

NATIONAL POWER CORPORATION, PETITIONER, VS. HON. COURT OF APPEALS AND WILMAG IRON MINES, INC., RESPONDENTS.*G.R. No. L-43814. April 16, 1982*

Ponente: TEEHANKEE, Acting C.J.

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TEEHANKEE, Acting C.J.:

The Court, after a review of the judgment dated April 30, 1976 of respondent Court of Appeals, declares that respondent court's conclusions of fact find no support in the evidence and therefore cannot be deemed as binding and conclusive.[1] The Court consequently finds no case for private respondent and sets aside the appellate court's judgment which granted said respondent an "enormous, fantastic and unbelievable" award of over P30-million inclusive of interests of 6% from the filing of the complaint on October 31, 1967 to date (consisting mainly of damages of P15,497,179.50 representing the value of commercial logs which respondent allegedly failed to remove from the Angat reservoir area [exclusive of interests] on its P345,000.00-contract with petitioner) besides a P500,000.00-award as "damages to the commercial credit and business reputation of respondent and P25,000.00-attorney's fees.[2]

On December 21, 1962, National Power Corporation (hereinafter referred to as NPC) issued an invitation for bids for the clearing of the reservoir area of approximately 2,300 hectares of the Angat River Hydroelectric Project at Norzagaray, Bulacan. Wilmag Iron Mines, Inc. (hereinafter referred to as WILMAG), among others, submitted its bid dated February 1, 1963 in the amount of P345,000.00, which bid NPC accepted in a letter dated February 26, 1963. On April 4, 1963, NPC, represented by its General Manager, and WILMAG, represented by its President, Jose C. Fajardo, entered into a contract for the clearing project which contract incorporated as integral parts, by reference, (1) the Invitation for Bids dated December 21, 1962; (2) the Plans and Specifications which included the Instructions to Bidders (Part I), the General Provisions (Part II), the Special Provisions (Part III), and the Technical Provisions (Part IV); (3) all drawings, maps and plans attached to the said contract or on file in the NPC office; (4) Addendum No. 1 dated January 14, 1963 and Addendum No. 2 dated January 23, 1963 to the Plans and Specifications; (5) WILMAG's bid dated February 1, 1963; (6) NPC's letter of acceptance dated February 26, 1963; and (7) WILMAG's P200,000. -performance bond. The contract provided for the complete clearing of the reservoir area of approximately 2,300 hectares at the unit price of P150.00 per hectare within 720 days from the date of its signing by WILMAG, subject to any extension that may be granted by NPC. The contract also provided that "As part of the compensation for undertaking the specified work, ownership of the timber, bamboo, rattan, firewood, and other products which have commercial value shall rest solely with the contractor and he may dispose of the same in any manner."

On May 13, 1963, WILMAG, with the assistance of NPC, secured from the Bureau of Forestry, upon payment of the required forestry bond, special timber license No. 1-65 dated April 1, 1963 authorizing it to cut and remove "ONE HUNDRED EIGHTY FIVE THOUSAND ONE HUNDRED NINETY-NINE (185,199.00) cubic meters of timber" from the reservoir area. On April 11, 1964, the Acting Secretary of Agriculture and Natural Resources cancelled WILMAG's special timber license due to complaints regarding the said WILMAG's illegal logging

outside the area staked out for clearing. As a consequence, WILMAG discontinued its clearing operations. However, WILMAG appealed the said cancellation to Malacanang and on June 10, 1964, the Acting Presidential Executive Secretary restored WILMAG's special timber license, subject to certain conditions.

In February 1965, NPC required WILMAG to desist from further felling of trees due to complaints of renewed illegal logging in the reservoir area and subsequently created the Committee on Illegal Logging to investigate unauthorized logging operations in the watershed.

WILMAG's stipulated period of 720 calendar days to finish the clearing of the reservoir area was due to expire on March 23, 1965, failing which their April 4, 1963 contract made WILMAG liable for liquidated damages in the sum of P500. - for each day of delay. Unable to complete the clearing work within the stipulated period, WILMAG asked NPC for an extension of time without penalty. NPC acceded thereto and through its Board Resolution No. 65-285 of July 15, 1965, it granted WILMAG an extension up to March 31, 1966 for the completion of the clearing work, subject to the following conditions:

"1) That further felling of trees in the reservoir area be completely stopped and Contractor's operation be limited to areas where they have already felled trees;

"2) That the Contractor be required during the current rainy season to keep the necessary force of workmen to cut logs below elevation 144 to shorten pieces to prevent possible clogging of the diversion tunnels during flood; and

"3) All forest products, particularly commercial logs from trees already felled, be appropriately marked by NPC inspectors and foresters and transported preferably through the project site by floating them down the river."

Subsequently, the NPC Board, through Resolution No. 66-183, granted WILMAG still another extension up to June 23, 1966 to complete its clearing operations, but prohibited WILMAG from felling and cutting any remaining trees inside the reservoir area and confined WILMAG's work mainly to clearing and burning the trees previously felled and cut, so as to finally clear the area.

On June 20, 1966, WILMAG effected completion of the project and turned over the same to NPC. Thereafter, NPC, in a certification dated December 19, 1966, cleared WILMAG of all money and property responsibilities in connection with the project. And in a certification dated December 20, 1966, NPC accepted WILMAG's "total actual accomplishment as of June 20, 1966." The final estimate of accomplishment jointly signed by the representatives of both parties showed an actual clearing of 1,325.6475 hectares for which WILMAG received the corresponding total payment of P198,847.12 after NPC's last progress payment on February 3, 1967 of the sum of P65,303.51.

Thereafter, about a year after the completion and turnover of the clearing project on June 20, 1966, as above stated, WILMAG filed with NPC its claims (1) for reimbursement of alleged increased labor cost in the amount of P1,222,595.01 resulting from the statutory adjustment of minimum wage rates from P4.00 to P6.00 a day upon the effectivity of Republic Act No. 1480 on April 21, 1965; and (2) for an alleged outstanding balance still due on the clearing project contract in the amount of P146,152.88.

WILMAG's claims were rejected by NPC. On October 31, 1967, WILMAG filed its complaint with the Court of First Instance of Manila (Branch VIII), with the Honorable Abundio Z. Arrieta as Presiding Judge, and verified by Natividad M. Fajardo as its general manager^[3] and controlling stockholder,"^[4] seeking to recover from NPC the total amount of P40,572,689.41, broken down as follows:

1. The amount of P146,152.88 representing the outstanding balance of the clearing project contract price;

2. The amount of P1,222,595.01 representing the additional increased labor cost resulting from the adjustment of minimum wages effected by Republic Act No. 4180;
3. The amount of P15,497,179.90 representing the value of felled logs and cut timber it failed to remove and haul away from the clearing area due to the "restrictions and prohibitions" imposed by NPC Resolution No. 65-285;
4. The amount of P236,613.76 representing forest charges assessed by the Bureau of Forestry on the unhailed felled logs and cut timber;
5. The amount of P2,459,828.07, exclusive of interests and other charges, representing the totality of various claims against it by its creditors;
6. The amount of P21,005,119.79 representing consequential damages, itemized as follows:
 - a. The sum of P2,564,030.40 representing unrealized profits;
 - b. The sum of P2,750,000.00 representing damages arising from various court suits filed against it;
 - c. The sum of P2,824,350.34 representing its outstanding balance to the subcontractors it employed in the clearing project; and
 - d. The sum of P12,866,739.05 representing actual investment spent in the clearing project;
7. The amount of P2,200.00 representing premium payments made by it on its performance bond;
8. The amount of P3,000.00 representing incidental expenses; and
9. A reasonable amount representing attorney's fees and other expenses of litigation, plus costs.

In its answer dated December 14, 1967, NPC specifically denied the averments of material facts on which WILMAG relied for its numerous claims which it rejected as without "basis in fact" and counterclaimed for the amount of P20,000.00 representing attorney's fees for the "clearly unfounded action" filed against it.

NPC and WILMAG, through their respective counsels, submitted to the court a quo a partial stipulation of facts dated March 25, 1968, and after trial, the court a quo then rendered its judgment dated February 26, 1971 in favor of WILMAG, ordering NPC to pay to WILMAG the following:

- "1. The sum of P146,152.88 as the unpaid balance of the contract price due the plaintiff, with interest at 6% per annum from the date of the filing of the complaint;
- "2. The sum of P622,662.50 as reimbursement for the same amount paid by the plaintiff to its laborers from April 21, 1965 to December 21, 1965 and the additional sum of P21,266.00 from January 1, 1966 to June 20, 1966 as increased wages under the Minimum Wage Law, or the total sum of P643,928.50, with interest at 6% per annum from the filing of the complaint;
- "3. The amount of P15,497,179.50 for the value of commercial logs plaintiff failed to remove from the reservoir area, with interest also at 6% per annum from the time of the filing of the complaint;
- "4. The amount of P2,000,000.00 as damages to the commercial credit and business reputation of the plaintiff;
- "5. The sum of P500,000.00 as nominal damages;
- "6. The sum of P100,000.00 as attorney's fees; and
- "7. The costs of this action."

NPC forthwith gave on March 9, 1971 its notice of appeal of the trial court's judgment against it of almost P19-million exclusive of interest but the trial court was yet to issue its special order of April 15, 1971 overruling petitioner-defendant's opposition and granting respondent-plaintiff's motion for execution of the judgment pending appeal on the ground that "(petitioner-defendant) is disposing of some of its personal and immovable properties which may defeat or frustrate the judgment should the appellate court confirm the same and considering further plaintiff's claims were found valid and meritorious and the defendant has consistently refused to pay even that undisputed portion of its obligation in favor of the plaintiff, the Court believes that defendant's appeal is merely dilatory thereby constituting a justifiable ground for the issuance of a writ of execution pending appeal which plaintiff is ready and willing to back up with a bond if so required."

The trial court, however, in its supplementary order of April 21, 1971 clarified *motu proprio* the dispositive portion of the said special order of execution pending appeal and directed that "the writ of execution pending appeal shall only issue after the failure of [NPC] to file a supersedeas bond on or before the perfection of its appeal, and only after the court shall have fixed the reasonable amount of the bond to be filed by [WILMAG] for the issuance of the said writ of execution pending appeal," and further directed the clerk of court "to recall whatever writ of execution he might have already issued" prior thereto. In its subsequent order of May 6, 1971, the trial court, recognizing the essential public services rendered by petitioner and acknowledging the error of its premises for its issuance of the aforesaid special order of execution pending appeal, granted petitioner's motion for reconsideration thereof and set aside the same as well as denied respondent's motion for reconsideration of its supplementary order of April 21, 1971 rejecting "[respondent's] contention that it is illegal for having been issued by the court *motu proprio* [as] absolutely untenable."

NPC's appeal to respondent appellate court proceeded in due course. Said court substantially affirmed the trial court's award (reducing the same by some P2-million to about P16.778 million by decreasing the blatantly excessive damages allegedly suffered by respondent with reference to its "commercial credit and business reputation" in the sum of P2-million to P500,000.00 and P100,000. -attorney's fee's to P25,000.00 and eliminating the P500,000. -award for "nominal damages" in the definitely not nominal amount of P500,000.00), which award, as stated at the beginning would now reach a staggering sum of over P30-million with the accumulated 6% interest per annum from the filing of the complaint in 1967, as follows:

"WHEREFORE, modified as above indicated, judgment is hereby rendered in favor of the appellee and against the appellant, sentencing the latter to pay the former, as follows:

"1. The sum of P54,325.89[5] as the unpaid balance of the contract price due the appellee, with interest at 6% per annum from the date of the filing of the complaint;

"2. The sum of P622,662.50 as reimbursement for the same amount paid by the appellee to its laborers from April 21, 1965 to December 31, 1965, and the additional sum of P21,266.00 from January 1, 1966 to June 20, 1966 as increased wages under the Minimum Wage Law, or the total sum of P643,928.50, with interest at 6% per annum from the filing of the complaint;

"3. The amount of P15,497,179.50 for the value of commercial logs appellee failed to remove from the reservoir area, with interest also at 6% per cent [sic] from the time of the filing of the complaint;

"4. The amount of P500,000.00 as damages to the commercial credit and business reputation of the plaintiff [sic];

"5. The amount of P25,000.00 as attorney's fees; and

"6. The costs of this action."

Hence, this petition for review.

NPC assigns ten (10) errors against the questioned decision, asserting that respondent appellate court erred (1) in holding it still liable to WILMAG in the amount of P54,325.89 under the contract for the clearing project; (2) in holding it in estoppel from raising other issues relating to WILMAG's claim for the increased cost of labor resulting from the adjustment of minimum wages; (3) in holding it liable to pay WILMAG the amount of P643,928.50 as increased cost of labor; (4) in holding that there was felled commercial timber with the value of P15,497,179.50 within the clearing area; (5) in holding that NPC Board Resolution No. 65-285 was the cause of WILMAG's failure to remove felled timber from the clearing area; (6) in not holding that NPC Board Resolution No. 65-285 constituted a supplementary contract between the parties which was accepted by WILMAG; (7) in not holding that the contract for the clearing project between the parties had been fully consummated and liquidated after which no action for alleged damages in the aforesaid amount of P15,497,179.50 representing the alleged value of unremoved commercial timber could be brought against it; (8) in awarding the amount of P500,000.00 as damages to the alleged commercial credit and business reputation of WILMAG; (9) in awarding the amount of P25,000.00 as attorney's fees and the costs of the suit in favor of WILMAG; and (10) in not awarding attorney's fees in its favor.

The first assigned error relates to respondent court's finding declaring NPC liable under the contract for the clearing project to pay WILMAG "for the entire 1,621.1534 hectares, or the total amount of P243,173.01 at P150.00 a hectare" and ruling that "(S)ince the NPC has already paid the sum of P198,847.12, there still remain a balance in favor of the Wilmag in the sum of P54,325.89." Respondent court arrived at this determination after consideration of the circumstances that "(1) the NPC in paragraph 2 of its answer admitted that the Wilmag completed 1,621.1534 hectares, and (2) the final estimate of the NPC did not include the areas previously cleared and recleared of vegetation that tend to grow again, contrary to the provision of the contract that said areas 'will be measured in the final payment of the contract' x x x."

The Court finds the legal propositions submitted by NPC to be meritorious. As will presently be seen, particularly on the huge P15.497-million damage award, both respondent appellate court and the trial court grievously erred in granting the same and other amounts through gross misappreciation of the evidence or despite the lack of supporting evidence to sustain their erroneous conclusions of fact.

Respondent appellate court leaned heavily upon two (2) considerations, the first of which was that "the NPC in paragraph 2 of its answer admitted that the WILMAG completed 1,621.1534 hectares." However, paragraph 2 of NPC's answer actually reads:

"That defendant admits the allegations contained in paragraph 5 of the complaint with the qualification that the total work completed by plaintiff under the contract was 81.77% or 1,621.1534 hectares." (Emphasis supplied)

Notwithstanding the circumstance that paragraph 2 of NPC's answer refers to "81.77% or 1,621.1534 hectares," the appellate court fell into the error of disregarding the reference to "81.77%" and held the said NPC liable for the "entire 1,621.1534 hectares." It neither offered any explanation whatsoever for its complete disregard of the reference to "81.77%" in paragraph 2 of NPC's answer nor endeavored to reconcile "81.77%" with the supposed equivalent of "1,621.1534 hectares" in the same paragraph which very paragraph it cited as a consideration to support its conclusion. The appellate court - which also stated in its decision at bar that "(W)hile it is true that the contract specified 2,300 hectares for clearing, before the clearing started an actual measurement of the entire area was made and this was found out to be in the order of 1,900 hectares, and out of this [sic] 1,900 hectares only 1,621.1534 hectares was [sic] staked out and duly marked in the field for clearing"[6] - could have noted in a gleam the arithmetical imprecision that 1,621.1534 hectares comprise neither 81.77% of 2,300 hectares (the entire reservoir area measurement specified in the contract) nor 81.77% of 1,900 hectares (the actual entire reservoir

area measurement).[7] The arithmetical imprecision serves as indisputable indicium of the incongruity between the two figures adduced by NPC in paragraph 2 of its answer. Instead of selecting and lifting from the same paragraph "1,621.1534 hectares" only - isolating the same from the preceding qualifying figure of "81.77%" - and making it appear that the said paragraph referred solely to "1,621.1534 hectares" and placing undue emphasis thereon, the appellate court should have reconciled the recognizable incongruity, considering that the very point in issue related to the area actually cleared by WILMAG.

In contrast, the evidence on record establishes the relation between the figures cited by NPC in paragraph 2 of its answer. The final estimate dated December 16, 1966 of the clearing work accomplished for the period from April 4, 1963 to June 20, 1966 - which document, submitted as exhibit by NPC per its "formal Offer of Exhibits for the Defendant" dated October 26, 1970, WILMAG admitted per its "Plaintiff's Comments and/or Objections on Defendant's Exhibits" dated November 3, 1970 - evinces that the said WILMAG completed the clearing of 1,325.6475 hectares only. In addition, the certificate of acceptance dated December 20, 1966 issued by NPC - to the factual recitals of which document the record shows WILMAG took no exception whatsoever upon and after its issuance or even during the proceedings before the trial court - states that "as of June 20, 1966, [WILMAG] actually completed 81.77% of the total surveyed areas (1621. 1534 Has.)" Furthermore, the three-page "TABULATION OF FINAL QUANTITIES ACCOMPLISHED AS OF JUNE 20, 1966" prepared by NPC functionaries and concurred in by the WILMAG representative whose signature appears thereon - which document the trial court admitted in evidence per its order dated November 3, 1970 - sets forth the "TOTAL SURVEYED AREAS UNDER CLEARING" as 645.9570 hectares for sector A, 774.7026 hectares for sector B, 101.0455 hectares for sector C and 99.4483 hectares for sector D or a total of 1,621.1534 hectares for the entire reservoir expanse under clearing as well as the "TOTAL SURVEYED AREAS ACTUALLY COMPLETED TO DATE" as 553.3869 hectares for sector A, 625.2028 hectares for sector B, 85.2007 hectares for sector C and 81.8571 hectares for sector D or a total of 1,325.6475 hectares for the whole reservoir tract completely cleared.

All the foregoing documents in evidence fix the reservoir area under clearing at 1,621.1534 hectares and the area actually cleared by WILMAG at 1,325.6475 hectares. An arithmetical computation demonstrates easily that 1,325.6475 hectares constitute 81.77% of 1,621.1534 hectares and this result serves to clear the apparent incongruity between or error in the figures cited by NPC in paragraph 2 of its answer. In short, the documents of record show that NPC's said answer should read that "the total work completed by plaintiff under the contract was 81.77% of (not or) 1,621.1534 hectares" and as insisted by NPC in its brief, since there was a variance between the said allegation in its answer and the evidence adduced by it, "the appellate court may treat the pleadings as amended to conform to the evidence although the pleadings were not actually amended." (Rule 10, section 5, Rules of Court).[8] The result then renders the selective and discriminatory statement of the appellate court that NPC "admitted that the WILMAG completed 1,621.1534 hectares" incompetent to support the conclusion of the same court that "NPC is liable to the WILMAG for the entire 1,621.1534 hectares, or the total of P243,173.01 at P150.00 a hectare."

The second consideration relied upon by the appellate court was its perception that "the final estimate of the NPC did not include the areas previously cleared and recleared of vegetation that tend to grow again, contrary to the provision of the contract that said areas 'will be measured in the final payment of the contract.'" In support thereof, the appellate court cited the testimony of NPC engineer Armando M. Tenorio, who expressed uncertainty as to whether the "cleared and recleared areas were carried forward to Estimates Nos. 10, 11, 12 and finally Estimate No. 13."

In concluding erroneously that the final estimate excluded areas previously cleared and then recleared, the appellate court misplaced reliance on the bare testimony of uncertainty by the NPC engineer who himself

admitted that he took no personal part in the preparation of the final estimate dated December 16, 1966.[9] This testimony of uncertainty by a person who could not possibly have been in a position to have personal knowledge of the facts relating and circumstances attendant to the preparation of the final estimate dated December 16, 1966, considering that he worked in his assigned task as inspector in the reservoir area only for the period from April 1963 to August 1965,[10] lacks absolutely any probative force to sustain in law the appellate court's groundless conclusion. This testimony could not in any manner undermine the evidentiary value of the categorical assertion by NPC Project Engineer Meliton Y. Corro assigned specifically to the Angat River Hydroelectric Project that the areas cleared and reclassified indeed "were measured and entered in the final estimate." [11]

The foregoing considerations relied upon by the appellate court in misappreciation of the facts having been shown to be inconsistent and irreconcilable with the evidence on record, require the setting aside of its holding that NPC pay WILMAG "for the entire 1,621.1534 hectares or the total amount of P243,173.01 at P150.00 a hectare." The Court holds that there is no balance due on the contract to WILMAG, since it actually cleared only 1,325.6475 hectares of the reservoir area for which it already received in full settlement and payment from NPC the total amount of P198,847.12.

The second and third assigned errors bear upon the appellate court's findings (1) declaring NPC in estoppel from raising issues relating to WILMAG's claim for reimbursement for the increased labor cost resulting from the adjustment of minimum wage rates effected by Republic Act No. 4180 other than as to the amount to be reimbursed; and (2) holding NPC liable to pay WILMAG the amount of P643,928.50 representing wage differentials.

The Court finds that the appellate court erred in holding that the manifestation of NPC counsel August M. Pablo during the hearing of March 6, 1969 before the trial court to the effect that NPC "recognize(s) the right of WILMAG to the adjustment under the minimum wage law" worked to debar completely the said NPC from submitting for consideration issues in connection with WILMAG's claim for reimbursement other than as to the amount to be repaid. The appellate court imputed to the said manifestation a sweeping meaning that extends unduly its true legal extent and effect and was beyond counsel's competence. Such manifestation could not be accorded an interpretation so strained as to preclude any and all questions relating to whether or not WILMAG in claiming reimbursement had complied with the stipulated contractual requirements and more importantly, whether the alleged increased labor costs had actually been expended for clearing work under the contract.

In the case at bar, the provisions of the second paragraph of subsection (2) prescribe that "to qualify for . . . reimbursement, the Contractor must submit monthly to the Contracting Officer duplicate of his payrolls and certified list of his common laborers showing the corresponding daily wage of each." These contractual provisions essentially require for the accrual and enforcement of the right to claim reimbursement - in the nature of a *conditio sine qua non* - the timely submission monthly by WILMAG to NPC of duplicates of its labor payrolls and certified lists of its laborers and their respective daily wages. These provisions - dictated by ordinary prudence - serve to provide NPC the opportunity to regularly determine on the spot and check the accuracy of the data on the number of WILMAG's working men assigned to the clearing area included in the duplicate payrolls and laborers' certified lists submitted, thereby obviating the filing of padded or even fraudulent and fabricated claims for reimbursement. Indeed, on the one hand, the provisions of the first paragraph of subsection (1) create the right to claim reimbursement which, absent the same contractual provisions, would not exist. On the other hand, the provisions of the second paragraph of subsection (a) prescribe the essential pre-conditions which WILMAG must comply with in order to avail of the right to claim reimbursement.

Both the court a quo and the appellate court conceded and acknowledged WILMAG's "omission to submit copies of its payrolls and lists of laborers within the prescribed limits provided for in the clearing agreement." [12] (The

record shows that WILMAG first submitted duplicate and photostat copies of its consolidated payrolls corresponding to the periods (1) from April 20 to December 31, 1965; (b) from January 2 to February 28, 1966; and (c) from March 1 to June 20, 1966, and a certified integrated list of its employees and laborers supposedly assigned to the clearing project during the period from April to December 1965 - which list fails to show "the corresponding daily wage of each" employee or laborer - only on March 14, 1967[13] or more than eight (8) months after it effected completion of the project and turned over the same to NPC on June 20, 1966, all of which alleged work furthermore was already beyond the expiration on March 23, 1965 of the contract's original stipulated 720-calendar day period.)

The Court holds that the appellate court reached an erroneous conclusion in not holding that the failure of WILMAG to comply with the material terms and essential pre-conditions of the contractual provisions involved herein, wherein time was of the essence, of submitting monthly the duplicates of its labor payrolls and certified lists of laborers (which failure WILMAG attempted to justify by the untenable excuse that its "financial difficulties" engendered by its failure "to remove and avail of the commercial products obtainable from the project incapacitated it to pay adequately its laborers" and, as a consequence, it "did not obtain the signatures of its laborers on the payrolls until they were fully paid"[14] on April 10, 1967) relieves NPC of any and all liability for any increased labor cost resulting from the adjustment of minimum wage rates effected by Republic Act No. 4180.

The importance and significance of the above-cited essential pre-conditions of timely monthly submittal of the duplicates of the labor payrolls and laborers' lists will be immediately appreciated in the light of the fact that WILMAG's claim involved the alleged employment of more than 800 laborers in the maintenance and repair of an access road from Akle to Talaguio, Bulacan, which was outside the clearing area and scope of the contract. The contract did not provide for the building nor maintenance of any access road by WILMAG for clearing the Angat reservoir area. On the contrary, the contract expressly made it clear that "the dam site, upstream of which is the area to be cleared, is accessible from the City of Manila by existing Ipo Road to Km. 44.2; thence by about fourteen (14) kilometers of corporation access road now in the final stages of construction (SP-01 LOCATION, p. 97, Record.)"

In affirming the trial court's award of P643,928.50 for such alleged wage differentials of WILMAG, the appellate court quoted with approval the trial court's ratiocination that the Akle-to-Talaguiao access road "was a necessity not only for less expensive and more convenient transportation from the area of the commercial forest products which form the principal consideration of the contract as far as plaintiff (respondent) was concerned." This is patent error in law - for NPC could not be held liable for labor costs incurred by WILMAG in the construction and maintenance of the said access road which was not the subject matter of nor contemplated by their contract, and which was built by WILMAG primarily for its own benefit for transporting the commercial forest products which was its own business and with which NPC had nothing to do.

NPC's next four assignments claim error by the appellate court (1) in holding (a) that the cleared working area yielded forest products and materials of commercial value, in the nature of 18,810,199.68 board feet of timber worth P15,497,179.56 which timber pertained in ownership to WILMAG pursuant to the provisions of paragraph 1[15] of subsection (d) of section 1 - 04 of the Technical Provisions of the Plans and Specifications appended to the contract as part thereof; and (b) that NPC, through its Resolution No. 65-285 dated July 15, 1965, prevented the said WILMAG from removing said commercial timber from the clearing site; and (2) in allowing WILMAG's belated claim for alleged compensatory damages in the amount of P15,497.179.56 corresponding to the value of commercial timber unhailed and unremoved from the clearing site, notwithstanding the consummation and liquidation of the clearing contract between the parties when the said WILMAG accepted without any protest final

payment for its work in April 1967.

Several circumstances on record more than counterweigh the finding of the appellate court that the cleared working site yielded 18,810,199.68 board feet of commercial timber valued at the fantastic sum of P15,497,179.56. Both the trial court and the appellate court rely, for their finding as to the existence of the aforementioned volume and value of commercial timber, on the testimony of Forest Officer Alfredo G. Reyes of the Bureau of Forestry as well as the Auxiliary invoice dated March 17, 1967 prepared and signed by the same Forest Officer. Forest Officer Reyes testified as to the existence of 133,00 cubic meters plus of unhailed and unremoved commercial timber from the clearing areas. This declaration both the trial court and the appellate court took as gospel truth notwithstanding the circumstance that the Bureau of Forestry functionary who made the same, although assigned specifically to the reservoir area to supervise the scaling of commercial forest products and materials and to assess the same the corresponding forest charges for payment, appeared in the work site only "once or twice a week"[16] solely to "check the computation of [the] scaling work"[17] submitted by "forest guards"[18] who performed the actual scaling. The Auxiliary Invoice dated March 17, 1967, according to the appellate court, showed the "existence of 18,810,199.68 board feet" of commercial timber. This appellate court finding disregards the circumstance that the Auxiliary Invoice indicates the measurement of the value of commercial timber in terms of cubic meters and not of board feet. Again, both the trial court and the appellate court relied on the Auxiliary Invoice prepared and signed by the same Bureau of Forestry functionary who remarked therein that the commercial timber "were scaled by a team of forest officers headed by the undersigned during the period from January, 1964 to April, 1965, inclusive." Nonetheless, the same functionary testified that in April, 1964, he recalled the personnel under him[19] and that they "never came back for scaling." [20] Indeed, if by his own testimony, Forest Officer Reyes recalled his men from the work site and consequently scaling of commercial timber ceased in April, 1964, how then could the same Forest Officer have stated absolutely and guiltlessly in the Auxiliary Invoice that he and his men scaled the "logs" referred to in the said Invoice "during the period from January, 1964 to April, 1965, inclusive." The highly dubious and questionable character of the Auxiliary Invoice dated March 17, 1967 - prepared after more than two-and-a-half years after Forest Officer Reyes and his men stopped scaling work in the clearing area and covering a period of 16 months (when an auxiliary invoice should cover only one week) - and aggravated by the heading "Remarks" therein that "the preparation and submittal of this Auxiliary Invoice to the BIR collection agent . . . was held in abeyance per request of the aforecited licensee (WILMAG) . . . "readily shows that the appellate court misappreciated the evidence in relying on such untrustworthy documents which NPC aptly denounced as "bearing all the earmarks of evidence which is self-serving and fabricated."

Damages must be shown by actual proof with a reasonable degree of certainty and cannot be based on speculation and conjecture. Here, so many factors militate against the appellate and trial court's finding that the cleared area yielded a treasure trove of commercial timber valued at P15,497 million.

The appellate court's conclusion that when the Bureau of Forestry issued a timber license to WILMAG to cut 185,199.00 cubic meters of timber from the area, the license "must have been issued" by said bureau based on the existence of such amount of timber is pure conjecture. No positive proof of the existence of such amount of timber was ever presented. It is a matter of judicial notice and public knowledge that in the issuance of timber licenses, it is the applicant (WILMAG in this case) who states for his own purposes the volume of timber for which he/it desires a license and pays the corresponding fees therefor. But such license is not proof that there exists indeed such magnitude of commercial timber in the logging area covered by the application and license.

Indeed, as NPC pungently states in its brief, "(I)t was because of the fact that there was no large commercial quantity of logs in the clearing area that NPC allowed whatever commercial logs might be found therein to be a

bonus or part consideration of the clearing in favor of the contractor. To allege that the clearing area was brimming with commercial timber worth at least 15 million pesos is to say that in addition to the contract price of not more than P345,000.00 (based on a total area of 2,300 hectares), NPC would be giving away an unstated consideration which is more than forty-three (43) times the stated value of the contract. Such an action by NPC is unnatural and goes against the presumption that a person takes ordinary care of his concerns (Rule 131, sec. 5, Revised Rules of Court)." And we may add, that if WILMAG's claim were true, then the NPC officials would have been guilty of gross negligence and would be subject to prosecution under the Anti-Graft Act.

All the evidence of record indicate that WILMAG did remove the felled timber and other commercial products to the extent that on April 15, 1967, the Bureau of Internal Revenue required it to refute the findings of the Revenue Inspector regarding its alleged failure to pay the correct amount of forest charges in the amount of P312,515.53 and also that it claimed to have spent (even sought to recover from NPC) the sum of P643,928.50 for building and maintaining the Akle-to-Talaguio access road for "less expensive and more convenient transportation from the clearing area of the forest commercial products," as above stated. Having built said access road for the purpose at such great expense (three times the ultimate contract payment of P198,847.12 received by it in full settlement for actually clearing 1,325 hectares), it would be an absurd finding, absent any evidence of any actual instance that NPC prevented such removal, that WILMAG did not avail of and use said access road to remove from the cleared area all the available forest products.

Finding that the appellate court erred in upholding the alleged existence of commercial timber of such incredible value and magnitude at the cleared area, as alleged by WILMAG, it becomes unnecessary to discuss and resolve the remaining questions as to whether or not NPC, through its Resolution No. 65-285 dated July 15, 1965, restrained WILMAG from hauling and removing the commercial timber it allegedly cut and felled from the clearing area, and as to whether or not acceptance without any protest or objection by WILMAG of the final payment in April 1967 for its clearing work barred the said WILMAG's right of action to recover alleged compensatory damages in an amount corresponding to the value of commercial timber allegedly unhailed and unremoved from the work site. Suffice it to state that NPC had the perfect legal right when WILMAG was in delay and liable for liquidated damages, to require by way of a supplement to the contract in granting the extension requested by WILMAG, that "further felling of trees in the reservoir area be completely stopped and Contractor's (WILMAG's) operations be limited to areas where they have already felled trees," which conditions WILMAG had agreed to and accepted.[21]

The eighth and ninth assigned errors relate to the award by the appellate court in favor of WILMAG of the "amount of P500,000.00 as damages to [its] commercial credit and business reputations" and the "amount of P25,000.00 as attorney's fees."

The provisions allowing recovery of damages "[f]or injury to the plaintiff's business standing or commercial credit" fall under the chapter on actual or compensatory damages of Title XVIII on damages of the new Civil Code. And such "[a]ctual or compensatory damages must be established by clear evidence." [22] In justifying its award of damages in the amount of P500,000.00 for alleged injury to WILMAG's business standing or commercial credit, the appellate court merely took as good WILMAG's bare assertion that its "credit standing in the community were [sic] completely shattered, its entire business destroyed and its mortgages lost" but cites no evidence whatsoever to support the same. More importantly, these damages have no legal basis in view of our finding that WILMAG has no cause of action against NPC. As NPC submits in its brief, "WILMAG has no business reputation or commercial credit standing in the community (in its decision, the Court of Appeals did not even mention or discuss the business reputation or standing of WILMAG). WILMAG's own evidence showed that multifarious complaints or charges have been filed against it and its officials with the courts and other government

agencies. This contradicts any pretension of said corporation to probity and integrity."

The litany of "34 civil and 2 criminal cases for estafa" filed against WILMAG and its controlling stockholder Natividad M. Fajardo by third parties, as enumerated by itself in seeking to justify the present action for damages against NPC allegedly because it could not as a result pay its loans to banks and fulfill its obligations to their subdivision buyers is reproduced in the footnote[23] below. Suffice it to state that NPC has nothing whatever to do with such suits and certainly cannot be held in any way liable for WILMAG's (apparently known to its creditors also as RAMAWIL) failure to live up to their contractual undertakings with them.

The appellate court's awards of P500,000.00 damages and P25,000.00 attorney's fees to WILMAG must accordingly be likewise set aside for lack of legal and factual basis.

ACCORDINGLY, the judgment dated April 30, 1976 of the Court of Appeals is hereby set aside and the complaint dated October 31, 1967 filed by the Wilmag Iron Mines, Inc. against the National Power Corporation is hereby dismissed. With costs in all instances against the Wilmag Iron Mines, Inc.

Makasiar, Guerrero, Melencio-Herrera, and Plana, JJ., concur.

Fernandez, J., took no part.

[*]The First Division then composed of Associate Justices Magno A. Gatmaitan, Roseller T. Lim and Sixto A. Domondon (ponente).

[1] Alma Betta, et al. v. Court of Appeals, et al., L-46430-31, July 30, 1979; Carolina Industries, Inc. v. CMS Stock Brokerage, Inc., et al., L-46908, May 17, 1980; Garcia vs. Court of Appeals, 30 SCRA 622.

[2] The particulars of the appellate court's judgment in question are set forth hereinafter on page 7 hereof.

[3] Record on Appeal, page 22.

[4] Rollo, page 249.

[5] Arithmetically speaking, the correct amount should be P44,325.89, considering (1) that the Court of Appeals found NPC "liable to the WILMAG for the entire 1,621.1534 hectares or the total amount of P243,173.01 at P150.00 a hectare;" and (2) that deducting the amount of P198,847.12 NPC already paid WILMAG from the amount of P243,173.01 results in the balance of P44,325. 89.

[6] Emphasis supplied.

[7] As demonstrable by the use of simple mathematics, 81.77% of 2,300 hectares = 1,880.71 hectares; and 81.77% of 1,900 hectares = 1,553.63 hectares.

[8] Petitioner's brief, page 14.

[9] T.s.n., December 18, 1969, p. 194.

[10] Ibid, p. 161.

[11] T.s.n., August 28, 1969, p. 88.

[12] Decision dated April 30, 1976 of the Court of Appeals, Rollo, p. 57.

[13] Letter dated March 14, 1967 from WILMAG to NPC (Original Record on Appeal, p. 80). From the record appears that subsequently, NPC requested WILMAG to furnish it a breakdown of the days covered by the period from April 21 to December 31, 1965 subject of the duplicate of the payrolls submitted on March 14, 1967,

considering that the said duplicate comprehended a lump sum amount (Original Record on Appeal, pp. 99 to 100). From the record also appears that WILMAG submitted to NPC "semi-monthly payrolls" covering the period from April to December 1965 only on May 15, 1968 (Original Record, Exhibits N and N-2, pp. 91-95) - on which date both the court a quo and the appellate court reckoned the said WILMAG's submission of the payrolls and the cash vouchers dated April 10, 1967 settling the claims of the said WILMAG's laborers for unpaid differential pay - while the case already pended in the first instance before the court a quo, the same having been filed on October 31, 1967.

[14] Vide footnote 13, supra.

[15] (d) Disposal of Materials from Clearing Operations.

1. Materials which have commercial value. As part of the compensation for undertaking the specified work, ownership of the timber, bamboo, rattan firewood, and other products which have commercial value shall rest solely with the Contractor and he may dispose of same in any manner he sees fit. All of the materials shall be stockpiled at approved locations and must be removed from the reservoir area not later than March 31, 1965. If those materials are not removed on time, the Corporation shall have the right to undertake the removal, charging the cost thereof to the Contractor."

[16] T.S.N., July 1, 1968, p. 42; T.S.N., July 5, 1968, p. 69.

[17] T.S.N., July 5, 1968, p. 69.

[18] T.S.N., July 5, 1968, p. 71.

[19] Ibid., p. 68.

[20] Ibid.

[21] Exh. "2", t.s.n., pp. 16-18, Hearing of April 22, 1968.

[22] Abesamis vs. Woodcraft Works, Ltd., L-18916, Nov. 28, 1969.

[23] WILMAG itself in its motion for reconsideration dated August 20, 1976 seeking reconsideration of the Court's resolution giving due course to NPC's petition, lists the following cases filed against it:

"a) Crim. Case No. CCC-VII-1620-Q.C. before the Circuit Criminal Court, Pasig, Rizal. Complainant is Rosendo de la Cruz.

b) Crim. Case No. CCC-VII-1623, Q.C. before the Circuit Criminal Court, Pasig, Rizal. Complainant is Antonio Albano.

c) Crim. Case No. CCC-VII-1624, Q.C. before the Circuit Criminal Court, Pasig, Rizal. Complainant is Nicanor Dayrit.

d) Civil Case No. 21481, before Branch X, Court of First Instance of Rizal (Pasig) filed by Dr. Melita Lontoc.

e) I.S. No. 10366 before Fiscal Antonio Solano of Quezon City, filed by Cesar Mauleon.

f) Nydia Flores vs. Natividad M. Fajardo as Gen. Manager of RAMAWIL (WILMAG IRON MINES, INC.) before Fiscal Lim, Department of Justice, Manila.

g) Conrado Pakinggan vs. Natividad M. Fajardo as Gen. Manager of RAMAWIL (WILMAG IRON MINES, INC.) before Fiscal Lim, Department of Justice, Manila.

h) Blanca Sanchez vs. Natividad M. Fajardo as Gen. Manager of RAMAWIL (WILMAG IRON MINES,

INC.) before Fiscal Lim, Department of Justice, Manila

i) Epifania de Leon vs. Natividad M. Fajardo, as Gen. Manager of RAMAWIL (WILMAG IRON MINES, INC.) before Fiscal Lim, Department of Justice, Manila.

j) Juan B. Lee vs. Natividad M. Fajardo as Gen. Manager of RAMAWIL (WILMAG IRON MINES, INC.) before Fiscal Lim, Department of Justice, Manila

k) Potenciano Villanueva vs. Natividad M. Fajardo as Gen. Manager of RAMAWIL (WILMAG IRON MINES, INC.) before Fiscal Lim, Department of Justice, Manila

l) Julio Garcia vs. Natividad M. Fajardo, as Gen. Manager of RAMAWIL (WILMAG IRON MINES, INC.) before the National Housing Authority, Quezon City.

m) Emmanuel Espino vs. Natividad M. Fajardo as Gen. Manager of RAMAWIL (WILMAG IRON MINES, INC.) before the National Housing Authority, Quezon City.

n) Vicente Calderon vs. Natividad M. Fajardo as Gen. Manager of RAMAWIL (WILMAG IRON MINES, INC.) before the National Housing Authority, Quezon City.

o) Ramon Baluyot vs. Natividad M. Fajardo as Gen. Manager of RAMAWIL (WILMAG IRON MINES, INC.) before the Office for Civil Relations, Camp Aguinaldo, Quezon City.

p) Civil Case No. B-108 before the Court of First Instance of Cavite (Bacoor) entitled 'SPOUSES TEODORO BERNARDO vs. RAMAWIL (WILMAG IRON MINES, INC.).'

q) Civil Case no. B-109 before the Court of First Instance of Cavite (Bacoor) entitled 'SPOUSES RODRIGUEZ vs. RAMAWIL (WILMAG IRON MINES, INC.)''

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