

## SECOND DIVISION

[ G.R. No. 144458, July 14, 2004 ]

**MERCURY DRUG CORPORATION, PETITIONER, VS. ATTY.  
RODRIGO B. LIBUNAO, RESPONDENT.**

### DECISION

**CALLEJO, SR., J.:**

This is a petition for review on *certiorari* of the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CV No. 59754 which modified the Decision<sup>[2]</sup> of the Regional Trial Court of Quezon City, Branch 97, in Civil Case No. Q-92-14114 and the Resolution of the Court of Appeals dated August 9, 2000 denying petitioner's motion for reconsideration.

On November 24, 1992, Atty. Rodrigo Libunao filed a complaint for damages with the Regional Trial Court of Quezon City against the Mercury Drug Corporation; its President, Mariano Que; Store Manager, Vilma Santos; and Security Guard Remigio Sido. The case was docketed as Civil Case No. Q-92-14114 and raffled to Branch 97. The respondent prayed that after due hearing, judgment be rendered in his favor, thus:

WHEREFORE, it is respectfully prayed that judgment be rendered:

1. Ordering defendants to, jointly and severally, pay plaintiff ₱1,000,000.00 in moral damages, and ₱500,000.00 in exemplary damages;
2. Ordering defendants to, jointly and severally, reimburse plaintiff for his acceptance fee expense in the amount of ₱50,000.00 and appearance fee expense at the rate of ₱1,000.00 per appearance of undersigned counsel, and bear the cost of his attorney's fee in the amount of ₱200,000.00.
3. Ordering defendants to, jointly and severally, bear the cost of the suit.<sup>[3]</sup>

In its Answer to the complaint, the defendant corporation mainly alleged that it was not Sido's employer, and that the latter's direct employer was the security agency, the Black Shield Security Services Corporation (BSSC); hence, Mercury Drug Corporation could not be held liable for the damages under Article 2180 of the New Civil Code.

### The Case for the Plaintiff

At about 8:00 p.m. on May 25, 1992, Atty. Rodrigo B. Libunao, a corporate lawyer of Caltex Philippines, and his friend, Jesus Bustos Atencio, the Secretary of the Senate

Committee on Government Corporations, had dinner at the Robinson's Galleria along Ortigas Avenue, Pasig City. Afterwards, they proceeded to the self-service section of the Mercury Drug Store where Libunao purchased some items, including antibiotics. Libunao paid for his purchases and was issued a tape receipt<sup>[4]</sup> by the cashier, who then placed the items inside the plastic bag. Libunao placed the receipt inside his pocket. As Libunao and Atencio were exiting from the drugstore, they were accosted by Sido, the security guard posted at the door. Sido was about 5 feet 5 inches tall, twenty pounds heavier than Libunao, and was armed with a service gun. Sido held Libunao's upper right arm and demanded the latter to show the receipt for his purchases, saying, "*Yong resibo niyan.*" Libunao searched for the receipt in his pocket, but it took him some time to get hold of it because Sido was still holding his right arm. Sido then remarked, "*Wala yatang resibo yan!*" Libunao was able to get hold of the receipt after about ten seconds and showed it to Sido, close to the latter's face. Sido inspected the receipt, and Libunao asked, "*Satisfied ka na?*" However, Sido angrily reacted and hurled invectives at Libunao: "*Putang-ina mo!*" Libunao retorted, "*Putang-ina mo!*" Sido lunged at him and again said: "*Putang-ina mo!*" Atencio tried to pacify the two, but Sido was able to hit Libunao on the face twice, on the nose, the chin and on the mouth. Sido then pointed his revolver at Libunao and said: "*Putang-ina mo, pag hindi kayo lumabas dito papuputukin'ko to sa iyo!*" A male person held Sido back. Afraid for his life, Libunao fled from the scene with Atencio and went to the Office of the Security Detachment of the Robinson's Galleria. Libunao reported the incident to the chief of security and asked him to arrest Sido. The chief of security accompanied Libunao back to the Mercury Drug Store and approached the store manager, Vilma Santos. When informed of the incident and of Sido's need to surrender, she said: "*Ako ang manager dito, hindi ninyo puedeng arestuhin ang security guard kasi on duty pa siya. Magsi-alis nga kayo dito mga buwisit kayo!*" In the meantime, a crowd started to gather when they noticed the commotion. Eventually, Santos relented and surrendered Sido. While the chief of security, Libunao, Atencio and Sido were leaving, the sales ladies of the store surrounded Sido and tried to protect him. The chief of security brought Sido to the police station where a criminal complaint was filed against him by Libunao. Santos also arrived at the police station.

Libunao was so traumatized by the incident, which was exacerbated as Sido went to his house twice to apologize. Libunao had to consult a psychiatrist, Dr. Patalinghod of the Philippine General Hospital (PGH). After several sessions, Dr. Patalinghod found him to be suffering from post-traumatic depression syndrome.

### **The Case for the Defendants**

Sido testified that he was employed as a security guard by the Black Shield Security Corporation and was assigned at the Mercury Drug Store in Robinson's Galleria. At about 8:30 p.m. on May 25, 1992, he saw Libunao and his companion exiting from the store. Libunao was holding a plastic bag, and Sido noticed that no receipt was stapled thereto. He asked Libunao for the receipt, but the latter handed the bag to him. Sido searched for the receipt in the bag, but failed to find any. He then asked the two men to go back to the cashier to get a receipt. However, Libunao was able to bring out the receipt from his pocket and angrily shoved it close to Sido's face. Sido explained to them that he was just doing his duty. Libunao and his companion were about to leave, but Libunao said, "*Baka hindi mo ako kilala, security guard ka lang! Ano ba talaga ang problema mo?*" Sido tried to explain, and in the process, a violent argument ensued. A sales attendant of the store pacified them. The two

men left, with a warning from Libunao, "Be ready because I will come back." After about 15 minutes, Libunao returned with a security guard from the Enriquez Agency and a man in civilian clothes, who turned out to be a policeman. The same policeman asked Sido to go with him to the police station. He refused because he was still on duty. When Santos saw the incident, she told Sido to go inside the store. But after talking to the policeman, Santos relented and told Sido to go with them to the building security office. When confronted by the security officer, Sido denied boxing Libunao and poking a gun at him. He was later brought to the police station and placed in jail. Libunao approached him and said: "You see now how powerful I am?" Sido also testified that a policeman later asked from him ₱2,000.00 so that he could get out of jail. He was able to give only ₱1,500.00 which was his salary for that day. He was released from jail the next day at 4:00 p.m.

Santos testified that she was the Store Manager of the Mercury Drug Store at the Robinson's Galleria. At about 8:30 p.m. on May 25, 1992, she was at the retail section of the store when her attention was called by one of the pharmacy assistants, Geminiano de Leon, about an on-going altercation between two men and the store security guard near the exit of the self-service section, which was about 15 meters away from where she was. When she rushed to the scene, Libunao and his companion were no longer there. However, Libunao returned with two policemen from Quezon City who were in civilian clothes, and informed her that they were going to arrest Sido. She told the policemen that they were about to close the store and asked them if they could wait for about ten to fifteen minutes so that Sido could help them close up. The policemen agreed, but Libunao objected and said that her refusal to surrender Sido amounted to obstruction of justice. Sido was later brought to the security office of the building and then taken to the police station.

Santos also testified that she accompanied Sido to the security office and to the police station. Libunao told her that she should not have accompanied Sido because he was not an employee of the Mercury Drug Corporation. She apologized to Libunao on behalf of Sido and told him that she had not expected the altercation between the two of them. She testified that one of her duties as the store manager was to prevent injuries to their customers, more so those caused by any of its employees. She also testified that one of Sido's duties as their security guard was to open and close the store.

On April 18, 1997, the court rendered judgment in favor of the plaintiff and against the defendants, the decretal portion of which reads:

WHEREFORE, in view of the foregoing consideration, judgment is hereby rendered by this Court in favor of the Plaintiff and against the Defendants Remigio Sido, Mercury Drug Corporation, and Vilma Santos, and said defendants are hereby ordered, as follows:

To pay to plaintiff, jointly and severally, by way of moral damages, the amount of ₱300,000.00, by way of exemplary damages, the amount of ₱200,000.00 to discourage disrespect of the public by such acts as were committed by defendants, plus attorney's fees of ₱50,000.00 and costs of suit.

SO ORDERED. <sup>[5]</sup>

The court granted the motion for reconsideration filed by Store Manager Santos, and ordered the dismissal of the complaint against her. It, however, denied the motion for reconsideration filed by the defendant Corporation. Hence, the defendant Corporation appealed the decision to the Court of Appeals contending that:

- I. EVIDENCE ON RECORD CLEARLY SHOW (*sic*) THAT PLAINTIFF'S ALLEGATIONS AGAINST DEFENDANT MERCURY DRUG IN HIS COMPLAINT HAS (*sic*) BEEN DISPROVED BY PLAINTIFF'S OWN ADMISSION AND BY UNCONTROVERTED EVIDENCE.
- II. THE TRIAL COURT ERRED IN HOLDING DEFENDANT MERCURY DRUG CORPORATION JOINTLY AND SEVERALLY LIABLE WITH DEFENDANT SIDO FOR MORAL DAMAGES.
- III. THE TRIAL COURT COMMITTED A REVERSIBLE ERROR IN HOLDING MERCURY DRUG JOINTLY AND SEVERALLY LIABLE WITH DEFENDANT SIDO TO PAY PLAINTIFF-APPELLEE EXEMPLARY DAMAGES. [6]

On June 9, 2000, the Court of Appeals rendered judgment affirming with modification the decision of the trial court, thus:

WHEREFORE, premises considered, the challenged decision of the trial court dated April 15, 1997 is AFFIRMED with the modification that the award of attorney's fees is DELETED, and the moral and exemplary damages awarded are reduced from ₱300,000.00 to ₱150,000.00 and from ₱200,000.00 to ₱100,000.00, respectively.

SO ORDERED. [7]

The appellate court ruled that Sido was an employee of the Mercury Drug Corporation, and that there was no sufficient evidence to prove that he was an employee of BSSC. As such, it held that Mercury Drug Corporation was, jointly and severally, liable with Sido for the latter's delictual and harmful acts.

### **The Present Petition**

Mercury Drug filed the instant petition for review, asserting as follows:

1. THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING THE JUDICIAL ADMISSION OF PLAINTIFF-RESPONDENT RODRIGO LIBUNAO THAT REMIGIO SIDO IS NOT AN EMPLOYEE OF PETITIONER-DEFENDANT MERCURY DRUG CORPORATION AND IN RULING CONTRARY TO SAID STIPULATION OF FACT OR JUDICIAL ADMISSION.
2. THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DISREGARDING A DOCUMENTARY EVIDENCE WHICH WAS NOT QUESTIONED NOR CONTROVERTED AND IN RULING CONTRARY TO THE EVIDENCE ON RECORD.
3. THE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION IN HOLDING PETITIONER LIABLE FOR THE ACTS OF

THE SECURITY GUARD UNDER ARTICLE 2181 (*sic*) OF THE NEW CIVIL CODE.<sup>[8]</sup>

The petitioner contends that based on the evidence on record, Sido was not one of its employees, but an employee of BSSC. As such, the Court of Appeals misapplied the last paragraph of Article 2180 of the New Civil Code, and should have ruled in accordance with the ruling of this Court in *Soliman, Jr. v. Court of Appeals*.<sup>[9]</sup>

In his Comment on the petition, the respondent sought the denial of the petition on the following grounds: (a) the petition raises factual issues; (b) the petitioner failed to submit the appropriate certification against forum shopping; and, (c) the Court of Appeals did not commit any reversible error in holding the petitioner liable for damages for the tortious and delictual acts of Sido, over whose acts the petitioner had direct control and supervision as employer.

The core issues for resolution are (a) whether the certification against forum shopping embedded in the petition is sufficient compliance with Section 4, Rule 45 of the Rules of Court; (b) whether the remedy of the petitioner is proper; and, (c) whether the petitioner is liable for damages to the respondent for the tortious and delictual acts of Sido.

On the first issue, the respondent avers that the verification/certification against forum shopping executed by the petitioner's in-house counsel and counsel of record, Atty. Joy Ann Marie C. Nolasco, is insufficient. We reject the contention of the respondent. The assailed verification and certification states that Atty. Joy Ann Marie C. Nolasco is the legal officer and/or in-house counsel of petitioner, as well as its counsel of record in the above-entitled case, and is duly authorized to sign the said verification and certification.<sup>[10]</sup> As the petitioner's in-house counsel, she is the officer who is in the best position to verify the truthfulness and the correctness of the allegations of the petition, and to determine if a similar petition has been filed and is pending with other courts. In *Robern Development Corporation v. Quitain*,<sup>[11]</sup> we held that the certification executed by an in-house counsel is sufficient compliance with the Rules:

In this case, the questioned verification stated that Atty. Cañete was the acting regional legal counsel of NPC at the Mindanao Regional Center in Iligan City. He was not merely a retained lawyer, but an NPC in-house counsel and officer, whose basic function was to prepare legal pleadings and to represent NPC-Mindanao in legal cases. ***As regional legal counsel for the Mindanao Area, he was the officer who was in the best position to verify the truthfulness and the correctness of the allegations in the Complaint for expropriation in Davao City. As internal legal counsel, he was also in the best position to know and to certify if an action for expropriation had already been filed and pending with the courts.***<sup>[12]</sup>

On the second issue, we rule that the remedy of the petitioner under Rule 45 of the Rules of Court is proper. While only questions of law may be raised in a petition for review under Rule 45 of the Rules of Court, review may nevertheless be granted under certain exceptions, namely: (a) when the conclusion is a finding grounded entirely on speculation, surmises, or conjectures; (b) when the inference made is manifestly mistaken, absurd, or impossible; (c) where there is a grave abuse of