

SECOND DIVISION

[G.R. NO. 154259, February 28, 2005]

**NIKKO HOTEL MANILA GARDEN AND RUBY LIM, PETITIONERS,
VS. ROBERTO REYES, A.K.A. "AMAY BISAYA," RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

In this petition for review on *certiorari*, petitioners Nikko Hotel Manila Garden (Hotel Nikko)^[1] and Ruby Lim assail the Decision^[2] of the Court of Appeals dated 26 November 2001 reversing the Decision^[3] of the Regional Trial Court (RTC) of Quezon City, Branch 104, as well as the Resolution^[4] of the Court of Appeals dated 09 July 2002 which denied petitioners' motion for reconsideration.

The cause of action before the trial court was one for damages brought under the human relations provisions of the New Civil Code. Plaintiff thereat (respondent herein) Roberto Reyes, more popularly known by the screen name "Amay Bisaya," alleged that at around 6:00 o'clock in the evening of 13 October 1994, while he was having coffee at the lobby of Hotel Nikko,^[5] he was spotted by his friend of several years, Dr. Violeta Filart, who then approached him.^[6] Mrs. Filart invited him to join her in a party at the hotel's penthouse in celebration of the natal day of the hotel's manager, Mr. Masakazu Tsuruoka.^[7] Mr. Reyes asked if she could vouch for him for which she replied: "of course."^[8] Mr. Reyes then went up with the party of Dr. Filart carrying the basket of fruits which was the latter's present for the celebrant.^[9] At the penthouse, they first had their picture taken with the celebrant after which Mr. Reyes sat with the party of Dr. Filart.^[10] After a couple of hours, when the buffet dinner was ready, Mr. Reyes lined-up at the buffet table but, to his great shock, shame and embarrassment, he was stopped by petitioner herein, Ruby Lim, who claimed to speak for Hotel Nikko as Executive Secretary thereof.^[11] In a loud voice and within the presence and hearing of the other guests who were making a queue at the buffet table, Ruby Lim told him to leave the party ("*huwag ka nang kumain, hindi ka imbitado, bumaba ka na lang*").^[12] Mr. Reyes tried to explain that he was invited by Dr. Filart.^[13] Dr. Filart, who was within hearing distance, however, completely ignored him thus adding to his shame and humiliation.^[14] Not long after, while he was still recovering from the traumatic experience, a Makati policeman approached and asked him to step out of the hotel.^[15] Like a common criminal, he was escorted out of the party by the policeman.^[16] Claiming damages, Mr. Reyes asked for One Million Pesos actual damages, One Million Pesos moral and/or exemplary damages and Two Hundred Thousand Pesos attorney's fees.^[17]

Ruby Lim, for her part, admitted having asked Mr. Reyes to leave the party but not under the ignominious circumstance painted by the latter. Ms. Lim narrated that she

was the Hotel's Executive Secretary for the past twenty (20) years.^[18] One of her functions included organizing the birthday party of the hotel's former General Manager, Mr. Tsuruoka.^[19] The year 1994 was no different. For Mr. Tsuruoka's party, Ms. Lim generated an exclusive guest list and extended invitations accordingly.^[20] The guest list was limited to approximately sixty (60) of Mr. Tsuruoka's closest friends and some hotel employees and that Mr. Reyes was not one of those invited.^[21] At the party, Ms. Lim first noticed Mr. Reyes at the bar counter ordering a drink.^[22] Mindful of Mr. Tsuruoka's wishes to keep the party intimate, Ms. Lim approached Mr. Boy Miller, the "captain waiter," to inquire as to the presence of Mr. Reyes who was not invited.^[23] Mr. Miller replied that he saw Mr. Reyes with the group of Dr. Filart.^[24] As Dr. Filart was engaged in conversation with another guest and as Ms. Lim did not want to interrupt, she inquired instead from the sister of Dr. Filart, Ms. Zenaida Fruto, who told her that Dr. Filart did not invite Mr. Reyes.^[25] Ms. Lim then requested Ms. Fruto to tell Mr. Reyes to leave the party as he was not invited.^[26] Mr. Reyes, however, lingered prompting Ms. Lim to inquire from Ms. Fruto who said that Mr. Reyes did not want to leave.^[27] When Ms. Lim turned around, she saw Mr. Reyes conversing with a Captain Batung whom she later approached.^[28] Believing that Captain Batung and Mr. Reyes knew each other, Ms. Lim requested from him the same favor from Ms. Fruto, i.e., for Captain Batung to tell Mr. Reyes to leave the party as he was not invited.^[29] Still, Mr. Reyes lingered. When Ms. Lim spotted Mr. Reyes by the buffet table, she decided to speak to him herself as there were no other guests in the immediate vicinity.^[30] However, as Mr. Reyes was already helping himself to the food, she decided to wait.^[31] When Mr. Reyes went to a corner and started to eat, Ms. Lim approached him and said: "*alam ninyo, hindo ho kayo dapat nandito. Pero total nakakuha na ho kayo ng pagkain, ubusin na lang ninyo at pagkatapos kung pwede lang po umalis na kayo.*"^[32] She then turned around trusting that Mr. Reyes would show enough decency to leave, but to her surprise, he began screaming and making a big scene, and even threatened to dump food on her.^[33]

Dr. Violeta Filart, the third defendant in the complaint before the lower court, also gave her version of the story to the effect that she never invited Mr. Reyes to the party.^[34] According to her, it was Mr. Reyes who volunteered to carry the basket of fruits intended for the celebrant as he was likewise going to take the elevator, not to the penthouse but to Altitude 49.^[35] When they reached the penthouse, she reminded Mr. Reyes to go down as he was not properly dressed and was not invited.^[36] All the while, she thought that Mr. Reyes already left the place, but she later saw him at the bar talking to Col. Batung.^[37] Then there was a commotion and she saw Mr. Reyes shouting.^[38] She ignored Mr. Reyes.^[39] She was embarrassed and did not want the celebrant to think that she invited him.^[40]

After trial on the merits, the court *a quo* dismissed the complaint,^[41] giving more credence to the testimony of Ms. Lim that she was discreet in asking Mr. Reyes to leave the party. The trial court likewise ratiocinated that Mr. Reyes assumed the risk of being thrown out of the party as he was uninvited:

Plaintiff had no business being at the party because he was not a guest of Mr. Tsuruoka, the birthday celebrant. He assumed the risk of being asked to leave for attending a party to which he was not invited by the host. Damages are pecuniary consequences which the law imposes for the breach of some duty or the violation of some right. Thus, no recovery can be had against defendants Nikko Hotel and Ruby Lim because he himself was at fault (*Garciano v. Court of Appeals*, 212 SCRA 436). He knew that it was not the party of defendant Violeta Filart even if she allowed him to join her and took responsibility for his attendance at the party. His action against defendants Nikko Hotel and Ruby Lim must therefore fail.^[42]

On appeal, the Court of Appeals reversed the ruling of the trial court as it found more commanding of belief the testimony of Mr. Reyes that Ms. Lim ordered him to leave in a loud voice within hearing distance of several guests:

In putting appellant in a very embarrassing situation, telling him that he should not finish his food and to leave the place within the hearing distance of other guests is an act which is contrary to morals, good customs . . . , for which appellees should compensate the appellant for the damage suffered by the latter as a consequence therefore (Art. 21, New Civil Code). The liability arises from the acts which are in themselves legal or not prohibited, but contrary to morals or good customs. Conversely, even in the exercise of a formal right, [one] cannot with impunity intentionally cause damage to another in a manner contrary to morals or good customs.^[43]

The Court of Appeals likewise ruled that the actuation of Ms. Lim in approaching several people to inquire into the presence of Mr. Reyes exposed the latter to ridicule and was uncalled for as she should have approached Dr. Filart first and both of them should have talked to Mr. Reyes in private:

Said acts of appellee Lim are uncalled for. What should have been done by appellee Lim was to approach appellee Mrs. Filart and together they should have told appellant Reyes in private that the latter should leave the party as the celebrant only wanted close friends around. It is necessary that Mrs. Filart be the one to approach appellant because it was she who invited appellant in that occasion. Were it not for Mrs. Filart's invitation, appellant could not have suffered such humiliation. For that, appellee Filart is equally liable.

. . .

The acts of [appellee] Lim are causes of action which are predicated upon mere rudeness or lack of consideration of one person, which calls not only protection of human dignity but respect of such dignity. Under Article 20 of the Civil Code, every person who violates this duty becomes liable for damages, especially if said acts were attended by malice or bad faith. Bad faith does not simply connote bad judgment or simple negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a known duty to some motive or

interest or ill-will that partakes of the nature of fraud (Cojuangco, Jr. v. CA, et al., 309 SCRA 603).^[44]

Consequently, the Court of Appeals imposed upon Hotel Nikko, Ruby Lim and Dr. Violeta Filart the solidary obligation to pay Mr. Reyes (1) exemplary damages in the amount of Two Hundred Thousand Pesos (P200,000); (2) moral damages in the amount of Two Hundred Thousand Pesos (P200,000); and (3) attorney's fees in the amount of Ten Thousand Pesos (P10,000).^[45] On motion for reconsideration, the Court of Appeals affirmed its earlier decision as the argument raised in the motion had "been amply discussed and passed upon in the decision sought to be reconsidered."^[46]

Thus, the instant petition for review. Hotel Nikko and Ruby Lim contend that the Court of Appeals seriously erred in –

I.

... NOT APPLYING THE DOCTRINE OF *VOLENTI NON FIT INJURIA* CONSIDERING THAT BY ITS OWN FINDINGS, AMAY BISAYA WAS A GATE-CRASHER

II.

... HOLDING HOTEL NIKKO AND RUBY LIM JOINTLY AND SEVERALLY LIABLE WITH DR. FILART FOR DAMAGES SINCE BY ITS OWN RULING, AMAY BISAYA "COULD NOT HAVE SUFFERED SUCH HUMILIATION," "WERE IT NOT FOR DR. FILART'S INVITATION"

III.

... DEPARTING FROM THE FINDINGS OF FACT OF THE TRIAL COURT AS REGARDS THE CIRCUMSTANCES THAT ALLEGEDLY CAUSED THE HUMILIATION OF AMAY BISAYA

IV.

... IN CONCLUDING THAT AMAY BISAYA WAS TREATED UNJUSTLY BECAUSE OF HIS POVERTY, CONSIDERING THAT THIS WAS NEVER AN ISSUE AND NO EVIDENCE WAS PRESENTED IN THIS REGARD

V.

... IN FAILING TO PASS UPON THE ISSUE ON THE DEFECTS OF THE APPELLANT'S BRIEF, THEREBY DEPARTING FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS

Petitioners Lim and Hotel Nikko contend that pursuant to the doctrine of *volenti non fit injuria*, they cannot be made liable for damages as respondent Reyes assumed the risk of being asked to leave (and being embarrassed and humiliated in the process) as he was a "gate-crasher."

The doctrine of *volenti non fit injuria* ("to which a person assents is not esteemed in law as injury"^[47]) refers to self-inflicted injury^[48] or to the consent to injury^[49] which precludes the recovery of damages by one who has knowingly and voluntarily exposed himself to danger, even if he is not negligent in doing so.^[50] As formulated by petitioners, however, this doctrine does not find application to the case at bar because even if respondent Reyes assumed the risk of being asked to leave the

party, petitioners, under Articles 19 and 21 of the New Civil Code, were still under obligation to treat him fairly in order not to expose him to unnecessary ridicule and shame.

Thus, the threshold issue is whether or not Ruby Lim acted abusively in asking Roberto Reyes, a.k.a. "Amay Bisaya," to leave the party where he was not invited by the celebrant thereof thereby becoming liable under Articles 19 and 21 of the Civil Code. Parenthetically, and if Ruby Lim were so liable, whether or not Hotel Nikko, as her employer, is solidarily liable with her.

As the trial court and the appellate court reached divergent and irreconcilable conclusions concerning the same facts and evidence of the case, this Court is left without choice but to use its latent power to review such findings of facts. Indeed, the general rule is that we are not a trier of facts as our jurisdiction is limited to reviewing and revising errors of law.^[51] One of the exceptions to this general rule, however, obtains herein as the findings of the Court of Appeals are contrary to those of the trial court.^[52] The lower court ruled that Ms. Lim did not abuse her right to ask Mr. Reyes to leave the party as she talked to him politely and discreetly. The appellate court, on the other hand, held that Ms. Lim is liable for damages as she needlessly embarrassed Mr. Reyes by telling him not to finish his food and to leave the place within hearing distance of the other guests. Both courts, however, were in agreement that it was Dr. Filart's invitation that brought Mr. Reyes to the party.

The consequential question then is: Which version is credible?

From an in depth review of the evidence, we find more credible the lower court's findings of fact.

First, let us put things in the proper perspective.

We are dealing with a formal party in a posh, five-star hotel,^[53] for-invitation-only, thrown for the hotel's former Manager, a Japanese national. Then came a person who was clearly uninvited (by the celebrant)^[54] and who could not just disappear into the crowd as his face is known by many, being an actor. While he was already spotted by the organizer of the party, Ms. Lim, the very person who generated the guest list, it did not yet appear that the celebrant was aware of his presence. Ms. Lim, mindful of the celebrant's instruction to keep the party intimate, would naturally want to get rid of the "gate-crasher" in the most hush-hush manner in order not to call attention to a glitch in an otherwise seamless affair and, in the process, risk the displeasure of the celebrant, her former boss. To unnecessarily call attention to the presence of Mr. Reyes would certainly reflect badly on Ms. Lim's ability to follow the instructions of the celebrant to invite only his close friends and some of the hotel's personnel. Mr. Reyes, upon whom the burden rests to prove that indeed Ms. Lim loudly and rudely ordered him to leave, could not offer any satisfactory explanation why Ms. Lim would do that and risk ruining a formal and intimate affair. On the contrary, Mr. Reyes, on cross-examination, had unwittingly sealed his fate by admitting that when Ms. Lim talked to him, she was very close. Close enough for him to kiss:

Q: And, Mr. Reyes, you testified that Miss Lim approached you while you were at the buffet table? How close was she when she approached you?