

## EN BANC

[ G.R. No. 141309, December 23, 2008 ]

### LIWAYWAY VINZONS-CHATO, VS. FORTUNE TOBACCO CORPORATION, RESPONDENT.

#### R E S O L U T I O N

##### NACHURA, J.:

It is a fundamental principle in the law of public officers that a duty owing to the public in general cannot give rise to a liability in favor of particular individuals.<sup>[1]</sup> The failure to perform a public duty can constitute an individual wrong only when a person can show that, in the public duty, a duty to himself as an individual is also involved, and that he has suffered a special and peculiar injury by reason of its improper performance or non-performance.<sup>[2]</sup>

By this token, the Court reconsiders its June 19, 2007 Decision<sup>[3]</sup> in this case.

As culled from the said decision, the facts, in brief, are as follows:

On June 10, 1993, the legislature enacted Republic Act No. 7654 (RA 7654), which took effect on July 3, 1993. Prior to its effectivity, cigarette brands `Champion," "Hope," and "More" were considered local brands subjected to an *ad valorem* tax at the rate of 20-45%. However, on July 1, 1993, or two days before RA 7654 took effect, petitioner issued RMC 37-93 reclassifying "Champion," "Hope," and "More" as locally manufactured cigarettes bearing a foreign brand subject to the 55% *ad valorem* tax. RMC 37-93 in effect subjected "Hope," "More," and "Champion" cigarettes to the provisions of RA 7654, specifically, to Sec. 142, (c)(1) on locally manufactured cigarettes which are currently classified and taxed at 55%, and which imposes an *ad valorem* tax of "55% provided that the minimum tax shall not be less than Five Pesos (P5.00) per pack."

On July 2, 1993, at about 5:50 p.m., BIR Deputy Commissioner Victor A. Deoferio, Jr. sent *via telefax* a copy of RMC 37-93 to Fortune Tobacco but it was addressed to no one in particular. On July 15, 1993, Fortune Tobacco received, by ordinary mail, a certified xerox copy of RMC 37-93. On July 20, 1993, respondent filed a motion for reconsideration requesting the recall of RMC 37-93, but was denied in a letter dated July 30, 1993. The same letter assessed respondent for *ad valorem* tax deficiency amounting to P9,598,334.00 (computed on the basis of RMC 37-93) and demanded payment within 10 days from receipt thereof. On August 3, 1993, respondent filed a petition for review with the Court of Tax Appeals (CTA), which on September 30, 1993, issued an injunction enjoining the implementation of RMC 37-93. In its decision dated August

10, 1994, the CTA ruled that RMC 37-93 is defective, invalid, and unenforceable and further enjoined petitioner from collecting the deficiency tax assessment issued pursuant to RMC No. 37-93. This ruling was affirmed by the Court of Appeals, and finally by this Court in *Commissioner of Internal Revenue v. Court of Appeals*. It was held, among others, that RMC 37-93, has fallen short of the requirements for a valid administrative issuance.

On April 10, 1997, respondent filed before the RTC a complaint for damages against petitioner in her private capacity. Respondent contended that the latter should be held liable for damages under Article 32 of the Civil Code considering that the issuance of RMC 37-93 violated its constitutional right against deprivation of property without due process of law and the right to equal protection of the laws.

Petitioner filed a motion to dismiss contending that: (1) respondent has no cause of action against her because she issued RMC 37-93 in the performance of her official function and within the scope of her authority. She claimed that she acted merely as an agent of the Republic and therefore the latter is the one responsible for her acts; (2) the complaint states no cause of action for lack of allegation of malice or bad faith; and (3) the certification against forum shopping was signed by respondent's counsel in violation of the rule that it is the plaintiff or the principal party who should sign the same.

On September 29, 1997, the RTC denied petitioner's motion to dismiss holding that to rule on the allegations of petitioner would be to prematurely decide the merits of the case without allowing the parties to present evidence. It further held that the defect in the certification against forum shopping was cured by respondent's submission of the corporate secretary's certificate authorizing its counsel to execute the certification against forum shopping. x x x x

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The case was elevated to the Court of Appeals *via* a petition for certiorari under Rule 65. However, same was dismissed on the ground that under Article 32 of the Civil Code, liability may arise even if the defendant did not act with malice or bad faith. The appellate court ratiocinated that Section 38, Book I of the Administrative Code is the general law on the civil liability of public officers while Article 32 of the Civil Code is the special law that governs the instant case. Consequently, malice or bad faith need not be alleged in the complaint for damages. It also sustained the ruling of the RTC that the defect of the certification against forum shopping was cured by the submission of the corporate secretary's certificate giving authority to its counsel to execute the same.<sup>[4]</sup>  
[Citations and underscoring omitted.]

In the aforesaid June 19, 2007 Decision, we affirmed the disposition of the Court of Appeals (CA) and directed the trial court to continue with the proceedings in Civil Case No. 97-341-MK.<sup>[5]</sup>

Petitioner, on July 20, 2007, subsequently moved for the reconsideration of the said decision.<sup>[6]</sup> After respondent filed its comment, the Court, in its April 14, 2008 Resolution,<sup>[7]</sup> denied with finality petitioner's motion for reconsideration.

Undaunted, petitioner filed, on April 29, 2008 her Motion to Refer [the case] to the Honorable Court En Banc.<sup>[8]</sup> She contends that the petition raises a legal question that is novel and is of paramount importance. The earlier decision rendered by the Court will send a chilling effect to public officers, and will adversely affect the performance of duties of superior public officers in departments or agencies with rule-making and quasi-judicial powers. With the said decision, the Commissioner of Internal Revenue will have reason to hesitate or refrain from performing his/her official duties despite the due process safeguards in Section 228 of the National Internal Revenue Code.<sup>[9]</sup> Petitioner hence moves for the reconsideration of the June 19, 2007 Decision.<sup>[10]</sup>

In its June 25, 2008 Resolution,<sup>[11]</sup> the Court referred the case to the *En Banc*. Respondent consequently moved for the reconsideration of this resolution.

We now resolve both motions.

There are two kinds of duties exercised by public officers: the "duty owing to the public collectively" (the body politic), and the "duty owing to particular individuals, thus:

**1. Of Duties to the Public.** - The first of these classes embraces those officers whose duty is owing primarily to the public collectively --- to the body politic --- and not to any particular individual; who act for the public at large, and who are ordinarily paid out of the public treasury.

The officers whose duties fall wholly or partially within this class are numerous and the distinction will be readily recognized. Thus, the governor owes a duty to the public to see that the laws are properly executed, that fit and competent officials are appointed by him, that unworthy and ill-considered acts of the legislature do not receive his approval, but these, and many others of a like nature, are duties which he owes to the public at large and no one individual could single himself out and assert that they were duties owing to him alone. So, members of the legislature owe a duty to the public to pass only wise and proper laws, but no one person could pretend that the duty was owing to himself rather than to another. Highway commissioners owe a duty that they will be governed only by considerations of the public good in deciding upon the opening or closing of highways, but it is not a duty to any particular individual of the community.

These illustrations might be greatly extended, but it is believed that they are sufficient to define the general doctrine.

**2. Of Duties to Individuals.** - The second class above referred to includes those who, while they owe to the public the general duty of a proper administration of their respective offices, yet become, by reason of their employment by a particular individual to do some act for him in

an official capacity, under a special and particular obligation to him as an individual. They serve individuals chiefly and usually receive their compensation from fees paid by each individual who employs them.

A sheriff or constable in serving civil process for a private suitor, a recorder of deeds in recording the deed or mortgage of an individual, a clerk of court in entering up a private judgment, a notary public in protesting negotiable paper, an inspector of elections in passing upon the qualifications of an elector, each owes a general duty of official good conduct to the public, but he is also under a special duty to the particular individual concerned which gives the latter a peculiar interest in his due performance.<sup>[12]</sup>

In determining whether a public officer is liable for an improper performance or non-performance of a duty, it must first be determined which of the two classes of duties is involved. For, indeed, as the eminent Floyd R. Mechem instructs, "[t]he *liability* of a public officer to an individual or the public is based upon and is co-extensive with his *duty* to the individual or the public. If to the one or the other he owes no duty, to that one he can incur no liability."<sup>[13]</sup>

Stated differently, when what is involved is a "duty owing to the public in general", an individual cannot have a cause of action for damages against the public officer, even though he may have been injured by the action or inaction of the officer. In such a case, there is damage to the individual but no wrong to him. In performing or failing to perform a public duty, the officer has touched his interest to his prejudice; but the officer owes no duty to him as an individual.<sup>[14]</sup> The remedy in this case is not judicial but political.<sup>[15]</sup>

The exception to this rule occurs when the complaining individual suffers a *particular or special injury* on account of the public officer's improper performance or non-performance of his public duty. An individual can never be suffered to sue for an injury which, technically, is one to the public only; he must show a wrong which he specially suffers, and damage alone does not constitute a wrong.<sup>[16]</sup> A contrary precept (that an individual, in the absence of a special and peculiar injury, can still institute an action against a public officer on account of an improper performance or non-performance of a duty owing to the public generally) will lead to a deluge of suits, for if one man might have an action, all men might have the like--the complaining individual has no better right than anybody else.<sup>[17]</sup> If such were the case, no one will serve a public office. Thus, the rule restated is that an individual cannot have a particular action against a public officer *without a particular injury, or a particular right*, which are the grounds upon which all actions are founded.<sup>[18]</sup>

Juxtaposed with Article 32<sup>[19]</sup> of the Civil Code, the principle may now translate into the rule that *an individual can hold a public officer personally liable for damages on account of an act or omission that violates a constitutional right only if it results in a particular wrong or injury to the former*. This is consistent with this Court's pronouncement in its June 19, 2007 Decision (subject of petitioner's motion for reconsideration) that Article 32, in fact, allows a damage suit for "tort for impairment of rights and liberties."<sup>[20]</sup>

It may be recalled that in tort law, for a plaintiff to maintain an action for damages for the injuries of which he complains, he must establish that such injuries resulted *from a breach of duty which the defendant owed the plaintiff*, meaning a *concurrence of injury to the plaintiff and legal responsibility by the person causing it*. Indeed, central to an award of tort damages is the premise that an individual was injured in contemplation of law.<sup>[21]</sup> Thus, in *Lim v. Ponce de Leon*,<sup>[22]</sup> we granted the petitioner's claim for damages because he, in fact, suffered the loss of his motor launch due to the illegal seizure thereof. In *Cojuangco, Jr. v. Court of Appeals*,<sup>[23]</sup> we upheld the right of petitioner to the recovery of damages as there was an injury sustained by him on account of the illegal withholding of his horserace prize winnings.

In the instant case, what is involved is a public officer's duty owing to the public in general. The petitioner, as the then Commissioner of the Bureau of Internal Revenue, is being taken to task for Revenue Memorandum Circular (RMC) No. 37-93 which she issued without the requisite notice, hearing and publication, and which, in *Commissioner of Internal Revenue v. Court of Appeals*,<sup>[24]</sup> we declared as having "fallen short of a valid and effective administrative issuance."<sup>[25]</sup> A public officer, such as the petitioner, vested with quasi-legislative or rule-making power, owes a duty to the public to promulgate rules which are compliant with the requirements of valid administrative regulations. But it is a duty owed not to the respondent alone, but to the entire body politic who would be affected, directly or indirectly, by the administrative rule.

Furthermore, as discussed above, to have a cause of action for damages against the petitioner, respondent must allege that it suffered a *particular or special injury* on account of the non-performance by petitioner of the public duty. A careful reading of the complaint filed with the trial court reveals that no *particular injury* is alleged to have been sustained by the respondent. The phrase "financial and business difficulties"<sup>[26]</sup> mentioned in the complaint is a vague notion, ambiguous in concept, and cannot translate into a "particular injury." In contrast, the facts of the case eloquently demonstrate that the petitioner took nothing from the respondent, as the latter did not pay a single centavo on the tax assessment levied by the former by virtue of RMC 37-93.

With no "particular injury" alleged in the complaint, there is, therefore, no delict or wrongful act or omission attributable to the petitioner that would violate the primary rights of the respondent. Without such delict or tortious act or omission, the complaint then fails to state a cause of action, because a cause of action is the act or omission by which a party violates a right of another.<sup>[27]</sup>

A cause of action exists if the following elements are present: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to plaintiff for which the latter may maintain an action for recovery of damages.<sup>[28]</sup>

The remedy of a party whenever the complaint does not allege a cause of action is to set up this defense in a motion to dismiss, or in the answer. A motion to dismiss