder from competing with the business of the corporation.

Atty. Legaspi admitted the allegations in paragraphs 26 and 27 that he appeared for Edward Porter in the estafa case filed against the latter, reasoning that his appearances were direct orders of management and that it was not improper for counsel to represent both the corporate officers when they are being sued at the same time.

As to the allegations in paragraphs 16 and 17, Atty. Legaspi declared that he has no sufficient knowledge to form a belief as to the truth or falsity of the statements contained therein.

On January 23, 1978, the Court issued a resolution dismissing the disbarment complaint against Legaspi. The resolution is quoted hereunder:

"Administrative Case No. 1819 (*Erlinda L. Ponce v. Valentino L. Legaspi*). — Considering the complaint for disbarment against Atty. Valentino L. Legaspi as well as said respondent's comment thereon, the Court Resolved to DISMISS the complaint for lack of merit." (Records, Administrative Case No. 1819 p. 91)

The petitioner filed a motion for reconsideration which was denied by the Court on March 31, 1978.

On February 10, 1978, Atty. Legaspi filed before the Court of First Instance (now Regional Trial Court of Cebu) a complaint for damages against the petitioner.

The petitioner filed a motion to dismiss which was denied by the trial court.

On July 18, 1983, the lower court rendered judgment the dispositive portion of which reads as follows:

Supreme Court E-Library

"WHEREFORE, this court being satisfied that the material allegations of the complaint have been proved and remained uncontradicted with the testimonial and documentary evidence introduced and admitted by the court, judgment is hereby rendered in favor of the plaintiff and against the defendant Erlinda L. Ponce ordering the defendant to pay Valentino L. Legaspi, plaintiff herein, the amount of ₱1,000.00 as actual damages, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages and to pay the costs." (*Rollo*, p. 115)

The petitioner appealed to the Court of Appeals. On May 26, 1987, the Court of Appeals affirmed the lower court's judgment. In affirming the appealed decision, the Court of Appeals reasoned:

"Defendant-appellant contends that plaintiff-appellee's action for damages is purely retaliatory in character and stems from an alleged feeling of wounded pride or *amor proprio*; that granting without admitting that the appellee has suffered certain adverse effects in his reputation because of the disbarment case, it does not constitute malicious prosecution as would otherwise perhaps render the appellant liable for damages; that the facts on record indubitably show that the appellant was merely exercising her right of access to courts for redress of legitimate grievances when she filed the disbarment case believing then as she still does, that appellee committed a breach of his professional duties as a lawyer. In refutation, appellee alleges that appellant belittles this action for damages as 'purely retaliatory in character and stems from an alleged feeling of wounded pride or *amor proprio*'; that by such statement, appellant has unmasked herself as to how little regard she has for the feelings of others and how she clings to the law if only to secure her purpose; that what is being sought by appellee is compensation for appellee's malice, falsehoods and deceit in trying to destroy the professional standing of a humble practitioner just because he did better than the other.

While free access to the courts is guaranteed under Section 9, Article IV of the 1973 Constitution (now Section 11, Article III of the 1986 Constitution), it does not give unbridled license to file any case, whatever the motives are. Whoever files a case shall be responsible for the consequences thereof whenever his act of filing infringes upon the rights of others. In the same way that although freedom of speech is guaranteed, one cannot claim to be protected under such freedom when he is being held liable for the libel he commits.

Supreme Court E-Library

The case at bar cannot be considered as one for recovery of damages arising from malicious prosecution, for a disbarment proceeding is not a criminal action. (*De Jesus-Paras v. Vailoces*, 111 Phil. 569; 1 SCRA 954, 957). However, we should not lose sight of the fact that utterances made in the course of judicial proceedings, including all kinds of pleadings, petitions and motions, belong to the class of communications that are absolutely privileged. (*Sison v. David*, 110 Phil. 662; 1 SCRA 60, 71 citing authorities) and no civil action for libel or slander may arise therefrom unless the contents of the petition are irrelevant to the subject matter thereof. (1 SCRA 71). It has also been held that a privileged communication should not be subjected to microscopic examination to discover grounds of malice or falsity. Such excessive scrutiny would defeat the protection which the law throws over privileged communications. The ultimate test is that of bona fides. (*Deles v. Aragona, Jr.*, 27 SCRA 633, 642). The privileged character of her complaint filed with the Supreme Court must have been what defendant had in mind when she invokes her right to free access to the courts. However, defendant's actuations before and after the filing of administrative complaint with the Supreme Court disprove her bona fides. On this issue, the trial court found:

> 'Yet, the uncontroverted evidence before the court belie these allegations because there are antecedent incidents between plaintiff and defendant that speak otherwise; that she filed this disbarment complaint against plaintiff with malice aforethought. This conclusion is founded on the fact that defendant was embittered against him for failing to obtain a compromise against Eduardo Coronel before the military due to plaintiff's defense of his client; that she wanted to dissolve the L'Nor Corporation in order to repossess the premises leased to the former upon the corporation's dissolution and Porter's ouster which was thwarted by plaintiff's advice as counsel for L'Nor; plaintiff's letter (Exhibit "H") that she was not authorized to use the title of Chairman of the Board; not counter-signing plaintiff's check (Exhibits I, I-1, and I-2); her insistence to have the surplus profits declared as cash dividend which likewise failed due to plaintiff's advice; her letter (Exh. J) asking plaintiff to desist from defending the corporation and its officers; plaintiff's refusal to give her advice without authority from the Board of Directors; numerous cases filed with the Security and Exchange Commission which were all dismissed and with the Court of First Instance and Circuit Criminal Court which

Supreme Court E-Library

> plaintiff ably defended causing their eventual dismissal and other acts against plaintiff which demonstrated palpably defendant's hatred for the plaintiff acts clearly evidencing malice contrary to her averments in the Answer.
>
> To top it all, notwithstanding her evident support and advice by counsel, she cleverly hid the identity of said counsel prosecuting all her acts of vilification and harassment in her own name. Furthermore, the testimony of plaintiff that she distributed copies of her complaint for disbarment against plaintiff to his clients remain uncontradicted. Finally, instead of coming to court in good faith she instead moved from her residence at Seaview Heights, Lawaan, Talisay, Cebu without informing the court nor her counsel and has not been heard from. From the foregoing, malice is evident.'

Appellant claims that the finding of the lower court that appellant disseminated information regarding the filing of her complaint for disbarment and caused a copy of the same to be furnished appellee's clients is totally unsupported by any evidence on record. The contention is untenable. Plaintiff declared that he came to know of the complaint against him even before the Supreme Court required him to comment because two or three of his clients told him that they had a copy given to them. (p. 8, t.s.n., June 3, 1983)

The foregoing acts committed by the defendant violate the conduct that she should have observed in her relation to plaintiff, as provided in the following provisions of the Civil Code of the Philippines, to wit:

'Article 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.

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

Article 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

(1) Prying into the privacy of another's residence;

Supreme Court E-Library

(2) Meddling with or disturbing the private life or family relations of another;

(3) Intriguing to cause another to be alienated from his friends;

(4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.' (*Rollo*, pp. 45-48)

The petitioner's motion for reconsideration was denied by the respondent Court in its resolution dated July 7, 1987. Hence, this petition.

The petitioner assigns the following errors:

I

"THE RESPONDENT COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT OF CEBU, BRANCH XXI, WHICH FOUND THE HEREIN PETITIONER GUILTY OF BAD FAITH IN INSTITUTING A COMPLAINT FOR DISBARMENT AGAINST THE PRIVATE RESPONDENT.

II

THE RESPONDENT COURT OF APPEALS ERRED IN ORDERING THE PETITIONER TO PAY THE PRIVATE RESPONDENT ACTUAL, MORAL AND EXEMPLARY DAMAGES TO PAY THE COSTS. (*Rollo*, p. 21)

Before proceeding with the merits of the case, the scope of an action for damages arising from malicious prosecution needs to be clarified. Both the Court of Appeals and the petitioner are of the belief that the suit for damages filed by Atty. Legaspi is not one arising from malicious prosecution because "a disbarment proceeding is not a criminal action. (*De Jesus-Paras v. Vailoces*, 1 SCRA 954 [1961])." The obvious inference is that only an unsuccessful criminal action may subsequently give rise to a claim for damages based on malicious prosecution. This is not correct. While generally, malicious prosecution refers to unfounded criminal actions and has been expanded to include unfounded civil suits just to vex and humiliate the defendant despite the absence of a cause of action or probable cause

Supreme Court E-Library

(*Equitable Banking Corporation v. Intermediate Appellate Court*, 133 SCRA 138 [1984]) the foundation of an action for malicious prosecution is an original proceeding, judicial in character. (*Lorber v. Storrow*, 70 P. 2d 513 [1937]; *Shigeru Hayashida v. Tsunehachi Kakimoto*, 23 P. 2d 311 [1933]; *Graves v. Rudman*, 257 N.Y.S. 212 [1932]). A disbarment proceeding is, without doubt, judicial in character and therefore may be the basis for a subsequent action for malicious prosecution.

A perusal of the allegations in Atty. Legaspi's complaint for damages, particularly paragraphs 10, 11, 12 and 15 thereof (*Rollo*, pp. 56-59) shows that his main cause of action was predicated on injury resulting from the institution of the disbarment case against him. This being the case, we find that the suit filed by the respondent lawyer makes out a case of damages for malicious prosecution.

An action for damages arising from malicious prosecution is anchored on the provisions of Article 21, 2217 and 2219 [8] of the New Civil Code. Under these Articles:

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

"Article 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

"Article 2219. Moral damages may be recovered in the following and analogous cases:

xxx xxx xxx

(8) Malicious prosecution."

In order, however, for the malicious prosecution suit to prosper, the plaintiff must prove: (1) the fact of the prosecution and the further fact that the defendant was himself the prosecutor, and that the action finally terminated with an acquittal; (2) that in

Supreme Court E-Library

bringing the action, the prosecutor acted without probable cause; and (3) that the prosecutor was actuated or impelled by legal malice, that is by improper or sinister motive. (*Lao v. Court of Appeals*, 199 SCRA 58 [1991]; *Rehabilitation Finance Corporation v. Koh*, 4 SCRA 535 [1962]; *Buchanan v. Viuda de Esteban*, 32 Phil. 363 [1915]) -

The foregoing requisites are necessary safeguards to preserve a person's right to litigate which may otherwise be emasculated by the undue filing of malicious prosecution cases. Thus, as further held in the aforecited case of *Buchanan v. Viuda. de Esteban, supra*: "Malice is essential to the maintenance of an action for malicious prosecution and not merely to the recovery of exemplary damages. But malice alone does not make one liable for malicious prosecution, where probable cause is shown, even where it appears that the suit was brought for the mere purpose of vexing, harassing and injuring his adversary. *In other words malice and want of probable cause* must both exist in order to justify the action." (Italics supplied; see also *Rehabilitation Finance Corp. v. Koh, supra*)

Probable cause is the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime (or in this case, the wrongdoing) for which he was prosecuted. (See *Buchanan v. Viuda de Esteban, supra*).

The general rule is well settled that one cannot be held liable in damages for maliciously instituting a prosecution where he acted with probable cause. In other words, a suit will lie only in cases where a legal prosecution has been carried on *without probable cause*. (*Id*.; italics supplied)

The petitioner, at the time of her filing of the administrative complaint against the respondent, held substantial stockholdings in L'NOR. She believed that L'NOR was defrauded by its President/General Manager, Edward Porter, and filed a complaint for estafa against the latter. Porter was convicted by the trial court but, upon appeal, was acquitted by the appellate court.

Supreme Court E-Library

Respondent did not deny that he represented Porter during the preliminary investigation and trial of the criminal case. In his comment in the disbarment complaint against him, he justified his action by saying that they were "direct orders of management" and that there is "nothing improper for counsel to represent both the corporation and corporate officers at the same time when they are being sued." (Records, Administrative Case No. 1819, p. 64)

It is of no moment now that Porter was acquitted of the estafa charge. Apparently, at that time, petitioner Ponce saw a conflict of interest situation. To her mind, the act of the respondent in appearing as counsel for Porter, who had allegedly swindled L'NOR, the interest of which he was duty bound to protect by virtue of the retainer contract, constituted grave misconduct and gross malpractice.

Atty. Legaspi did not deny that he aided the Porters in facilitating the incorporation of YRASPORT and that he himself was its corporate secretary. He emphasized, though, that due to L'NOR'S limited capitalization, YRASPORT was organized to complement L'NOR'S business and not to compete with the latter's undertakings.

Since the petitioner, however, was of the honest perception that YRASPORT was actually organized to appropriate for itself some of L'NOR'S business, then we find that she had probable cause to file the disbarment suit.

We take exception to the respondent's comment that, assuming the petitioner's accusation to be true, "there is nothing in Philippine law which considers as unethical the formation of competitive corporations and neither can it be considered with evident bad faith and absolute lack of fidelity." (Records, Administrative Case No. 1819, p. 69).

The circumstances of the case do not depict a simple case of formation of competitive corporations. What the petitioner objects to is the fact that both the respondent lawyer and Porter are fiduciaries of L'NOR and are at the same time fiduciaries of YRASPORT, both of which are engaged in the same line of business.

Supreme Court E-Library

True, at that time, the Corporation Law did not prohibit a director or any other person occupying a fiduciary position in the corporate hierarchy from engaging in a venture which competed with that of the corporation. But as a lawyer, Atty. Legaspi should have known that while some acts may appear to be permitted through sheer lack of statutory prohibition, these acts are nevertheless circumscribed upon ethical and moral considerations. And had Atty. Legaspi turned to American jurisprudence which then, as now, wielded a persuasive influence on our law on corporations, he would have known that it was unfair for him or for Porter, acting as fiduciary, to take advantage of an opportunity when the interest of the corporation justly calls for protection. (See Ballantine, Corporations, 204, Callaghan & Co., N. Y. [1946]).

Parenthetically, this lapse in the old Corporation Law is now cured by Sections 31 and 34 of the Corporation Code which provide:

"Section 31. *Liability of directors, trustees or officers.*— Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise have accrued to the corporation.

"Section 34. *Disloyalty of a director*. — Where a director, by virtue of his office, acquires for himself a business opportunity which should belong to the corporation, thereby obtaining profits to the prejudice of such corporation, he must account to the latter for all such profits by refunding the same, unless his act has been ratified by a vote of the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock. This provision shall

Supreme Court E-Library

be applicable, notwithstanding the fact that the director risked his own funds in the venture."

The Court finds it unnecessary to discuss all the other charges imputed to the respondent lawyer in the disbarment complaint. From the foregoing discussion, we have sufficient basis to declare that the petitioner had probable cause in filing the administrative case against Atty. Legaspi. Facts and circumstances existed which excited belief in Mrs. Ponce's mind that the respondent indeed committed unethical acts which warranted the imposition of administrative sanctions. Whether or not the petitioner's perception of these facts and circumstances is actually correct is irrelevant to our inquiry, the only issue being whether or not the petitioner had probable cause in filing the complaint.

The above discussion should not be construed as re-opening of the disbarment proceeding against Atty. Legaspi. References to the complaint for disbarment and the respondent's comment thereto are made only for the purpose of determining the existence of probable cause.

Since we adjudge that petitioner Ponce was moved by probable cause, we need not anymore ascertain whether or not the petitioner acted with malice in filing the complaint. The existence of probable cause alone, regardless of considerations of malice, is sufficient to defeat the charge of malicious prosecution.

The respondent court treated Atty. Legaspi's complaint as one for damages arising from libel and applied the test of *bona fides*, citing the case of *Deles v. Aragona* (27 SCRA 633 [1969]). This is incorrect.

In the first place, allegations and averments in pleadings are absolutely privileged as long as they are relevant or pertinent to the issues (See *Montenegro v. Medina*, 73 Phil. 602 [1942]). The test of good faith applies only to a qualified privileged communication. Had the respondent court studied the Deles case more closely, it would have traced the "*bona fides*" test to the case of *U.S. v. Bustos*, (37 Phil. 731 [1918]). In the latter case, the Court was referring to a qualified privileged communication when it formulated the "*bona fides*" test.

Supreme Court E-Library

Moreover, the test to break through the protective barrier of an absolutely privileged communication is not "bona fides" but relevance. In the present case, Atty. Legaspi's complaint nowhere alleged that the statements made by the petitioner were irrelevant. Thus, we, find that the petitioner's complaint for disbarment is still covered by the privilege and may not be the basis of a damage suit arising from libel.

We disagree with the findings of the two lower courts that it was the petitioner who distributed copies of the complaint for disbarment to Atty. Legaspi's clients. It should be noted that Atty. Legaspi did not even present these alleged clients in court to testify to the source of these copies. Considering that a complaint for disbarment becomes of public record once it is filed with the Court, then the petitioner may not be pinpointed as the sole and indisputable source of the copies received by the respondent's clients.

Atty. Legaspi may have suffered injury as a consequence of the disbarment proceedings. But the adverse result of an action does not *per se* make the action wrongful and subject the actor to make payment of damages for the law could not have meant to impose a penalty on the right to litigate (*Saba v. Court of Appeals*, 189 SCRA 50 [1990], citing *Rubio v. Court of Appeals*, 141 SCRA 488 [1986]; see also *Salao v. Salao*, 70 SCRA 65 [1976] and *Ramos v. Ramos*, 61 SCRA 284 [1974], citing *Barreto v. Arevalo*, 99 Phil. 771 [1956]). One who exercises his rights does no injury. (*Saba v. Court of Appeals, supra*, citing *Auyong Hian v. Court of Tax Appeals*, 59 SCRA 110 [1974]). If damage results from a person's exercising his legal rights, it is *damnum absque injuria*. [*Id*.]

WHEREFORE, the petition is hereby *GRANTED*. The decision of the respondent Court of Appeals is *SET ASIDE* and *REVERSED*.

SO ORDERED.

Feliciano, Bidin, and *Romero, JJ*., concur.

Davide, Jr., J., no part.