

Republic of the Philippines
COURT OF APPEALS
Manila

FOURTH DIVISION

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NESTLE PHILIPPINES, INC.,
Petitioner,

CA-G.R. SP NO. 128046

Members:

-versus-

HON. PAZLINDA A.
VILLAMOR SANCHEZ,
Presiding Judge of Branch 44
of the Regional Trial Court of
Masbate City, Masbate and
HONEYLET P. LASALA,
Respondents.

TIJAM, N. G., *Chairperson*
ACOSTA, F. P., *and*
PERALTA, JR., E. B., II:

Promulgated:

August 18, 2015

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DECISION

TIJAM, J:

Assailed in this *Petition for Certiorari*¹, filed under *Rule 65* of the *Rules of Court*, is the October 10, 2012 *Order*², issued by the Regional Trial Court (RTC), Branch 44 of Masbate City, in *Criminal Case No. 13018*.

The facts of the case are as follows:

Petitioner Nestlé Philippines, Inc. (Nestlé), is the exclusive manufacturer in the Philippines of *Nescafé Classic 100% Pure Instant Coffee* (Nescafé) and sole licensee of the trademark *Nescafé*; *Milo Tonic Food Drink* (Milo); *Nido Full Cream Milk*; and *Coffee-Mate Non-Dairy Coffee Creamer* (Coffee-Mate).

1 Rollo, p. 3.

2 Rollo, p. 55.

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NESTLÉ instructed the “*in-house investigators and researchers*” of the Law Firm of R.V. Domingo & Associates (RVD Law Firm), to conduct an extensive surveillance and investigate the activities of Everbright Commercial II Store (Everbright). RVD Law Firm discovered that Everbright, through its owners and/or operators, was engaged in the business of retailing, distributing, dealing with or otherwise disposing of counterfeit NESTLÉ products. Thereafter, NESTLÉ requested the assistance of the National Bureau of Investigation (NBI) in its *Anti-Counterfeiting Campaign*. The NBI applied for³ and was granted *Search Warrant No. 05-6726*⁴, to search Everbright premises and seized the items described in the *Search Warrant, to wit: (1) 6 pieces of counterfeit Nescafé 2-gram sticks; (2) various delivery receipts and a pricelist pertaining to Nestlé products; and (3) 1 box of Coffee-Mate 5-gram sachets*. The seized items were included in the NBI's June 3, 2005 *Receipt/Inventory of Property Seized*.

During the course of the search, RVD Law Firm learned that Everbright was owned by Private Respondent Honeylet P. Lasala (HONEYLET).

Based on the investigation, NESTLÉ filed a *Criminal Complaint* docketed as *I.S. No. 2005-606* against HONEYLET with the *Anti-Intellectual Property Piracy Task Force* of the Department of Justice. Consequently, NESTLÉ, filed a *Criminal Information* against Honeylet for *Unfair Competition* as defined in and penalized by *Section 168*, in relation to *Section 170 of RA No. 8293*⁵, docketed as *Criminal Case No. 13018* with the RTC, Branch 44 of Masbate City, presided over by the Respondent Judge.

Assisted by her counsel, Atty. Darwin Dimen, HONEYLET pleaded not guilty to the charge filed against her.

Pre-trial was held on November 24, 2010, and the RTC's *Pre-trial Order* was issued on the same day. At this stage, there was neither a settlement on the civil aspect of the criminal case nor was

3 Rollo, p. 64.

4 Rollo, p. 130.

5 Intellectual Property Code of the Philippines.

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there any stipulation of facts. Trial, then ensued.

The Prosecution's evidence consisted of the testimonies of *Special Investigator* Christopher Hernandez, Atty. Dindin Cruz and Nestlé's *Product Quality Executive* Ana Lucrecia Changco Yniguez.

Consequently, HONEYLET filed a *Demurrer to Evidence*⁶ on the ground that the Prosecution's evidence is insufficient. Her main argument harped on the fact that the chain of custody of the "two (2) *Nescafé sticks*" which allegedly were among the "six (6) *Nescafé sticks*" seized, was not established and that SI Hernandez, the officer who confiscated the said *Nescafé sticks*, lacked expertise in determining whether or not, the seized items were genuine or counterfeit.

NESTLÉ opposed the *Demurrer* and argued that the accused "by insisting lack of evidence proving chain of custody is in effect questioning the admissibility of the *Nescafé sticks* which were already admitted by the court and which may no longer be questioned at this stage." With respect to SI Hernandez' competence, NESTLÉ maintained that "he was never qualified as an expert witness as 'it need not take a rocket scientist' to determine whether a particular *Nescafé sticks* are genuine or not."

In its October 10, 2012 *Order*,⁷ the RTC dismissed the criminal complaint for violation of *Section 168, RA No. 8293* against HONEYLET, for insufficiency of the Prosecution's evidence.

Dispensing with the filing of a *Motion for Reconsideration*, for the reason that Public Respondent "disregarded a clear and emphatic judicial adjudicatory policy," NESTLÉ filed this *Petition* relying on the following grounds:

"I. PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN SHE TOTALLY DISREGARDED THE UNDISPUTED PRESUMPTION THAT OFFICIAL DUTY HAS BEEN REGULARLY PERFORMED.

6 Rollo, p. 136.

7 Supra at Note 2.

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II. PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN SHE TOTALLY DISREGARDED THE PIECES OF EVIDENCE BY THE PROSECUTION.

III. PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT THE EVIDENCE OF THE PROSECUTION IS NOT SUFFICIENT TO MERIT AN AWARD OF DAMAGES IN FAVOR OF PETITIONER.”

The Petition is bereft of merit.

In its *Petition*, NESTLÉ maintains that although the instant *Certiorari* is not directed against the criminal aspect of the case, it nevertheless would show that the Public Respondent gravely abused its discretion in dismissing the case for purported insufficiency of evidence. For the first and second grounds of the *Petition*, NESTLÉ went on to challenge the Public Respondent's failure to appreciate SI Hernandez's testimony and the pieces of evidence presented during the trial leading to HONEYLET's acquittal. NESTLÉ posits that despite the Prosecution's overwhelming and compelling pieces of evidence, Public Respondent, “for reasons peculiarly known” to her, dismissed the case against HONEYLET.

NESTLÉ's contentions are misplaced.

No matter how NESTLÉ tries to mask it, the arguments in its *first* and *second* assigned errors are tailored to question Public Respondent's errors of judgment, rather than errors of jurisdiction. To challenge errors of jurisdiction, however, is not the proper office of a *Petition for Certiorari*. Indeed, when the court has jurisdiction over the case and person of the accused⁸ or defendant, any mistake in the application of the law and the appreciation of evidence committed by a court may be corrected only by appeal.⁹ The determination made by the trial court regarding the admissibility of evidence, as what Public

8 Cruz vs. People, G.R. No. 121422, February 23, 1999.

9 Jay Candelaria and Eric Basit vs. RTC, Branch 42, City of San Fernando; (Pampanga) represented by its PJ Hon. Maria Amifait S. Fider-Reyes, et al., G.R. No.173861, July 14, 2014.

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Respondent did in this case, is but an exercise of its jurisdiction and whatever fault it may have perpetrated in making such a determination is an error in judgment, not of jurisdiction.¹⁰ To put it differently, even assuming *arguendo* that Public Respondent may have improperly assessed the evidence on hand, *what is certain is that the decision was arrived at only after all the evidence was considered, weighed and passed upon.*¹¹ In such a case, any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by *certiorari*.¹² The rulings of the trial court on procedural questions and on admissibility of evidence during the course of a trial are *interlocutory* in nature and may not be the subject of a separate appeal or review on *certiorari*.¹³ They must be assigned as errors and reviewed in the appeal properly taken from the decision rendered by the trial court on the merits of the case.¹⁴

Verily, errors of judgment committed by the appellate court are not correctable by a *Petition for Certiorari*.¹⁵ Otherwise, this would violate HONEYLET's constitutionally guaranteed right against double jeopardy, in view of the RTC's grant of the *Demurrer to Evidence*.

On its *third* assigned error, NESTLÉ points out that since Public Respondent did not state in its assailed *Order* that "*the fact from which the civil liability arise did not exist,*" NESTLÉ should be entitled to P1,000,000.00 as actual damages for loss of goodwill and P725,282.67 for attorney's fees in enforcing its intellectual property rights.

We beg to differ.

The extinction of the penal action does not necessarily carry with it the extinction of the civil action, whether the latter is instituted with or separately from the criminal action.¹⁶ The offended party may

10 Ibid. (Jay Candelaria Case.)

11 People vs. Tria-Trona, G.R. No. 130106, July 15, 2005.

12 Ibid. (Tria-Trona.)

13 Supra at Note 9. (Jay Candelaria Case.)

14 Ibid. (Jay Candelaria Case.)

15 Office of the Ombudsman vs. Evangelista, G.R. No. 177211, March 13, 2009.

16 Co vs. Muñoz, Jr., G.R. No. 181986, December 4, 2013.

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still claim civil liability *ex delicto* if there is a finding in the final judgment in the criminal action that the act or omission from which the liability may arise exists.¹⁷ Jurisprudence¹⁸ has enumerated three instances when, notwithstanding the accused's acquittal, the offended party may still claim civil liability *ex delicto*: (a) if the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) if the court declared that the liability of the accused is only civil; and (c) if the civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted.

Although NESTLÉ's claim is apparently based on one of these three situations, *i.e., if the acquittal is based on reasonable doubt as only preponderance of evidence is required*; still, it cannot recover on the civil liability arising from the offense charged.

It is settled that loss of goodwill and reputation falls under actual or compensatory damages.¹⁹ Actual or compensatory damages are those awarded in satisfaction of, or in recompense for, loss or injury sustained.²⁰ They proceed from a sense of natural justice and are designed to repair the wrong that has been done, to compensate for the injury inflicted and not to impose a penalty.²¹ The burden is to establish one's case by a preponderance of evidence which means that the evidence, as a whole, adduced by one side, is superior to that of the other.²² As such, to warrant an award of actual or compensatory damages, the claimant must prove that the damage sustained is the natural and probable consequences of the negligent act and, moreover, the claimant must adequately prove the amount of such damage,²³ with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable.²⁴ A court

17 Ibid. (Muñoz Case.)

18 Ibid. (Muñoz Case.)

19 Tanay Recreation Center and Development Corp., Petitioners, vs. Catalina Matienzo Fausto and Anunciacion Fausto Pacunayen, Respondents, G.R. No. 140182. April 12, 2005.

20 Now Mountain Dairy Corporation vs. GMA Veterans Force, Inc. G.R. No. 192446, November 19, 2014.

21 Ibid. (Now Mountain Case.)

22 Ibid. (Now Mountain Case.)

23 Lim vs. Sps. Gomez, G.R. No. 160110, June 18, 2014.

24 Manila Electric Company vs. T.E.A.M. Electronics Corporation, G.R. No. 131723, December 13, 2007.

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cannot rely on speculations, conjectures or guesswork as to the fact of damage.²⁵ Specific facts that could afford a basis for measuring whatever compensatory or actual damages are borne must be pointed out.²⁶ The award of actual damages cannot be simply based on the mere allegation of a witness without any tangible claim, such as receipts or other documentary proofs to support such claim.²⁷

To prove its claim, NESTLÉ's counsel, Atty. Din-Din Cruz (Atty. Cruz), testified, thus:

“xxx we have become aware that the goodwill of Nestlé has been damaged because *from the discovery of the sale of illegal or counterfeit Nestlé products it would appear that* establishments are able to procure counterfeit Nestlé products when in fact they have *not been procured or purchased or supplied* by Nestlé Philippines. xxx.”

This Court, however, is of the opinion that these statements are insufficient specific facts which could afford a basis for measuring whatever compensatory or actual damages NESTLÉ borne. For one thing, there is dearth of evidence to prove that indeed, the subject “Nescafé sticks” are illegal or counterfeit. On the contrary, there was no finding that those “Nescafé sticks” were “fake or counterfeit.” For another thing, there was no proof that the “Nescafé sticks” purchased by the “establishments” mentioned by Atty. Cruz were not supplied by NESTLÉ.

From the very opening sentence of *Article 2208 of the Civil Code*,²⁸ it is clearly intended to retain the award of attorney's fees as

25 Tan vs. G.V.T. Engineering Services, G.R. No. 153057, August 7, 2006.

26 Ibid. (Now Mountain Case.)

27 Ibid. (Now Mountain Case.)

28 “Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except: (1) When exemplary damages are awarded; (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest; (3) In criminal cases of malicious prosecution against the plaintiff; (4) In case of a clearly unfounded civil action or proceeding against the plaintiff; (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's valid and demandable claim; (6) In actions for legal support; (7) In actions for the recovery of wages of household helpers, laborers and skilled workers; (8) In actions for indemnity under workmen's compensation and employer's liability laws; (9) In a separate civil action to recover civil liability arising from a crime; (10) When at least double judicial costs are awarded; (11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered; In all cases, the attorney's fees and

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the exception in our law, as the general rule remains that attorney's fees are not recoverable in the absence of a stipulation thereto, the reason being that it is not sound policy to set a premium on the right to litigate.²⁹ The award of attorney's fees being an exception rather than the general rule, it is necessary for the court to make findings of facts and law that would bring the case within the exception and justify the grant of such award.³⁰ Thus, the reason for the award of attorney's fees must be stated in the text of the court's decision; otherwise, if it is stated only in the *dispositive portion* of the decision, the same must be disallowed on appeal.³¹

In the present case, a perusal of the RTC *Order* would reveal that it neither discussed nor even hinted on the propriety of attorney's fees, and it never awarded such in the *dispositive portion*. Following established jurisprudence,³² this Court disallows on appeal said award of attorney's fees as the RTC failed to substantiate said award.

Verily, for failure to prove its claim for damages by preponderance of evidence,³³ NESTLÉ is not entitled to P1,000,000.00 actual damages for loss of goodwill and P725,282.67 for attorney's fees in enforcing its intellectual property rights.

WHEREFORE, the *Petition* is **DENIED**, the October 10, 2012 *Order*³⁴, issued by the Regional Trial Court, Branch 44 of Masbate City, in *Criminal Case No. 13018* is **AFFIRMED in toto**.

SO ORDERED.

NOEL G. TIJAM
Associate Justice

expenses of litigation must be reasonable.”

29 Mendoza vs. Sps. Gomez, G.R. No. 160110, June 18, 2014.

30 Ibid. (Mendoza Case.)

31 Ibid. (Mendoza Case.)

32 Mercury Drug Corporation v. Baking, 551 Phil. 182 (2007).

33 “Preponderance of evidence” is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term “greater weight of the evidence” or “greater weight of the credible evidence.” Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.” Sps. Ramos vs. Obispo, G.R. No. 193804, February 27, 2013.

34 Rollo, p. 55.

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WE CONCUR:

FRANCISCO P. ACOSTA

Associate Justice

EDUARDO B. PERALTA, JR.

Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the court.

NOEL G. TIJAM

Associate Justice

Chairperson, Fourth Division