

SIXTH DIVISION

[CA-G.R. CV. NO. 96341, March 25, 2014]

PATRICIA ROGGENKAMP, PLAINTIFF-APPELLANT, VS. ALASTAIR JOHN KANE, DEFENDANT-APPELLEE.

DECISION

CRUZ, R.A., J.:

THE CASE

This is an ordinary appeal under Rule 41 of the Rules of Court assailing the Order dated June 8, 2010^[1] issued by the Regional Trial Court ("RTC") of Mandaluyong City, Branch 214 in Civil Case No. MC08-3871 for Damages which dismissed the case on the ground of *res judicata* and lack of jurisdiction and the Order dated November 19, 2010^[2] denying reconsideration thereof.

THE ANTECEDENTS

Plaintiff Patricia Roggenkamp and Defendant Alastair John Kane are Australian citizens. They are involved in a relationship and decided to do business in the Philippines. They reside in a condominium unit located at 1202 Bayview International Tower 3, Roxas Blvd., Paranaque City.

On December 1, 2004, at around 1:00 a.m. after they arrived at their residence from a party hosted by Ashley Richard Cayzer (Plaintiff's son), plaintiff confronted defendant about his behavior during the party. She accused him of maliciously looking at the underwear of female guests during the party. Defendant proceeded to lie down on the bed while plaintiff sat on a chair nearby. According to the plaintiff, the defendant approached her, lifted her off from the chair and dropped her because he got angry from her remarks. Plaintiff alleged that defendant also punched her in the head, pulled her hair and pushed her head against the pillow. Defendant claimed that he lifted her off from the chair to transfer her to the bed. However, he accidentally dropped her because the bed (which had wheels) moved. When plaintiff had the opportunity, she ran to the bathroom and locked herself up.

The next day, Ashley Richard Cayzer visited his mother. He saw that she was in bed lying in pain. Defendant told him that his mother accidentally fell on the floor while he was carrying her. Ashley Richard Cayzer brought his mother at San Juan De Dios Hospital where she was prescribed painkillers for twelve (12) days to ease her body pain. After the incident, things were peaceful again at their residence. They even went for a vacation from December 26, 2004 to January 1, 2005.

On January 6, 2005, defendant verbally abused her again. The next day, defendant left their residence with her car and the keys to her condominium units at Pasig City and Roxas Blvd. He stayed at the condominium unit at Pasig City. Plaintiff asked her driver to accompany her to her condominium unit at Pasig City and she was able to recover possession of her car.

On February 4, 2005, plaintiff reported the December 1, 2004 incident to the police. She explained that there were already incidents of abuse even prior to December 1, 2004. Defendant continued to harass plaintiff and her son, hence she decided to move to a friend's condominium unit at Mandaluyong City.

An Information for violation of Republic Act No. 9262 or Anti-Violence against Women and their Children Act ("VAWC") was filed on March 30, 2006 before the Regional Trial Court of Paranaque City, Branch 260 docketed as Criminal Case No. 06-0413. On November 17, 2008, the RTC acquitted defendant of the crime crime charged based on reasonable doubt.^[3]

Thereafter, plaintiff filed a case for Damages before the RTC of Mandaluyong City, Branch 214 docketed as Civil Case No. MC-08-3871. Plaintiff seeks to hold defendant civilly liable for his acts of physical injuries under Article 33 of the Civil Code. She argues that despite the acquittal of the defendant for violation of VAWC, she may still file a civil action for damages which is entirely separate and distinct from the criminal action. After all, independent civil actions under Articles 32, 33, 34 and 2176 of the Civil Code are not deemed instituted with the criminal action and may be filed separately by the offended party even without reservation. A civil action for damages is also one of the remedies of an offended party under the Rules on VAWC. She stresses that the defendant was acquitted based on reasonable doubt. Hence, a civil action for damages for the same act or omission may still be instituted. She prayed for actual, moral and exemplary damages and attorney's fees.

Defendant filed a Motion to Dismiss on the ground of *res judicata* and improper venue.^[4] In an Order dated April 20, 2009^[5], the RTC denied the motion to dismiss ruling thus: (1) Civil liability is not extinguished because the acquittal of the defendant was based on reasonable doubt; (2) An independent civil liabilities under Articles 32, 33, 34 and 2176 of the Civil Code may be enforced against an offender separately or simultaneously with his civil liability *ex delicto* under Article 100 of the Revised Penal Code; (3) Venue was properly laid because at the time of the filing of the complaint, plaintiff was already residing in Mandaluyong City.

After the Answer^[6] and Reply^[7] were filed, pre-trial conference was conducted on October 23, 2009^[8].

On June 8, 2010, the RTC dismissed the case on its own initiative on the ground of *res judicata* and lack of jurisdiction.^[9] The RTC ruled that proceeding to the initial trial will just be a waste of time. The decision in Criminal Case No. 06-0413 revealed that the injuries suffered by the plaintiff was the result of an accident and was not intentional on the part of the defendant. The RTC totally discarded the version offered by plaintiff and gave credence to the version of the defendant. This means that the act from which the civil liability might arise did not exist. The filing of the case constitutes forum-shopping because it involves the same cause of action, relief, and parties as in Criminal Case No. 06-0413. The decision in Criminal Case No. 06-0413 has already attained finality. Therefore, the RTC has no jurisdiction over the case for damages.

On June 28, 2010, plaintiff filed a Motion for Reconsideration^[10] which was subsequently denied in an Order dated August 23, 2010^[11].

Dissatisfied, plaintiff is now before Us through her Notice of Appeal^[12], raising as errors the following:

THE ASSIGNED ERRORS

In assailing the Decision rendered against her, Plaintiff Patricia Roggenkamp, as appellant before us, poses the queries,

I.

WHETHER OR NOT THE RTC ERRED IN RULING THAT THE COMPLAINT IS BARRED BY PRIOR JUDGMENT;

II.

WHETHER OR NOT THE VENUE OF THE ACTION IS IMPROPERLY LAID;

Plaintiff-appellant emphasizes that the issues have already been settled in the April 20, 2009 Order denying defendant-appellee's motion to dismiss. She claims that there is nothing in the Rules of Court which authorizes the judge to *motu proprio* initiate a motion to dismiss if no such motion was filed by the parties. In addition, a pre-trial conference had already been conducted and the parties have agreed, defined and confined the issues to be resolved as: (1) whether or not defendant-appellee is civilly liable to plaintiff-appellant for the physical injuries inflicted upon her; (2) who among the parties are entitled to damages and counterclaims. The action of the RTC should have been limited to these issues. Plaintiff-appellant avers that the RTC ignored the April 20, 2009 Order, Article 33 of the Civil Code and Republic Act No. 9262, all of which form the basis for the complaint. An action for independent civil liabilities under Articles 32, 33, 34 and 2176 of the Civil Code may be enforced against an offender separately or simultaneously with his civil liability *ex delicto* under Article 100 of the Revised Penal Code. Here, defendant-appellee caused physical injuries to the plaintiff-appellant which warrants the filing of a civil action for damages. It is entirely separate and distinct from the criminal action and may be brought pursuant to Article 33 of the Civil Code. The failure to make a reservation in the criminal action is not a waiver of the right to file a separate and independent civil action based on Articles 32, 33, 34, and 2176 of the Civil Code.

The act of the defendant-appellee resulting to injuries to the plaintiff-appellant constitute a violation of Section 5(a) of Republic Act No. 9262. It also falls within the ambit of physical injuries under Article 33 of the Civil Code. Furthermore, among the other remedies which may be resorted by the offended party in a case for violation of Republic Act No. 9262 is the filing of a civil action for damages. The fact that defendant-appellee was acquitted in the criminal case is not a bar to the institution of an independent civil action for damages. Such action requires only preponderance of evidence.

Plaintiff-appellant notes that the acquittal of the defendant-appellee in the criminal case was based on reasonable doubt. There was absolutely no declaration in the judgment of acquittal that the fact from which the civil liability may arise did not exist. Therefore, the judgment of acquittal of the defendant-appellee did not

extinguish his liability for damages. Article 29 of the Civil Code also authorizes plaintiff-appellant to file this case.

In his Brief^[13], defendant-appellee contends that the RTC has the inherent power to amend and control its processes and orders. Hence, the court may amend, reverse and set aside its April 20, 2009 Order either *motu proprio* or upon motion of the defendant-appellee. Defendant-appellee counters that the November 18, 2008 Decision in Criminal Case No. 06-0413 constitutes *res judicata* to the instant case because all the elements are present: (1) The November 18, 2008 Decision in Criminal Case No. 06-0413 is a decision on the merits and is final and executory; (2) It has been rendered by a court having jurisdiction over the subject matter and parties of the case; (3) There is identity of parties, subject matter and cause of action between the Criminal Case No. 06-0413 and Civil Case No. MC-08-3871. Furthermore, the filing of this case constitutes deliberate forum shopping.

OUR RULING

The appeal is meritorious.

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*, under Article 100 of the Revised Penal Code; and (2) independent civil liabilities, such as those (a) not arising from an act or omission complained of as a felony, e.g., *culpa contractual* or obligations arising from law under Article 31 of the Civil Code, intentional torts under Articles 32 and 34, and *culpa aquiliana* under Article 2176 of the Civil Code; or (b) where the injured party is granted a right to file an action independent and distinct from the criminal action under Article 33 of the Civil Code. ^[14] Either of these liabilities may be enforced against the offender subject to the caveat under Article 2177 of the Civil Code that the offended party cannot recover damages twice for the same act or omission or under both causes.^[15]

As differentiated in *Lily Lim vs. Kuo Co Ping a.k.a. Charlie Co*^[16],

-xxx-

“The civil liability arising from the offense or *ex delicto* is **based on the acts or omissions that constitute the criminal offense**; hence, its trial is inherently intertwined with the criminal action. For this reason, the civil liability *ex delicto* is **impliedly instituted with the criminal offense**. If the action for the civil liability *ex delicto* is instituted prior to or subsequent to the filing of the criminal action, its proceedings are suspended until the final outcome of the criminal action. The civil liability based on delict is extinguished when the court hearing the criminal action declares that “the act or omission from which the civil liability may arise did not exist.”

On the other hand, the **independent civil liabilities are separate** from the criminal action and may be pursued **independently**” (Emphasis supplied)

-XXX-

The modes of enforcement of the foregoing civil liabilities are provided for in Sections 1^[17] and 3^[18], Rule 111 the Revised Rules of Criminal Procedure.

Here, a reading of the complaint filed by the plaintiff-appellant shows that her cause of action is based on Article 33^[19] of the Civil Code, an independent civil action. The pertinent portion of the complaint reads:

-XXX-

"35. The Defendant caused physical injuries to the Plaintiff which warrants the filing of a civil action for damages entirely separate and distinct the criminal action which may be brought by the injured party.

36. In *Philippine Rabbit Bus Lines vs. People*, the Supreme Court has held that the independent civil actions in Articles 32, 33, 34 and 2176 of the Civil Code are not deemed instituted with the criminal action but may be filed separately by the offended party even without reservation therefore. The failure to make reservation in the criminal action is not a waiver of the right to file a separate and independent civil action based on these articles of the Civil Code.

37. The acts of Defendant which resulted in the injuries of the Plaintiff constitute a violation of Section 4 (a) of Republic Act 9262, by causing physical harm to a woman.

38. The same criminal act complained of also falls within the ambit of "physical injuries" under Article 33 of the Civil Code."

-XXX-

She is invoking her right to recover damages against the defendant-appellee for the physical injuries inflicted upon her by defendant-appellee. The civil action filed by the plaintiff-appellant was not derived from the criminal liability of defendant in the criminal case but one based on Article 33 of the Civil Code which is separate and distinct from the civil liability arising from a crime.

It matters not that defendant-appellee claims her cause of action to be one based on delict. The nature of a cause of action is determined by the facts alleged in the complaint as constituting the cause of action. The purpose of an action or suit and the law to govern it is to be determined not by the claim of the opposing party, but rather by the complaint itself, its allegations and prayer for relief.

Neither does it matter that the independent civil action was not reserved in the criminal action. To reiterate, independent civil actions may be filed separately and prosecuted independently even without any reservation in the criminal action. The failure to make a reservation in the criminal action is not a waiver of the right to file