815 Phil. 166

THIRD DIVISION

[G.R. No. 185597, August 02, 2017]

JOHN E.R. REYES AND MERJIN JOSEPH REYES, PETITIONERS, VS. ORICO DOCTOLERO, ROMEO AVILA, GRANDEUR SECURITY AND SERVICES CORPORATION, AND MAKATI CINEMA SQUARE, RESPONDENTS.

D E C I S I O N

JARDELEZA, J.:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court challenging the Decision[2] dated July 25, 2008 and the Resolution[3] dated December 5, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 88101.

The case arose from an altercation between respondent Orico Doctolero (Doctolero), a security guard of respondent Grandeur Security and Services Corporation (Grandeur) and petitioners John E.R. Reyes (John) and Mervin Joseph Reyes (Mervin) in the parking area of respondent Makati Cinema Square (MCS).[4]

Petitioners recount the facts as follows: on January 26, 1996, between 4:30 to 5:00 P.M., John was driving a Toyota Tamaraw with plate no. PCL-349. As he was approaching the entrance of the basement parking of MCS, Doctolero stopped him to give way to outgoing cars. After a few minutes, Doctolero gave John a signal to proceed but afterwards stopped him to allow the opposite car to move to the right side. The third time that Doctolero gave John the signal to proceed, only to stop him again to allow a car on the opposite side to advance to his right, it almost caused a collision. John then told Doctolero of the latter's mistake in giving him signals to proceed, then stopping him only to allow cars from the opposite side to move to his side. Infuriated, Doctolero shouted "*PUTANG INA MO A*" at John. Then, as John was about to disembark from his vehicle, he saw Doctolero pointing his gun at him. Sensing that Doctolero was about to pull the trigger, John tried to run towards Doctolero to tackle him. Unfortunately, Doctolero was able to pull the trigger before John reached him, hitting the latter's left leg in the process. Doctolero also shot at petitioner Mervin when he rushed to John's rescue. When he missed, Mervin caught Doctolero and pushed him down but was unable to control his speed. As a result, Mervin went inside MCS, where he was shot in the stomach by another security guard, respondent Romeo Avila (Avila).[5]

Grandeur advances a different version, one based on the Initial Report[6] conducted by Investigator Cosme Giron. While Doctolero was on duty at the ramp of the exit driveway of MCS's basement parking, John took over the left lane and insisted entry through the basement parking's exit driveway. Knowing that this is against traffic rules, Doctolero stopped John, prompting the latter to alight from his vehicle and confront Doctolero. With his wife unable to pacify him, John punched and kicked

Doctolero, hitting the latter on his left face and stomach. Doctolero tried to step back to avoid his aggressor but John persisted, causing Doctolero to draw his service firearm and fire a warning shot. John ignored this and continued his attack. He caught up with Doctolero and wrestled with him to get the firearm. This caused the gun to fire off and hit John's leg. Mervin then ran after Doctolero but was shot on the stomach by security guard Avila.[7]

Petitioners filed with the Regional Trial Court (RTC) of Makati a complaint for damages against respondents Doctolero and Avila and their employer Grandeur, charging the latter with negligence in the selection and supervision of its employees. They likewise impleaded MCS on the ground that it was negligent in getting Grandeur's services. In their complaint, petitioners prayed that respondents be ordered, jointly and severally, to pay them actual, moral, and exemplary damages, attorney's fees and litigation costs.[8]

Respondents Doctolero and Avila failed to file an answer despite service of summons upon them. Thus, they were declared in default in an Order dated December 12, 1997.[9]

For its part, Grandeur asserted that it exercised the required diligence in the selection and supervision of its employees. It likewise averred that the shooting incident was caused by the unlawful aggression of petitioners who took advantage of their "martial arts" skills.[10]

On the other hand, MCS contends that it cannot be held liable for damages simply because of its ownership of the premises where the shooting incident occurred. It argued that the injuries sustained by petitioners were caused by the acts of respondents Doctolero and Avila, for whom respondent Grandeur should be solely responsible. It further argued that the carpark was, at that time, being managed by Park Asia Philippines and MCS had no control over the carpark when the shooting incident occurred on January 26, 1996. It likewise denied liability for the items lost in petitioners' vehicle.[11]

On January 18, 1999, the RTC rendered judgment[12] against respondents Doctolero and Avila, finding them responsible for the injuries sustained by petitioners. The RTC ordered them to jointly and severally pay petitioners the following: P344,898.73 as actual damages; P360,000.00 as lost income; P20,000.00 as school expenses; P300,000.00 as moral damages; P100,000.00 as exemplary damages; P75,000.00 as attorney's fees; and costs of suit.[13] The trial thereafter continued with respect to Grandeur and MCS.

On April 15, 2005, the RTC rendered a decision dismissing the complaint against MCS. It, however, held Grandeur solidarily liable with respondents Doctolero and Avila. According to the RTC, Grandeur was unable to prove that it exercised the diligence of a good father of a family in the *supervision* of its employees because it failed to prove strict implementation of its rules, regulations, guidelines, issuances and instructions, and to monitor consistent compliance by respondents.[14]

On September 19, 2005, upon Grandeur's motion for reconsideration, the RTC issued an Order modifying its April 15, 2005 Decision, to wit:

> WHEREFORE, premises considered, the Motion for Reconsideration is hereby **GRANTED**, and the decision dated 15 April 2005 is hereby modified, as follows:
>
> The Court renders judgment in favor of plaintiffs finding defendants Orico Doctolero and [Romeo] Avila liable for negligence and to pay plaintiffs, the following amounts:
>
> 1. [P]344,898.73 as actual damages;
>
> 2. [P]360,000.00 as the reasonable lost (*sic*) of income and P20,000.00 in the form of tuition fees, books, and other school incidental expenses;
>
> 3. [P]300,000 as moral damages;
>
> 4. [P]100,000.00 as exemplary damages;
>
> 5. [P]75,000.00 as attorney's fees;
>
> 6. costs of suit.
>
> The Court, however, orders the **DISMISSAL** of the complaint filed against defendants Grandeur Security and Services Corporation and [MCS]. It is likewise ordered the Dismissal of both the Counterclaims filed by defendants Grandeur Security and Services Corp., and [MCS] for the right to litigate is the price we pay in a civil society.
>
> SO ORDERED.[15] (Emphasis in the original.)

In reconsidering its Decision, the RTC held that it re-evaluated the tacts and the attending circumstances of the present case and was convinced that Grandeur has sufficiently overcome the presumption of negligence. It gave credence to the testimony of Grandeur's witness, Eduardo Ungui, the head of the Human Resources Department (HRD) of Grandeur, as regards the various procedures in its *selection* and hiring of security guards. Ungui testified that Grandeur's hiring procedure included, among others, several rounds of interview, submission of various clearances from different government agencies, such as the NBI clearance and PNP clearance, undergoing neuro-psychiatric examinations, drug testing and physical examinations, attending pre-licensing training and seminars, securing a security license, and undergoing on the job training for seven days.[16]

Furthermore, the RTC held that Grandeur was able to show that it observed diligence of a good lather of the family during the existence of the employment when it conducted regular and close *supervision* of its security guards assigned to various clients. In this regard, the RTC cited Grandeur's standard operational procedures, as testified to by Ungui, which include: (1) daily marking before the security guards are posted; (2) post-to-post station conducted by the branch supervisor and vice-supervisor; (3) round the clock inspection by the company inspector to determine the efficiency and fulfilment by the security guards of their respective duties; (4) a monthly area formation conducted by the operation officer; (5) a quarterly area formation conducted by the operation officer; (6) a general

formation conducted every six months by the president, vice-president, operation officer and HRD head; (7) a yearly neuro-psychiatric test; (8) a special seminar conducted every two years; (9) re-training course also held every two years; and (10) monthly briefing or orientation to those security guards who committed violations.[17] The RTC likewise gave weight to the memorandum/certificates submitted by Grandeur as proof of its diligence in the *supervision* of the actual work performances of its employees.[18]

Petitioners assailed the RTC Order dated September 19, 2005 before the CA.

The CA dismissed petitioners' appeal and affirmed the RTC's Order. It agreed that Grandeur was able to prove with preponderant evidence that it observed the degree of diligence required in both selection and supervision of its security guards.[19]

The CA likewise rejected petitioners' arguments against the additional evidence belatedly adduced by Grandeur in support of its motion for reconsideration before the RTC. It ruled that the additional memoranda and certificate of attendance to seminars which Grandeur attached to its motion for reconsideration can be considered as they are related to the testimonial evidence adduced during trial.[20]

Finally, the CA rejected petitioners' argument that MCS should be held liable as indirect employers of respondents. According to the CA, the concept of indirect employer only relates to the liability for unpaid wages and, as such, finds no application to this case involving "imputed negligence" under Article 2180 of the Civil Code. It held that the lack of employer-employee relationship between respondents Doctolero and Avila and respondent MCS bars petitioners' claim against MCS for the former's acts.[21]

Petitioners filed a motion for reconsideration which the CA denied in its Resolution dated December 5, 2008.[22]

Hence, the present petition.

The sole issue for the consideration of this Court is whether Grandeur and MCS may be held vicariously liable for the damages caused by respondents Doctolero and Avila to petitioners John and Mervin Reyes.

We deny the petition.

I

Petitioner contends that MCS should be held liable for the negligence of respondents Avila and Doctolero. According to petitioners, since the act or omission complained of took place in the vicinity of MCS, it is liable for all damages which are the natural and probable consequences of the act or omission complained of. They reasoned that MCS hired the services of Grandeur, whose employees (the security guards), in turn, committed harmful acts that caused the damages suffered by petitioners. MCS should thus be declared as a joint tortfeasor with Grandeur and respondent security guards.[23]

We cannot agree. MCS is not liable to petitioners.

As a general rule, one is only responsible for his own act or omission.[24] This general rule is laid down in Article 2176 of the Civil Code, which provides:

> Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

The law, however, provides for exceptions when it makes certain persons liable for the act or omission of another. One exception is an employer who is made vicariously liable for the tort committed by his employee under paragraph 5 of Article 2180.[25] Here, although the employer is not the actual tortfeasor, the law makes him vicariously liable on the basis of the civil law principle of *pater familias* for failure to exercise due care and vigilance over the acts of one's subordinates to prevent damage to another.[26]

It must be stressed, however, that the above rule is applicable only if there is an employer-employee relationship.[27] This employer-employee relationship cannot be presumed but must be sufficiently proven by the plaintiff.[28] The plaintiff must also show that the employee was acting within the scope of his assigned task when the tort complained of was committed. It is only then that the defendant, as employer, may find it necessary to interpose the defense of due diligence in the selection and supervision of employees.[29]

In *Mamaril v. The Boy Scout of the Philippines*,[30] we found that there was no employer-employee relationship between Boy Scout of the Philippines (BSP) and the security guards assigned to it by an agency pursuant to a Guard Service Contract. In the absence of such relationship, vicarious liability under Article 2180 of the Civil Code cannot apply as against BSP.[31] Similarly, we find no employer-employee relationship between MCS and respondent guards. The guards were merely assigned by Grandeur to secure MCS' premises pursuant to their Contract of Guard Services. Thus, MCS cannot be held vicariously liable for damages caused by these guards' acts or omissions.

Neither can it be said that a principal-agency relationship existed between MCS and Grandeur. Section 8 of the Contract for Guard Services between them explicitly states:

> 8. **LIABILITY TO GUARDS AND THIRD PARTIES**
>
> The SECURITY COMPANY is NOT an agent or employees (sic) of the CLIENT and the guards to be assigned by the SECURITY COMPANY to the CLIENT arc in no sense employees of the latter as they arc for all intents and purposes under contract with the SECURITY COMPANY. Accordingly, the CLIENT shall not be responsible for any and all claims for personal injury or death that arises of or in the course of the performance of guard duties.[32] (Emphasis in the original.)