

PART 1 – TRIAL MEMORANDUM:

Jonna Bueno filed an action for damages of P500,000.00 against Gloria Supermart, Inc. before the Regional Trial Court of Quezon City for the injuries that her son, Ricky, suffered at its supermarket, for the expense, and for the emotional pain that it brought to him and his mother.

Consider the following testimonies that the witnesses from either side presented at the trial of the case. Assume that you are the lawyer either for Bueno or for Gloria Supermart and write a trial memorandum for the side you have chosen to represent. You would want to convince the trial court to decide the case in your client's favor.

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**Excerpts from Transcript of Stenographic Notes**

**Bueno vs. Gloria Supermart, Inc., Civil Case No. 27-112011, Hearing of June 7, 2011.**

DIRECT EXAMINATION OF PLAINTIFF'S WITNESS

COURT STAFF: (After swearing in the witness) State your name and personal circumstances.

WITNESS: I am Jonna Bueno, 35 years old, married, and a resident of 89 Little Baguio St., San Juan City, Metro Manila. I am an accountant.

ATTY. REX BELTRAN: Your Honor, we are offering the testimony of Ms. Bueno to prove that her son, Ricky, slipped on the wet floor of Gloria Supermart by reason of the gross negligence of its management and employees, causing him to suffer excruciating pain from a fractured arm and undergo great discomfort and depression. Ms. Bueno herself incurred an enormous medical expense and suffered from mental stress.

COURT: What do you say counsel?

ATTY. EMIL SUNGA: Subject to cross, Your Honor.

COURT: Proceed, Atty. Beltran.

ATTY. BELTRAN:

Q. Ms. Bueno, do you know the defendant Gloria Supermart?

A. Yes, sir.

Q. Why do you know it?

A. I have been buying our groceries and other things from Gloria Supermart for the past 20 years.

Q. Where is Gloria Supermart located?

A. On Ortigas Avenue, San Juan, Metro Manila, just two blocks from our condominium.

Q. Do you remember where you were at about 10 a.m. on May 11, 2010?

A. Yes, Sir.

Q. Where were you?

A. I was at Gloria Supermart.

Q. What were you doing there?

A. I was about to cook spaghetti for my son Ricky when I realized I didn't have any tomato sauce so I went to Gloria Supermart to buy tomato sauce and some other things we needed in the house.

Q. Did you have any companion?

A. Yes, my boy Ricky.

Q. How old was Ricky at that time?

A. His birthday is May 2, 2005. He was 5 years old already.

Q. How did you do your shopping for groceries with Ricky on tag?

A. I had a cart. He would sometimes ride on it or walk along the aisles with me. At times, I will ask him to pick safe things from the shelves and put them in the cart. He also grabs goodies that he likes.

Q. Do you remember anything unusual that happened while you and Ricky were picking up groceries at the shelves?

A. Yes, a small ball rolled along the aisle and Ricky ran after it.

Q. Was he able to catch the ball?

A. No. Although Ricky had gone some distance down the aisle from where I stood, I saw him slip with a heavy bang on a wet section of the aisle.

- Q. What happened to him after he slipped?  
A. He shrieked from pain in his right wrist which he used to stop his fall.  
Q. What did you do after you saw Ricky fall down the floor, looking hurt?  
A. I immediately came to his side to help him. I also asked a store clerk who came around to help me carry Ricky to my car so I could bring him to the hospital. I did not get to finish my shopping.  
Q. Did the store clerk help you?  
A. Yes, Sir. But he was not very friendly. Afterwards, I brought Ricky to the Philippine Orthopedic Hospital.  
Q. You said that Ricky slipped on a wet floor section of the aisle. How did you know that the section you referred to was wet?  
A. I saw the puddle of liquid on the floor.  
Q. Did you get to know what kind of liquid it was?  
A. It was syrup that seeped out from a leaking bottle in a nearby shelf.  
Q. Was there any supermarket cleaner nearby when you came near that puddle of syrup?  
A. None sir.  
Q. Did you see any supermarket grocery clerk around?  
A. None, Sir. There should have been someone to warn people of that puddle of syrup on the floor.  
Q. Did you see any sign near that puddle or around it, warning customers of the danger it presents?  
A. None, Sir, although I heard someone shout, "Hoy, bata, ingat! May basa diyan!"  
ATTY. SUNGA: I move to strike out that testimony. It is hearsay.  
ATTY. BELTRAN: It is admissible as a res gestae statement, Your Honor.  
COURT: Strike out the answer.  
Q. You said that you brought your son, Ricky, to the Philippine Orthopedic Hospital, who attended to your son at the hospital?  
A. Dr. John D. Lim, an orthopedic surgeon. He was the physician at the emergency room. I think he is in his mid-forties.  
Q. You said it was his right wrist that Ricky complained of. How did you know that?  
A. He pointed to it while crying from pain. After we brought him to the Philippine Orthopedic Hospital, I saw the doctor operate on his right wrist to restore the position of a fractured bone. Later, the doctor showed me an x-ray picture of the wrist bone before and after the operation.  
Q. How long did Ricky stay in the hospital?  
A. The doctor required Ricky to stay overnight at the hospital for pain management and care. He ordered his release on the following day.  
Q. Based on your observation, how long did it take for Ricky to recover the use of his right wrist?  
A. About six weeks.  
Q. How did your son take these things that happened to him?  
A. He complained of great pain at the beginning. Later, he moved with discomfort and difficulty, unable to use both hands.  
Q. How about you, Ms. Bueno? How did you take these events?  
A. He is my son. I mentally suffered more pain than he did. He is my only son. I don't know what I would do if I lose him. My husband and I waited for years before we had Ricky. And then this happens.  
Q. How much expense, if any, did you incur for the hospitalization and medical treatment of Ricky?  
A. I spent P22,840.00 for doctor's fee, hospitalization, and medicine. We also bought toys for Ricky to distract him from the pain that he suffered. We spent approximately P5,000.00.  
Q. Do you have evidence of these expenses?  
A. Yes, Sir, here are my receipts  
*[Note: Assume that the marking and presentation of the receipts for the expenses mentioned above, although omitted here, were done right.]*  
ATTY. BELTRAN: That is all for the witness.  
COURT: Cross.

CROSS-EXAMINATION BY ATTY. SUNGA

ATTY. SUNGA:

Q. Ms. Bueno, you said that you brought your son Ricky to Gloria Supermart on May 11, 2010. Did you need him to be there whenever you buy your groceries?

A. No, Sir, but I did not have anyone to leave him home with.

Q. But when you took him there, you of course are aware that the supermarket did not have a leave-your-child service?

A. Yes, Sir.

Q. Consequently, you were aware that the responsibility for looking after Ricky's needs and safety while in the supermarket is primarily in your hands as his mother?

A. Yes, Sir, but supermarkets always expect children to come with their parents and so it has to make sure that the place is safe for children.

Q. But do you agree that, as his mother, he is safer when he stays by your side in a public place like a supermarket?

A. Yes, Sir.

Q. Still, you let him slip away from your control, when he ran after that ball?

A. Yes, Sir, but the supermarket should keep their eyes open for things like loose balls running down their aisles, drawing children away from their parents, and letting them slip on carelessly spilled liquids.

Q. But did you not notice that the aisles of Gloria Supermart have sales clerks that attend to inquiries and needs of its customers?

A. Not all the time. When my son had his accident, no one was around to prevent it from happening.

ATTY. SUNGA: That is all, Your Honor.

### **Excerpts from Transcript of Stenographic Notes**

### **Bueno vs. Gloria Supermart, Inc., Civil Case No. 27-112011, Hearing of June 14, 2011**

#### DIRECT EXAMINATION OF DEFENDANT'S WITNESS

COURT STAFF: (After swearing in the witness) State your name and personal circumstances.

WITNESS; I am Rene Castro, 55 years old, married, and a resident of 12 V.G. Cruz, Sampaloc, Manila. I am a supermarket supervisor.

ATTY. EMIL SUNGA: Your Honor, we are offering the testimony of Mr. Castro to prove that Gloria Supermart exercised proper diligence in making its premises safe for its customers; that the accident involving Ricky was something it could not reasonably anticipate and so beyond its control; that, in any event, Ricky and her mother contributed to Ricky slipping on the floor and suffering physical injury and pain; and that Gloria Supermart provided immediate help and assistance to Ricky and her mother.

COURT: What do you say counsel?

ATTY. BELTRAN: Subject to cross, Your Honor.

COURT: Proceed Atty. Sunga.

ATTY. SUNGA:

Q. Mr. Castro, you said that you are a supermarket supervisor. For whom do you work as supermarket supervisor?

A. I have been with Gloria Supermart for 5 years already, Sir.

Q. Do you know the plaintiff Jonna Bueno?

A. Yes, Sir, she has been a customer at our supermarket.

Q. Do you recall seeing her at your supermarket about 10 a.m. on May 11, 2010?

A. Yes, Sir.

Q. Why do you recall seeing her there at that time and on that date?

A. Because her son Ricky had an accident and I was around.

Q. Did you see how the accident happened?

A. No, Sir, but I was just at the next aisle fixing the new stocks of instant noodles. When I heard the commotion, I quickly walked down there and saw Ricky lying on the floor, crying with pain. Her mother, Ms. Bueno, was trying to minister to him.

Q. What else did you see?

A. Some items from a nearby shelf had fallen down the floor.

Q. What were these items?

A. There were a couple of bottles of syrup, mostly in plastic bottles, except one glass bottle that had broken and spilled part of its contents on the floor.

Q. To what do you account this?

A. I could infer from the position of Ricky that he bumped into the shelf containing syrup bottles and knocked off some of them.

Q. Did you speak to Ms. Bueno about it?

A. I talked to her at the hospital while we were waiting for Ricky's treatment to be finished and I asked her what happened.

Q. What did she say?

A. She said that Ricky saw a ball rolling down the aisle and he ran after it. Somehow, he slipped on the floor and hurt his arm. She was so flustered.

Q. Are children allowed in your supermarket?

A. All supermarkets allow customers to bring their children into the store. It is often a necessity for them. It is understood of course that their parents would look after them, preventing them from misbehaving, causing damage to the merchandise, or getting injured.

Q. Ms. Bueno said that Ricky slid on the floor because some syrup seeped out of a leaking bottle in one of the shelves. Do you know anything about it?

A. Yes, sir. What she said is not true. The syrup must have come from one of the bottles that Ricky knocked off from the shelf when he ran wild down the aisle, supposedly running after a loose ball. There can be no other explanation.

Q. What did you do then?

A. I helped Ms. Bueno pick up Ricky, intending to bring him to a hospital but his mom insisted that we take him to her car so she can drive him quickly to the hospital. I carried Ricky to her car and accompanied them to the hospital.

Q. Did Ms. Bueno tell you anything while you were in the car?

A. She was blaming the supermarket for the accident.

Q. Did you reply to her?

A. No, Sir, I said nothing to upset her because she was driving and was worried about her child.

ATTY. SUNGA: That is all, Your Honor.

#### CROSS-EXAMINATION BY ATTY. BELTRAN

ATTY. BELTRAN:

Q. Mr. Castro, You said that you did not actually see the accident when it happened, is that right?

A. Yes, Sir.

Q. In fact, you were in another aisle at that time?

A. Yes, Sir.

Q. So when you said that Ricky bumped into the shelf containing syrup bottles and knocked off some of them, you were merely speculating on what could have happened, right?

A. Yes, Sir, but the scene suggested it.

Q. Since you did not see what actually happened at that aisle, is it possible for some other person to have knocked off those bottles?

A. Yes, Sir, that is possible but not likely since I did not see any person leave the place in haste.

Q. So, it is also possible that the syrup on the floor, spilled by someone else, caused Ricky to slip as he was running after some ball before you showed up?

A. Yes, that is possible, but unlikely. The shelves are carefully stocked.

Q. Do accidents resulting in injury happen in your supermarkets?

A. Yes but not so often; about one accident a year, if I remember right. These things are unavoidable because hundreds of people come to the supermarket everyday.

Q. How about shoplifting, does this happen often?

A. Every now and then, Sir. It's normal for supermarkets.

Q. So naturally you must have some procedure for dealing with events like accidents or shoplifting?

A. Yes, Sir.

Q. To protect your rights and interests, is that correct?

A. Yes, Sir.

Q. Since Ricky had this serious accident that you claim was not your fault as the scene suggested, did your supermarket bother to take pictures of the puddle on the floor and the bottles of syrup that you said Ricky had knocked off?

A. No, Sir.

ATTY. BELTRAN: That is all for the witness.

## LAWS AND JURISPRUDENCE

### FAMILY CODE

#### PARENTAL AUTHORITY

ART. 209. Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the caring for and rearing of such children for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being.

Art. 20. Parental authority and responsibility may not be renounced or transferred except in the cases authorized by law.

Art. 220. The parents and those exercising parental authority shall have with respect to their unemancipated children or wards the following rights and duties:

(1) To keep them in their company, to support, educate and instruct them by right precept and good example, and to provide for their upbringing in keeping with their means;

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(8) To impose discipline on them as may be required under the circumstances; and

(9) To perform such other duties as are imposed by law upon parents and guardians.

Art. 221. Parents and other persons exercising parental authority shall be civilly liable for the injuries and damages caused by the acts or omissions of their unemancipated children living in their company and under their parental authority subject to the appropriate defenses provided by law.

### CIVIL CODE

#### PERSONAL LIABILITY

Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

#### NUISANCE

Art. 694. A nuisance is any act, omission, establishment, business, condition of property, or anything else which:

(1) Injures or endangers the health or safety of others; or

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Art. 697. The abatement of a nuisance does not preclude the right of any person injured to recover damages for its past existence.

#### Attractive Nuisance

One who maintains on his premises dangerous instrumentalities or appliances of a character likely to attract children in play, and who fails to exercise ordinary care to prevent children from playing therewith or resorting thereto, is liable to a child of tender years who is injured thereby, even if the child is technically a trespasser in the premises. (*Hidalgo Enterprises, Inc., v. Balandan, et al.*, L-3422, June 13, 1952, 91 Phil. 488)

#### QUASI-DELICTS

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-

existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

An accident pertains to an unforeseen event in which no fault or negligence attaches to the defendant. xxx

On the other hand, negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do. xxx

Accident and negligence are intrinsically contradictory; one cannot exist with the other. Accident occurs when the person concerned is exercising ordinary care, which is not caused by fault of any person and which could not have been prevented by any means suggested by common prudence. (*Jarco Marketing Corporation v. Court of Appeals, G.R. No. 129792, December 21, 1999, 321 SCRA 375*)

The doctrine of *res ipsa loquitur* applies where (1) the accident was of such character as to warrant an inference that it would not have happened except for the defendant's negligence; (2) the accident must have been caused by an agency or instrumentality within the exclusive management or control of the person charged with the negligence complained of; and (3) the accident must not have been due to any voluntary action or contribution on the part of the person injured. (*Child Learning Center, Inc. v. Tagorio, G.R. No. 150920, November 25, 2005, 476 SCRA 236*)

The test for determining whether a person is negligent in doing an act whereby injury or damage results to the person or property of another is this: could a prudent man, in the position of the person to whom negligence is attributed, foresee harm to the person injured as a reasonable consequence of the course actually pursued? (*Philippine National Construction Corporation v. Court of Appeals, G.R. No. 159270, August 22, 2005, 467 SCRA 569*)

Art. 2179. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard which he is required to conform for his own protection.

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It is an act or omission amounting to want of ordinary care on the part of the person injured which, concurring with the defendant's negligence, is the proximate cause of the injury. (*National Power Corporation v. Heirs of Noble Casionan, G.R. No. 165969, November 27, 2008, 572 SCRA 71*)

Proximate cause is defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. (*Ramos v. C.O.L. Realty Corporation, G.R. No. 184905, August 28, 2009, 597 SCRA 526*)

Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

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The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

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The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

## DAMAGES

Art. 2197. Damages may be:

- (1) Actual or compensatory;
- (2) Moral;
- (3) Nominal;
- (4) Temperate or moderate;
- (5) Liquidated; or
- (6) Exemplary or corrective.

Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

Art. 2203. The party suffering loss or injury must exercise the diligence of a good father of a family to minimize the damages resulting from the act or omission in question.

Art. 2214. In quasi-delicts, the contributory negligence of the plaintiff shall reduce the damages that he may recover.

The underlying precept on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full but must bear the consequences of his own negligence. (*National Power Corporation v. Heirs of Noble Casionan*, G.R. No. 165969, November 27, 2008, 572 SCRA 71)

In *Phoenix Construction, Inc., v. Intermediate Appellate Court*, where we held that the legal and proximate cause of the accident and of Dionisio's injuries was the wrongful and negligent manner in which the dump truck was parked but found Dionisio guilty of contributory negligence on the night of the accident, we allocated most of the damages on a 20-80 ratio. In said case, we required Dionisio to bear 20% of the damages awarded by the appellate court, except as to the award of exemplary damages, attorney's fees and costs. (*Estacion v. Bernardo*, G.R. No. 144723, February 27, 2006, 483 SCRA 222)

Art. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

Art. 2219. Moral damages may be recovered in the following and analogous cases:

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(2) Quasi-delicts causing physical injuries;

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## **RULES OF COURT**

### **EVIDENCE**

Sec. 36. *Testimony generally confined to personal knowledge; hearsay excluded.* — A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

Where the statements or writings attributed to a person who is not on the witness stand are being offered not to prove the truth of the facts stated therein but only to prove that those statements were actually made or those writings were executed, such evidence is not covered by the hearsay evidence rule. (*Cornejo, Sr., vs. Sandiganbayan*, G.R. No. 58831, July 31, 1987, 152 SCRA 559)

Under the doctrine of independently relevant statements, only the fact that such statements were made is relevant, and the truth or falsity thereof is

immaterial. The hearsay rule does not apply. (*People v. Gumimba et al.*, G.R. No. 174056, February 27, 2007, 517 SCRA 25)

Sec. 42. *Part of res gestae*. — Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of *res gestae*. xxx

A declaration made spontaneously after a startling occurrence is deemed as part of the *res gestae* when (1) the principal act, the *res gestae* is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) the statements concern the occurrence in question and its immediately attending circumstances. (*Zarate v. Regional Trial Court, Branch 43, Gingoog City, Misamis Oriental*, G.R. No. 152263, July 3, 2009, 591 SCRA 510)

Sec. 48. *General rule*. — The opinion of witness is not admissible, except as indicated in the following sections.

Sec. 3. *Disputable presumptions*. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

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(d) That a person takes ordinary care of his concerns;

(q) That the ordinary course of business has been followed;

(y) That things have happened according to the ordinary course of nature and ordinary nature habits of life;

In every tort case filed under Article 2176 of the Civil Code, plaintiff has to prove by a preponderance of evidence: (1) the damages suffered by the plaintiff; (2) the fault or negligence of the defendant or some other person for whose act he must respond; and (3) the connection of cause and effect between the fault or negligence and the damages incurred. (*Child Learning Center, Inc. v. Tagorio*, G.R. No. 150920, November 25, 2005, 476 SCRA 236)

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BAR REVIEW

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