552 Phil. 101

[G.R. NO. 141309, June 19, 2007]

LIWAYWAY VINZONS-CHATO, PETITIONER, VS. FORTUNE TOBACCO CORPORATION, RESPONDENT.

DECISION

YNARES-SANTIAGO, J.:

Petitioner assails the May 7, 1999 Decision[1] of the Court of Appeals in CA-G.R. SP No. 47167, which affirmed the September 29, 1997 Order[2] of the Regional Trial Court (RTC) of Marikina, Branch 272, in Civil Case No. 97-341-MK, denying petitioner's motion to dismiss. The complaint filed by respondent sought to recover damages for the alleged violation of its constitutional rights arising from petitioner's issuance of Revenue Memorandum Circular No. 37-93 (RMC 37-93), which the Court declared invalid in *Commissioner of Internal Revenue v. Court of Appeals*.[3]

Petitioner Liwayway Vinzons-Chato was then the Commissioner of Internal Revenue while respondent Fortune Tobacco Corporation is an entity engaged in the manufacture of different brands of cigarettes, among which are "Champion," "Hope," and "More" cigarettes.

On June 10, 1993, the legislature enacted Republic Act No. 7654 (RA 7654), which took effect on July 3, 1993. Prior to its effectivity, cigarette brands "Champion," "Hope," and "More" were considered local brands subjected to an ad valorem tax at the rate of 20-45%. However, on July 1, 1993, or two days before RA 7654 took effect, petitioner issued RMC 37-93 reclassifying "Champion," "Hope," and "More" as locally manufactured cigarettes bearing a foreign brand **subject to the 55% ad valorem tax**.[4] RMC 37-93 in effect subjected "Hope," "More," and "Champion" cigarettes to the provisions of RA 7654, specifically, to Sec. 142,[5] (c)(1) on locally manufactured cigarettes which are **currently classified and taxed at 55%**, and which imposes an *ad valorem* tax of "55% provided that the minimum tax shall not be less than Five Pesos (P5.00) per pack."[6]

On July 2, 1993, at about 5:50 p.m., BIR Deputy Commissioner Victor A. Deoferio, Jr. sent *via telefax* a copy of RMC 37-93 to Fortune Tobacco but it was addressed to no one in particular. On July 15, 1993, Fortune Tobacco received, by ordinary mail, a certified xerox copy of RMC 37-93. On July 20, 1993, respondent filed a motion for reconsideration requesting the recall of RMC 37-93, but was denied in a letter dated July 30, 1993.[7] The same letter assessed respondent for *ad valorem* tax deficiency amounting to P9,598,334.00 (computed on the basis of RMC 37-93) and demanded payment within 10 days from receipt thereof.[8] On August 3, 1993, respondent filed a petition for review with the Court of Tax Appeals (CTA), which on September 30, 1993, issued an injunction enjoining the implementation of RMC 37-93.[9] In its decision dated August 10, 1994, the CTA ruled that RMC 37-93 is defective, invalid, and unenforceable and further enjoined petitioner from collecting the deficiency tax

assessment issued pursuant to RMC No. 37-93. This ruling was affirmed by the Court of Appeals, and finally by this Court in *Commissioner of Internal Revenue v. Court of Appeals*.[10] It was held, among others, that RMC 37-93, has fallen short of the requirements for a valid administrative issuance.

On April 10, 1997, respondent filed before the RTC a complaint[11] for damages against petitioner in her private capacity. Respondent contended that the latter should be held liable for damages under Article 32 of the Civil Code considering that the issuance of RMC 37-93 violated its constitutional right against deprivation of property without due process of law and the right to equal protection of the laws.

Petitioner filed a motion to dismiss[12] contending that: (1) respondent has no cause of action against her because she issued RMC 37-93 in the performance of her official function and within the scope of her authority. She claimed that she acted merely as an agent of the Republic and therefore the latter is the one responsible for her acts; (2) the complaint states no cause of action for lack of allegation of malice or bad faith; and (3) the certification against forum shopping was signed by respondent's counsel in violation of the rule that it is the plaintiff or the principal party who should sign the same.

On September 29, 1997, the RTC denied petitioner's motion to dismiss holding that to rule on the allegations of petitioner would be to prematurely decide the merits of the case without allowing the parties to present evidence. It further held that the defect in the certification against forum shopping was cured by respondent's submission of the corporate secretary's certificate authorizing its counsel to execute the certification against forum shopping. The dispositive portion thereof, states:

> WHEREFORE, foregoing premises considered, the motion to dismiss filed by the defendant Liwayway Vinzons-Chato and the motion to strike out and expunge from the record the said motion to dismiss filed by plaintiff Fortune Tobacco Corporation are both denied on the grounds aforecited. The defendant is ordered to file her answer to the complaint within ten (10) days from receipt of this Order.
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> SO ORDERED.[13]

The case was elevated to the Court of Appeals via a petition for certiorari under Rule 65. However, same was dismissed on the ground that under Article 32 of the Civil Code, liability may arise even if the defendant did not act with malice or bad faith. The appellate court ratiocinated that Section 38, Book I of the Administrative Code is the general law on the civil liability of public officers while Article 32 of the Civil Code is the special law that governs the instant case. Consequently, malice or bad faith need not be alleged in the complaint for damages. It also sustained the ruling of the RTC that the defect of the certification against forum shopping was cured by the submission of the corporate secretary's certificate giving authority to its counsel to execute the same.

Undaunted, petitioner filed the instant recourse contending that the suit is grounded on her acts done in the performance of her functions as a public officer, hence, it is Section 38, Book I of the Administrative Code which should be applied. Under this provision, liability will attach only when there is a clear showing of bad faith, malice, or gross negligence. She further averred that the Civil Code, specifically, Article 32

which allows recovery of damages for violation of constitutional rights, is a general law on the liability of public officers; while Section 38, Book I of the Administrative Code is a special law on the superior public officers' liability, such that, if the complaint, as in the instant case, does not allege bad faith, malice, or gross negligence, the same is dismissible for failure to state a cause of action. As to the defect of the certification against forum shopping, she urged the Court to strictly construe the rules and to dismiss the complaint.

Conversely, respondent argued that Section 38 which treats in general the public officers' "acts" from which civil liability may arise, is a general law; while Article 32 which deals specifically with the public officers' violation of constitutional rights, is a special provision which should determine whether the complaint states a cause of action or not. Citing the case of *Lim v. Ponce de Leon*,[14] respondent alleged that under Article 32 of the Civil Code, it is enough that there was a violation of the constitutional rights of the plaintiff and it is not required that said public officer should have acted with malice or in bad faith. Hence, it concluded that even granting that the complaint failed to allege bad faith or malice, the motion to dismiss for failure to state a cause of action should be denied inasmuch as bad faith or malice are not necessary to hold petitioner liable.

The issues for resolution are as follows:

> (1) May a public officer be validly sued in his/her private capacity for acts done in connection with the discharge of the functions of his/her office?
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> (2) Which as between Article 32 of the Civil Code and Section 38, Book I of the Administrative Code should govern in determining whether the instant complaint states a cause of action?
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> (3) Should the complaint be dismissed for failure to comply with the rule on certification against forum shopping?
>
> (4) May petitioner be held liable for damages?

On the first issue, the general rule is that a public officer is not liable for damages which a person may suffer arising from the just performance of his official duties and within the scope of his assigned tasks.[15] An officer who acts within his authority to administer the affairs of the office which he/she heads is not liable for damages that may have been caused to another, as it would virtually be a charge against the Republic, which is not amenable to judgment for monetary claims without its consent.[16] However, a public officer is by law not immune from damages in his/her personal capacity for acts done in bad faith which, being outside the scope of his authority, are no longer protected by the mantle of immunity for official actions.[17]

Specifically, under Section 38, Book I of the Administrative Code, civil liability may arise where there is bad faith, malice, or gross negligence on the part of a superior public officer. And, under Section 39 of the same Book, civil liability may arise where the subordinate public officer's act is characterized by willfulness or negligence. Thus –

> **Sec. 38. Liability of Superior Officers**. – (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.
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> x x x x
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> **Section 39. Liability of Subordinate Officers**. – No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acts under orders or instructions of his superior.

In addition, the Court held in *Cojuangco, Jr. v. Court of Appeals*,[18] that a public officer who directly or indirectly violates the constitutional rights of another, may be validly sued for damages under Article 32 of the Civil Code even if his acts were not so tainted with malice or bad faith.

Thus, the rule in this jurisdiction is that a public officer may be validly sued in his/her private capacity for acts done in the course of the performance of the functions of the office, where said public officer: (1) acted with malice, bad faith, or negligence; or (2) where the public officer violated a constitutional right of the plaintiff.

Anent the second issue, we hold that the complaint filed by respondent stated a cause of action and that the decisive provision thereon is Article 32 of the Civil Code.

A general statute is one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class. A special statute, as the term is generally understood, is one which relates to particular persons or things of a class or to a particular portion or section of the state only.[19]

A general law and a special law on the same subject are statutes in *pari materia* and should, accordingly, be read together and harmonized, if possible, with a view to giving effect to both. The rule is that where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special law must prevail since it evinces the legislative intent more clearly than that of a general statute and must not be taken as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all.[20]

The circumstance that the special law is passed before or after the general act does not change the principle. Where the special law is later, it will be regarded as an exception to, or a qualification of, the prior general act; and where the general act is later, the special statute will be construed as remaining an exception to its terms, unless repealed expressly or by necessary implication.[21]

Thus, in *City of Manila v. Teotico*,[22] the Court held that Article 2189 of the Civil Code which holds provinces, cities, and municipalities civilly liable for death or

injuries by reason of defective conditions of roads and other public works, is a special provision and should prevail over Section 4 of Republic Act No. 409, the Charter of Manila, in determining the liability for defective street conditions. Under said Charter, the city shall not be held for damages or injuries arising from the failure of the local officials to enforce the provision of the charter, law, or ordinance, or from negligence while enforcing or attempting to enforce the same. As explained by the Court:

> Manila maintains that the former provision should prevail over the latter, because Republic Act 409 is a special law, intended exclusively for the City of Manila, whereas the Civil Code is a general law, applicable to the entire Philippines.
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> The Court of Appeals, however, applied the Civil Code, and, we think, correctly. It is true that, insofar as its territorial application is concerned, Republic Act No. 409 is a special law and the Civil Code a general legislation; but, as regards the subject matter of the provisions above quoted, Section 4 of Republic Act 409 establishes a general rule regulating the liability of the City of Manila for "damages or injury to persons or property arising from the failure of" city officers "to enforce the provisions of" said Act "or any other law or ordinance, or from negligence" of the city "Mayor, Municipal Board, or other officers while enforcing or attempting to enforce said provisions." Upon the other hand, Article 2189 of the Civil Code constitutes a particular prescription making "provinces, cities and municipalities . . . liable for damages for the death of, or injury suffered by, any person by reason" – specifically – "of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision." **In other words, said section 4 refers to liability arising from negligence, in general, regardless of the object thereof, whereas Article 2189 governs liability due to "defective streets," in particular. Since the present action is based upon the alleged defective condition of a road, said Article 2189 is decisive thereon.**[23]

In the case of *Bagatsing v. Ramirez*,[24] the issue was which law should govern the publication of a tax ordinance, the City Charter of Manila, a special act which treats ordinances in general and which requires their publication before enactment and after approval, or the Tax Code, a general law, which deals in particular with "ordinances levying or imposing taxes, fees or other charges," and which demands publication only after approval. In holding that it is the Tax Code which should prevail, the Court elucidated that:

> There is no question that the Revised Charter of the City of Manila is a special act since it relates only to the City of Manila, whereas the Local Tax Code is a general law because it applies universally to all local governments. Blackstone defines general law as a universal rule affecting the entire community and special law as one relating to particular persons or things of a class. And the rule commonly said is that a prior special law is not ordinarily repealed by a subsequent general law. The fact that one is special and the other general creates a presumption that the special is to be considered as remaining an exception of the general, one as a general law of the land, the other as the law of a particular