

## SECOND DIVISION

[ CA-G.R. CV NO. 98790, November 18, 2014 ]

**RENATO FACTOR, PLAINTIFF-APPELLEE, vs. JOSE BOMA, ET AL.,  
DEFENDANTS-APPELLANTS.**

### DECISION

**BUESER, J.:**

This is an appeal from the Decision<sup>[1]</sup> of the Regional Trial Court ("RTC") 5<sup>th</sup> Judicial Region, Branch 41, Daet, Camarines Norte dated March 30, 2012, holding appellant Jose Boma ("Appellant Boma") in bad faith and consequently ordered him to pay appellee Renato Factor ("Appellee Factor") moral damages, exemplary damages, attorney's fee, appearance fee and cost of suit, the dispositive of which reads in this wise:

*"**WHEREFORE**, on the basis of the foregoing, judgment is hereby rendered in favour of the plaintiff and directing the defendant to pay plaintiff the following:*

1. Php 100,000.00 as moral damages;
2. Php 50,000.00 as exemplary damages;
3. Php 30,000.00 as attorney's fee and Php 1,000.00 for every court appearance; and
4. Costs of suit."

### **THE FACTS**

The pertinent facts and antecedents of this case, as borne by the records, are as follows:

The appeal before Us stemmed from the case for mandamus and damages<sup>[2]</sup> filed on July 27, 1994 by herein appellee Factor which prayed that appellant Boma, who was then the Municipal Mayor of the Municipality of San Lorenzo Ruiz, be ordered to reinstate appellee Factor to his position as Assistant Municipal Treasurer of San Lorenzo Ruiz, Camarines Norte ("San Lorenzo Ruiz") and for appellant Boma and Alicia R. Morales ("Ms. Morales"), who was then the Local Revenue Collection Officer II of the same Municipality, to pay him the following amounts: 1.) Php55,360.00 for the salaries and other emoluments due the petitioner from October 1993 to June 1994; 2.) Php100,000.00 as actual damages; 3.) Php200,000.00 as moral damages; 4.) Exemplary damages as maybe determined by the lower court; 5.) Php50,000.00 as attorney's fee and Php500.00 per appearance of the counsel in

court; and 6.) cost of suit.

Appellee Factor is a retired government employee who was appointed as Assistant Municipal Treasurer of San Lorenzo Ruiz on July 1, 1981.

It was in March 1991 that appellee Factor assumed the position of officer-in-charge ("OIC") of the Treasurer's Office of San Vicente, Camarines Norte ("San Vicente") pursuant to Regional Special Personnel Order 21-91 issued by the regional director of Department of Finance- Bureau of Local Government Finance ("DOF-BLGF") upon recommendation of the Provincial Treasurer of Camarines Norte after consultation with appellee Factor.

As alleged by appellee Factor, the Municipal Government of San Lorenzo continued to pay his salary and other emoluments up to March 1993. However, from April 1993 to September 1993, the same was suspended by appellant Boma.

Sometime in 1993, when appellee Factor's salary was suspended, he hired a legal counsel to help him in the collection of his salary. Consequently, the Municipal Treasurer's Office of San Lorenzo Ruiz paid his salary pursuant to the instruction of appellant Boma. According to appellee Factor, this was when appellant Boma also promised that his salary would no longer be suspended.

However, according to appellee Factor, sometime in October 1993, the OIC of the Treasurer's Office of San Lorenzo Ruiz told him that he could no longer get his salary and other emoluments pursuant to the memorandum of appellant Boma issued to the Municipal Treasurer of San Lorenzo Ruiz which ordered for his deletion from the municipal payroll.<sup>[3]</sup> Appellee Factor informed the provincial treasurer of the same who then made representations with appellant Boma to no avail.

He then wrote the provincial treasurer to inform the latter of his willingness to return to his original station which letter was endorsed to the regional director of the Department of Finance, who then ordered appellee's return effective November 2, 1993.<sup>[4]</sup>

On November 2, 1993, appellee Factor went to the Municipality of San Lorenzo Ruiz to inform appellant Boma that he would be assuming his position as ordered by the regional director of the Department of Finance but the latter refused.

On March 1, 1994, appellee Factor wrote Ms. Morales, ICO of the Treasurer's Office of San Lorenzo Ruiz, requesting a copy of the legal authority she used in support of the withholding of his salary and other benefits due him.<sup>[5]</sup> Ms. Morales, in response, said that she was merely following the memorandum order dated October 26, 1993 of appellant Boma.

Due to the fact that appellee Factor's name was deleted from the payroll for the month of December 1993, he asseverated that the suspension of his salary deeply troubled him as he needed the same for the treatment of his wife, who was diagnosed with stage 1 cancer and that when he and his wife were referred to a surgeon for operation, he could not afford the cost because he had no money to pay for it. Consequently, because of the delayed operation, his wife's health deteriorated until her cancer reached stage 4. Further, he was not able to pay the monthly

amortization of his PAG-IBIG housing loan which accumulated to the extent that his house would have been foreclosed.

Appellee Factor alleged further that when he was allowed to return to San Lorenzo Ruiz he was only allowed to use a small table along the corridor going to the comfort room and the worst part is that he was not allowed to perform his duties and responsibilities under the Local Government Code ("LGC").

It was only sometime in 2002 that appellee Factor's first installment of his unpaid salary was paid under the newly elected Mayor Edgar T. Ramores, who assumed office on July 2001.

In the testimony of Adolfo S. Gadil ("Mr. Gadil"), who was then Municipal Treasurer of San Lorenzo Ruiz, he said that he received a memoranda from the Office of the Mayor of San Lorenzo Ruiz, both dated October 26, 1993, signed by appellant Boma, directing his office not to allow appellee Factor to collect his salaries from the Municipality or not to include him in the municipal payroll considering that there was an appropriation for salaries in the municipality where he was serving. Pursuant to these memoranda, appellee Factor was excluded in the municipal payroll for the period of December 1 to 31, 1993.<sup>[6]</sup>

Moreover, in the testimony of Norma C. Definado ("Ms. Definado"), who was then the Secretary of the Sangguniang Bayan of the said municipality, she said that Resolution No. 94-021 of the Sangguniang Bayan of San Lorenzo Ruiz adopted the 1994 annual budget of the municipality denominated as Ordinance No. 01-94. She pointed out that Section 3 thereof provides that the Municipal Treasurer is authorized to pay/disburse any amount appropriated therein, which covers all programs, appropriation and obligation. Further, she testified, that there was a Local Budget Preparation Form No. 153 or Personnel Schedule<sup>[7]</sup> for the Office of the Municipal Treasurer of San Lorenzo Ruiz and that under the heading "title of position" and "name of incumbent," the Assistant Municipal Treasurer was appellee Factor as indicated therein.<sup>[8]</sup>

On the other hand, appellant Boma testified<sup>[9]</sup> that he was the former Municipal Mayor of the Municipality of San Lorenzo Ruiz from 1992 to 2001. During his assumption to office as Municipal Mayor of San Lorenzo Ruiz on June 30, 1992, appellee Factor was the assistant treasurer of the said municipality. However, the latter was designated as Officer-in-Charge of the Treasurer's Office of the Municipality of San Vicente starting October 1, 1993, which according to him was made without his prior knowledge and consent.

Further, according to appellant Boma, it was in the Municipality of San Vicente that appellee Factor was reporting for work and rendering services and not in the Municipality of San Lorenzo Ruiz. Hence, appellee Factor was not submitting the pertinent documents required before an employee would be able to receive his salary and that his salaries were withheld pending submission of the required documents.

However, upon appellee Factor's submission of the pertinent documents, his salaries covering the period from April to September 1993 were paid.

Appellant Boma further claimed that he did not know that appellee Factor was designated as the Acting Municipal Treasurer of San Vicente and assumed the same during his incumbency with the approval of his late father Silvestre A. Boma in March 1991. He even said that he believes that it is improper and irregular that an employee should receive salary and other benefits from one municipality while performing his duties in another municipality as it would deprive the paying municipality of the services for which that employee is being paid for. This is in accordance to the principle of "no work, no pay". According to him, it is only logical for appellee Factor to draw his salary and other emoluments from the Municipality of San Vicente when he continued to assume his position as the OIC thereof on October 1, 1993.

As claimed by appellant Boma, as the then Municipal Mayor, he was merely exercising his powers and functions as provided for under the Local Government Code, which is to initiate and maximize the generation of sources and revenues, when he ordered the non-disbursement of municipal funds to pay any person who did not render services to the municipality. Otherwise, he might be held liable for technical malversation.

Further, appellant Boma is claiming to be honest and in good faith when he withheld the salaries of appellee Factor during such time that the latter was serving as municipal treasurer of San Vicente and not of San Lorenzo Ruiz.

On March 30, 2012, the lower court rendered the assailed Decision holding appellant Boma in bad faith as his acts revealed that he intended to cause damage to appellee Factor and ordering him to pay moral and exemplary damages, attorney's and appearance fees and cost of suit.

Dissatisfied with the said adverse pronouncement, appellant Boma filed the present appeal.

### **THE ISSUE**

The main issue to be resolved in this case is whether the court *a quo* erred in finding appellant Boma in bad faith thus holding him liable for moral damages, exemplary damages, attorney's fee, appearance fee and cost of suit.

### **THE RULING OF THE COURT**

We find the present appeal bereft of merit.

It is the contention of appellant Boma that the court *a quo* found the existence of bad faith despite absence of clear and convincing evidence to prove the same. Further, by way of defense, he said that the withholding of the salaries was prompted by his belief that since appellee Factor has been invested with the status of an OIC of the Municipal Treasury of San Vicente, his salaries should then be paid by the same municipality. He ratiocinated that since the Municipality of San Vicente was the one benefiting from his services, it is but logical that the said municipality must also pay for his salaries from October 1993 onwards.

Moreover, appellant Boma stood firm that his actions were not in anyway intended to prejudice appellee Factor but more to protect the interest of the Municipality of San Lorenzo Ruiz where the former was serving as a Mayor.

We disagree.

As gleaned from the records of the case, the lower court in its assailed Decision said that appellee Factor was originally assigned as Assistant Municipal Treasurer of the Municipality of San Lorenzo Ruiz and appointed on July 1, 1981 and was designated as In Charge of Office ("ICO") of the Municipal Treasurer's Office of San Vicente pursuant to Regional Special Personnel Order No. 21-91 dated March 6, 1991 issued by Salvador P. Senar, Regional Director of the Bureau of Local Government and Finance, and said designation was further extended until December 30, 1993.

It is worth to stress that appellee Factor had a total of nine (9) extensions from his first appointment on June 11, 1991 until his last extension from July 1, 1993 to December 30, 1993 as ICO of the Municipal Treasurer's Office of San Vicente, Camarines Norte. The lower court said that appellee Factor's designation is a detail or the movement of an employee from one agency to another without the need of another appointment pursuant to the authority of the Secretary of the Department of Finance. Thus, Section 8, Rule VII of the Omnibus Rules Implementing the Civil Service Law (Book V of Executive Order No. 292), is explicit on this point:

*"SEC. 8. A detail is the movement of an employee from one department or agency to another which is temporary in nature, which does not involve a reduction in rank, status or salary and does not require the issuance of another appointment.*

*The employee detailed receives his salary only from his mother unit/agency.*

*Detail shall be allowed only for a limited period in the case of employees occupying professional, technical and scientific position. If the employee believes that there is no justification for the detail, he may appeal his case to the Commission. Pending the appeal, the decision to detail the employee shall be executed unless otherwise ordered by the Commission."*

From the foregoing provision, the detailed employee receives his salary from his mother unit or agency. In the case at bench, the mother unit of appellee Factor is the Municipality of San Lorenzo Ruiz, but the latter refused payment of the salaries in contravention of the said rule.

Officials and employees on detail with other offices shall be paid their salaries, emoluments, allowances, fringe benefits and other personal services costs from the appropriations of their parent agencies and in no case shall such be charged against the appropriations of the agencies where they are assigned or detailed, except when authorized by law.<sup>[10]</sup>