

MARIA A. CABRERA, on behalf of the heirs of
MANUEL F. ALDAN, Plaintiff-Appellee

v.

JUAN M. CASTRO, Defendant-Appellant

Civil Appeal No. 238

Appellate Division of the High Court

Mariana Islands District

September 3, 1980

Appeal from a judgment of title to land and damages for loss of livestock. The Appellate Division of the High Court, Gianotti, Associate Justice, held that where evidence claimed to be newly discovered could clearly have been discovered by proper discovery proceedings at any time before the trial, denial of motion for new trial was proper, and where plaintiff pleaded generally as to loss of property, this was sufficient for an award of damages for lost cows, and therefore judgment was affirmed.

1. Appeal and Error—New Trial

The granting of a new trial is within the discretion of the trial court and generally will not be disturbed unless that discretion has been abused. (Rules Civil Proc. 47)

2. Appeal and Error—New Trial

Trial court did not err in its ruling denying a motion for new trial, where evidence claimed to be newly discovered could clearly have been discovered by proper discovery proceedings at any time before the trial.

3. Appeal and Error—Evidence—Weight

It is not the function of the appellate division to weigh evidence anew when the trial court's findings are supported by substantial credible evidence.

4. Pleadings—Issues Pleaded

Award of damages for lost cows was not erroneous because not requested by the pleadings, where plaintiff pleaded generally as to loss of property, and there was sufficient proof in the trial as to the loss and value of personal property, i.e., the cows.

Counsel for Appellant:

CHARLES K. NOVO-GRADAC, ESQ.,
WHITE & NOVO-GRADAC, Sai-
pan, CM 96950

Counsel for Appellee:

DOUGLAS F. CUSHNIE, ESQ.,
CUSHNIE & FITZGERALD, Sai-
pan, CM 96950

Before BURNETT, *Chief Justice*, NAKAMURA, *Associate Justice*, and GIANOTTI, *Associate Justice*

GIANOTTI, *Associate Justice*

In 1956 a tract of land located in Saipan was received by appellees' ancestors in exchange for two parcels of land located in the Chalan Nuevo area of Saipan. Appellees originally brought an action for trespass and ejection against appellant. The trial court, in rendering its judgment, found title of the land in question to be in appellees, and also awarded appellees damages for loss of certain livestock. The appellant claimed that the land used in the transfer had belonged to his father, and that appellees' ancestors wrongfully used the land in the transfer in 1956. The trial court did not agree with this contention and as a result of the trial court's opinion, appellant appealed, raising three issues.

At the time the judgment was rendered, appellant filed a motion for new trial, which the trial court subsequently denied. The basis for the motion was that the judgment was not supported by the evidence, and that there was newly discovered evidence.

Motions for a new trial are subject to Rule 47 T.T. R. Civ. P. which reads in pertinent part:

A new trial may be granted to all or any of the parties on all or part of the issues by reason of newly discovered evidence or errors of law apparent in the record.

[1] However, the granting of a new trial is within the discretion of the trial court and generally will not be disturbed unless that discretion has been abused.

The granting or denial of a motion for new trial is addressed to the sound legal discretion of the trial court, and the trial court's action will not be disturbed on appeal unless it clearly appears the court erred in some pure, simple, and unmixed question of law, or acted arbitrarily or capriciously. *Bates v. Winkel*, 254 P.2d 361, 364 (Okla. 1953).

To warrant the granting of a new trial on the ground of newly discovered evidence, it must appear that the evidence is such as will probably change the result if a new trial is granted, that it has been discovered since the trial, that it could not have been discovered before the trial by the exercise of due diligence, that it is material to the issue, and that it is not merely cumulative or impeaching. *Kaminanga v. Sylvester*, 5 T.T.R. 341, 342 (Tr. Div. 1971) citing 39 Am. Jur. New Trial § 158.

Am. Jur. 2d, in its treatise on new trials, 58 Am. Jur. 2d New Trials § 164, clearly covers this problem where it says:

Applications for new trials on the ground of newly discovered evidence are not favored by the courts, for the reason that the moving party has generally had ample opportunity to prepare his case carefully and to secure all of the evidence before the trial.

[2] The evidence claimed to be newly discovered could clearly have been discovered by proper discovery proceedings at any time before the trial, and the trial court does not appear to have erred in its ruling.

[3] As to the second ground of appeal, appellant claims the court's finding that appellee owned the land was not supported by the evidence and was clearly erroneous. However, an examination of the evidence received at trial does not support this argument, and it is not the function of the appellate court to reweigh that evidence. This rule has been stated many times by this court.

It is not the function of the appellate division to weigh evidence anew when the trial court's findings are supported by substantial credible evidence. *Laubon v. Monna X*, 7 T.T.R. 439 (App. Div. 1976).

See also *Rengiil v. Derbai*, 6 T.T.R. 181 (Tr. Div. 1973); *Trust Territory v. Miller*, 6 T.T.R. 193 (App. Div. 1972); *Alik v. Alik*, 7 T.T.R. 395 (App. Div. 1976); and *Arriola v. Arriola*, 4 T.T.R. 486 (App. Div. 1969).

Finally, appellant contends the award of damages for lost cows was erroneous because such damages were not requested by the appellees' pleadings. The complaint in the body thereof alleged, "Defendant's conduct has caused substantial damage to the property of plaintiff." The prayer of the complaint asked for "damages in the amount of \$1,000.00" and "for such other and further relief as the court may deem appropriate." Appellant contends the pleadings did not give it notice of or fairly comprise damage to personal property, i.e., animals. However, such loss may be pleaded generally.

Accordingly, where by reason of a certain wrong or from the breach of a contract the law would impute certain damages as the natural necessary and logical consequence of the acts of defendant, such damages need not be specifically set forth in the complaint, but are, on a proper averment of such breach or wrong, recoverable under a claim for damages generally. 25 C.J.S. Damages § 131.

It seems that what are called general damages as contradistinguished from special damages, are admitted in evidence under a general allegation, indeed are inferred by the law itself, for the reason that they are immediate, direct, and proximate result of the act complained of. *Stoddard v. Pleoger*, 247 P. 791, 793, 42 Ida. 688 (1926).

[4] Appellee pleaded for loss of property. There was sufficient proof in the trial as to the loss and value of said property and recovery therefor may be had. This rule is provided for in 25 C.J.S. Damages § 41, which states:

In general, a recovery may be had for the destruction or impairment of the valuable qualities of an animal or a depreciation in its market value.

We do not find any error in the ruling of the trial court, and judgment is hereby AFFIRMED.