

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MAUREEN ANN GRETA –
FERRER,

Petitioner,

- versus -

RIGHT EIGHT SECURITY
AGENCY, INC.,

Respondent.

G.R. No. 223635

Present:

LEONEN, J., *Chairperson*,
HERNANDO,*
INTING,
DELOS SANTOS, and
LOPEZ, J., *JJ.*

Promulgated:

June 14, 2021

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DECISION

LOPEZ, J., *J.*:

Before this Court is a Petition for Review on *Certiorari*¹ assailing the Decision² dated September 17, 2015 and the Resolution³ dated March 16, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 102157. The assailed Decision reversed and set aside the Decision⁴ dated January 28, 2013 of the Regional Trial Court (RTC) of Makati City, Branch 62 in Civil Case No. 08-498, while the challenged Resolution denied petitioner's Motion for Reconsideration.⁵

* On leave.

¹ *Rollo*, pp. 11-28.

² *Id.* at 30-43. Penned by Honorable Associate Justice Manuel M. Barrios, and concurred in by Associate Justices Samuel H. Gaerlan (now a member of this Court) and Maria Elisa Sempio Diy.

³ *Id.* at 55-57.

⁴ *Id.* at 132-142.

⁵ *Id.*

The Antecedents

Right Eight Security Agency, Inc., (*respondent*) is the security provider of Casa Verde Townhomes (*Casa Verde*), where Maureen Ann Oreta-Ferrer (*petitioner*) is a resident.⁶ To ensure the safety of the residents, Casa Verde required respondent to observe the standard operating procedure stated in its 1994 Revised Rules & Regulations as follows:

Section 4.2.5. Check all articles brought in & out of the compound.

Section 4.2.6. Prevent the delivery & taking out of goods & other articles by workers, contractors, drivers, domestic helpers[,] without the permission of the unit owner.⁷

On the other hand, Casa Verde imposes on the unit owner the following responsibilities as regards the conduct of their helpers:

2.9.1. Unit owner and/or lawful occupants shall be responsible for the behavior and conduct of their maids, helpers and drivers, and their compliance with these Rules.⁸

To this end, Casa Verde and respondent executed a Contract of Security Services which stipulates that the latter shall be liable, in case of any loss or damage due to the fault or negligence of its security guard/s, in the following occasions:

Par. 5 The Agency shall be responsible for such losses or damages which are due solely to the negligence of the guards.

x x x

If after investigation[,] it is established by substantial evidence that the loss/damage incurred by Client is attributed directly to the negligence of the guard/s without any contributory negligence on the part of the Client, the Agency agrees to restore, indemnify, & pay for such loss or damage.⁹

Meanwhile, respondent denounces any liability when a loss or damage occurred in the following instances:

x x x x

d. When the loss or damage occurred inside a closed house, structure, office, room, building or warehouse where the guards for the agency are not allowed or have no access to, unless there are clear signs of forcible entry in areas within sight of the guards;

⁶ *Id.* at 31.

⁷ *Id.* at 209.

⁸ *Id.* at 73.

⁹ *Id.* at 210.

③

e. When the lost or damaged property is pocketable or easily transported or concealed or which cannot be considered as bulky such as, but not limited to, pocket calculator, jewelries & cash.¹⁰

In the afternoon of April 15, 2008, petitioner received a call from her 9-year-old son, Emilio (*Mio*), who informed her that their househelper Melody Flor Perez (*Perez*) had been talking with someone on their landline phone for a long time.¹¹ When Perez hanged up, she told Mio that petitioner instructed her to bring some of her personal items and to meet her in Makati City.¹²

Another househelper named Elsie Matibad (*Matibad*), together with Mio, accompanied Perez to the guard house and told the guard-on-duty, Richard Almine (SG Almine) that petitioner will meet Perez in Makati City to get some personal belongings which the latter prepared in a red shopping bag.¹³ SG Almine asked for Perez's gate pass, but she had none.¹⁴ It was at this point that Mio told SG Almine, "*My mommy already knows about that. She called me already.*"¹⁵ When SG Almine asked for further confirmation, Mio replied, "*Ako na nga ang nagsasabi sayo na okey na.*"¹⁶

SG Almine checked the contents of Perez's paper bag and saw plastic sachets of hair gel, after which he heeded Mio's instructions since it has been a normal practice for petitioner and her family to send him to the guard house to confirm the authorized egress of Perez without a gate pass.¹⁷ SG Almine did not bodily frisk Perez because this is not allowed by the Casa Verde's Homeowner's Association,¹⁸ but he logged her exit in the security logbook afterwards.¹⁹

On even date, at around 3:30 p.m., petitioner arrived home, and she was informed by Mio and Matibad that Perez left to meet with her in Makati.²⁰ Alarmed since this was not the case, petitioner immediately checked the master's bedroom where she discovered that her drawer had been forcibly opened and several pieces of jewelry²¹ consisting of: a) one (1) pair of mini diamond earrings and necklace, b) one (1) piece of silver bracelet, c) one (1) pair of diamond earrings with silver-white gold border frame, d) one (1) pair of heart diamond earrings with white mini diamonds, e) one (1) pair of blue diamond earrings with white mini diamonds, f) one (1) piece of Rolex solid gold watch, g) one (1) piece Rolex two-toned colored watch, h) one (1) piece silver bracelet, i) one (1) piece silver bangles, and j) one (1) pair of pearl

¹⁰ *Id.*

¹¹ *Id.* at 31.

¹² *Id.* at 32.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 33.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 34.

¹⁹ *Id.* at 33.

²⁰ *Id.* at 32.

²¹ *Id.*

earrings,²² plus cash, amounting to ₱60,000.00, with an aggregate value of ₱6,020,000.00,²³ were missing.

Later that day, petitioner received a text message from Perez who said that she was in Quezon City and victimized by a “*Dugo-Dugo Gang*.”²⁴ Petitioner did not believe her and consequently filed a criminal charge against her.²⁵ Perez admitted that she concealed the valuables underneath her clothing to avoid detection.²⁶ Meanwhile, petitioner confronted SG Almine why he allowed Perez to leave, where he answered that her son Mio had given the authorization.²⁷ Out of frustration, petitioner uttered: “*Ano ka ba Emilio, bakit mo pinayagan[,] ginago ka lang ni Flor?*”²⁸

Soon thereafter, petitioner, through her lawyer, sent respondent a demand letter holding them liable for the loss of her valuables on the ground that its security guard on-duty failed to accost Perez.²⁹ Acting on the complaint, respondent conducted its own investigation and concluded that SG Almine undertook all routine security measures on Perez,³⁰ and thus refused to heed petitioner’s demand. This notwithstanding, respondent submitted an Investigation Report, prepared by its investigator, Allan Caponès (*Caponès*), who recommended that “*Casa Verde gate guards should be equipped with metal detectors,*”³¹ among others.

Discontented, petitioner filed a complaint for damages against respondent on June 27, 2008.³²

Ruling of the RTC

After trial, the RTC, in its Decision dated January 28, 2013, found merit in petitioner’s complaint, but held her equally liable for contributory negligence, which led the RTC to disallow her claim for exemplary damages and reduce her claim for moral damages,³³ the dispositive portion of which states:

WHEREFORE, after the bodies of evidence have been offered, admitted & examined, the Court found that the plaintiff was able to prove their causes of action by a preponderance of evidence, & hereby holds the defendant liable to pay the plaintiff:

²² *Id.* at 205.

²³ *Id.* at 213.

²⁴ *Id.* at 32.

²⁵ *Id.* at 32-33.

²⁶ *Id.* at 209.

²⁷ *Id.* at 34.

²⁸ *Id.*

²⁹ *Id.* at 206.

³⁰ *Id.* at 34.

³¹ *Id.* at 139.

³² *Id.* at 13.

³³ *Id.* at 141.

1. Php 6,020,000.00 for actual damages to cover the value of the pieces of jewelry & monies lost;
2. Php 200,000.00 for Moral Damages; [and].
3. Php 50,000.00 for reasonable attorney's fees.

The counterclaim of defendant is also hereby dismissed for insufficiency of evidence.

SO ORDERED.³⁴

The RTC, likewise, dismissed respondent's counterclaim which prompted both parties to appeal to the CA.³⁵

Ruling of the CA

As earlier stated, the CA found that respondent performed the functions required of it under the contract with Casa Verde, hence, it should not be made liable for petitioner's losses.³⁶ Needless to say, there is no factual and legal basis for the award of damages against respondent.³⁷ On the other hand, petitioner acted in good faith in filing the instant case; thus, respondent's counterclaim is also without basis.³⁸ For this reason, the CA reversed and set aside the ruling of the RTC in its assailed Decision, the dispositive portion of which states:

WHEREFORE, premises considered, the assailed Decision dated 28 January 2013 of the Regional Trial Court, Branch 62, Makati City in Civil Case No. 08-498 is **REVERSED** and **SET ASIDE**. Both the complaint and compulsory counterclaims are **DISMISSED**.

SO ORDERED.³⁹

Petitioner filed a Motion for Reconsideration, but it was similarly denied by the CA in its assailed Resolution.⁴⁰ Undaunted, petitioner elevated the case before this Court and raised the following assignment of errors:⁴¹

I.

WHETHER [THE CA] ERRED IN REVERSING THE FINDINGS OF THE MAKATI RTC [THAT RESPONDENT IS NOT GROSSLY NEGLIGENT]

II.

WHETHER [THE CA] ERRED IN FINDING CONTRIBUTORY NEGLIGENCE ON THE PART OF THE PETITIONER AND IN NOT

³⁴ *Id.* at 142.

³⁵ *Id.*

³⁶ *Id.* at 42.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* (Emphasis in the original).

⁴⁰ *Id.* at 56.

⁴¹ *Id.* at 16.

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HOLDING RESPONDENT LIABLE FOR ACTUAL DAMAGES, MORAL DAMAGES, NOMINAL AND ATTORNEY'S FEES

Petitioner asserted mainly that respondent is negligent because it allowed her househelper to leave the premises in the absence of a gate pass, without personally verifying from her as a homeowner.⁴² The defense proffered by respondent that petitioner usually allowed her house help to go out of the village on numerous occasions in the past without a gate pass, accompanied only by her 9-year-old son Mio, to confirm her authorization, was not proven.⁴³ Meanwhile, she denounced the finding of contributory negligence on her part, since she was not even at home when the incident happened.⁴⁴

On the other hand, respondent maintained that it exercised due diligence as borne by the fact that it followed the standard operating procedure on security inspection when the househelper was at the guardhouse.⁴⁵ Even when petitioner's son told the security guard on-duty that, "*Mommy already knows about that. She called me already,*"⁴⁶ the security guard on-duty still pressed on for further confirmation.⁴⁷ Likewise, he also searched the househelper's paper bag thoroughly.⁴⁸

In essence, the issue is whether the CA committed reversible error in ruling that petitioner cannot recover damages from respondent since there was no negligence on its part.

Our Ruling

The Court resolves to **deny** the petition.

Preliminarily, the petition is anchored on whether respondent committed breach of contract through negligence. At this juncture, the Court stresses that "the determination of the existence of a breach of contract"⁴⁹ and "[t]he issue of negligence"⁵⁰ are factual matters not usually reviewable in a petition filed under Rule 45. The philosophy behind this rule is that the Court is not a trier of facts.⁵¹ Nonetheless, one of the established exceptions is when, "the findings of facts are conflicting,"⁵² which is obtaining in this case. Guided by this rule, the Court will embark on a factual re-evaluation of this case, since the CA and the RTC differ as regards the finding of negligence on the part of respondent.

⁴² *Id.* at 19.

⁴³ *Id.* at 18.

⁴⁴ *Id.* at 23.

⁴⁵ *Id.* at 260.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Adriano, et al. v. Lasala, et al.*, 719 Phil. 408, 416 (2013), citing *Engr. Dueñas v. Guce-Africa*, 618 Phil. 10, 19 (2009).

⁵⁰ *Safeguard Security Agency, Inc. v. Tangco*, 540 Phil. 86, 102 (2006).

⁵¹ *Adriano, et al. v. Lasala, et al.*, *supra* note 49.

⁵² *Safeguard Security Agency, Inc. v. Tangco*, *supra* note 50, at 103.

I. Respondent followed the protocol on security inspection which belied negligence on its part.

In an action for breach of contract, all that is required of the plaintiff is to prove the existence of such contract and its non-performance.⁵³ Non-performance can be attributed to fraud, negligence, delay or in any manner, contravene the tenor of such contract.⁵⁴ Once a breach of contract is proved, the defendant is presumed negligent and must prove not being at fault.⁵⁵

Security guards, by the very nature of their work, are mandated to secure the premises and protect its property from pilferage.⁵⁶ Our next query, then, is, in relation to the theft incident, did respondent commit a breach of contract through negligence?

The Court answers in the **negative**.

A circumspect reading of Casa Verde's 1994 Rules and Regulations indicate that respondent was tasked to observe the following security protocol in dealing with the ingress and egress of people in the village: 1) check all articles brought in and out of the compound;⁵⁷ and 2) **prevent the delivery and taking out of goods** and other articles by workers, contractors, drivers, **domestic helpers without the permission** of the unit owner.⁵⁸ In this regard, respondent is subject to the restriction that it cannot bodily frisk the people who will leave Casa Verde's premises.⁵⁹

Pertinent thereto, the Contract of Security Services executed by the parties expressly stipulated that "[w]hen the lost or damaged property is pocketable or easily transported or concealed or which **cannot be considered as bulky** such as, but not limited to, pocket calculator, **jewelries & cash**"⁶⁰ respondent shall not be liable for any loss or damage.

The real nature of a contract may be determined from the express terms of the written agreement and from the contemporaneous and subsequent acts of the contracting parties.⁶¹ In the construction or interpretation of an instrument, the intention of the parties is primordial and is to be pursued.⁶² If the terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall

⁵³ *Japan Airlines v. Simangan*, 375 Phil. 359, 375 (2008).

⁵⁴ Article 1170 of the Civil Code.

⁵⁵ *Orient Freight International, Inc. v. Keihin-Everett Forwarding Co., Inc.*, 816 Phil. 163, 176 (2017).

⁵⁶ *Re: Theft of Used Galvanized Iron Sheets in the SC Compound, Baguio City*, 665 Phil. 1, 10 (2011).

⁵⁷ *Rollo*, p. 77.

⁵⁸ *Id.* (Emphasis supplied).

⁵⁹ *Id.* at 34.

⁶⁰ *Id.* at 138. (Emphasis supplied)

⁶¹ *Ayala Life Assurance, Inc. v. Ray Burton Development Corp.*, 515 Phil. 431, 437 (2006).

⁶² *Id.*

control.⁶³

Casa Verde's 1994 Rules and Regulations, when read together with the Contract of Security Services, indicates that Casa Verde only expect respondent to do a visual search or inspection of the people who will enter and leave the premises. This is why Casa Verde agreed that respondent cannot be held liable for the loss of any item which cannot be considered as bulky, such as cash and jewelry, because the said items can be easily concealed underneath one's clothing, which would make it difficult to detect by mere visual inspection.

Guided by these parameters, no breach can be attributed to respondent, since SG Almine observed the following protocols when Perez arrived at the guard house: (1) he asked for her gate pass;⁶⁴ (2) when she cannot present one, he asked for further confirmation, which petitioner's son guaranteed;⁶⁵ (3) he checked Perez's paper bag which contained hair gel products;⁶⁶ and (4) after finding nothing suspicious, he allowed her to leave and logged her exit on the logbook.⁶⁷ To the mind of the Court, he followed the routine procedure on security inspection set by Casa Verde, which belied negligence on the part of respondent.

While respondent's investigator, Capones, recommended that the security guards should be equipped with metal detectors,⁶⁸ it was essential for petitioner to establish that this is a common practice among security agencies, and that respondent's conduct falls below such standard. These conditions are necessary since "[n]egligence is defined as the **failure to observe** for the protection of the interests of another person **that degree of care, precaution, and vigilance that the circumstances justly demand**, whereby such other person suffers injury."⁶⁹ Conformably with this understanding of negligence, the diligence the law requires of an individual to observe and exercise varies according to the nature of the situation in which [he/she] happens to be, and the importance of the act that [he/she] has to perform.⁷⁰

Negligence is, therefore, a relative or comparative concept.⁷¹ The law here, in effect, adopts the standard supposed to be supplied by the imaginary conduct of the discreet *paterfamilias* of the Roman law.⁷² The existence of negligence in a given case is not determined by reference to the personal

⁶³ *Id.*

⁶⁴ *Rollo*, p. 32.

⁶⁵ *Id.* at 33.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 139.

⁶⁹ *Dr. Solidum v. People*, 728 Phil. 578, 594 (2014), citing *Gaid v. People*, 602 Phil. 858, 868 (2009). (Emphasis supplied).

⁷⁰ *Bintudan v. Commission on Audit*, 807 Phil. 795, 803 (2017), citing *Bullilan v. Commission on Audit*, 360 Phil. 626, 635 (1998).

⁷¹ *Id.*

⁷² *Philippine National Railways Corp. v. Vizcara*, 682 Phil. 343, 352 (2012), citing *Picart v. Smith, Jr.*, 37 Phil. 809 (1918).

judgment of the actor in the situation before him.⁷³ The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.⁷⁴ Hence, petitioner should first establish what a prudent and reasonable person should do as required by the circumstances and measure respondent's efforts against it, to ultimately determine whether breach of duty took place.

II. Petitioner cannot recover damages under the principle of *damnum absque injuria*.

In this jurisdiction, we adhere to the principle that injury alone does not give petitioner the right to recover damages, but it must also have a right of action for the legal wrong inflicted by respondent.⁷⁵ In order that the law will give redress for an act causing damage, there must be *damnum et injuria* that act must be not only hurtful, but wrongful.⁷⁶

Elaborating on this point, the Court, in *Spouses Carbonell v. Metropolitan Bank and Trust Company (Carbonell)*,⁷⁷ held, thus:

x x x Injury is the illegal invasion of a legal right; damage is the loss, hurt, or harm which results from the injury; and damages are the recompense or compensation awarded for the damage suffered. **Thus, there can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty. These situations are often called *damnum absque injuria*.**⁷⁸

In order that a plaintiff may maintain an action for the injuries of which [he/she] complains, he must establish that such injuries resulted from a breach of duty which the defendant owed to the plaintiff – a concurrence of injury to the plaintiff and legal responsibility by the person causing it.⁷⁹ There must first be the breach of some duty and the imposition of liability for that breach before damages may be awarded; it is not sufficient to state that there should be tort liability merely because the plaintiff suffered some pain and suffering.⁸⁰

At this juncture, it is well to note that both the CA⁸¹ and the RTC⁸² found that it was customary for petitioner to allow her son Mio, to accompany Perez

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *The City of Baculod et al., v. Phuture Misions Co., Inc.*, 823 Phil. 867, 882 (2018).

⁷⁶ *Id.*

⁷⁷ 809 Phil. 725-735 (2017), citing *The Orchard Golf & Country Club, Inc., et al. v. Yu*, 776 Phil. 352, 370 (2016).

⁷⁸ *Id.*, citing *Spouses Custodio v. Court of Appeals*, 323 Phil. 575, 585 (1996). (Emphasis supplied)

⁷⁹ *The Orchard Golf & Country Club, Inc., et al. v. Yu*, 776 Phil. 352, 370 (2016), citing *Spouses Custodio v. Court of Appeals*, 323 Phil. 575 (1996).

⁸⁰ *Id.* at 585-586.

⁸¹ *Rollo*, p. 58.

⁸² *Id.* at 139.

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at the gate, when she had no gate pass on hand. In fact, in the two (2) years that Perez was employed by petitioner, she had always been allowed egress without a gate pass, and the latter never complained that the duty guards were remiss in their duties in this regard, except in that one isolated theft incident.⁸³ Moreover, the CA aptly pointed out that from every indication, Perez – who served in the household of petitioner for two (2) years was a victim of “*Dugo-Dugo Gang*” who usually take advantage of the naivete of the househelpers.⁸⁴ Hence, measures could have been done to educate her of this *modus operandi* to prevent her from becoming a victim.⁸⁵

In situations of *damnum absque injuria*, or damage without injury, wherein the loss or harm was not the result of a violation of legal duty, there is no basis for an award of damages.⁸⁶ There must first be a breach of duty and imposition of liability before damages may be awarded.⁸⁷ Therefore, **the injured person alone bears the consequences because the law affords no remedy for damages resulting from an act that does not amount to a legal injury or wrong.**⁸⁸ In *Carbonell*, the Court denied the spouses’ claim for damages against their bank that issued US dollar bills which turned out to be counterfeit, after the bank established that it observed the proper protocols and procedure in verifying the subject dollar bills and that the same were “near perfect genuine notes” that could be detected only with extreme difficulty, even with the exercise of due diligence.⁸⁹ Consequently, the Court ruled:

Here, although the petitioners suffered humiliation resulting from their unwitting use of the counterfeit US dollar bills, **the respondent, by virtue of its having observed the proper protocols and procedure in handling the US dollar bills involved, did not violate any legal duty towards them. Being neither guilty of negligence nor remiss in its exercise of the degree of diligence required by law or the nature of its obligation as a banking institution, the latter was not liable for damages. Given the situation being one of *damnum absque injuria*, they could not be compensated for the damage sustained.**⁹⁰

While the Court sympathizes with petitioner, we cannot afford her remedy since the loss she suffered was a consequence of her own negligence in putting too much trust on her househelper and failure to strictly comply with the requirements of securing a gate pass for her, and did not arise from a breach of respondent’s legal duty. Therefore, the loss occasioned thereby is *damnum absque injuria*, for which petitioner is not entitled to an award of damages.

⁸³ *Id.* at 38.

⁸⁴ *Id.* at 41.

⁸⁵ *Id.*

⁸⁶ *Frobel Properties Corp. v. AC Enterprises, Inc.*, G.R. No. 245438, November 3, 2020, citing *Spouses Custadio v. Court of Appeals*, *supra* note 73.

⁸⁷ *Id.*

⁸⁸ *Spouses Carbonell v. Metropolitan Bank and Trust Company*, *supra* note 77, at 734. (Emphasis supplied)

⁸⁹ *Id.* at 735.


⁹⁰ *Id.*

WHEREFORE, premised considered, the Petition for Review is **DENIED**. The September 17, 2015 Decision and the March 16, 2016 Resolution of the Court of Appeals in CA-G.R. CV No. 102157, are hereby **AFFIRMED**.

SO ORDERED.


JHOSEP Y LOPEZ
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson


On leave
RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson, Third Division

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CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Third Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice