

SECOND DIVISION

[G.R. NO. 158995, September 26, 2006]

L.G. FOODS CORPORATION AND VICTORINO GABOR, VICE-PRESIDENT AND GENERAL MANAGER, PETITIONERS, VS. HON. PHILADELFA B. PAGAPONG-AGRAVIADOR, IN HER CAPACITY AS PRESIDING JUDGE OF REGIONAL TRIAL COURT, BRANCH 43, BACOLOD CITY, AND SPS. FLORENTINO AND THERESA VALLEJERA, RESPONDENTS.

DECISION

GARCIA, J.:

Assailed and sought to be set aside in this petition for review on *certiorari* is the Decision^[1] dated April 25, 2003 of the Court of Appeals (CA), as reiterated in its Resolution of July 10, 2003,^[2] in CA-G.R. SP No. 67600, affirming an earlier Order of the Regional Trial Court (RTC) of Bacolod City, Branch 43, which denied the petitioners' motion to dismiss in Civil Case No. 99-10845, an action for damages arising from a vehicular accident thereat instituted by the herein private respondents - the spouses Florentino Vallejera and Theresa Vallejera - against the petitioners.

The antecedent facts may be briefly stated as follows:

On February 26, 1996, Charles Vallereja, a 7-year old son of the spouses Florentino Vallejera and Theresa Vallejera, was hit by a Ford Fiera van owned by the petitioners and driven at the time by their employee, Vincent Norman Yeneza y Ferrer. Charles died as a result of the accident.

In time, an Information for *Reckless Imprudence Resulting to Homicide* was filed against the driver before the Municipal Trial Court in Cities (MTCC), Bacolod City, docketed as Criminal Case No. 67787, entitled *People of the Philippines v. Vincent Norman Yeneza*.

Unfortunately, before the trial could be concluded, the accused driver committed suicide, evidently bothered by conscience and remorse. On account thereof, the MTCC, in its order of September 30, 1998, dismissed the criminal case.

On June 23, 1999, in the RTC of Bacolod City, the spouses Vallejera filed a complaint^[3] for damages against the petitioners as employers of the deceased driver, basically alleging that as such employers, they failed to exercise due diligence in the selection and supervision of their employees. Thereat docketed as Civil Case No. 99-10845, the complaint was raffled to Branch 43 of the court.

In their *Answer with Compulsory Counterclaim*,^[4] the petitioners as defendants denied liability for the death of the Vallejeras' 7-year old son, claiming that they had

exercised the required due diligence in the selection and supervision of their employees, including the deceased driver. They thus prayed in their Answer for the dismissal of the complaint for lack of cause of action on the part of the Vallejera couple.

During pre-trial, the defendant petitioners insisted that their dismissal prayer be resolved. Hence, the trial court required them to file within ten days a memorandum of authorities supportive of their position.

Instead, however, of the required memorandum of authorities, the defendant petitioners filed a *Motion to Dismiss*, principally arguing that the complaint is basically a "claim for subsidiary liability against an employer" under the provision of Article 103^[5] of the Revised Penal Code. Prescinding therefrom, they contend that there must first be a judgment of conviction against their driver as a condition *sine qua non* to hold them liable. *Ergo*, since the driver died during the pendency of the criminal action, the *sine qua non* condition for their subsidiary liability was not fulfilled, hence the lack of cause of action on the part of the plaintiffs. They further argue that since the plaintiffs did not make a reservation to institute a separate action for damages when the criminal case was filed, the damage suit in question is thereby deemed instituted with the criminal action. which was already dismissed.

In an Order dated September 4, 2001,^[6] the trial court denied the motion to dismiss for lack of merit and set the case for pre-trial. With their motion for reconsideration having been denied by the same court in its subsequent order^[7] of September 26, 2001, the petitioners then went on *certiorari* to the CA in CA-G.R. SP No. 67600, imputing grave abuse of discretion on the part of the trial judge in refusing to dismiss the basic complaint for damages in Civil Case No. 99-10845.

In the herein assailed decision^[8] dated April 25, 2003, the CA denied the petition and upheld the trial court. Partly says the CA in its challenged issuance:

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It is clear that the *complaint* neither represents nor implies that the responsibility charged was the petitioner's subsidiary liability under Art. 103, *Revised Penal Code*. As pointed out [by the trial court] in the Order of September 4, 2001, the *complaint* does not even allege the basic elements for such a liability, like the conviction of the accused employee and his insolvency. Truly enough, a civil action to enforce subsidiary liability separate and distinct from the criminal action is even unnecessary.

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Specifically, Civil Case No. 99-10845 exacts responsibility for fault or negligence under Art. 2176, Civil Code, which is entirely *separate* and *distinct* from the civil liability arising from negligence under the *Revised Penal Code*. Verily, therefore, the liability under Art. 2180, *Civil Code*, is direct and immediate, and not conditioned upon prior recourse against

the negligent employee or prior showing of the latter's insolvency.
(Underscoring in the original.)

In time, the petitioners moved for a reconsideration but their motion was denied by the CA in its resolution^[9] of July 10, 2003. Hence, the petitioners' present recourse on their submission that the appellate court committed reversible error in upholding the trial court's denial of their motion to dismiss.

We **DENY**.

As the Court sees it, the sole issue for resolution is whether the spouses Vallejeras' cause of action in Civil Case No. 99-10845 is founded on Article 103 of the Revised Penal Code, as maintained by the petitioners, or derived from Article 2180^[10] of the *Civil Code*, as ruled by the two courts below.

It thus behooves us to examine the allegations of the complaint for damages in Civil Case No. 99-10845. That complaint alleged, *inter alia*, as follows:

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3. That defendant [LG Food Corporation] is the registered owner of a Ford Fiera Van with Plate No. NMS 881 and employer sometime February of 1996 of one Vincent Norman Yeneza y Ferrer, a salesman of said corporation;
4. That sometime February 26, 1996 at around 2:00 P.M. at Rosario St., Bacolod City, the minor son of said plaintiffs [now respondents], Charles Vallejera, 7 years old, was hit and bumped by above-described vehicle then driven by said employee, Vincent Norman Yeneza y Ferrer;
5. That the mishap was due to the gross fault and negligence of defendant's employee, who drove said vehicle, recklessly, negligently and at a high speed without regard to traffic condition and safety of other road users and likewise to the fault and negligence of the owner employer, herein defendants LG Food Corporation who failed to exercise due diligence in the selection and supervision of his employee, Vincent Norman Yeneza y Ferrer;
6. That as a result of said incident, plaintiffs' son suffered multiple body injuries which led to his untimely demise on that very day;
7. That a criminal case was filed against the defendant's employee, docketed as Criminal Case No. 67787, (earlier filed as Crim. Case No. 96-17570 before RTC) before MTC- Branch III, entitled "People v. Yeneza" for "Reckless Imprudence resulting to Homicide," but the same was dismissed because pending litigation, then remorse-stricken [accused] committed suicide;

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8. That the injuries and complications as well as the resultant death suffered by the late minor Charles Vallejera were due to the negligence and imprudence of defendant's employee;
9. **That defendant LG Foods Corporation is civilly liable for the negligence/imprudence of its employee since it failed to exercise the necessary diligence required of a good father of the family in the selection and supervision of his employee, Vincent Norman Yeneza y Ferrer which diligence if exercised, would have prevented said incident.** (Bracketed words and emphasis ours.)

Nothing in the foregoing allegations suggests, even remotely, that the herein petitioners are being made to account for their subsidiary liability under Article 103 of the Revised Penal Code. As correctly pointed out by the trial court in its order of September 4, 2001 denying the petitioners' *Motion to Dismiss*, the complaint did not even aver the basic elements for the subsidiary liability of an employer under Article 103 of the Revised Penal Code, such as the prior conviction of the driver in the criminal case filed against him nor his insolvency.

Admittedly, the complaint did not explicitly state that plaintiff Vallejeras were suing the defendant petitioners for damages based on *quasi-delict*. Clear it is, however, from the allegations of the complaint that *quasi-delict* was their choice of remedy against the petitioners. To stress, the plaintiff spouses alleged in their complaint gross fault and negligence on the part of the driver and the failure of the petitioners, as employers, to exercise due diligence in the selection and supervision of their employees. The spouses further alleged that the petitioners are civilly liable for the negligence/imprudence of their driver since they failed to exercise the necessary diligence required of a good father of the family in the selection and supervision of their employees, which diligence, if exercised, could have prevented the vehicular accident that resulted to the death of their 7- year old son.

Section 2, Rule 2, of the 1997 Rules of Civil Procedure defines cause of action as the "act or omission by which a party violates the right of another." Such act or omission gives rise to an obligation which may come from law, contracts, *quasi* contracts, delicts or *quasi*- delicts.^[11]

Corollarily, an act or omission causing damage to another may give rise to two separate civil liabilities on the part of the offender, i.e., 1) civil liability *ex delicto*;^[12] and 2) independent civil liabilities, such as those (a) not arising from an act or omission complained of as felony (e.g., *culpa contractual* or obligations arising from law;^[13] the intentional torts;^[14] and *culpa aquiliana*^[15]); or (b) where the injured party is granted a right to file an action independent and distinct from the criminal action. ^[16] Either of these two possible liabilities may be enforced against the offender.^[17]

Stated otherwise, victims of negligence or their heirs have a choice between an action to enforce the civil liability arising from *culpa criminal* under Article 100 of the Revised Penal Code, and an action for *quasi*-delict (*culpa aquiliana*) under Articles 2176 to 2194 of the Civil Code. If, as here, the action chosen is for *quasi*-delict, the plaintiff may hold the employer liable for the negligent act of its employee, subject