Supreme Court E-Library

Art. 704. Any private person may abate a public nuisance which is specially injurious to him by removing, or if necessary, by destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury. But it is necessary:

(1) That demand be first made upon the owner or possessor of the property to abate the nuisance;

(2) That such demand has been rejected;

(3) That the abatement be approved by the district health officer and executed with the assistance of the local police; and

(4) That the value of the destruction does not exceed three thousand pesos.

WHEREFORE, premises considered, the petition is **DENIED.** The Court of Appeals Decision dated March 31, 2008 in CA-GR. SP. No. 104474 is **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Villarama, Jr., Reyes, and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 191033. January 11, 2016]

THE ORCHARD GOLF & COUNTRY CLUB, INC., EXEQUIEL D. ROBLES, CARLO R.H. MAGNO, CONRADO L. BENITEZ II, VICENTE R. SANTOS, HENRY CUA LOPING, MARIZA SANTOS-TAN, TOMAS B. CLEMENTE III, and FRANCIS C. MONTALLANA, *petitioners, vs.* **ERNESTO V. YU and MANUEL C. YUHICO,** *respondents.*

Supreme Court E-Library

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PERIOD FOR PERFECTING AN APPEAL; PROCEDURAL RULES MAY BE WAIVED OR DISPENSED WITH IN ORDER TO SERVE AND ACHIEVE SUBSTANTIAL JUSTICE; CASE AT BAR.—** In general, procedural rules setting the period for perfecting an appeal or filing a petition for review are inviolable considering that appeal is not a constitutional right but merely a statutory privilege and that perfection of an appeal in the manner and within the period permitted by law is not only mandatory but jurisdictional. However, procedural rules may be waived or dispensed with in order to serve and achieve substantial justice. Relaxation of the rules may be had when the appeal, on its face, appears to be absolutely meritorious or when there are persuasive or compelling reasons to relieve a litigant of an injustice not commensurate with the degree of thoughtlessness in not complying with the prescribed procedure. Notably, under A.M. No. 04-9-07-SC (Re: Mode of Appeal in Cases Formerly Cognizable by the Securities and Exchange Commission), while the petition for review under Rule 43 of the Rules should be filed within fifteen (15) days from notice of the decision or final order of the RTC, the CA may actually grant an additional period of fifteen (15) days within which to file the petition and a further extension of time not exceeding fifteen (15) days for the most compelling reasons. This implies that the reglementary period is neither an impregnable nor an unyielding rule.

2. **CIVIL LAW; DAMAGES; THERE IS NO FACTUAL AND LEGAL BASIS TO GRANT MORAL AND EXEMPLARY DAMAGES, ATTORNEY'S FEES AND COST OF SUIT IF THE DAMAGE SUFFERED PARTAKES OF THE NATURE OF *DAMNUM ABSQUE INJURIA*; PRESENT IN CASE AT BAR.—** Respondents were suspended in accordance with the procedure set forth in the Club's By-laws. There is no merit on their insistence that their suspension is invalid on the ground that the affirmative vote of eight (8) members is required to support a decision suspending or expelling a Club member. Both the provisions of Articles of Incorporation and By-Laws of the Club expressly limit the number of directors to seven (7); hence, the provision on suspension and expulsion of a member which requires the affirmative vote of eight (8) members

Supreme Court E-Library

is obviously a result of an oversight. x x x Lastly, contrary to respondents' position, the recommendation of the House Committee to suspend a Club member is not a pre-requisite. Section 1, Article XIV, not Section 2 (b), Article XI, of the By-Laws governs as it outlines the procedure for the suspension of a member. Even assuming that the recommendation of the House Committee is mandatory, respondents failed to prove, as a matter of fact, that petitioners acted in bad faith in relying on the subject provision, which employs the permissive word *"may"* in reference to the power of the House Committee to recommend anytime the suspension of a Club member. Way different from the trial court's findings, there is, therefore, no factual and legal basis to grant moral and exemplary damages, attorney's fees and costs of suit in favor of respondents. The damages suffered, if there are any, partake of the nature of a *damnum absque injuria*. x x x "One who makes use of his own legal right does no injury. *Qui jure suo utitur nullum damnum facit*. If damage results from a person's exercising his legal rights, it is *damnum absque injuria*." In this case, respondents failed to prove by preponderance of evidence that there is fault or negligence on the part of petitioners in order to oblige them to pay for the alleged damage sustained as a result of their suspension as Club members. Certainly, membership in the Club is a privilege. Regular members are entitled to use all the facilities and privileges of the Club, subject to its rules and regulations. As correctly pointed out by petitioners, the mental anguish respondents experienced, assuming to be true, was brought upon them by themselves for deliberately and consciously violating the rules and regulations of the Club. Considering that respondents were validly suspended, there is no reason for the Club to compensate them. Indeed, the penalty of suspension provided for in Section 1, Article XIV of the By-Laws is a means to protect and preserve the interest and purposes of the Club. This being so, the suspension of respondents does not fall under any of the provisions of the Civil Code pertaining to the grant of moral and exemplary damages, attorney's fees, and litigation costs.

Supreme Court E-Library

APPEARANCES OF COUNSEL

Sebastian Liganor Galinato & Alamis for petitioners.
Esguerra & Blanco for respondent *Ernesto V. Yu.*
Atilano S. Guevarra, Jr., for respondent *Manuel C. Yuhico.*

D E C I S I O N

PERALTA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court (*Rules*) seeks to reverse the Resolutions dated September 16, 2009[1] and January 21, 2010[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 106918, which reconsidered and set aside its Resolution dated January 15, 2009[3] granting petitioners a 15-day period within which to file a petition for review under Rule 43 of the Rules.

The present case is a continuation of *Yu v. The Orchard Gold & Country Club, Inc.*[4] decided by this Court on March 1, 2007. For brevity, the relevant facts narrated therein are quoted as follows:

> On May 28, 2000, a Sunday, [respondents] Ernesto Yu and Manuel Yuhico went to the Orchard Golf & Country Club to play a round of golf with another member of the club. At the last minute, however, that other member informed them that he could not play with them. Due to the "no twosome" policy of the Orchard contained, in the membership handbook prohibiting groups of less than three players from teeing off on weekends and public holidays before 1:00 p.m., [respondents] requested management to look for another player to join them.
>
> Because [Orchard] were unable to find their third player, [respondent] Yu tried to convince Francis Montallana, Orchard's

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[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Noel G. Tijam and Jose C. Reyes, Jr., concurring; *rollo,* pp. 90-96.

[2] *Id.* at 99-100.

[3] *Id.* at 526.

[4] 546 Phil. 1 (2007).

Supreme Court E-Library

assistant golf director, to allow them to play twosome, even if they had to tee off from hole no. 10 of the Palmer golf course. Montallana refused, stating that the flights which started from the first nine holes might be disrupted. [Respondent] Yu then shouted invectives at Montallana, at which point he told [respondent] Yuhico that they should just tee off anyway, regardless of what management's reaction would be. [Respondents] then teed off. without permission from Montallana. They were thus able to play, although they did so without securing a tee time control slip before teeing off, again in disregard of a rule in the handbook. As a result of [respondents'] actions, Montallana filed a report on the same day with the board of directors (the board).

In separate letters dated May 31, 2000, the board, through [petitioner] Clemente, requested [respondents] to submit their written comments on Montallana's incident report dated May 28, 2000. The report was submitted for the consideration of the board.

Subsequently, on June 29, 2000, the board resolved to suspend [respondents] from July 16 to October 15, 2000, and served notice thereof on them.

On July 11, 2000, [respondents] filed separate petitions for injunction with application for temporary restraining order (TRO) and/or preliminary injunction with the Securities Investigation and Clearing Department (SICD) of the Securities and Exchange Commission (SEC), at that time the tribunal vested by law with jurisdiction to hear and decide intra-corporate controversies. The cases, in which [respondents] assailed the validity of their suspension, were docketed as SEC Case Nos. 07-00- 6680 and 07-00-6681. They were eventually consolidated.

After a joint summary hearing on the aforesaid petitions, the SEC-SICD, on July 14, 2000, issued a TRO effective for 20 days from issuance, restraining and enjoining [petitioners], their agents or representatives from implementing or executing the suspension of [respondents].

On August 1, 2000, the SEC *en banc* issued its "Guidelines on Intra-Corporate Cases Pending Before the SICD and the Commission *En Bane* of the Securities and Exchange Commission" (guidelines). Sections 1 and 2 of these guidelines provided:

> Section 1. Intra-corporate and suspension of payments or rehabilitation cases may still be filed with the Securities and

Supreme Court E-Library

> Exchange Commission on or before August 8, 2000. However, the parties-litigants or their counsels or representatives shall be advised that the jurisdiction of the Commission over these cases shall be eventually transferred to the Regional Trial Courts upon effectivity of *The Securities Regulation* Code by August 9, 2000.
>
> Section 2. Prayers for temporary restraining order or injunction or suspension of payment order contained in cases filed under the preceding section may be acted upon favorably provided that the effectivity of the corresponding order **shall only be up to August 8, 2000.** Prayers for other provisional remedies shall no longer be acted upon by the Commission. In all these cases, the parties-litigants or their counsels or representatives shall be advised that the said cases will eventually be transferred to the regular courts by August 9, 2000. (Emphasis ours)

After hearing [respondents'] applications for preliminary injunction, the SEC-SICD issued an order dated August 2, 2000 directing the issuance of a writ of preliminary injunction enjoining the individual [petitioners], their agents and representatives from suspending [respondents], upon the latter's posting of separate bonds of ₱40,000. This [respondents) did on August 4, 2000.

On August 7, 2000, the SEC-SICD issued a writ of preliminary injunction against [petitioners] directing them to strictly observe the order dated August 2, 2000.

On October 31, 2000, the board held a special meeting in which it resolved to implement the June 29, 2000 order for the suspension of [respondents] in view of the fact that the writs of injunction issued by the SICD in their respective cases had already [elapsed] on August 8, 2000 under the SEC guidelines.

In separate letters dated December 4, 2000 addressed to each [respondent], [petitioner] Clemente informed them that the board was implementing their suspensions.

On December 12, 2000, [respondents] filed a petition for indirect contempt against [petitioners] in the Regional Trial Court (RTC) of Dasmariñas, Cavite, docketed as Civil Case No. 2228-00.

In an order dated December 13, 2000, the Dasmariñas, Cavite RTC, Branch 90, through Judge Dolores [L.] Español, directed the parties to maintain the "last, actual, peaceable and uncontested state

Supreme Court E-Library

of things," effectively restoring the writ of preliminary injunction, and also ordered [petitioners] to file their answer to the petition. [Petitioners] did not file a motion for reconsideration but filed a petition for *certiorari* and prohibition with the CA, docketed as CA-G.R. SP No. 62309, contesting the propriety of the December 13, 2000 order of Judge Español. They also prayed for the issuance of a TRO and writ of preliminary injunction.

The CA reversed the Dasmariñas, Cavite RTC in the x x x decision dated August 27, 2001.

In view of the CA's decision in CA-G.R. SP No. 62309, [petitioners] finally implemented [respondents'] suspension.

In the meantime, [respondents] filed a motion *ad cautelam* dated August 30, 2001 in the RTC of Imus, Cavite, Branch 21, praying for the issuance of a TRO and/or writ of injunction to enjoin [petitioners] from implementing the suspension orders. They alleged that neither the CA nor this Court could afford them speedy and adequate relief hence[,] the case in the RTC of Imus, Cavite. The case was docketed as SEC Case Nos. 001-01 and 002-01.

On September 7, 2001, the Imus, Cavite RTC issued a TRO. [Petitioners] filed a motion for reconsideration on September [11,] 2001.

It was after the issuance of this TRO that [respondents] filed, on September 12, 2001, a motion for reconsideration of the CA' s decision in CA-G.R. SP No. 62309. In a resolution dated October 10, 2001, the CA denied [respondents'] motion, prompting them to elevate the matter to this Court via petition for review on *certiorari,* docketed as G.R. No. 150335.

In an order dated September 21, 2001, the Imus, Cavite RTC denied [petitioners'] motion for reconsideration and directed the issuance of a writ of preliminary injunction. This prompted [petitioners] to file another petition for *certiorari* in the Court of Appeals [docketed as CA-G.R. SP No. 67664] which x x x issued [on March 26, 2002] a TRO against the Imus, Cavite RTC, enjoining it from implementing the writ of preliminary injunction.

At this point, [respondents] filed their second petition in this Court, this time a special civil action for *certiorari,* docketed as G.R. No. 152687, which included a prayer for the issuance of a TRO and/or the issuance of a writ of preliminary injunction to restrain the enforcement of the CA-issued TRO.

Supreme Court E-Library

On May 6, 2002, the Court issued a resolution consolidating G.R. No. 152687 and G.R. No. 150335.

In G.R. No. 150335, the issue for consideration [was] whether Sections 1 and 2 of the SEC guidelines dated August 1, 2000 shortened the life span of the writs of preliminary injunction issued on August 7, 2000 by the SEC-SICD in SEC Case Nos. 07-00-6680 and 07-00-6681, thereby making them effective only until August 8, 2000.

At issue in G.R. No. 152687, on the other hand, [was] whether or not the CA committed grave abuse of discretion amounting to lack of jurisdiction by issuing a TRO against the Imus, Cavite RTC and enjoining the implementation of its writ of preliminary injunction against [petitioners].[5]

On March 1, 2007, the Court denied the petitions in G.R. Nos. 150335 and 152687. In G.R. No. 150335, it was held that the parties were allowed to file their cases before August 8, 2000 but any provisional remedies the SEC granted them were to be effective only until that date. Given that the SEC Order and Writ of Injunction were issued on August 2 and 7, 2000, respectively, both were covered by the guidelines and the stated cut-off date. As to G.R. No. 152687, We ruled that the petition became moot and academic because the TRO issued by the CA on March 26, 2002 already expired, its lifetime under Rule 58 of the Rules being only 60 days, and petitioners themselves admitted that the CA allowed its TRO to elapse.

Meanwhile, per Order dated September 24, 2002 of the Imus RTC, SEC Case Nos. 001-01 and 002-01 were set for pre-trial conference.[6] Trial on the merits thereafter ensued.

On December 4, 2008, the Imus RTC ruled in favor of respondents. The dispositive portion of the Decision[7] ordered:

WHEREFORE, premises considered, the decision of the Club's Board of Directors suspending [respondents] Ernesto V. Yu and Manuel C. Yuhico is hereby declared void and of no effect, and its' *(sic)*

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[5] *Yu v. The Orchard Gold & Country Club, Inc., supra,* at 4-8.

[6] *Rollo,* pp. 408-409.

[7] *Id.* at 502-509.

Supreme Court E-Library

enforcement permanently enjoined. The writ of preliminary injunction is hereby declared permanent.

[Petitioners] are hereby directed to jointly and severally pay each of the [respondents] the following amounts:

(a) ₱2,000,000.00 as moral damages;

(b) ₱2,000,000.00 as exemplary damages;

(c) ₱500,000.00 as attorney's fees[;] and

(d) ₱100,000.00 as costs of litigation.

SO ORDERED.[8]

Upon receiving a copy of the Imus RTC Decision on December 22, 2008, petitioners filed a Notice of Appeal accompanied by the payment of docket fees on January 5, 2009.[9] Respondents then filed an Opposition to Notice of Appeal with Motion for Issuance of Writ of Execution,[10] arguing that the December 4, 2008 Decision already became final and executory since no petition for review under Rule 43 of the Rules was filed before the CA pursuant to Administrative Matter No. 04-9-07-SC.

Realizing the mistake, petitioners filed on January 13, 2009 an Urgent Motion for Extension of Time to File a Petition.[11] Before the Imus RTC, they also filed a Motion to Withdraw the Notice of Appeal.[12]

On January 15, 2009, the CA resolved to give petitioners a 15-day period within which to file the petition, but *"[s]ubject to the timeliness of the filing of petitioners' Urgent Motion for Extension of Time to File 'Petition for Review' Under Rule 43 of the Rules of Court dated January 13, 2009."*[13]

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[8] *Id.* at 509.

[9] *Id.* at 510-514.

[10] *Id.* at 598-601, 611-614.

[11] *Id*. at 515-523.

[12] *Id*. at 524-525.

[13] *Id*. at 526.

Supreme Court E-Library

Afterwards, on January 21, 2009, petitioners filed a Petition for Review.[14]

In the meantime, respondents filed an Opposition to Petitioners' Urgent Motion.[15] Subsequently, they also filed a motion for reconsideration of the CA's Resolution dated January 15, 2009.[16]

Before the Imus RTC, respondents' motion for execution was granted on February 17, 2009. The trial court opined that the proper appellate mode of review was not filed within the period prescribed by the Rules and that the CA issued no restraining order.[17] On March 2, 2009, the Writ of Execution was issued.[18] Eventually, on March 30, 2009, the Sheriff received the total amount of ₱9,200,000.00, as evidenced by two manager's check payable to respondents in the amount of ₱4,600,000.00 each, which were turned over to respondents' counsel.[19]

On September 16, 2009, the CA granted respondents' motion for reconsideration, setting aside its January 15, 2009 Resolution. It relied on *Atty. Abrenica v. Law Firm of Abrenica, Tungol & Tibayan (Atty. Abrenica)*[20] and *Land Bank of the Philippines v. Ascot Holdings and Equities, Inc., (LBP),*[21] which respondents cited in their Opposition to the Urgent Motion and Motion for Reconsideration. Petitioners moved to reconsider,[22] but it was denied on January 21, 2010; hence, this petition.

The Court initially denied the petition, but reinstated the same on October 6, 2010.[23]

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[14] *Id*. at 529-588.

[15] *Id*. at 589-597.

[16] *Id*. at 602-610.

[17] *Id*. at 619-621.

[18] *Id*. at 622-623.

[19] *Id*. at 632-636, 644.

[20] 534 Phil. 34 (2006).

[21] 562 Phil. 974 (2007).

[22] *Rollo*, pp. 651-703.

[23] *Id.* at 1022, 1107-1108.

Supreme Court E-Library

We grant the petition.

The cases of *LBP* and *Atty. Abrenica* are inapplicable. In *LBP,* the Court affirmed the CA's denial of the bank's motion for extension of time to file a petition for review. Examination of said case revealed that the bank filed a motion for reconsideration of the trial court's adverse judgment dated March 15, 2006, in violation of Section 8(3), Rule 1 of the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799. It was held that the filing of such prohibited pleading did not toll the reglementary period to appeal the judgment *via* a petition for review under Rule 43 of the Rules. Thus, the CA already lacked jurisdiction to entertain the petition which the bank intended to file, much less to grant the motion for extension of time that was belatedly filed on July 25, 2006.

Also, in *Atty. Abrenica,* We found no compelling reasons to relax the stringent application of the rules on the grounds as follows:

First, when petitioner received the trial court's consolidated decision on December 16, 2004, A.M. No. 04-9-07-SC was already in effect for more than two months.

Second, petitioner had known about the new rules on the second week of January, 2005 when he received a copy of respondents' Opposition (To Defendant's Notice of Appeal) dated January 6, 2005. In their opposition, respondents specifically pointed to the applicability of A.M. No. 04-9-07-SC to the instant case.

Third, petitioner originally insisted in his Reply with Manifestation (To the Opposition to Defendant's Notice of Appeal) that the correct mode of appeal was a "notice of appeal."

Petitioner reiterated in his Opposition to respondents' motion for execution dated January 14, 2005 that a notice of appeal was the correct remedy.

Finally, petitioner filed his Motion to Admit Attached Petition for Review only on **June 10, 2005,** or almost **eight months** from

Supreme Court E-Library

the effectivity of A.M. No. 04-9-07-SC on October 15, 2004, after he received the trial court's Order of May 11, 2005.[24]

Unlike *LBP* and *Atty. Abrenica,* petitioners in this case committed an excusable delay of merely seven (7) days. When they received a copy of the Imus RTC Decision on **December 22, 2008,** they filed before the CA an Urgent Motion for Extension of Time to File a Petition on **January 13, 2009.** Meantime, they exhibited their desire to appeal the case by filing a Notice of Appeal before the Imus RTC. Upon realizing their procedural *faux pax,* petitioners exerted honest and earnest effort to file the proper pleading despite the expiration of the reglementary period. In their urgent motion, they candidly admitted that a petition for review under Rule 43 and not a notice of appeal under Rule 41 ought to have been filed. The material dates were also indicated. Hence, the CA was fully aware that the 15-day reglementary period already elapsed when it granted the time to file the petition.

In general, procedural rules setting the period for perfecting an appeal or filing a petition for review are inviolable considering that appeal is not a constitutional right but merely a statutory privilege and that perfection of an appeal in the manner and within the period permitted by law is not only mandatory but jurisdictiona1.[25] However, procedural rules may be waived or dispensed with in order to serve and achieve substantial justice.[26] Relaxation of the rules may be had when the appeal, on its face, appears to be absolutely meritorious or when there are persuasive or compelling reasons to relieve a litigant of an

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[24] *Atty. Abrenica v. Law Firm of Abrenica, Tungol & Tibayan, supra* note 20, at 42-43.

[25] *Calipay v. National Labor Relations Commission,* 640 Phil. 458, 466 (2010).

[26] *Philippine National Bank v. Commissioner of Internal Revenue,* 678 Phil. 660, 677 (2011).

Supreme Court E-Library

injustice not commensurate with the degree of thoughtlessness in not complying with the prescribed procedure.[27]

Notably, under A.M. No. 04-9-07-SC (Re: Mode of Appeal in Cases Formerly Cognizable by the Securities and Exchange Commission),[28] while the petition for review under Rule 43 of the Rules should be filed within fifteen (15) days from notice of the decision or final order of the RTC, the CA may actually grant an additional period of fifteen (15) days within which to file the petition and a further extension of time not exceeding fifteen (15) days for the most compelling reasons. This implies that the reglementary period is neither an impregnable nor an unyielding rule.

Here, there is also no material prejudice to respondents had the CA allowed the filing of a petition for review. When the Imus RTC declared as permanent the writ of preliminary injunction, the injunction became immediately executory. Respondents' suspension as Club members was effectively lifted; in effect, it restored their rights and privileges unless curtailed by a temporary restraining order or preliminary injunction.

More importantly, the substantive merits of the case deserve Our utmost consideration.

In the present case, Yu acknowledged that there was an offense committed.[29] Similarly, Yuhico admitted that he was aware or had prior knowledge of the Club's "no twosome" policy as contained in the Club's Membership Handbook and that they teed off without the required tee time slip.[30] Also, while Yu

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[27] See *Calipay v. National Labor Relations Commission, supra* note at 467; and *Asia United Bank v. Goodland Company, Inc.,* 650 Phil. 174, 183-185 (2010).

[28] Promulgated on September 14, 2004 and took effect on October 15, 2004.

[29] TSN (SEC Case No. 002-01), February 15, 2005, p. 44; *rollo,* p. 745.

[30] TSN (SEC Cases Nos. 6681/6680), July 26,2000, pp. 28-29,42-44 and TSN (SEC Case No. 001-01), September 12, 2003, pp. 27-29, 35-36; *id.* at 772-774, 780-781, 1179-1180, 1193-1195.

Supreme Court E-Library

recognized telling Montallana *"kamote ka,"* Yuhico heard him also say that he (Montallana) is *"gago."*[31]

Respondents assert that the "no twosome" policy was relaxed by the management when a member or player would not be prejudiced or, in the words of Yu, allowed when *"maluwag."*[32] Yet a thorough reading of the transcript of stenographic records (TSN) disclosed that such claim is based not on concrete examples. No specific instance as to when and under what circumstance the supposed relaxation took place was cited. Yuhico roughly recollected two incidents but, assuming them to be true, these happened only after May 28, 2000.[33] Further, the tee pass or control slip and the Club's Palmer Course Card[34] which was identified by respondents' witness, Pepito Dimabuyo, to prove that he and another member were allowed to play twosome on June 13, 2004, a Sunday, indicated that they were allowed to tee off only at 1:45 p.m.[35] Lastly, granting, for the sake of argument, that the "no twosome" policy had been relaxed in the past, Montallana cannot be faulted in exercising his prerogative to disallow respondents from playing since they made no prior reservation and that there were standing flights waiting for tee time. Per Cipriano Santos' Report, May 28, 2000 was a relatively busy day as it had 200 registered players to accommodate as of 8:00 a.m.

It was averred that respondents teed off without the required tee time slip based on the thinking that it was no longer necessary since Santos, the Club's Manager, allowed them by waving

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[31] TSN (SEC Cases Nos. 6681/6680), July 26, 2000, p. 32; TSN (SEC Case No. 001-0 I), September 12, 2003, pp. 11-12, 3; and TSN (SEC Case No. 002-01), February 15, 2005, p. 29; *id.* at 731, 757-758, 776, 1183.

[32] TSN (SEC Case No. 001-01), September 12, 2003, pp. 7-8, 29-30, 36 and TSN (SEC Case No. 002-01), February 15, 2005, pp. 10-11, 31-32, 43-44; *id.* at 713-714, 733-734, 744-745, 753-754, 774-775, 781.

[33] TSN (SEC Cases Nos. 6681/6680), July 26, 2000, pp. 20-24, 87-90, 105-107; *id.* at 1171-1175, 1238-1241, 1256-1258.

[34] *CA rollo,* pp. 703-704.

[35] TSN (SEC Case No. 001-01 and 002-01), November 2006, pp. 8-10; *rollo,* pp. 790-792.

Supreme Court E-Library

his hands when Yuhico's caddie tried to pick up the slip in the registration office. Such excuse is flimsy because it ignored the reality that Santos, a mere subordinate of Montallana who already earned the ire of Yu, was practically more helpless to contain the stubborn insistence of respondents.

Definitely, the contentions that respondents were not stopped by the management when they teed off and that they did not cause harm to other members playing golf at the time for absence of any complaints are completely immaterial to the fact that transgressions to existing Club rules and regulations were committed. It is highly probable that they were tolerated so as to restore the peace and avoid further confrontation and inconvenience to the parties involved as well as to the Club members in general.

With regard to the purported damages they incurred, respondents testified during the trial to support their respective allegations. Yuhico stated that he distanced himself from his usual group *(the "Alabang Boys")* and that he became the butt of jokes of fellow golfers.[36] On the other hand, Yu represented that some of his friends in the business like Freddy Lim, a certain Atty. Benjie, and Jun Ramos started to evade or refuse to have dealings with him after his suspension.[37] Apart from these self-serving declarations, respondents presented neither testimonial nor documentary evidence to bolster their claims. Worse, Yu even admitted that Freddy Lim and Atty. Benjie did not tell him that his suspension was the reason why they did not want to transact with him.[38]

Records reveal that respondents were given due notice and opportunity to be heard before the Board of Directors imposed the penalty of suspension as Club members. Respondent Yu

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[36] TSN (SEC Case Nos. 001-01 and 002-01), June 10, 2003, p. 10; *id.* at 1016.

[37] TSN (SEC Case No. 002-01), February 15, 2005, pp. 22-26, 33-39; *id.* at 724-728, 735-741.

[38] TSN (SEC Case No. 002-01), February 15, 2005, pp. 44-45; *id.* at 745-746.

Supreme Court E-Library

was served with the May 31, 2000 letter[39] signed by then Acting General Manager Tomas B. Clemente III informing that he violated the "no twosome" policy, teed off without the required tee time slip, and uttered derogatory remarks to Montallana in front of another member and the caddies. In response, Yu's counsel asked for a copy of Montallana's report and a formal hearing to confront the complainant and all the witnesses.[40] Subsequently, on June 13, 2000, Yu, through counsel, submitted his explanation that included an admission of the "no twosome" policy.[41] Finally, on September 15, 2000, Yu was advised of the Board resolution to give him another opportunity to present his side in a meeting supposed to be held on September 20, 2000.[42] It appears, however, that Yu refused to attend.[43]

Likewise, respondent Yuhico was given by Clemente a letter dated May 31, 2000 informing him of violating the "no twosome" policy and teeing off without the required tee time slip.[44] After receiving the same, Yuhico called up Clemente to hear his side.[45] Like Yu, however, Yuhico later refused to attend a meeting with the Board.[46]

Respondents were suspended in accordance with the procedure set forth in the Club's By-laws. There is no merit on their insistence that their suspension is invalid on the ground that the affirmative vote of eight (8) members is required to support a decision suspending or expelling a Club member. Both the

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[39] *Rollo,* p. 136.

[40] *Id.* at 138.

[41] *Id.* at 139-141.

[42] *Id.* at 198.

[43] *Id.* at 199.

[44] *Rollo,* p. 137.

[45] TSN (SEC Cases Nos. 6681 /6680), July 26, 2000, pp. 69-71 *(Id.* at 1220-1222).

[46] *Rollo,* p. 200.

Supreme Court E-Library

provisions of Articles of Incorporation[47] and By-Laws[48] of the Club expressly limit the number of directors to seven (7); hence, the provision on suspension and expulsion of a member which requires the affirmative vote of eight (8) members is obviously a result of an oversight. Former Senator Helena Z. Benitez, the Honorary Chairperson named in the Membership Handbook, could not be included as a regular Board member since there was no evidence adduced by respondents that she was elected as such pursuant to the Corporation Code and the By-laws of the Club or that she had the right and authority to attend and vote in Board meetings. In addition, at the time the Board resolved to suspend respondents, the affirmative votes of only six (6) Board members already sufficed. The testimony of Jesus A. Liganor, who served as Assistant Corporate Secretary, that Rodrigo Francisco had not attended a single Board meeting since 1997 remains uncontroverted.[49] The Court agrees with petitioners that the Club should not be powerless to discipline its members and be helpless against acts inimical to its interest just because one director had been suspended and refused to take part in the management affairs.

Lastly, contrary to respondents' position, the recommendation of the House Committee[50] to suspend a Club member is not a pre-requisite. Section 1, Article XIV,[51] not Section 2 (b), Article

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[47] Article VI *(Id.* at 106).

[48] Article VII *(Id.* at 807-809).

[49] TSN (SEC Case Nos. 00l-0l and 002-0l), February 14, 2006, pp. 6-9 *(Id.* at 992-995).

[50] According to Article XI, Section 1 of the By-laws, the House Committee is one of the standing committees of the Club, which shall be the President's advisory board. The committees shall generally perform staff functions, formulate, propose and recommend policies and procedures, and report and be directly responsible to the President. *(Id.* at 813-814)

[51] Sec. 1. **Suspension and Expulsion.** The Board of Directors, by the affirmative vote of eight of its members, may reprimand, suspend or expel a member on any of the following grounds:

a. Violation of articles of incorporation or the By-laws;

Supreme Court E-Library

XI,[52] of the By-Laws governs as it outlines the procedure for the suspension of a member. Even assuming that the recommendation of the House Committee is mandatory, respondents failed to prove, as a matter of fact, that petitioners acted in bad faith in relying on the subject provision, which employs the permissive word *"may"* in reference to the power of the House Committee to recommend anytime the suspension of a Club member.

Way different from the trial court's findings, there is, therefore, no factual and legal basis to grant moral and exemplary damages, attorney's fees and costs of suit in favor of respondents. The damages suffered, if there are any, partake of the nature of a *damnum absque injuria*. As elaborated in *Spouses Custodio v. CA*:[53]

> x x x [T]he mere fact that the plaintiff suffered losses does not give rise to a right to recover damages. To warrant the recovery of damages, there must be both a right of action for a legal wrong inflicted by the defendant, and damage resulting to the plaintiff therefrom.

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b. Violation of Rules and Regulations adopted by the Board of Directors; or

c. Acts or conduct of the member inimical to the interest and purposes of the Club.

The member concerned shall be informed of the charges against him in writing and may appeal to a general or special meeting of stockholders whose decision shall be final.

The suspension or expulsion of a regular member shall automatically include the suspension or expulsion of the assignees or representatives of said member. If a nominee or representative of a regular member is suspended or expelled by reason other than delinquency in the payment of accounts, only the erring nominee or representative shall be disciplined. *(Id.* at 820)

[52] b. **House Committee –** The House Committee with the approval of the Board shall make and promulgate the rules and regulations for the management of the Club and the use of the Clubhouse and all facilities; regulate the prices of commodities and services within its jurisdiction; formulate policies on purchasing functions; and subject to its House Rules, may at anytime, recommend to the Board the suspension of any member, and exercise such other powers and perform such functions as may be authorized by the Board. *(Id.* at 814).

[53] 323 Phil. 575 (1996).

Supreme Court E-Library

Wrong without damage, or damage without wrong, does not constitute a cause of action, since damages are merely part of the remedy allowed for the injury caused by a breach or wrong.

There is a material distinction between damages and injury. Injury is the illegal invasion of a legal right; damage is the loss, hurt, or harm which results from the injury; and damages are the recompense or compensation awarded for the damage suffered. Thus, there can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty. These situations are often called *damnum absque injuria.*

In order that a plaintiff may maintain an action for the injuries or which he complains, he must establish that such injuries resulted from a breach of duty which the defendant owed to the plaintiff – a concurrence of injury to the plaintiff and legal responsibility by the person causing it. The underlying basis for the award of tort damages is the premise that an individual was injured in contemplation of law. Thus, there must first be the breach of some duty and the imposition of liability for that breach before damages may be awarded; it is not sufficient to state that there should be tort liability merely because the plaintiff suffered some pain and suffering.

Many accidents occur and many injuries are inflicted by acts or omissions which cause damage or loss to another but which violate no legal duty to such other person, and consequently create no cause of action in his favor. In such cases, the consequences must be borne by the injured person alone. The law affords no remedy for damages resulting from an act which does not amount to a legal injury or wrong.

In other words, in order that the law will give redress for an act causing damage, that act must be not only hurtful, but wrongful. There must be *damnum et injuria.* If, as may happen in many cases, a person sustains actual damage, that is, harm or loss to his person or property, without sustaining any legal injury, that is, an act or omission which the law does not deem an injury, the damage is regarded as *damnum absque injuria.*

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The proper exercise of a lawful right cannot constitute a legal wrong for which an action will lie, although the act may result in damage to another, for no legal right has been invaded. One may use any lawful means to accomplish a lawful purpose and though the means adopted may cause damage to another, no cause of action

Supreme Court E-Library

arises in the latter's favor. Any injury or damage occasioned thereby is *damnum absque injuria.* The courts can give no redress for hardship to an individual resulting from action reasonably calculated to achieve a lawful end by lawful means.[54]

"One who makes use of his own legal right does no injury. *Qui jure suo utitur nullum damnum facit.* If damage results from a person's exercising his legal rights, it is *damnum absque injuria."*[55] In this case, respondents failed to prove by preponderance of evidence that there is fault or negligence on the part of petitioners in order to oblige them to pay for the alleged damage sustained as a result of their suspension as Club members. Certainly, membership in the Club is a privilege.[56] Regular members are entitled to use all the facilities and privileges of the Club, subject to its rules and regulations.[57] As correctly pointed out by petitioners, the mental anguish respondents experienced, assuming to be true, was brought upon them by themselves for deliberately and consciously violating the rules and regulations of the Club. Considering that respondents were validly suspended, there is no reason for the Club to compensate them. Indeed, the penalty of suspension provided for in Section 1, Article XIV of the By-Laws is a means to protect and preserve the interest and purposes of the Club. This being so, the suspension of respondents does not fall under any of the provisions of the Civil Code pertaining to the grant of moral and exemplary damages, attorney's fees, and litigation costs.

WHEREFORE, premises considered, the petition is **GRANTED.** The Resolutions dated September 16, 2009 and January 21, 2010 of the Court of Appeals in CA-G.R. SP No. 106918, which reconsidered and set aside its Resolution dated January 15, 2009, granting petitioners a fifteen- day period within which to file a petition for review under Rule 43 of the Rules,

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[54] *Spouses Custodio, supra,* at 585-586, 588-589.

[55] *Pro Line Sports Center, Inc. v. CA,* 346 Phil. 143, 154 (1997).

[56] Article II, Section 1 of the By-laws (*Rollo,* p. 800).

[57] Article II, Section 2 of the By-laws (*Id.).*

Supreme Court E-Library

is **ANNULLED AND SET ASIDE.** SEC Case Nos. 001-0l and 002-01 filed and raffled before the Regional Trial Court, Branch 21 of Imus, Cavite are hereby **DISMISSED** for lack of merit. Respondents are **ORDERED TO RETURN** to petitioners the total amount of ₱9,200,000.00 or ₱4,600,000.00 each, within **THIRTY (30) DAYS** from the time this decision becomes final and executory. Thereafter, said amount shall earn legal interest of six percent (6%) per annum until fully paid.

SO ORDERED.

Velasco, Jr. (Chairperson), Villarama, Jr., Reyes, and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 192914. January 11, 2016]

NAPOLEON D. SENIT, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES**, *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS OF LAW; THE HOLDING OF TRIAL *IN ABSENTIA* IS AUTHORIZED UNDER THE CONSTITUTION WHICH PROVIDES THAT AFTER ARRAIGNMENT, TRIAL MAY PROCEED NOTWITHSTANDING THE ABSENCE OF THE ACCUSED PROVIDED THAT HE HAS BEEN DULY NOTIFIED AND HIS FAILURE TO APPEAR IS UNJUSTIFIABLE; APPLICATION IN CASE AT BAR.— The holding of trial *in absentia* is authorized under Section 14(2), Article III of the 1987 Constitution which provides that after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his