

**G.R. No. 217806 — ADELAIDA C. NAVARRO-BANARIA, petitioner, versus ERNESTO A. BANARIA, PANFILO A. BANARIA, GRACIA SEVERA BANARIA-ESPIRITU, REINA CLARA BANARIA-MAGTOTO, MARCELINO S. BANARIA, PAULINA BANARIA-GELIDO, MARIA LOURDES DIVINE BANARIA-DURAN, GRACIA ISABELITA BANARIA-ESPIRITU, GEOFFREY BANARIA-ESPIRITU, ANNE MARIE ESPIRITU-PAPPANIA, JUSTIN BANARIA-ESPIRITU, respondents.**

Promulgated: JUL 28 2020

x-----x

## CONCURRING OPINION

**CAGUIOA, J.:**

I concur with the *ponencia* in its findings of abuse of right on the part of petitioner, in clear breach of the most rudimentary principles of human relations as embodied in Article 19 in relation to Article 21 of the Civil Code.<sup>1</sup> I take this opportunity to recall and to emphasize the underlying propositions governing the principle of abuse of right, and echo the breadth of application that these encompassing provisions historically contemplated, both of which support a decisive finding of abuse of right in the present case.

The invocation of the abuse of right principle under Article 19 in relation to either Article 20 or 21 is admittedly not subject to a hard and fast evaluation of mathematical precision, owing perhaps to its design as an all-inclusive provision that seeks to redress other wrongs or injurious acts not covered by legislative foresight. Article 19 is based on the maxim *suum jus summa injuria* (the abuse of a right is the greatest possible wrong),<sup>2</sup> and is described as the guide to relational behavior that rise from the dictates of good conscience and govern any human society, to wit:

Therein are formulated some basic principles that are to be observed for the rightful relationship between human being and for the stability of the social order. The present Civil Code merely states the effects of the law, but fails to draw out the spirit of the law. This chapter is designed to indicate certain norms that spring from the fountain of good conscience. These guides for human conduct should run as golden threads through society, to the end that law may approach its supreme ideal, which is the sway and dominance of Justice.<sup>3</sup>

<sup>1</sup> In brief, the factual backdrop involves a legal spouse who did not bring her frail and ailing husband (Pascasio) to the latter's 90th birthday celebration prepared for him by his children from a previous marriage, and relatedly failed to advise Pascasio's family of his absence or the reason therefor whether prior to or after the same. As a consequence of such, herein petitioner's stepchildren sustained injury and loss, and prompted them to file a complaint for damages against petitioner, imputing against her malicious and injurious abuse of rights.

<sup>2</sup> See Desiderio P. Jurado, *CIVIL LAW REVIEWER*, 2009 ed., p. 33.

<sup>3</sup> See Francisco R. Capistrano, *CIVIL CODE OF THE PHILIPPINES WITH COMMENTS AND ANNOTATIONS*, 1950 ed., Vol. 1, p. 28.



This provision on the basic tenets of decent human behavior, however, may not be invoked independently of Articles 20 and 21, which provide for the legal consequences of such an abuse. Article 20 is said to underpin the entire legal system, and ensures that no person who suffers damage, because of the act of another, may find himself without redress.<sup>4</sup> It is further said to extend our understanding of what tortious acts may consist of, with its language indicative of the incorporation into our traditional contemplation of tort or *culpa aquiliana*—the Anglo-American concept of tort which includes malice.<sup>5</sup> Article 21, for its part, stretched the “sphere of wrongs” provided for by positive law, and filled in the gaps to ensure remedy for people who have sustained material injuries from moral wrongs, in the absence of any other express provision.<sup>6</sup>

The scope of this principle is expansive, and is said to have “greatly broadened the scope of the law on civil wrongs.”<sup>7</sup> It provides that although an act is not illegal, damages may be properly awarded should the injury be borne of an abuse of a right, as when the right is exercised without prudence or in bad faith. This abuse may, however, be properly entreated only upon establishment of the following elements: (1) there is a legal right or duty; (2) which is exercised in bad faith; and (3) for the sole intent of prejudicing or injuring another.<sup>8</sup>

The idea that rights are capable of abuse is a far shift from the prior theory embodied in the Roman Law maxim “*qui iure suo utitur neminem laedit*” or, he who exercises his own right injures no one. This idea of abuse of right instead acknowledges the primordial boundary on one’s rights, that is, the rights of others. In his Commentary on the Civil Code, noted Civilist Eduardo P. Caguioa elaborated on the inherent logic of limitations of rights, the overstepping of which constitutes the abuse:

x x x In Roman Law the maxim was “*qui iure suo utitur neminem laedit*,” [i.e.], he who exercises his own right injures no one. Taken absolutely and literally the maxim is false and leads to absurd consequences. The exercise of rights must be done within certain limits. These limitations can be classified into two categories: 1. The **intrinsic limitations** which emanate from the right itself, [i.e.] from its nature and purpose, 2. The **extrinsic limitations** which emanate from the rights of others. The Intrinsic

---

<sup>4</sup> Id.

<sup>5</sup> Eduardo P. Caguioa, COMMENTS AND CASES ON CIVIL LAW, CIVIL CODE OF THE PHILIPPINES, 1959 ed., Vol. I, p. 29.

<sup>6</sup> Id.

<sup>7</sup> *Baksh v. Court of Appeals*, G.R. No. 97336, February 19, 1993, 219 SCRA 115, 127-128; citing Arturo M. Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, 1985 ed., Vol. I, p. 72; the case adds:

In the general scheme of the Philippine legal system envisioned by the Commission responsible for drafting the New Civil Code, intentional and malicious acts, with certain exceptions, are to be governed by the Revised Penal Code while negligent acts or omissions are to be covered by Article 2176 of the Civil Code. In between these opposite spectrums are injurious acts which, in the absence of Article 21, would have been beyond redress. Thus, Article 21 fills that vacuum. It is even postulated that together with Articles 19 and 20 of the Civil Code, Article 21 has greatly broadened the scope of the law on civil wrongs; it has become much more supple and adaptable than the Anglo-American law on torts.

<sup>8</sup> *Andrade v. Court of Appeals*, G.R. No. 127932, December 7, 2001, 371 SCRA 555, 563.

limitations are the following: (a) those derived from the nature of the right, [e.g.], the depositary cannot use the things deposited without authorization otherwise the character of the contract is destroyed; (b) Limitations arising from good faith; and (c) Limitations imposed by the economic and social ends of the right which require the holder of the right to exercise the right in accordance with the end for which it was granted or created. Hence the principle of ABUSE OF RIGHT. The extrinsic limitations are: (a) Those in favor of third persons who act in good faith; and (b) Those arising from the concurrence or conflict with the rights of others.

x x x x

x x x x “The abusive act” says Josserrand, “is simply that which, performed in accordance with a subjective right whose limits has been respected, is nevertheless contrary to right considered in general and as the sum total of all obligatory laws. It is perfectly possible to have in one’s own favor such a determinate right but nevertheless have against one the whole of law and this is the situation which produces that famous maxim “*summum ius summa iniuria*”. The responsibility arising from the abuse of right covers both the subjective character of right and its social end and function.<sup>9</sup>

Under the aforementioned operative definition of abuse of right, therefore, petitioner’s acts of failing to actually bring Pascasio (the father of respondents) to the birthday celebration which respondents mounted for him, and her concomitant failure to inform the latter of their foreseen absence from the party, or to just let them know that they had already returned to Manila after the schedule of the same, despite her justifications — that, based on her own narrative, are easily surmountable challenges — betrays intention and bad faith on petitioner’s part. This is a clear breach of the intrinsic limitation on her right as the spouse of Pascasio arising from good faith, as well as breach of the extrinsic limitation arising from its conflict with the rights of others. So that although she indeed possessed the determinate right of bringing or not bringing her spouse to the birthday celebration, her exercise of said right placed her squarely against the basic rule on observance of good faith.

The Court of Appeals succinctly described this abuse of right through the apparent pretense in petitioner’s defense, to wit:

Second, defendant-appellant testified that before going to Tarlac, she and Pascasio attended a birthday celebration at the Century Club, Quezon City on 21 February 2004. Her testimony further reveals that as early as that day, Pascasio was (allegedly) already decided on not attending the party prepared by his children. If said testimony is to be believed, it puzzles the Court why defendant-appellant did not attempt to contact, at that earliest time, plaintiffs-appellees to advise them of their father’s sudden change of heart. Defendant-appellant knew that the celebration prepared by the Banaria children is not simple as guests were invited and a considerable sum of money is spent for the event. Indeed, had defendant-appellant informed plaintiffs-appellees of her predicament, the damage or injury that plaintiffs-appellees are now complaining of could have been prevented.

<sup>9</sup> Supra note 5 at 26-27. Emphasis in the original.



Further, petitioner argues that this was no more than a case of *damnum absque injuria*, or a damage without injury as the loss or harm suffered was not a result of a violation of a legal duty.<sup>10</sup> Here, petitioner is in error. *Damnum absque injuria* or damage without injury may not be appreciated in petitioner's actions as said principle contemplates a situation wherein in the exercise of a right, "the purpose was good, the exercise normal and still damage is caused".<sup>11</sup> As applied to petitioner's actions, her failure to inform respondents of their intended absence from the party or their whereabouts, in the least, to the extent that respondents found it necessary to file a Missing Person's report with the local police,<sup>12</sup> exhibits the utter lack of consideration for respondents, or otherwise a deficit in good faith relations with the latter.

With respect to the indemnification for the damage caused, I agree that respondents herein are entitled to moral and exemplary damages in addition to actual damages, but wish to supplement the basis for finding the propriety of said awards. For moral damages, such may be properly awarded in this case, pursuant to Article 2219(10) in relation to Article 21 of the Civil Code, where the former enumerates the instances when moral damages may be appreciated. Exemplary damages was also properly found in favor of respondents, pursuant to Article 2231 in relation to Articles 19 and 21 of the Civil Code. To my mind, the lower courts and the *ponencia* aptly found gross negligence on the part of the petitioner when, despite clear opportunities to inform respondents of their foreseen absence from the event in question, petitioner nevertheless repeatedly failed to undertake the same. Given that such a simple act of phoning any of respondents at any point during the time prior to and after the party could have spared respondents from the loss and humiliation that they subsequently sustained, the fact that petitioner kept failing to do so escapes reason. I therefore agree that such repeated failure is properly characterized as gross negligence under the contemplation of Article 2231. As the Court has held in the case of *Abrogar v. Cosmos Bottling Co., et al.*,<sup>13</sup> gross negligence is the thoughtless disregard of consequences without exerting any effort to avoid them. In this case, petitioner's utter disregard of each opportunity she could have taken to inform respondents of their father's absence is correctly characterized as gross negligence which correspondingly entitled herein respondents to exemplary damages.<sup>14</sup>

In fine, Articles 19, 20, and 21 have been historically planted to ensure that no wanton discounting of the rights of others may escape with impunity for the sole reason that no black letter law specifically prohibits the same. For if the case were otherwise, we would be constantly confronted with the irony wherein, as the Report of the Code Commission itself described,<sup>15</sup> people would be free to cause damage to others, and violate the most elementary principles of morality, so long as no positive law is broken. Such a situation

---

<sup>10</sup> *Rollo*, p. 31.

<sup>11</sup> *Supra* note 5 at 28.

<sup>12</sup> *Rollo*, p. 36.

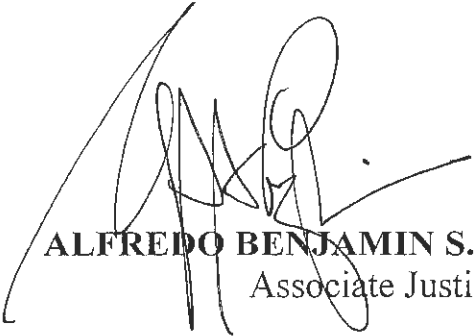
<sup>13</sup> G.R. No. 164749, March 15, 2017, 820 SCRA 301.

<sup>14</sup> *Id.* at 350; citing *Mendoza v. Sps. Gomez*, G.R. No. 160110, June 18, 2014, 726 SCRA 505, 526.

<sup>15</sup> *Supra* note 5 at 30; citing Report of Code Commission, pp. 40-41.



could not be further from the contemplations of the law, and the abuse of right principle under Articles 19, 20, and 21 of the Civil Code ensure that it remains so.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice