

VIRGILIO M. DEL ROSARIO AND CORAZON PAREDES-DEL ROSARIO, PETITIONERS, VS. COURT OF APPEALS AND METAL FORMING CORPORATION, RESPONDENTS.

G.R. No. 118325. January 29, 1997

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

On August 28, 1995, the Court En Banc promulgated judgment in the case of Metal Forming Corporation v. Office of the President, etc., et al.,[1] dismissing the petitioner's appeal and affirming the decision of the Office of the President dated April 30, 1993. The latter decision in turn affirmed that of the Department of Trade and Industry rendered on May 29, 1991 in an administrative case initiated against Metal Forming Corporation (hereafter MFC) by complaint of the spouses Virgilio M. del Rosario and Corazon Paredes-del Rosario."

The Del Rosarios' complaint, filed on November 21, 1990, charged MFC with violation of Section 3 of Act No. 3740, "An Act to Penalize Fraudulent Advertising, Mislabeling or Misbranding of Any Product, Stocks, Bonds, etc." It alleged that:[2]

- 1) "in selling to the public roofing materials known 'Banawe' shingles,** (MFC) made representations on the durability of the product and sturdiness of its installation" through massive advertisements in print media and television**(and) brochures ;"
- 2) these representation -- particularly those characterizing the shingles as "STRUCTURALLY SAFE AND STRONG" and that the "BANAWA METAL TILE structure acts as a single unit against wind and storm pressure due to the strong hook action on its overlaps"-- "prompted ** (the Del Rosarios) to buy the 'Banawe' shingles and ** (have) them installed at their residence;" but
- 3) "(b)arely two (2) months after completion of the installation, portions of the roof of ** (the Del Rosarios) were blown away by strong wind brought about by typhoon "Ruping."

After due proceedings, the DTI rendered judgment declaring that MCF had indeed misrepresented its product because "as the records showed," strong winds actually blew off part of the structure/roof of the Del Rosario Spouses and the same acted in parts (instead of as a single unit) when strong winds blew, a part remaining while another part was blown off. MFC was accordingly sentenced to pay an "administrative fine of P10,000.00" (within ten [10] days from finally of the decision), otherwise its "business name and registration ** would be deemed suspended and its establishment closed until the fine was fully paid."

As already stated, the decision of the DTI (of May 29, 1991) was, on appeal, affirmed in toto by the Office of the President on April 30, 1993; and the latter judgment was in turn affirmed by this Court on August 28, 1995 with a modification solely as to the fine, which was reduced to P5,000.00. In said judgment of August 28, 1995, this Court, stressing that the factual findings of such administrative bodies as the Office of the President are generally to be accorded respect, if not indeed invested with finality, pronounced as correct that Office's ruling, among others, that :

*** (A)lthough the occurrence of a typhoon is a fortuitous event which by itself might have exempted petitioner from liability to private respondents -

" ** it cannot efface the fundamental fact that (petitioner) acted in bad faith and/or with gross negligence in failing to deliver the necessary accessories for the proper installation of the structure ** and actually installed inferior roofing materials at (private respondents') residence, in violation of the proper installation procedure expressly specified in the former's brochures and advertisements for installation, i.e., the metal tile attached to the roof panels should be two (2) self-drilling screws for one (1) metal cleat. However, instead of conforming with this procedure, (petitioner) attached some of the metal cleats with this one (1)-inch ordinary nail each and others were fastened with only one (10) wood screw each.** "

It appears that MFC replaced and repaired the roof free of charge, evidently acknowledging that the damage was covered by its one-year warranty on the materials and the installation. The repair work was observed and analyzed by Esteban Adjusters and Valuer's, Inc., which was engaged by the Del Rosarios to determine the cause of the destruction.[3] The repair work was begun on October 23, 1989, with the delivery of replacement tiles, and completed on November 7, 1989. Thereafter the Esteban Adjusters and Valuers, Inc. submitted its report to the Del Rosarios, dated November 8, 1989,[4] in which it made the following conclusion:

"The 'Banawe' metal tiles which were detached from the roof trusses were not fastened with two (2) wood screws on each metal cleat as required but only with single wood screw or a combination of a single wood screw and a 1-inch nail which is contrary to the design and specification. We have observed during the course of repai(r) works that some 'Banawe' metal tiles installed were no longer than the roof span, hence there is overlapping on the ridged roll/hip. It is very evident that the original subcontractor (which we were not able to identify) were in haste to complete the project.** '"

MFC however declined to concede liability for the other damages claimed by the Del Rosario Spouses to have been caused to the interior of their home. This prompted the latter to commence a civil action against MFC on April 16, 1990 in the Regional Trial Court of Manila.[5] In this suit, docketed as Civil Case No. 90-52734, the spouses sought to recover from MFC, damages resulting from the events just narrated, contending that aside from the destruction of the roof of their house, injury was also caused to its electrical wiring, ceiling, fixtures, walls, wall paper, wood parquet flooring and furniture.[6] The plaintiff spouses reckoned their actual damages at P1,008,003.00 -- "representing the estimated cost of the repair, restoration and/or replacement of the damaged areas and items in plaintiffs' house and the cost of the inspection conducted by the independent adjuster (engaged by them), with legal interests thereon from 21 February 1990 when defendant (MFL) received the formal demand from plaintiffs until fully paid." [7] They also prayed for an award to them of moral damages in the sum of P3,000,000.00, exemplary damages in the amount of P1,000,000.00, and attorney's fees in the sum of P1,000,000.00.

MFC moved to dismiss the complaint for lack of cause of action. It stated that it had no contractual relationship with the Del Rosarios since the contract for the purchase and installation of the roofing, upon which the latter's claims were based, was actually entered into between it and another person, Jesus M. Puno (an engineer identified as the Del Rosarios' contractor). The Trial Court denied the motion. MFC assailed that denial in the Court of Appeals, but was rebuffed; and its recourse to this Court (G.R. No. 95514) was also unsuccessful.[8]

Trial then ensued after which judgment was rendered on November 18, 1991 by the Regional Trial Court in favor of the Del Rosarios,[9] the dispositive portion of which reads as follows:[10]

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant, to pay: -

"a) Actual Damages in the amount of ONE MILLION EIGHT THOUSAND THREE (P1,008,003.00) PESOS,

with legal interest thereon, from June 31, 1990 until fully paid;

"b) Moral Damages in the amount of FIVE HUNDRED THOUSAND (P500,000.00) PESOS;

"c) Exemplary Damages in the amount of THREE HUNDRED THOUSAND (P300,000.00) PESOS; and

"d) Attorney's fees and expenses of litigation in the amount of ONE HUNDRED FIFTY THOUSAND (P150,000.00) PESOS

Counter claims filed by the defendant are dismissed.

SO ORDERED."

The Trial Court held the corporation liable for breach of its contract for the supply and installation of the roofing materials in the Del Rosarios' residence. According to the the Court:[11]

"The following facts were duly established from the evidence supporting plaintiffs' claim for damages:

"1. There was actually serious damages caused on plaintiffs' house on account of faulty or inferior installation;

"2. Defendant himself admitted its liability by making partial repairs of the roofing of 'Banawe' shingles, free of charge, after the typhoon ** (Ruping) ;

"3. There was an expressed warranty specified in the brochure that there should be two (2) metal screws for one (1) cleat but the same was violated by the defendant who only used (1) 1-inch nail or a combination of one (1) metal screw to one (1) cleat;

"4. There is ample evidence including the testimony of Engr. Puno that it was defendant Metal Forming Corporation who ** (had) a contract with the plaintiffs for the supply and installation of roofing materials in plaintiffs' residential house located at No. 17 Tabuena Street, Corinthian Gardens, Quezon City; and

"5. There was a declared warranty by the defedants relied upon by the plaintiffs and that the defendant was guilty of fraud and/or breach of warranty."

Parenthetically, these conclusions are substantially the same as those made by the Department of Trade and Industry in its own judgement rendered on May 29, 1991 -- affirmed by the Office of the President in a decision dated April 30, 1993, and ultimately by this Court En Banc in its decision promulgated on August 28, 1995.[12] The Trial Court ruled that there was privity of contract between the Del Rosarios and MFC; Engineer Puno acted as MFC's agent in the signing of the contracts for the supply and installation of the "Banawe" shingles; hence, the contract was really between the Del Rosarios and that company.[13]

MFC appealed to the Court of Appeals. In its Decision promulgated on June 29, 1994,[14] said Court reversed the Trial Court's judgement. It ruled that there was no privity of contract between the Del Rosarios and MFC, for the following reasons:[15]

a. The contracts for the supply of materials and installation of the roof were signed by Engr. Puno. On the face of the contracts, it does not appear that the Del Rosarios were parties to it or that it was entered into for their benefit. It does not also appear that Engr. Puno acted as agent of the Del Rosarios nor of the corporation.

b. The holding of the trial court that Engr. Puno was an agent of the corporation is not borne out by the records. There is no evidence apart from Engr. Puno's testimony, to show that any agency exists.

c. The nature of the relationship between the Del Rosarios and Engr. Puno is also not clear from the records of the case.

d. While it may be implicit in the complaint of the Del Rosarios that there was contract between them and the

corporation, this is not supported by the evidence presented.

There being no such privity, according to the Court of Appeals, the Del Rosarios had no cause of action against MFC for breach of warranties, there being no law allowing them to proceed directly against those whom their contractor had subcontracted to furnish materials and do part of the work that the latter was engaged to perform.[16]

The Del Rosarios appealed, and in this Court expectedly present for resolution,[17] the issue of "WHETHER OR NOT THERE IS A PRIVACY OF CONTRACT BETWEEN THE PARTIES."

There is merit in the petition. The essential issue is whether or not upon the facts established by the evidence, MFC is answerable to the Del Rosarios for the damage caused to the latter's residence when its roof, made of shingles purchased from and installed by the former, was blown away by a typhoon. The Court rules that it is.

The facts on record -- including those set forth in the final judgement of the Court En Banc involving the same parties, adverted to in the opening paragraph of this opinion, supra,[18] of which judgement official cognizance may properly be, as it is hereby, taken -- constitute adequate basis for a verdict against MFC. These are the following:

1. MFC was engaged in the business of selling to the public roofing materials known as 'Banawe' shingles or metal tiles, and through extensive advertisements in media and in its brochures, made representations respecting the durability of its tiles and the sturdiness of roofing installed in accordance with its particularly described method. These representations included statements that the shingles are "STRUCTURALLY SAFE AND STRONG" and that the "BANAWE METAL TILE structure acts as a single unit against wind and storm pressure due to the strong hook action on its overlaps."
2. After reading MFC's brochures and advertisements, the Del Rosario Spouses instructed their contractor, Engineer Puno, to use the "Banawe" shingles or metal tiles in the roofing of their house then under construction.[19]
3. In other words, paraphrasing Article 1546 of the Civil Code, MFC, as seller to the general public, had made affirmations of fact and promises relating to its advertised product, the "Banawe" tiles, the natural tendency of which was induce the buyers, as in fact it did induce the Del Rosarios, to purchase the same, relying thereon.
4. Pursuant to the Del Rosarios' instructions, Puno placed orders with MFC and signed the pertinent contracts for the purchase of the shingles, accepted deliveries thereof and signed corresponding invoices, and made payments thereon with the spouses' funds.[20]
5. Deliveries of the "Banawe" metal tiles or shingles were made by MFC's employees to the construction site of the Del Rosarios' residence; and installation of the metal tiles in the roof of the Del Rosario's house was made by MFC's workers.
6. MFC "acted in bad faith and/or with gross negligence in failing to deliver the necessary accessories for the proper installation of the structure ** and actually installed inferior roofing materials at (private respondents') residence, in violation of the proper installation procedure expressly specified in the former's brochures and advertisements for installation, i.e., the metal tile attached to the roof panels should be by two (2) self -drilling screws for one (1) metal cleat ** (but) instead of conforming with this procedure, (petitioner) attached some of the metal cleats with only one (1)-inch ordinary nail each and others were fastened with only one (1) wood screw each **." [21]
7. As a result, barely two (2) months after completion of the installation of the roof by MFC's workers, portions thereof were blown away by the winds of typhoon "Ruping."
8. MFC replaced the roof free of charge, in acknowledgement of its one-year warranty on the materials and

their installation.

All the quibbling about whether Engineer Puno acted as agent of MFC or of the spouses, is pointless. The matter is not a factor in determining MFC's liability for its workers' use of inferior materials and their defective installation of the "Banawe" metal tiles in the roof of the latter's residence. Prescinding from the persuasive proof on record that at all times material and with regard to the acquisition and installation of the metal tiles or shingles, Puno was in truth acting as contractor of the Del Rosarios and on their instructions,[22] ascertainment of the definite identity of the person who actually ordered the shingles from MFC is utterly inconsequential -- it might just as well have been a construction foreman, a trusted domestic, or any friend or acquaintance of the Del Rosarios -- in view of the indisputable fact not only (1) that the tiles were delivered to the Del Rosarios and used in fabricating the roof of their home, but also (2) that it was the employees and workers of MFC who (a) delivered the shingles or metal tiles to the construction site of the Del Rosarios' home, and (b) undertook and completed the installation thereof. These they did in bad faith, using inferior materials and assembling them in a manner contrary to MFC's express representations in its brochures and advertisements circulated and broadcast to the general public -- which representations had, in the first place, induced the Del Rosarios to choose the metal tiles in question for their roofing. In fine, since MFC, in bad faith and with gross negligence, infringed the express warranty made by it to the general public in connection with the "Banawe" tiles brought to and set up in the house of the Del Rosarios who had relied on the warranty, and thereby caused them considerable injury, the identity of the individual who actually dealt with MFC and asked the latter to make such delivery and installation is of little moment.

Turning now to the matter of damages, it is the Del Rosarios' contention that the pecuniary detriment to their home amounted to P1,008,003.00, covering not only the destruction of the roof, but also substantial harm to the electrical wiring, ceiling, fixtures, walls, wallpaper, wood parquet flooring and furniture.[23] They rely on the Report of the Esteban Adjusters and Valuers, Inc.,[24] to which the Regional Trial Court accorded full credit. But that report contains no statement whatever of the amount of the damage. Indeed, the testimony of Engineer Abril, the representative of the Esteban Adjusters and Valuers, Inc., is that his firm had been retained only to determine the cause of the damage, not to estimate and assess it.[25] A similar aridity as to the amount of the damage, unfortunately characterizes the testimony of Atty. Virgilio Del Rosario and the rest of the spouses' proofs. There is therefore no evidentiary foundation upon which to lay an award of actual damages. The Trial Court's grant thereof must be struck down. *Lufthansa German Airlines vs. CA, et al.*, promulgated on April 21, 1995,[26] *inter alia* ruled that:

"Actual or compensatory damages cannot be presumed, but must be duly proved and proved with reasonable degree of certainty. A court cannot rely on speculations, conjectures or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have (been) suffered and on evidence of the actual amount thereof."

Its grant of moral and exemplary damages was justified by the Trial Court as follows:[27]

"From the evidence presented, plaintiffs' sufferings have been duly and substantially proven by the defendant's fraudulent actuation and breach of warranty, and thereby entitled for the claim of damages and litigations costs as enunciated by the testimony of the plaintiff * that the damages to his house caused sufferings and feelings of shock, helplessness, fears, embarrassment and anger, thereby entitling him to Moral Damages which should be assessed at P500,000.00."

"The moral damages ** (are awarded) for indemnity or reparation not punishment or correction, that is, an award to entitle the injured party to obtain means (of) diversions and amusement that will serve to alleviate the moral suffering he has undergone by reason of defendant's culpable action. (*RNB Surety and Ins. Co. v. IAC*,

G.R. No. 64515, June 22, 1984, 129 SCRA 745)."

That MFC did in truth act with bad faith, in flagrant breach of its express warranties made to the general public and in wanton disregard of the rights of the Del Rosarios who relied on those warranties, is adequately demonstrated by the recorded proofs. The law explicitly authorizes the award of moral damages "in breaches of contract where the defendant acted fraudulently or in bad faith." [28] There being, moreover, satisfactory evidence of the psychological and mental trauma actually suffered by the Del Rosarios, the grant to them of moral damages is warranted. Over a period of about a month, they experienced "feelings of shock, helplessness, fear, embarrassment and anger." [29] As declared by this Court in *Makabili v. Court of Appeals*, [30] among other precedents:

It is essential ** in the award of damages that the claimant must have satisfactorily proven during the trial the existence of the factual basis of the damages and its causal connection to defendant's acts. This is so because moral damages though incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer (*Enervida v. De la Torre*, 55 SCRA 340 [1974].) and are allowable only when specifically prayed for in the complaint. (*San Miguel Brewery, Inc. v. Magno*, 21 SCRA 292 [1968])

As reflected in the records of the case, the Court of Appeals was in agreement with the findings of the trial court that petitioners suffered anguish, embarrassment and mental sufferings due to the failure of private respondents to perform its obligation to petitioners. According to the Court of Appeals, private respondents acted in wanton disregard of the rights of petitioners. These pronouncements lay the basis and justification for this Court to award petitioners moral and exemplary damages."

This Court also agrees with the Trial Court that exemplary damages are properly exigible of MFC, "Article 2229 of the Civil Code provides that such damages may be imposed by way of example or correction for the public good. While exemplary damages cannot be recovered as a matter of right, they need not be proved, although plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded." [31] "Exemplary damages are imposed not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions." [32]

However, the same statutory and jurisprudential standards just mentioned dictate reduction of the amounts of moral and exemplary damages fixed by the Trial Court. There is, to be sure, no hard and fast rule for determining what would be a fair amount of moral (or exemplary) damages, each case having to be governed by its attendant particulars. Generally, the amount of moral damages should be commensurate with the actual loss or injury suffered. In the case of *PNB v. C.A* just cited, [33] this Court quoted with approval the following observation from *RCPI v Rodriguez*, [34] viz.:

*** ** Nevertheless, we find the award of P100,000.00 as moral damages in favor of respondent Rodriguez excessive and unconscionable. In the case *Prudenciado v. Alliance Transport System, Inc.* (148 SCRA 440 [1987]) we said: "x x x [I]t is undisputed that the trial courts are given discretion to determine the amount of moral damages (*Alcantara v. Surro*, 93 Phil. 472) and that the Court of Appeals can only modify or change the amount awarded when they are palpably and scandalously excessive so as to indicate that it was the result of passion, prejudice or corruption on the part of the trial court' (*Gellada v. Warner Barnes & Co., Inc.*, 57 O.G. [4] 7347, 7358; *Saddie v. Bacharach Motors Co. Inc.*, 57 O.G. [4] 636 and *Adone v. Bacharach Motor Co., Inc.*, 57 O.G. 656). But in more recent cases where the awards of moral and exemplary damages are far too excessive compared to the actual losses sustained by the aggrieved party; this Court ruled that they should be reduced to more reasonable amounts. xxx. (Underscoring ours.)"

" In other words, the moral damages awarded must be commensurate with the loss or injury suffered."

In the same case (PNB v. CA), this Court[35] found the amount of exemplary damages required to be paid (P1,000,000.00) "too excessive and reduced it to an "equitable level"(P25,000.00)

** (T)he award of P1,000,000.00 exemplary damages is also far too excessive and should likewise be reduced to an equitable level. Exemplary damages are imposed not to enrich one party or impoverish another but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions

In another case involving strikingly analogous facts decided in 1994, *Geraldez vs. C.A.*,[36] where no actual damages were adjudicated but moral and exemplary damages in similar amounts (P500,000.00) and P300,000.00, respectively) were awarded by the Trial Court, as in this case, this Court reduced the amount of moral damages to P100,000.00 and of exemplary damages to P50,000.00. The Court sees no reason to adopt a different treatment in the case at bar, and accordingly reduces the moral damages from P500,000.00 to P100,000.00, and the exemplary damages from P300,000.00 to P50,000.00.

Finally, like the adjudication of actual or compensatory damages, the award of attorney's fees must be deleted. The matter was dealt with only in the dispositive portion of the Trial Court's decision. Since the judgement does not say why attorney's fees are awarded, there is no basis for such award which should consequently be removed. So did this Court rule, for instance, in *Scott Consultants and Resource Development Corp., Inc. vs. CA, et al.* :[37]

" It is settled that the award of attorney's fees is the exception rather than the rule and counsel's fees are not to be awarded every time a party wins. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification; its basis cannot be left to speculation or conjecture. Where granted, the court must explicitly state in the body of the decision, and not only in the dispositive portion thereof, the legal reason for the award of attorney's fees."

WHEREFORE, the challenged Decision of the Court of Appeals of June 29, 1994 is REVERSED and SET ASIDE; and the Decision of the Regional Trial Court of November 18, 1991 is REINSTATED AND AFFIRMED, with the modification that the award of actual damages and attorney's fees is deleted, and the moral and exemplary damages awarded are reduced from P500,000.00 to P100,000.00, and from P300,000.00 to P50,000.00, respectively.

IT IS SO ORDERED.

Davide, Jr., Melo, Francisco and Panganiban, JJ., concur.

[1]247 SCRA 731 (per Bellosillo, J.)

[2] Original record, p. 6.

[3]TSN, Nov. 19, 1990: testimony of Engineer Abril of said firm: Esteban Adjusters & Valuers, Inc.

[4] Exh. C (and C-1 and C-2).

[5] As earlier related -- SEE footnotes 1 and 2 and corresponding text -- the Del Rosarios also filed an administrative complaint on November 21, 1990 in the Department of Trade and Industry against MFC charging it with a violation of Section 3 of Act No. 3740: "An Act to Penalize Fraudulent Advertising, Mislabeling or Misbranding of any Product, Stocks, Bonds, etc."

[6] Rollo, p. 29

[7]Complaint, par. 18: Original Record, p. 8.

- [8] Rollo, p. 44.
- [9] Id., p. 42.
- [10] Id., p. 48.
- [11] Id., p. 47.
- [12] 247 SCRA 731; SEE footnote 1
- [13] Rollo, p. 46.
- [14] Id., p. 28.
- [15] Id., pp. 36-37.
- [16] Id., p. 37.
- [17] Id., pp. 154 et seq: Petitioners' Memorandum, September 22, 1995.
- [18] SEE footnote 1, 247 SCRA 731 (per Bellosillo, J.)
- [19] Rollo, pp. 164, 167, 171.
- [20] Id., pp. 165-170.
- [21] SEE footnotes 1 and 15.
- [22] Testimony of Mr. Puno: TSN, Dec. 18, 1990, pp. 4-6, 7-9, 16; Exhs. D, D-1 to D-6; SEE also, testimony of Mr. Jesus Jimenez, Manager of MFL to the effect that he knew Mr. Puno to have several construction projects (TSN, April 11, 1991, p. 5) in relation to communications of MFL to Mr. Puno relative to his project: completion of installation of Banawe roofing; and respecting the re-roofing for the residence of Atty. and Mrs. del Rosario** at # 17 Tabuena St. Corinthian Gardens, Q.C." (rollo, p. 163).
- [23] SEE footnote 2.
- [24] SEE footnote 3.
- [25] TSN, Nov. 19, 1990.
- [26] 243 SCRA 600, 615; (citing Dichoso v. CA, 192 SCRA 169 which in turn cited the case of Hua Liong Electric Corp. v. Reyes, 145 SCRA 713).
- [27] Rollo, pp. 47-48.
- [28] ART. 2220, Civil Code.
- [29] Rollo, pp. 47, 177-178.
- [30] 157 SCRA 253, 259 (1988); see also, PCI Bank v. CA, et al., G.R. No. 97785, March 29, 1996.
- [31] PNB v. CA, G.R. 116181 April 17, 1996, citing Makabili v. CA, supra.
- [32] Mecenas v. Court of Appeals, 180 SCRA 83 (1989).
- [33] Supra (footnote 29).
- [34] 182 SCRA 889 (1990); SEE also De Leon v. C.A., 165 SCRA 166 (1988).

[35] Citing *Macenas v. Court of Appeals*, 180 SCRA 83 (1989).

[36] 230 SCRA 320.

[37] 242 SCRA 393, 406 (March 16, 1995); SEE also *Valiant Machinery & Metal Corp., et al. vs. NLRC, et al.*, G.R. No. 105877, January 25, 1996.

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