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of innocence must yield to what had been so amply and persuasively demonstrated."[51]

WHEREFORE, the judgment is modified by increasing the damages to ₱12,000.00 but without requiring appellant to pay ₱5,000.00 for moral damages. In all other respects, the decision dated July 14, 1977 is hereby affirmed. Costs against appellant.

Barredo, Antonio, Aquino, Concepcion Jr., and *Santos, JJ.*, concur.

Abad Santos, J., took no part.

FIRST DIVISION

[G.R. No. L-48250. December 28, 1979]

GRAND UNION SUPERMARKET, INC. and NELIA SANTOS FANDINO, *petitioners, vs.* **JOSE J. ESPINO, JR., and THE HONORABLE COURT OF APPEALS,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; DAMAGES; A PARTY FALSELY ACCUSED AS A SHOPLIFTER IS ENTITLED THERETO; CASE AT BAR.— The false accusation charged against the private respondent after detaining and interrogating him by the uniformed guards and the mode and manner in which he was subjected, shouting at him, imposing upon him a fine, threatening to call the police and in the presence and hearing of many people

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[51] *Ibid.*, 36-37.

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at the Supermarket which brought and caused him humiliation and embarrassment, sufficiently rendered the petitioners liable for damages under Articles 19 and 21 in relation to Article 2219 of the Civil Code. We rule that under the facts of the case at bar, petitioners wilfully caused loss or injury to private respondent in a manner that was contrary to morals, good customs or public policy. It is against morals, good customs and public policy to humiliate, embarrass and degrade the dignity of a person. Everyone must respect the dignity, personality, privacy and peace of mind of his neighbors and other persons (Article 26, Civil Code). And one must act with justice, give everyone his due and observe honesty and good faith (Article 19, Civil Code).

2. **ID.; ID.; ID.; MORAL DAMAGES; PURPOSE.**— The purpose of moral damages is essentially indemnity or reparation, both punishment or correction. Moral damages are emphatically not intended to enrich a complainant at the expense of a defendant; they are awarded only to enable the injured party to obtain means, diversion or amusements that will serve to alleviate the moral suffering he has undergone, by reason of the defendant's culpable action. In other words, the award of moral damages is aimed at a restoration, within the limits of the possible, of the spiritual *status quo ante* and, it must be proportionate to the suffering inflicted.

3. **ID.; ID.; ID.; EXEMPLARY DAMAGES; NATURE.**— Exemplary or corrective damages are imposed by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages (Art. 2229, New Civil Code). Exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they could be adjudicated (Art. 2223, New Civil Code). Considering that exemplary damages are awarded for wanton acts, that they are penal in character granted not by way of compensation but as a punishment to the offender and as a warning to others as a sort of deterrent, We hold that the facts and circumstances of the case at bar do not warrant the grant of exemplary damages.

4. **ID.; ID.; ID.; ID.; AWARD OF EXEMPLARY DAMAGES NOT PROPER IN CASE AT BAR.**— Petitioners acted in good faith in trying to protect and recover their property, a right which the law accords to them. Under Article 429, New Civil Code, the owner or lawful possessor of a thing has a right to exclude

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any person from the enjoyment and disposal thereof and for this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property. And since a person who acts in the fulfillment of a duty or in the lawful exercise of a right or office exempts him from civil or criminal liability, petitioner may not be punished by imposing exemplary damages against him. We agree that petitioners acted upon probable cause in stopping and investigating private respondent for taking the file without paying for it, hence, the imposition of exemplary damages as a warning to others by way of a deterrent is without legal basis. We, therefore, eliminate the grant of exemplary damages to the private respondent.

DECISION

GUERRERO, *J.*:

This is a petition for *certiorari* by way of appeal from the decision of the Court of Appeals[1] dated September 26, 1977 rendered in CA-G.R. No. 55186-R entitled "*Jose J. Espino, Jr., plaintiff-appellant, versus Grand Union Supermarket, Inc. and Nelia Santos-Fandino, defendants-appellees*," the dispositive portion of which states:

"WHEREFORE, the appealed judgment is hereby reversed and set aside. Defendants are ordered to pay plaintiff - jointly and severally, the sum of Seventy-Five Thousand Pesos (₱75,000.00) by way of moral damages, Twenty-Five Thousand Pesos (₱25,000.00), as exemplary damages, and Five Thousand Pesos (₱5,000.00) as attorney's fee. Costs of both instances shall be taxed against the defendants."

The facts of the case are as stated in the decision of the respondent court, to wit:

"Upon the evidence, and from the findings of the lower court, it appears that in the morning of August 22, 1970, plaintiff Jose J. Espino, Jr., a civil engineer and an executive of Procter and

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[1] Special Second Division, A. Reyes, *J.*, *ponente*; with M. Serrano and H. Gutierrez, J., *JJ.*, concurring.

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Gamble Philippines, Inc., and his wife and their two daughters went to shop at the defendants' South Supermarket in Makati. While his wife was shopping at the groceries section, plaintiff browsed around the other parts of the market. Finding a cylindrical "rat tail" file which he needed in his hobby and had been wanting to buy, plaintiff picked up that item from one of the shelves. He held it in his hand thinking that it might be lost, because of its tiny size, if he put it in his wife's grocery cart. In the course of their shopping, plaintiff and his wife saw the maid of plaintiff's aunt. While talking to this maid, plaintiff stuck the file into the front breast pocket of his shirt with a good part of the merchandise exposed.

"At the check-out counter, the plaintiff paid for his wife's purchases which amounted to ₱77.00, but he forgot to pay for the file. As he was leaving by the exit of the supermarket on his way to his car, carrying two bags of groceries and accompanied by his wife and two daughters, plaintiff was approached by a uniformed guard of the supermarket who said: "Excuse me, Mr., I think you have something in your pocket which you have not paid for." (p, 5, tsn, Aug. 13, 1971), pointing to his left front breast pocket. Suddenly reminded of the file, plaintiff apologized thus: "I am sorry," and he turned back toward the cashier to pay for the file. But the guard stopped him and led him instead toward the rear of the supermarket. The plaintiff protested but the guard was firm saying: "No, Mr., please come with me. It is the procedure of the supermarket to bring people that we apprehend to the back of the supermarket" (p. 8, *ibid.*). The time was between 9 and 10 o'clock. A crowd of customers on their way into the supermarket saw the plaintiff being stopped and led by a uniformed guard toward the rear of the supermarket. Plaintiff acquiesced and signaled to his wife and daughters to wait.

"Into a cubicle which was immediately adjacent to the area where deliveries to the supermarket were being made, the plaintiff was ushered. The guard directed him to a table and gave the file to the man seated at the desk. Another man stood beside the plaintiff. The man at the desk looked at the plaintiff and

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the latter immediately explained the circumstances that led to the finding of the file in his possession. The man at the desk pulled out a sheet of paper and began to ask plaintiff's name, age, residence and other personal data. Plaintiff was asked to make a brief statement, and on the sheet of paper or "Incident Report" he wrote down the following: "While talking to my aunt's maid with my wife, I put this item in my shirt pocket. I forgot to check it out with my wife's items" (Exhibit A). Meanwhile, the plaintiff's wife joined him and asked what had taken him so long.

"The guard who had accosted plaintiff took him back inside the supermarket in the company of his wife. Plaintiff and his wife were directed across the main entrance to the shopping area, down the line of check-out counters, to a desk beside the first checkout counter. To the woman seated at the desk, who turned out to be defendant Nelia Santos-Fandino, the guard presented the incident report and the file, Exhibit B. Defendant Fandino read the report and addressing the guard remarked: "*Ano, nakaw na naman ito*" (p. 22, *Id.*). Plaintiff explained and narrated the incident that led to the finding of the file in his pocket, telling Fandino that he was going to pay for the file because he needed it. But this defendant replied: "That is all they all say, the people whom we caught not paying for the goods say . . . They all intended to pay for the things that are found to them." (p. 23, *Id.*). Plaintiff objected and said that he was a regular customer of the supermarket.

"Extracting a ₱5.00 bill from his pocket, plaintiff told Fandino that he was paying for the file whose cost was ₱3.85. Fandino reached over and took the ₱5,00 bill from plaintiff with these words: "We are fining you ₱5.00. That is your fine." Plaintiff was shocked. He and his wife objected vigorously that he was not a common criminal, and they wanted to get back the ₱5.00. But Fandino told them that the money would be given as an incentive to the guards who apprehend pilferers. People were milling around them and staring at the plaintiff. Plaintiff gave up the discussion. He drew a ₱50.00 bill and took back the file. Fandino directed him to the nearest check-out counter

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where he had to fall in line. The people who heard the exchange of words between Fandino and plaintiff continued to stare at him. At the trial, plaintiff expressed his embarrassment and humiliation thus: "I felt as though I wanted to disappear into a hole on the ground" (p. 34, *id.*). After paying for the file, plaintiff and his wife walked as fast as they could out of the supermarket. His first was to go back to the supermarket that night to throw rocks at its glass windows. But reason prevailed over passion and he thought that justice should take its due course.

"Plaintiff was certain during the trial that he signed the incident report, Exhibit A, inside the cubicle at the back of the supermarket only his brief statement of the facts (Exhibit A-2), aside from his name and personal circumstances, was written thereon. He swore the following were not in the incident report at the time he signed it:

Exhibit A-1 which says opposite the stenciled word SUBJECT: "Shoplifting"

Exhibit A-3 which says opposite the stenciled words Action Taken: Released by Mrs. Fandino after paying the item."

Exhibit A-4 which says opposite the stenciled words Remarks Noted: "Grd. Ebreo requested Grd. Paunil to apprehend subject shoplifter."

Private respondent's complaint filed on October 8, 1970 is founded on Article 21 in relation to Article 2219 of the New Civil Code and prays for moral damages, exemplary damages, attorney's fees and expenses of litigation, costs of the suit and the return of the ₱5.00 fine. After trial, the Court of First Instance of Pasig, Rizal, Branch XIX dismissed the complaint. Interposing the appeal to the Court of Appeals, the latter reversed and set aside the appealed judgment, granting the damages as earlier stated.

Not satisfied with the decision of the respondent court, petitioners instituted the present petition and submits the following grounds and/or assignment of errors, to wit:

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I

Respondent Court of Appeals erred in awarding moral and exemplary damages to respondent Espino under Articles 19 and 21 in relation to Article 2219 of the Civil Code, considering that —

A. Respondent Espino was guilty of theft;

B. Petitioners legitimately exercised their right of defense of property within the context of Article 429 of the Civil Code negating the application of Articles 19 and 21 of the same Code;

C. Petitioners acted upon probable cause in stopping and investigating respondent Espino for shoplifting and as held in various decisions in the United States on shoplifting, a merchant who acts upon probable cause should not be held liable in damages by the suspected shoplifter;

D. Petitioners did not exercise their right maliciously, wilfully or in bad faith; and/or

E. The proximate cause of respondent Espino's alleged injury or suffering was his own negligence or forgetfulness; petitioners acted in good faith.

II

Assuming *arguendo* that petitioners are liable for moral and exemplary damages, the award of ₱75,000.00 for moral damages and ₱25,000.00 for exemplary damages by the respondent Court of Appeals is not legally justified and/or is grossly excessive in the premises.

III

The award of ₱5,000.00 for attorney's fees by the respondent Court of Appeals is unjustified and unwarranted under Article 2199 of the Civil Code.

We agree with the holding of the respondent appellate court that "the evidence sustains the court's finding that the plaintiff had absolutely no intention to steal the file." The totality of the facts and circumstances as found by the Court of Appeals unerringly points to the conclusion that private respondent did not intend to steal the file and that his act of picking up the file from the open shelf was not criminal nor done with malice or criminal intent for on the contrary, he took the item with the intention of buying and paying for it.

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This Court needs only to stress the following undisputed facts which strongly and convincingly uphold the conclusion that private respondent was not "shoplifting." Thus, the facts that private respondent after picking the cylindrical "rat-tail" file costing ₱3.85 had placed it inside his left front breast pocket with a good portion of the item exposed to view and that he did not conceal it in his person or hid it from sight as well as the fact that he paid the purchases of his wife amounting to ₱77.00 at the checkout counter of the Supermarket, showed that he was not acting suspiciously or furtively. And the circumstance that he was with his family consisting of his wife, Mrs. Caridad Jayme Espino, and their two daughters at the time negated any criminal intent on his part to steal. Moreover, when private respondent was approached by the guard of the Supermarket as he was leaving by the exit to his car who told him, "Excuse me, Mr., I think you have something in your pocket which you have not paid for," Espino immediately apologized and answered, "I am sorry," which indicated his sincere apology or regrets. He turned back towards the cashier to pay for the file which proved his honesty, sincerity and good faith in buying the item, and not to shoplift the same. His brief statement on the sheet of paper called the Incident Report where private respondent wrote the following: "While talking to my aunt's maid with my wife, I put this item in my shirt pocket. I forgot to check it out with my wife's items," was an instant and contemporaneous explanation of the incident.

Considering further the personal circumstances of the private respondent, his education, position and character showing that he is a graduate Mechanical Engineer from U.P. Class 1950, employed as an executive of Procter & Gamble Phils., Inc., a corporate manager incharge of motoring and warehousing therein; honorably discharged from the Philippine Army in 1946; a Philippine government *pensionado* of the United States for six months; member of the Philippine Veterans Legion; author of articles published in the Manila Sunday Times and Philippines Free Press; member of the Knights of Columbus, Council No. 3713; son of the late Jose Maria Espino, retired Minister, Department of Foreign Affairs at the Philippine Embassy, Washington, We are fully convinced, as the trial and appellate

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courts were, that private respondent did not intend to steal the article costing ₱3.85. Nothing in the records intimates or hints whatsoever that private respondent has had any police record of any sort much less suspicion of stealing or shoplifting.

We do not lay down here any hard-and-fast rule as to what act or combination of acts constitute the crime of shoplifting for it must be stressed that each case must be considered and adjudged on a case-to-case basis and that in the determination of whether a person suspected of shoplifting has in truth and in fact committed the same, all the attendant facts and circumstances should be considered in their entirety and not from any single fact or circumstance from which to impute the stigma of shoplifting on any person suspected and apprehended therefor.

We likewise concur with the Court of Appeals that "(u)pon the facts and under the law, plaintiff has clearly made the cause of action for damages against the defendants. Defendants wilfully caused loss or injury to plaintiff in a manner that was contrary to morals, good customs or Public policy, making them amenable to damages under Articles 19 and 21 in relation to Article 2219 of the Civil Code."[2]

That private respondent was falsely accused of shoplifting is evident. The Incident Report (Exhibit A) with the entries thereon under Exhibit A-1 which says opposite the stenciled word SUBJECT: "Shoplifting," Exhibit A-3 which says opposite the stenciled words Action Taken: "Released by Mrs. Fandino after paying the item," Exhibit A-4 which says opposite the

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[2] 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. 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.

Art. 2219. Moral damages may be recovered in the following and analogous cases: . . . (10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35. x x x"

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stenciled words Remarks Noted: "Grd. Ebreo requested Grd. Paunil to apprehend subject shoplifter," established the opinion, judgment or thinking of the management of petitioner's supermarket upon private respondent's act of picking up the file. In plain words, private respondent was regarded and pronounced a shoplifter and had committed "shoplifting."

We also affirm the Court of Appeals' finding that petitioner Nelia Santos Fandino, after reading the incident report, remarked the following: "*Ano, nakaw na naman ito?*" Such a remark made in the presence of private respondent and with reference to the incident report with its entries, was offensive to private respondent's dignity and defamatory to his character and honesty. When Espino explained that he was going to pay the file but simply forgot to do so, Fandino doubted the explanation, saying: "That is all what they say, the people whom we caught not paying for the goods say . . . they all intended to pay for the things that are found to them." Private respondent objected and said that he was a regular customer of the Supermarket.

The admission of Fandino that she required private respondent to pay a fine of ₱5.00 and did in fact take the ₱5.00 bill of private respondent tendered by the latter to pay for the file, as a fine which would be given as an incentive to the guards who apprehend pilferers clearly proved that Fandino branded private respondent as a thief which was not right nor justified.

The testimony of the guard that management instructed them to bring the suspected customers to the public area for the people to see those kind of customers in order that they may be embarrassed (p. 26, tsn, Sept. 30, 1971); that management wanted "the customers to be embarrassed in public so that they will not repeat the stealing again" (p. 2, tsn, Dec. 10, 1971); that the management asked the guards "to bring these customers to different cashiers in order that they will know that they are pilferers" (p. 2, *ibid.*) may indicate the manner or pattern whereby a confirmed or self-confessed shoplifter is treated by the Supermarket management but in the case at bar, there is no showing that such procedure was taken in the case of the private respondent who denied strongly and vehemently the charge of shoplifting.

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Nonetheless, the false accusation charged against the private respondent after detaining and interrogating him by the uniformed guards and the mode and manner in which he was subjected, shouting at him, imposing upon him a fine, threatening to call the police and in the presence and hearing of many people at the Supermarket which brought and caused him humiliation and embarrassment, sufficiently rendered the petitioners liable for damages under Articles 19 and 21 in relation to Article 2219 of the Civil Code. We rule that under the facts of the case at bar, petitioners wilfully caused loss or injury to private respondent in a manner that was contrary to morals, good customs or public policy. It is against morals, good customs and public policy to humiliate, embarrass and degrade the dignity of a person. Everyone must respect the dignity, personality, privacy and peace of mind of his neighbors and other persons (Article 26, Civil Code). And one must act with justice, give everyone his due and observe honesty and good faith (Article 19, Civil Code).

Private respondent is entitled to damages but We hold that the award of Seventy-Five Thousand Pesos (₱75,000.00) for moral damages and Twenty-Five Thousand Pesos (₱25,000.00) for exemplary damages is unconscionable and excessive.

While no proof of pecuniary loss is necessary in order that moral, nominal, temperate, liquidated or exemplary damages may be adjudicated, the assessment of such damages, except liquidated ones, is left to the discretion of the court, according to the circumstances of each case (Art. 2216, New Civil Code). In the case at bar, there is no question that the whole incident that befell respondent had arisen in such a manner that was created unwittingly by his own act of forgetting to pay for the file. It was his forgetfulness in checking out the item and paying for it that started the chain of events which led to his embarrassment and humiliation, thereby causing him mental anguish, wounded feelings and serious anxiety. Yet, private respondent's act of omission contributed to the occurrence of his injury or loss and such contributory negligence is a factor which may reduce the damages that private respondent may recover (Art. 2214, New Civil Code). Moreover, that many people were present and they saw and heard the ensuing

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interrogation and altercation appears to be simply a matter of coincidence in a supermarket which is a public place and the crowd of onlookers, hearers or bystanders was not deliberately sought or called by management to witness private respondent's predicament. We do not believe that private respondent was intentionally paraded in order to humiliate or embarrass him because petitioner's business depended for its success and patronage the good will of the buying public which can only be preserved and promoted by good public relations.

As succinctly expressed by Mr. Justice J. B. L. Reyes in his concurring and dissenting opinion in *Pangasinan Transportation Company, Inc. vs. Legaspi*, 12 SCRA 598, the purpose of moral damages is essentially indemnity or reparation, both punishment or correction. Moral damages are emphatically not intended to enrich a complainant at the expense of a defendant; they are awarded only to enable the injured party to obtain means, diversion or amusements that will serve to alleviate the moral suffering he has undergone, by reason of the defendant's culpable action. In other words, the award of moral damages is aimed at a restoration, within the limits of the possible, of the spiritual *status quo ante* and, it must be proportionate to the suffering inflicted.

In Our considered estimation and assessment, moral damages in the amount of Five Thousand Pesos (₱5,000.00) is reasonable and just to award to private respondent.

The grant of Twenty-Five Thousand Pesos (₱25,000.00) as exemplary damages is unjustified. Exemplary or corrective damages are imposed by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages (Art. 2229, New Civil Code). Exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they could be adjudicated (Art. 2223, New Civil Code). Considering that exemplary damages are awarded for wanton acts, that they are penal in character granted not by way of compensation but as a punishment to the offender and as a warning to others as a sort of deterrent, We hold that the facts and circumstances of the case at bar do not warrant the grant of exemplary damages.

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Petitioners acted in good faith in trying to protect and recover their property, a right which the law accords to them. Under Article 429, New Civil Code, the owner or lawful possessor of a thing has a right to exclude any person from the enjoyment and disposal thereof and for this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property. And since a person who acts in the fulfillment of a duty or in the lawful exercise of a right or office exempts him from civil or criminal liability, petitioner may not be punished by imposing exemplary damages against him. We agree that petitioners acted upon probable cause in stopping and investigating private respondent for taking the file without paying for it, hence, the imposition of exemplary damages as a warning to others by way of a deterrent is without legal basis. We, therefore, eliminate the grant of exemplary damages to the private respondent.

In the light of the reduction of the damages, We hereby likewise reduce the original award of Five Thousand Pesos (₱5,000.00) as attorney's fees to Two Thousand Pesos (₱2,000.00).

WHEREFORE, IN VIEW OF THE FOREGOING, the judgment of the Court of Appeals is hereby modified. Petitioners are hereby ordered to pay, jointly and severally, to private respondent moral damages in the sum of Five Thousand Pesos (₱5,000.00) and the amount of Two Thousand Pesos (₱2,000.00) as and for attorney's fees; and further, to return the ₱5.00 fine to private respondent. No costs.

SO ORDERED.

Makasiar, Fernandez, De Castro, and *Melencio-Herrera, JJ.*, concur.

Teehankee (Chairman), J., took no part.