

## SECOND DIVISION

[ G.R. No. 136185, October 30, 2000 ]

**EDUARDO P. LUCAS, PETITIONER, VS. SPOUSES MAXIMO C. ROYO AND CORAZON B. ROYO, RESPONDENT.**

### DECISION

**BELLOSILLO, J.:**

This is a petition for review assailing the Decision of the Court of Appeals<sup>[1]</sup> which affirmed the holding of the trial court<sup>[2]</sup> that the civil case for collection of a sum of money with damages filed by respondent-spouses Maximo C. Royo and Corazon B. Royo against Eduardo P. Lucas was unwarranted and without sufficient basis, but with the modification that the award of P25,000.00 as attorney's fees and litigation expenses shall be deleted for lack of clear proof of malice in filing the case. The Resolution denying petitioner Lucas' motion for reconsideration is likewise assailed.

Petitioner Eduardo P. Lucas was a seller, canvasser and collector in Royo's Homemade Candy and Bakery (ROYO'S), a factory in Laguna engaged in the manufacture of candies and bread. The factory is owned by respondent-spouses Maximo C. Royo and Corazon B. Royo. Lucas was assigned to specific market areas to sell ROYO'S products. Assisting him were a helper, a checker and a driver. In procuring orders from customers, Lucas was provided with order slips and official receipts, as well as a notebook where the sales, cash collections and indebtedness of customers were listed (sales and collection notebook). After each collection, the order slips and the sales and collection notebook were turned over to Maximo C. Royo and/or Corazon B. Royo for checking of entries.

On 6 January 1992 Maximo Royo and Corazon Royo filed a civil case for collection of a sum of money plus damages against Lucas alleging among others that in 1991 the latter defrauded them of P177,191.30 by collecting the indebtedness of customers without remitting the amount to them, by altering the list in the sales and collection notebook after the cash collections had been checked and remitted to them, and by making it appear that the indebtedness of customers had been paid when Lucas actually pocketed the amount. The Royos likewise alleged that a demand letter dated 19 October 1991 was sent to Lucas for the return of the amount but he refused.

According to Corazon, she began to suspect that Lucas was defrauding them on 21 August 1991, thus she instructed Carlito Flores, one of their workers, to place Lucas under close watch, especially on what he did with the sales and collection notebook. On 21 September 1991, returning from a trip from Fairview, Quezon City, Carlito Flores reported that he saw Lucas tear pages from the sales and collection notebook while they were along Calauan, Laguna. Corazon did not say anything, but the following day Lucas was dismissed from his employment.

Lucas denied the charge. He argued that it was impossible for him to defraud the Royos nor alter the lists in the sales and collection notebook as strict measures were imposed upon all sellers /canvassers/agents with respect to their remittances. He argued likewise that he could not have torn the pages from the sales and collection notebook on their return trip to Laguna because he was in full view of his companions as he was seated beside the driver and the checker while Carlito Flores was seated at the back.

Petitioner Lucas opined that the actual reason for his dismissal was his having informed the Office of the Social Security System (SSS) of the Royos' failure to report their employees for SSS coverage.<sup>[3]</sup> After his termination, he filed another case against the Royos before the National Labor Relations Commission (NLRC) for illegal dismissal and violation of labor laws. He surmised that the complaint by the spouses against him was merely instituted in retaliation for the cases he had filed and to harass him if not weaken his resolve to pursue the cases he had filed.

In his compulsory counterclaim, Lucas stated that the Royos had informed his friends, customers and business associates of the fraud he allegedly committed against them while spreading rumors that he was a swindler and a *manloloko*. As a consequence of such rumors, Lucas claimed that his name was sullied, his reputation tarnished, and he suffered deep anguish and distress as his family was also affected by the rumors. According to him, his credit standing among the banks and his creditors was destroyed. In fact, Rogelio C. Cariaga, one of his creditors, withheld the release of his P100,000.00 loan which he intended to use to finance and expand his fishpond and piggery business. As this did not materialize, he incurred losses in the amount of P150,000.00 for unrealized profit. To protect and defend himself against the accusations hurled against him, he employed the services of a lawyer for P45,000.00 plus P1,200.00 per appearance. He demanded that he be paid P100,000.00 as actual damages in view of the loan withheld, P150,000.00 as unrealized profit from his fishpond and piggery business, P500,000.00 for moral damages, P200,000.00 for exemplary damages, plus attorneys fees. On 8 March 1993 the trial court dismissed the complaint of the Royos for failure to prove the allegations therein by preponderance of evidence. The court likewise found that the filing of the case was unwarranted, uncalled for and without sufficient basis, and thus, ordered the spouses Maximo and Corazon Royo to pay Lucas P25,000.00 for attorney's fees and litigation expenses. As for Lucas's counterclaim, the court *a quo* denied his claim for compensatory damages arising from unrealized profit from his fishpond and piggery business for being purely speculative, and doubted whether the complaint was the cause for the denial of his loan as he was a close family friend of his creditor.<sup>[4]</sup> As for his claim for moral damages due to the rumors supposedly spread by the Royos, the court *a quo* denied his claim on the ground that the spouses were merely expressing their sentiments and belief after being aggrieved.<sup>[5]</sup>

Both parties appealed to the Court of Appeals. The Royo spouses claimed that the court *a quo* erred in failing to appreciate the evidence showing the failure of Lucas to remit the amount representing collection from the customers and in awarding damages to him.<sup>[6]</sup> For his part, Lucas alleged that the court *a quo* erred in (a) holding that his expected profit from his fishpond and piggery project was purely speculative, (b) failing to award him moral and exemplary damages, and (c) disregarding the testimony of witness Cristina Arguil concerning the damaging rumors spread by the Royo spouses.

On 22 June 1998 the Court of Appeals affirmed the decision of the lower court dismissing the complaint of the Royos but deleted the award of attorney's fees and litigation expenses in favor of Lucas as it found no clear proof of malice in the filing of their suit. Lucas moved for reconsideration, particularly of the decision deleting the award of attorney's fees and litigation expenses but his motion was denied.

Petitioner argues in this petition against the denial of his attorney's fees and litigation expenses as he claims that the records are replete with evidence showing respondents' malice. He likewise claims that the Court of Appeals failed to resolve the other assigned errors identified in his brief in CA-G.R. No. CV-41269: (a) the court *a quo*'s holding that the expected profit of defendant-appellant in his fishpond and piggery projects was purely speculative; (b) its failure to grant compensatory, moral and exemplary damages on the ground that Maximo and Corazon Royo were merely expressing their sentiments and belief that they were aggrieved; and, (c) disregarding the testimony of Cristina Arguil concerning the rumors spread by the spouses.<sup>[7]</sup>

Thus at the crux of this petition are two (2) issues: (a) whether the filing of a complaint for collection of a sum of money plus damages against petitioner, found to be unsubstantiated and without cause, merits an award of damages and attorney's fees in his favor; and, (b) whether the spreading of rumors derogatory to the character of petitioner entitles him to an award of moral and exemplary damages.

The trial court and the appellate court were one in holding that the complaint that respondents Maximo and Corazon Royo had filed was unwarranted, baseless and without sufficient leg to stand on. Hence, what remains unresolved is whether malice attended the filing of the complaint or whether it was a case of malicious prosecution that petitioner should be entitled to damages.

For a malicious prosecution suit to prosper the following elements must concur: (a) the fact of the prosecution and the further fact that the defendant was himself the prosecutor, and that the action finally terminated in an acquittal; (b) in bringing the action the prosecutor acted without probable cause; and, (c) the prosecutor was actuated or impelled by legal malice, i.e., by improper or sinister motive.<sup>[8]</sup> The element of malice and the absence of probable cause must be proved.<sup>[9]</sup> There must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person, and that it was initiated deliberately knowing that the charge was false and baseless to entitle the victims to damages.<sup>[10]</sup> The two (2) elements must simultaneously exist, otherwise, the presence of probable cause signifies, as a legal consequence, the absence of malice.

In the instant case, Corazon Royo admitted that the sales and collection notebook was checked by their checker everyday after its surrender but, during the period of November 1990 to 21 September 1991, she was not notified of any anomaly.<sup>[11]</sup> She likewise admitted that she looked at their records only after terminating Eduardo P. Lucas and after the latter had filed complaints against them before the SSS and the NLRC.<sup>[12]</sup> The foregoing suggest that the entries in the sales and collection notebook were regular to begin with and respondent Corazon Royo was scrutinizing, if not manipulating them, in order to contrive an offense with which to pin petitioner for having filed cases against them. Her actions in the interim in which the civil complaint was filed thus suggest that respondent spouses were motivated