

THIRD DIVISION

[G.R. No. 127823, January 29, 1998]

"J" MARKETING CORPORATION REPRESENTED BY HECTOR L. CALUDAC, PETITIONER VS. FELICIDAD SIA, JR. AND COURT OF APPEALS, RESPONDENTS.

D E C I S I O N

FRANCISCO, J.:

This is a case of damages and attorney's fees. The undisputed facts are as follows:

"(Petitioner) J. Marketing Corporation, a company engaged in the business of appliances and motorcycles, received on April 24, 1983 from Kawasaki Motors (Phils.) a brand new Kawasaki motorcycle, color Blue, Mode HD-11 (1985) with Engine No. G7E-04848 and Chassis No. KG-805535. Upon receipt, petitioner's representative placed motorcycle in the bodega of YKS Bldg., Rizal Avenue, Tacloban City. However, on April 20, 1987, (*Petitioner*) found out that the motorcycle unit was missing in the bodega and the loss immediately reported to the police authorities specifically to the Headquarters Constabulary Highway Patrol District No. 8, Tacloban City. Subsequently, (*petitioner*) tried to trace the lost motor cycle to one Felicidad Sia, Jr., herein (*private respondent*), who bought a motorcycle from one Renato Pelande, Jr. on May 25, 1987. Allegedly, petitioner's representative went to the house of the private respondent and examined the chassis and motor numbers of the motorcycle in his (*private respondent*) possession, and found out that the chassis and motor numbers of the motorcycle in private respondent's possession have been tampered to jibe with the chassis and motor numbers of the motorcycle unit previously purchased by Renato Pelande, Jr. from petitioner. When petitioner's representative confronted private respondent at the Constabulary Highway Patrol Group office anent the questionable motorcycle, private respondent refused to return the said motorcycle to petitioner and instead told petitioner's representative to file a case in court. Hence, on September 24, 1987, petitioner filed a complaint for replevin with damages against private respondent Felicidad C. Sia, Jr. before the Regional Trial Court of Tacloban City, Branch 8.

"On April 14, 1988, *private respondent* Felicidad C. Sia Jr. filed a third party complaint against Renato Pelante Jr. from whom he purchased his motorcycle. Said third party defendant was subsequently declared as in default."^[1]

After trial, the lower court rendered a decision dismissing petitioner's complaint but awarded damages and attorney's fees to private respondent.^[2] On appeal, the CA affirmed the decision of the court a quo.^[3] Hence this petition where the sole issue

raised is whether the award of attorney's fees and damages (moral and exemplary) is proper.

A person's right to litigate should not be penalized by holding him liable for damages. This is especially true when the filing of the case is to enforce what he believes to be his rightful claim against another although found to be erroneous. In this case, petitioner precisely instituted the replevin case against private respondent based on the latter's own challenge to the former that if they really had a right on the motorcycle, then they should institute the necessary case in court. When petitioner did sue private respondent and filed a third party complaint against the person from whom private respondent claims to have brought the motorcycle, it cannot be said that the institution of the replevin suit was tainted with gross and evident bad faith or was done maliciously to harass, embarrass, annoy or ridicule private respondent.

Moreover, the adverse result of an action – dismissal of petitioner's complaint – does not per se make an act unlawful and subject the actor to the payment of moral damages. It is not a sound public policy to place a premium on the right to litigate.

[4] No damages can be charged on those who may exercise such precious right in good faith, even if done erroneously.[5]

The award of exemplary damages has likewise no factual basis. It is a requisite that the act must be accompanied by bad faith or done in wanton, fraudulent or malevolent manner[6] - circumstances which are absent in this case. In addition, exemplary damages cannot be awarded as the requisite element of compensatory damages was not present.[7]

With respect to the attorney's fees, an adverse decision does not ipso facto justify the award thereof to the winning party.[8] All indications point to the fact that petitioner honestly thought that they had a good cause of action, so notwithstanding the dismissal of their case, no attorney's fees can be granted to private respondent.

[9] Considering that the latter claims to be the owner of the motorcycle, petitioner was compelled to sue him. When the former "necessarily" became a party defendant no attorney's fees and litigation expenses can automatically be recovered even if he should win, as it is not the fact of winning alone that entitles recovery of such items but rather the attendance of special circumstances[10] - the enumerated exceptions in Article 2208 of the New Civil Code.[11] There being no bad faith reflected in petitioner's persistence in pursuing its case, other than an erroneous conviction of the righteousness of its cause, attorney's fees cannot be recovered as cost.[12]

WHEREFORE, premises considered, the decision of the Court of Appeals is AFFIRMED WITH THE MODIFICATION that the award of damages, attorney's fees and cost to private respondent is deleted.

SO ORDERED.

Narvasa, C.J., (Chairman), Romero, Melo, and Panganiban, JJ., concur.
