

SECOND DIVISION

[G.R. NO. 161760, August 25, 2005]

**LBC EXPRESS, INC. AND, LBC INTERNATIONAL, INC.,
PETITIONERS, VS. SPOUSES EUBERTO AND SISINIA ADO,
RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

Before us is a petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 73732 affirming that of the Regional Trial Court (RTC) of Naval, Biliran, Branch 16, holding LBC International, Inc. and LBC Express, Inc. solidarily liable for damages.

The factual backdrop of the case, as found by the CA, is as follows:

Euberto Ado was an overseas contract worker, employed as a mechanic in the Marine Workshop of Al Meroouge Group in Bahrain.^[2] He was the holder of Passport No. L067892.

Al-Mulla Cargo & Packing (AMCP) of Manama, Bahrain was an agent of LBC International, Inc. and LBC Express, Inc. (hereinafter collectively referred to as LBC).^[3]

When his two-year contract of employment expired, Euberto, together with his wife Sisinia, decided to take a three-month vacation to the Philippines. They secured a re-entry visa to Bahrain.

Before flying to the Philippines, on August 8, 1995, Euberto transported five (5) boxes, each weighing 168 kilograms, through AMCP,^[4] with himself as the consignee of the packages. AMCP issued House Air Waybill (HAWB) No. 004467 covering Euberto's packages. Under the waybill, Zachary Furagganan, the LBC's import manager and the representative of AMCP in the Philippines with office at LBC International, Inc., LBC Aviation Center, Domestic Road, Pasay City,^[5] was the party to notify upon Euberto's arrival in Manila.^[6]

Upon their arrival in the Philippines, the spouses Ado proceeded to LBC's Customer Service Department located at the LBC Aviation Center, Domestic Road, Pasay City, to take delivery of the boxes from Furagganan. Myrna Mendoza, an employee of LBC, suggested that Euberto avail of the custom duty exemptions for his packages, and entrust his passport to her for submission to the Customs Office. Euberto hesitated because it contained his re-entry visa to Bahrain, which he needed to get another two-year contract with Al Meroouge. He was concerned that his passport might get lost. However, after being assured that his passport, together with his

boxes, would be forwarded to him, he acquiesced. He turned over his passport to LBC, for which he was issued a receipt.^[7]

Euberto's boxes were delivered to him *via* the LBC-Ormoc City Branch on different dates: three boxes on September 7, 1995;^[8] one box on September 14, 1995^[9] and one box on September 16, 1995.^[10] He inquired about his passport, but the Ormoc City LBC Manager told him that his passport was not in their office. He advised Euberto to wait for a few days, as it might arrive on a later date. Euberto made several follow-ups, to no avail.^[11] Furagganan sent letter-inquiries to the managers of the LBC-Cebu Branch and LBC-Catbalogan Branch,^[12] informing them that Euberto's passport was attached to HAWB No. 004467, together with the waybills and bill of lading of shipments. However, the passport of Euberto could not be located.

Euberto then engaged the services of counsel who, on January 8, 1996, sent a demand letter^[13] to LBC. Still, LBC did not act on the demand and failed to return his passport. Euberto was not able to return to Bahrain and report back for work.

On September 22, 1997, Euberto filed a Complaint^[14] for damages against LBC Express, Inc. and LBC International, Inc. with the RTC of Naval, Biliran. The case was docketed as Civil Case No. B-1024 and raffled to Branch 16, and was later amended^[15] to implead Euberto's wife Sisinia. The complaint alleged that because of the loss of Euberto's passport through the gross negligence of the defendants, he failed to report back for work in Bahrain. The spouses Ado prayed that damages for Euberto's unearned income be awarded to them and that after due proceedings, the court render judgment in their favor, as follows:

1. Condemning and ordering the defendants, jointly and severally, to pay the plaintiff the following sums:
 - a. P300,000.00 as moral damages;
 - b. P200,000.00 as exemplary damages;
 - c. Actual and compensatory damages of P20,000.00 a month from October 10, 1995 with interest at the legal rate of 12% per annum until fully paid;
 - d. P30,000.00 as attorney's fees;
 - e. P20,000.00 as litigation expenses;
 - f. To pay the costs of the suit.
2. Plaintiffs further pray for such other reliefs and remedies as [the] Honorable Court may deem just and equitable in the premises.^[16]

In their answer with counterclaim,^[17] LBC alleged that their delivery van carrying Euberto's packages was forcibly opened and pilfered by

unidentified person/s at its Pasay City office, and surmised that the said passport was probably one of the items stolen. The spouses Ado had only themselves to blame for the damages they sustained, as Euberto failed to secure a replacement passport from the Department of Foreign Affairs, and a visa from the Embassy of Bahrain.

To prove their claim for actual damages, spouses Ado offered in evidence a certification from Euberto's employer, which reads:

TO WHOM IT MAY CONCERN:

This is to certify that Mr. Euberto Ado holder of Passport Number L 067892 was working as a Mechanic at our Marine Workshop. He left Bahrain on 08.08.1995 to Manila on holiday for the period of three months. He was getting the basic salary of BD 280.000 (Two hundred & Eighty) only monthly.

He was holding the return visa for coming back to after having his leave. Mr. Euberto Ado could not return back to Bahrain [as] his passport was misplace[d] in Manila.

Your's (*sic*) Sincerely,

Praful V. Birje (Manager)^[18]

On August 14, 2001, the spouses Ado filed their formal offer of documentary evidence.^[19] The defendants were given ten (10) days from August 30, 2001 within which to file their comments thereon. Meanwhile, trial was set at 8:30 a.m. of October 10, 2001 and on November 8 and 9, 2001 for the defendants to adduce their evidence.^[20] However, the defendants failed to file their respective comments and on October 4, 2001, the court issued an Order^[21] admitting all the documentary evidence of the plaintiffs. On October 10, 2001, the case was called for hearing. There was no appearance for the defendants, and the court issued an order declaring that the defendants were deemed to have waived their right to adduce their evidence, and that the case was considered submitted for decision.^[22]

On October 22, 2001, the trial court rendered judgment^[23] in favor of the spouses Ado. The *fallo* of the decision reads:

WHEREFORE, premises considered, this Court finds in favor of the plaintiffs and renders judgment against the defendants making them liable solidarily to pay the plaintiffs:

- (a) P480,000.00 in compensatory damages plus legal interest from the filing of this complaint until fully paid;
- (b) P300,000.00 in moral damages;
- (c) P30,000.00 in attorney's fees; and
- (d) to pay the costs.

SO ORDERED.^[24]

The trial court declared that Euberto's passport was lost because of the defendants' gross negligence.

On November 5, 2001, LBC filed a Motion dated October 31, 2001, for the reconsideration of the trial court's Order dated October 10, 2001, praying that trial proceed as scheduled on November 8, 2001. The defendants also filed their comments on the plaintiffs' formal offer of evidence. Before the trial court could resolve the motion, the defendants received a copy of the decision on November 9, 2001.

On November 14, 2001, LBC appealed the decision to the CA. In their Brief, LBC, as appellants, alleged that:

1. The lower court erred in declaring that plaintiff-appellee Euberto Ado lost a renewed contract at a basic salary of 280 Bahrain Dinar that entitles the plaintiffs-appellees for the award of actual and moral damages as well as attorney's fees.
2. The lower court erred in declaring that the defendants-appellants waived its (*sic*) right to present the necessary evidence.^[25]

LBC questioned the trial court's ruling that due to the loss of his passport, Euberto lost the opportunity for the renewal of his two-year contract, at the basic salary of about P20,000.00 a month in Bahrain, or for the total peso equivalent of P480,000.00 for two years. They argued that such ruling of the court was based on mere speculations. Moreover, the certification issued by Euberto's employer does not indicate that he had an existing contract, or that he would be given another two-year contract. LBC argued that Euberto failed to lessen the damages he suffered by filing an application for the issuance of another passport and or application for a two-year contract before the Bahrain Embassy in the Philippines; hence, the spouses Ado were not entitled to any damages, much less moral damages as they failed to adduce evidence that LBC acted in bad faith in failing to return Euberto's passport.

On the second assignment of error, LBC averred that the trial court erred in declaring the case submitted for decision for their failure to appear for the trial on October 10, 2001. If they had been allowed to adduce their evidence, they would have presented Jimwell Morales, who would testify that the shipments and Euberto's passport were properly handled. When the shipments and cargoes were brought to the LBC Express, Inc., Head Office at Pasay City for sorting and forwarding to their final destination, the delivery van carrying various shipments, including those of the spouses Ado and the passport attached to the shipments' air waybill, was forcibly opened by robbers along 14th Street, Port Area, South Harbor, Manila.^[26]

On July 10, 2003, the CA rendered judgment affirming the assailed decision.

LBC, now the petitioners, filed their petition for review on *certiorari* claiming that the CA erred -

- A. IN FINDING THAT RESPONDENT EUBERTO ADO HAD A TWO-YEAR CONTRACT WITH HIS FORMER EMPLOYER ABROAD THAT ALLEGEDLY JUSTIFIES THE AWARD TO HIM OF EXORBITANT (*SIC*) ACTUAL OR COMPENSATORY DAMAGES OF FOUR HUNDRED EIGHTY THOUSAND PESOS (P480,000.00);

- B. IN AFFIRMING THE AWARD OF ACTUAL OR COMPENSATORY DAMAGES BASED ON SPECULATION/OR GUESSWORK, IN VIOLATION OF THE "BEST EVIDENCE OBTAINABLE RULE;"
- C. IN AFFIRMING THE AWARD OF THREE HUNDRED THOUSAND PESOS (P300,000.00) MORAL DAMAGES, FOR PETITIONER COMMITTED NO BAD FAITH AND THERE IS NO SUFFICIENT PROOF ON RESPONDENTS' ALLEGED MORAL SUFFERING;
- D. IN AFFIRMING THE AWARD OF SUCH MORAL DAMAGES, BECAUSE THE SAME HAS BECOME PUNITIVE FOR PETITIONER OR HAS BECOME A MEASURE FOR RESPONDENTS' ENRICHMENT AT PETITIONERS' EXPENSE;
- E. IN AFFIRMING [THE] AWARD OF ATTORNEY'S FEES, PETITIONER NOT BEING IN BAD FAITH, AND TO PUT A PREMIUM TO LITIGATE NOT BEING A SOUND PUBLIC POLICY.^[27]

The petitioners reiterate their submissions in the appellate court in support of their petition.

The petition is partially granted.

One is entitled to actual or compensatory damages in the form of an adequate compensation for such pecuniary losses suffered as has been duly proved. In contracts, the damages for which the obligor who acted in good faith shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted. In the case where the obligor acted in bad faith, the obligor shall be responsible for all the damages which may be reasonably attributed to the non-performance of the obligation.^[28]

The Court agrees with the petitioners' contention that the respondents failed to adduce preponderant evidence to prove that upon his return to Bahrain, he would be automatically employed by his former employer for a period of two years and that he will be given the same job with the same compensation as provided for in his expired employment contract.

It is well-settled in our jurisdiction that actual or compensatory damages is not presumed, but must be duly proved with reasonable degree of certainty. A court cannot rely on speculation, conjecture or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have suffered and on evidence of the actual amount thereof.^[29] Indeed, the party alleging a fact has the burden of proving it and a mere allegation is not evidence.^[30]

In this case, the only evidence adduced by the respondents to prove that Euberto had been granted a two-year re-entry visa and that upon his return to Bahrain he would be automatically given a two-year employment contract is Euberto's own testimony and his employer's certification. The CA found the same to be sufficient, and affirmed the award for actual/compensatory damages, thus:

We do not agree. It is worthy to note that appellants' reproduction of appellee Euberto's testimony is, to say the least, incomplete. A more