

**YHT REALTY CORPORATION, ERLINDA LAINEZ AND ANICIA PAYAM,
PETITIONERS, VS. THE COURT OF APPEALS AND MAURICE
MCLOUGHLIN, RESPONDENTS.**

G.R. NO. 126780. February 17, 2005

Ponente: TINGA, J.

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TINGA, J.:

The primary question of interest before this Court is the only legal issue in the case: It is whether a hotel may evade liability for the loss of items left with it for safekeeping by its guests, by having these guests execute written waivers holding the establishment or its employees free from blame for such loss in light of Article 2003 of the Civil Code which voids such waivers.

Before this Court is a Rule 45 petition for review of the Decision[1] dated 19 October 1995 of the Court of Appeals which affirmed the Decision[2] dated 16 December 1991 of the Regional Trial Court (RTC), Branch 13, of Manila, finding YHT Realty Corporation, Brunhilda Mata-Tan (Tan), Erlinda Lainez (Lainez) and Anicia Payam (Payam) jointly and solidarily liable for damages in an action filed by Maurice McLoughlin (McLoughlin) for the loss of his American and Australian dollars deposited in the safety deposit box of Tropicana Copacabana Apartment Hotel, owned and operated by YHT Realty Corporation.

The factual backdrop of the case follow.

Private respondent McLoughlin, an Australian businessman-philanthropist, used to stay at Sheraton Hotel during his trips to the Philippines prior to 1984 when he met Tan. Tan befriended McLoughlin by showing him around, introducing him to important people, accompanying him in visiting impoverished street children and assisting him in buying gifts for the children and in distributing the same to charitable institutions for poor children. Tan convinced McLoughlin to transfer from Sheraton Hotel to Tropicana where Lainez, Payam and Danilo Lopez were employed. Lopez served as manager of the hotel while Lainez and Payam had custody of the keys for the safety deposit boxes of Tropicana. Tan took care of McLoughlin's booking at the Tropicana where he started staying during his trips to the Philippines from December 1984 to September 1987.[3]

On 30 October 1987, McLoughlin arrived from Australia and registered with Tropicana. He rented a safety deposit box as it was his practice to rent a safety deposit box every time he registered at Tropicana in previous trips. As a tourist, McLoughlin was aware of the procedure observed by Tropicana relative to its safety deposit boxes. The safety deposit box could only be opened through the use of two keys, one of which is given to the registered guest, and the other remaining in the possession of the management of the hotel. When a registered guest wished to open his safety deposit box, he alone could personally request the management who then would assign one of its employees to accompany the guest and assist him in opening the safety deposit box with the two keys.[4]

McLoughlin allegedly placed the following in his safety deposit box: Fifteen Thousand US Dollars (US\$15,000.00) which he placed in two envelopes, one envelope containing Ten Thousand US Dollars

(US\$10,000.00) and the other envelope Five Thousand US Dollars (US\$5,000.00); Ten Thousand Australian Dollars (AUS\$10,000.00) which he also placed in another envelope; two (2) other envelopes containing letters and credit cards; two (2) bankbooks; and a checkbook, arranged side by side inside the safety deposit box.[5]

On 12 December 1987, before leaving for a brief trip to Hongkong, McLoughlin opened his safety deposit box with his key and with the key of the management and took therefrom the envelope containing Five Thousand US Dollars (US\$5,000.00), the envelope containing Ten Thousand Australian Dollars (AUS\$10,000.00), his passports and his credit cards.[6] McLoughlin left the other items in the box as he did not check out of his room at the Tropicana during his short visit to Hongkong. When he arrived in Hongkong, he opened the envelope which contained Five Thousand US Dollars (US\$5,000.00) and discovered upon counting that only Three Thousand US Dollars (US\$3,000.00) were enclosed therein.[7] Since he had no idea whether somebody else had tampered with his safety deposit box, he thought that it was just a result of bad accounting since he did not spend anything from that envelope.[8]

After returning to Manila, he checked out of Tropicana on 18 December 1987 and left for Australia. When he arrived in Australia, he discovered that the envelope with Ten Thousand US Dollars (US\$10,000.00) was short of Five Thousand US Dollars (US\$5,000). He also noticed that the jewelry which he bought in Hongkong and stored in the safety deposit box upon his return to Tropicana was likewise missing, except for a diamond bracelet.[9]

When McLoughlin came back to the Philippines on 4 April 1988, he asked Lainez if some money and/or jewelry which he had lost were found and returned to her or to the management. However, Lainez told him that no one in the hotel found such things and none were turned over to the management. He again registered at Tropicana and rented a safety deposit box. He placed therein one (1) envelope containing Fifteen Thousand US Dollars (US\$15,000.00), another envelope containing Ten Thousand Australian Dollars (AUS\$10,000.00) and other envelopes containing his traveling papers/documents. On 16 April 1988, McLoughlin requested Lainez and Payam to open his safety deposit box. He noticed that in the envelope containing Fifteen Thousand US Dollars (US\$15,000.00), Two Thousand US Dollars (US\$2,000.00) were missing and in the envelope previously containing Ten Thousand Australian Dollars (AUS\$10,000.00), Four Thousand Five Hundred Australian Dollars (AUS\$4,500.00) were missing.[10]

When McLoughlin discovered the loss, he immediately confronted Lainez and Payam who admitted that Tan opened the safety deposit box with the key assigned to him.[11] McLoughlin went up to his room where Tan was staying and confronted her. Tan admitted that she had stolen McLoughlin's key and was able to open the safety deposit box with the assistance of Lopez, Payam and Lainez.[12] Lopez also told McLoughlin that Tan stole the key assigned to McLoughlin while the latter was asleep.[13]

McLoughlin requested the management for an investigation of the incident. Lopez got in touch with Tan and arranged for a meeting with the police and McLoughlin. When the police did not arrive, Lopez and Tan went to the room of McLoughlin at Tropicana and thereat, Lopez wrote on a piece of paper a promissory note dated 21 April 1988. The promissory note reads as follows:

I promise to pay Mr. Maurice McLoughlin the amount of AUS\$4,000.00 and US\$2,000.00 or its equivalent in Philippine currency on or before May 5, 1988.[14]

Lopez requested Tan to sign the promissory note which the latter did and Lopez also signed as a witness. Despite the execution of promissory note by Tan, McLoughlin insisted that it must be the hotel who must assume responsibility for the loss he suffered. However, Lopez refused to accept the responsibility relying on the conditions for renting the safety deposit box entitled "Undertaking For the Use Of Safety Deposit Box,"[15] specifically paragraphs (2) and (4) thereof, to wit:

- To release and hold free and blameless TROPICANA APARTMENT HOTEL from any liability arising from any loss in the contents and/or use of the said deposit box for any cause whatsoever, including but not limited to the presentation or use thereof by any other person should the key be lost;

...

- To return the key and execute the RELEASE in favor of TROPICANA APARTMENT HOTEL upon giving up the use of the box.[16]

On 17 May 1988, McLoughlin went back to Australia and he consulted his lawyers as to the validity of the abovementioned stipulations. They opined that the stipulations are void for being violative of universal hotel practices and customs. His lawyers prepared a letter dated 30 May 1988 which was signed by McLoughlin and sent to President Corazon Aquino.[17] The Office of the President referred the letter to the Department of Justice (DOJ) which forwarded the same to the Western Police District (WPD).[18]

After receiving a copy of the indorsement in Australia, McLoughlin came to the Philippines and registered again as a hotel guest of Tropicana. McLoughlin went to MalacaHang to follow up on his letter but he was instructed to go to the DOJ. The DOJ directed him to proceed to the WPD for documentation. But McLoughlin went back to Australia as he had an urgent business matter to attend to.

For several times, McLoughlin left for Australia to attend to his business and came back to the Philippines to follow up on his letter to the President but he failed to obtain any concrete assistance.[19]

McLoughlin left again for Australia and upon his return to the Philippines on 25 August 1989 to pursue his claims against petitioners, the WPD conducted an investigation which resulted in the preparation of an affidavit which was forwarded to the Manila City Fiscal's Office. Said affidavit became the basis of preliminary investigation. However, McLoughlin left again for Australia without receiving the notice of the hearing on 24 November 1989. Thus, the case at the Fiscal's Office was dismissed for failure to prosecute. McLoughlin requested the reinstatement of the criminal charge for theft. In the meantime, McLoughlin and his lawyers wrote letters of demand to those having responsibility to pay the damage. Then he left again for Australia.

Upon his return on 22 October 1990, he registered at the Echelon Towers at Malate, Manila. Meetings were held between McLoughlin and his lawyer which resulted to the filing of a complaint for damages on 3 December 1990 against YHT Realty Corporation, Lopez, Lainez, Payam and Tan (defendants) for the loss of McLoughlin's money which was discovered on 16 April 1988. After filing the complaint, McLoughlin left again for Australia to attend to an urgent business matter. Tan and Lopez, however, were not served with summons, and trial proceeded with only Lainez, Payam and YHT Realty Corporation as defendants.

After defendants had filed their Pre-Trial Brief admitting that they had previously allowed and assisted Tan to open the safety deposit box, McLoughlin filed an Amended/Supplemental Complaint[20] dated 10 June 1991 which included another incident of loss of money and jewelry in the safety deposit box rented by McLoughlin in the same hotel which took place prior to 16 April 1988.[21] The trial court admitted the Amended/Supplemental Complaint.

During the trial of the case, McLoughlin had been in and out of the country to attend to urgent business in Australia, and while staying in the Philippines to attend the hearing, he incurred expenses for hotel bills, airfare and other transportation expenses, long distance calls to Australia, Meralco power expenses, and expenses for food and maintenance, among others.[22]

After trial, the RTC of Manila rendered judgment in favor of McLoughlin, the dispositive portion of which reads:

WHEREFORE, above premises considered, judgment is hereby rendered by this Court in favor of plaintiff and against the defendants, to wit:

- Ordering defendants, jointly and severally, to pay plaintiff the sum of US\$11,400.00 or its equivalent in Philippine Currency of P342,000.00, more or less, and the sum of AUS\$4,500.00 or its equivalent in Philippine Currency of P99,000.00, or a total of P441,000.00, more or less, with 12% interest from April 16 1988 until said amount has been paid to plaintiff (Item 1, Exhibit CC);

- Ordering defendants, jointly and severally to pay plaintiff the sum of P3,674,238.00 as actual and consequential damages arising from the loss of his Australian and American dollars and jewelries complained against and in prosecuting his claim and rights administratively and judicially (Items II, III, IV, V, VI, VII, VIII, and IX, Exh. "CC");

- Ordering defendants, jointly and severally, to pay plaintiff the sum of P500,000.00 as moral damages (Item X, Exh. "CC");

- Ordering defendants, jointly and severally, to pay plaintiff the sum of P350,000.00 as exemplary damages (Item XI, Exh. "CC");

- And ordering defendants, jointly and severally, to pay litigation expenses in the sum of P200,000.00 (Item XII, Exh. "CC");

- Ordering defendants, jointly and severally, to pay plaintiff the sum of P200,000.00 as attorney's fees, and a fee of P3,000.00 for every appearance; and

- Plus costs of suit.

SO ORDERED.[23]

The trial court found that McLoughlin's allegations as to the fact of loss and as to the amount of money he lost were sufficiently shown by his direct and straightforward manner of testifying in court and found him to be credible and worthy of belief as it was established that McLoughlin's money, kept in Tropicana's safety deposit box, was taken by Tan without McLoughlin's consent. The taking was effected through the use of the master key which was in the possession of the management. Payam and Lainez allowed Tan to use the master key without authority from McLoughlin. The trial court added that if McLoughlin had not lost his dollars, he would not have gone through the trouble and personal inconvenience of seeking aid and assistance from the Office of the President, DOJ, police authorities and the City Fiscal's Office in his desire to recover his losses from the hotel management and Tan.[24]

As regards the loss of Seven Thousand US Dollars (US\$7,000.00) and jewelry worth approximately One Thousand Two Hundred US Dollars (US\$1,200.00) which allegedly occurred during his stay at Tropicana previous to 4 April 1988, no claim was made by McLoughlin for such losses in his complaint dated 21 November 1990 because he was not sure how they were lost and who the responsible persons were. But considering the admission of the defendants in their pre-trial brief that on three previous occasions they allowed Tan to open the box, the trial court opined that it was logical and reasonable to presume that his personal assets consisting of Seven Thousand US Dollars (US\$7,000.00) and jewelry were taken by Tan from the safety deposit box without

McLoughlin's consent through the cooperation of Payam and Lainez.[25]

The trial court also found that defendants acted with gross negligence in the performance and exercise of their duties and obligations as innkeepers and were therefore liable to answer for the losses incurred by McLoughlin.[26]

Moreover, the trial court ruled that paragraphs (2) and (4) of the "Undertaking For The Use Of Safety Deposit Box" are not valid for being contrary to the express mandate of Article 2003 of the New Civil Code and against public policy.[27] Thus, there being fraud or wanton conduct on the part of defendants, they should be responsible for all damages which may be attributed to the non-performance of their contractual obligations.[28]

The Court of Appeals affirmed the disquisitions made by the lower court except as to the amount of damages awarded. The decretal text of the appellate court's decision reads:

THE FOREGOING CONSIDERED, the appealed Decision is hereby AFFIRMED but modified as follows:

The appellants are directed jointly and severally to pay the plaintiff/appellee the following amounts:

- 1) P153,200.00 representing the peso equivalent of US\$2,000.00 and AUS\$4,500.00;
- 2) P308,880.80, representing the peso value for the air fares from Sidney [sic] to Manila and back for a total of eleven (11) trips;
- 3) One-half of P336,207.05 or P168,103.52 representing payment to Tropicana Apartment Hotel;
- 4) One-half of P152,683.57 or P76,341.785 representing payment to Echelon Tower;
- 5) One-half of P179,863.20 or P89,931.60 for the taxi xxx transportation from the residence to Sidney [sic] Airport and from MIA to the hotel here in Manila, for the eleven (11) trips;
- 6) One-half of P7,801.94 or P3,900.97 representing Meralco power expenses;
- 7) One-half of P356,400.00 or P178,000.00 representing expenses for food and maintenance;
- 8) P50,000.00 for moral damages;
- 9) P10,000.00 as exemplary damages; and
- 10) P200,000 representing attorney's fees.

With costs.

SO ORDERED.[29]

Unperturbed, YHT Realty Corporation, Lainez and Payam went to this Court in this appeal by certiorari.

Petitioners submit for resolution by this Court the following issues: (a) whether the appellate court's conclusion on the alleged prior existence and subsequent loss of the subject money and jewelry is supported by the evidence on record; (b) whether the finding of gross negligence on the part of petitioners in the performance of their duties as innkeepers is supported by the evidence on record; (c) whether the "Undertaking For The Use of Safety Deposit Box" admittedly executed by private respondent is null and void; and (d) whether the damages awarded to private respondent, as well as the amounts thereof, are proper under the circumstances.[30]

The petition is devoid of merit.

It is worthy of note that the thrust of Rule 45 is the resolution only of questions of law and any peripheral factual question addressed to this Court is beyond the bounds of this mode of review.

Petitioners point out that the evidence on record is insufficient to prove the fact of prior existence of the dollars and the jewelry which had been lost while deposited in the safety deposit boxes of Tropicana, the basis of the trial court and the appellate court being the sole testimony of McLoughlin as to the contents thereof. Likewise, petitioners dispute the finding of gross negligence on their part as not supported by the evidence on record.

We are not persuaded. We adhere to the findings of the trial court as affirmed by the appellate court that the fact of loss was established by the credible testimony in open court by McLoughlin. Such findings are factual and therefore beyond the ambit of the present petition.

The trial court had the occasion to observe the demeanor of McLoughlin while testifying which reflected the veracity of the facts testified to by him. On this score, we give full credence to the appreciation of testimonial evidence by the trial court especially if what is at issue is the credibility of the witness. The oft-repeated principle is that where the credibility of a witness is an issue, the established rule is that great respect is accorded to the evaluation of the credibility of witnesses by the trial court.[31] The trial court is in the best position to assess the credibility of witnesses and their testimonies because of its unique opportunity to observe the witnesses firsthand and note their demeanor, conduct and attitude under grilling examination.[32]

We are also not impressed by petitioners' argument that the finding of gross negligence by the lower court as affirmed by the appellate court is not supported by evidence. The evidence reveals that two keys are required to open the safety deposit boxes of Tropicana. One key is assigned to the guest while the other remains in the possession of the management. If the guest desires to open his safety deposit box, he must request the management for the other key to open the same. In other words, the guest alone cannot open the safety deposit box without the assistance of the management or its employees. With more reason that access to the safety deposit box should be denied if the one requesting for the opening of the safety deposit box is a stranger. Thus, in case of loss of any item deposited in the safety deposit box, it is inevitable to conclude that the management had at least a hand in the consummation of the taking, unless the reason for the loss is force majeure.

Noteworthy is the fact that Payam and Lainez, who were employees of Tropicana, had custody of the master key of the management when the loss took place. In fact, they even admitted that they assisted Tan on three separate occasions in opening McLoughlin's safety deposit box.[33] This only proves that Tropicana had prior knowledge that a person aside from the registered guest had access to the safety deposit box. Yet the management failed to notify McLoughlin of the incident and waited for him to discover the taking before it disclosed the matter to him. Therefore, Tropicana should be held responsible for the damage suffered by McLoughlin by reason of the negligence of its employees.

The management should have guarded against the occurrence of this incident considering that Payam admitted in open court that she assisted Tan three times in opening the safety deposit box of McLoughlin at around 6:30 A.M. to 7:30 A.M. while the latter was still asleep.[34] In light of the circumstances surrounding this case, it is undeniable that without the acquiescence of the employees of Tropicana to the opening of the safety deposit box, the loss of McLoughlin's money could and should have been avoided.

The management contends, however, that McLoughlin, by his act, made its employees believe that Tan was his spouse for she was always with him most of the time. The evidence on record, however, is bereft of any showing that McLoughlin introduced Tan to the management as his wife. Such an inference from the act of McLoughlin will not exculpate the petitioners from liability in the absence of any showing that he made the management believe that Tan was his wife or was duly authorized to have access to the safety deposit box. Mere close companionship and intimacy are not enough to warrant such conclusion considering that what is involved in the instant case is the very safety of McLoughlin's deposit. If only petitioners exercised due diligence in taking care

of McLoughlin's safety deposit box, they should have confronted him as to his relationship with Tan considering that the latter had been observed opening McLoughlin's safety deposit box a number of times at the early hours of the morning. Tan's acts should have prompted the management to investigate her relationship with McLoughlin. Then, petitioners would have exercised due diligence required of them. Failure to do so warrants the conclusion that the management had been remiss in complying with the obligations imposed upon hotel-keepers under the law.

Under Article 1170 of the New Civil Code, those who, in the performance of their obligations, are guilty of negligence, are liable for damages. As to who shall bear the burden of paying damages, Article 2180, paragraph (4) of the same Code provides that 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. Also, this Court has ruled that if an employee is found negligent, it is presumed that the employer was negligent in selecting and/or supervising him for it is hard for the victim to prove the negligence of such employer.[35] Thus, given the fact that the loss of McLoughlin's money was consummated through the negligence of Tropicana's employees in allowing Tan to open the safety deposit box without the guest's consent, both the assisting employees and YHT Realty Corporation itself, as owner and operator of Tropicana, should be held solidarily liable pursuant to Article 2193.[36]

The issue of whether the "Undertaking For The Use of Safety Deposit Box" executed by McLoughlin is tainted with nullity presents a legal question appropriate for resolution in this petition. Notably, both the trial court and the appellate court found the same to be null and void. We find no reason to reverse their common conclusion. Article 2003 is controlling, thus:

Art. 2003. The hotel-keeper cannot free himself from responsibility by posting notices to the effect that he is not liable for the articles brought by the guest. Any stipulation between the hotel-keeper and the guest whereby the responsibility of the former as set forth in Articles 1998 to 2001[37] is suppressed or diminished shall be void.

Article 2003 was incorporated in the New Civil Code as an expression of public policy precisely to apply to situations such as that presented in this case. The hotel business like the common carrier's business is imbued with public interest. Catering to the public, hotelkeepers are bound to provide not only lodging for hotel guests and security to their persons and belongings. The twin duty constitutes the essence of the business. The law in turn does not allow such duty to the public to be negated or diluted by any contrary stipulation in so-called "undertakings" that ordinarily appear in prepared forms imposed by hotel keepers on guests for their signature.

In an early case,[38] the Court of Appeals through its then Presiding Justice (later Associate Justice of the Court) Jose P. Bengzon, ruled that to hold hotelkeepers or innkeeper liable for the effects of their guests, it is not necessary that they be actually delivered to the innkeepers or their employees. It is enough that such effects are within the hotel or inn.[39] With greater reason should the liability of the hotelkeeper be enforced when the missing items are taken without the guest's knowledge and consent from a safety deposit box provided by the hotel itself, as in this case.

Paragraphs (2) and (4) of the "undertaking" manifestly contravene Article 2003 of the New Civil Code for they allow Tropicana to be released from liability arising from any loss in the contents and/or use of the safety deposit box for any cause whatsoever.[40] Evidently, the undertaking was intended to bar any claim against Tropicana for any loss of the contents of the safety deposit box whether or not negligence was incurred by Tropicana or its employees. The New Civil Code is explicit that the responsibility of the hotel-keeper shall extend to loss of, or injury to, the personal property of the guests even if caused by servants or employees of the keepers of hotels or inns as well as by strangers, except as it may proceed from any force majeure.[41] It is the loss through force

majeure that may spare the hotel-keeper from liability. In the case at bar, there is no showing that the act of the thief or robber was done with the use of arms or through an irresistible force to qualify the same as force majeure.[42]

Petitioners likewise anchor their defense on Article 2002[43] which exempts the hotel-keeper from liability if the loss is due to the acts of his guest, his family, or visitors. Even a cursory reading of the provision would lead us to reject petitioners' contention. The justification they raise would render nugatory the public interest sought to be protected by the provision. What if the negligence of the employer or its employees facilitated the consummation of a crime committed by the registered guest's relatives or visitor? Should the law exculpate the hotel from liability since the loss was due to the act of the visitor of the registered guest of the hotel? Hence, this provision presupposes that the hotel-keeper is not guilty of concurrent negligence or has not contributed in any degree to the occurrence of the loss. A depositary is not responsible for the loss of goods by theft, unless his actionable negligence contributes to the loss.[44]

In the case at bar, the responsibility of securing the safety deposit box was shared not only by the guest himself but also by the management since two keys are necessary to open the safety deposit box. Without the assistance of hotel employees, the loss would not have occurred. Thus, Tropicana was guilty of concurrent negligence in allowing Tan, who was not the registered guest, to open the safety deposit box of McLoughlin, even assuming that the latter was also guilty of negligence in allowing another person to use his key. To rule otherwise would result in undermining the safety of the safety deposit boxes in hotels for the management will be given imprimatur to allow any person, under the pretense of being a family member or a visitor of the guest, to have access to the safety deposit box without fear of any liability that will attach thereafter in case such person turns out to be a complete stranger. This will allow the hotel to evade responsibility for any liability incurred by its employees in conspiracy with the guest's relatives and visitors.

Petitioners contend that McLoughlin's case was mounted on the theory of contract, but the trial court and the appellate court upheld the grant of the claims of the latter on the basis of tort.[45] There is nothing anomalous in how the lower courts decided the controversy for this Court has pronounced a jurisprudential rule that tort liability can exist even if there are already contractual relations. The act that breaks the contract may also be tort.[46]

As to damages awarded to McLoughlin, we see no reason to modify the amounts awarded by the appellate court for the same were based on facts and law. It is within the province of lower courts to settle factual issues such as the proper amount of damages awarded and such finding is binding upon this Court especially if sufficiently proven by evidence and not unconscionable or excessive. Thus, the appellate court correctly awarded McLoughlin Two Thousand US Dollars (US\$2,000.00) and Four Thousand Five Hundred Australian dollars (AUS\$4,500.00) or their peso equivalent at the time of payment,[47] being the amounts duly proven by evidence.[48] The alleged loss that took place prior to 16 April 1988 was not considered since the amounts alleged to have been taken were not sufficiently established by evidence. The appellate court also correctly awarded the sum of P308,880.80, representing the peso value for the air fares from Sydney to Manila and back for a total of eleven (11) trips;[49] one-half of P336,207.05 or P168,103.52 representing payment to Tropicana;[50] one-half of P152,683.57 or P76,341.785 representing payment to Echelon Tower;[51] one-half of P179,863.20 or P89,931.60 for the taxi or transportation expenses from McLoughlin's residence to Sydney Airport and from MIA to the hotel here in Manila, for the eleven (11) trips;[52] one-half of P7,801.94 or P3,900.97 representing Meralco power expenses;[53] one-half of P356,400.00 or P178,000.00 representing expenses for food and maintenance.[54]

The amount of P50,000.00 for moral damages is reasonable. Although trial courts are given discretion to determine the amount of moral damages, the appellate court may modify or change the amount awarded when it is palpably and scandalously excessive. Moral damages are not intended to enrich a complainant at the expense of a

defendant. They are awarded only to enable the injured party to obtain means, diversion or amusements that will serve to alleviate the moral suffering he has undergone, by reason of defendants' culpable action.[55]

The awards of P10,000.00 as exemplary damages and P200,000.00 representing attorney's fees are likewise sustained.

WHEREFORE, foregoing premises considered, the Decision of the Court of Appeals dated 19 October 1995 is hereby AFFIRMED. Petitioners are directed, jointly and severally, to pay private respondent the following amounts:

- (1) US\$2,000.00 and AUS\$4,500.00 or their peso equivalent at the time of payment;
- (2) P308,880.80, representing the peso value for the air fares from Sydney to Manila and back for a total of eleven (11) trips;
- (3) One-half of P336,207.05 or P168,103.52 representing payment to Tropicana Copacabana Apartment Hotel;
- (4) One-half of P152,683.57 or P76,341.785 representing payment to Echelon Tower;
- (5) One-half of P179,863.20 or P89,931.60 for the taxi or transportation expense from McLoughlin's residence to Sydney Airport and from MIA to the hotel here in Manila, for the eleven (11) trips;
- (6) One-half of P7,801.94 or P3,900.97 representing Meralco power expenses;
- (7) One-half of P356,400.00 or P178,200.00 representing expenses for food and maintenance;
- (8) P50,000.00 for moral damages;
- (9) P10,000.00 as exemplary damages; and
- (10) P200,000 representing attorney's fees.

With costs.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., and Chico-Nazario, JJ., concur.

Austria-Martinez, J., no part.

[1] Rollo, p. 38. Decision penned by Justice Bernardo LL. Salas and concurred in by Justices Pedro A. Ramirez and Ma. Alicia Austria-Martinez.

[2] Id. at 118. Decision penned by Judge Gerardo M.S. Pepito.

[3] Id. at 119.

[4] Id. at 120.

[5] Ibid.

[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] Ibid.

[10] Id. at 121 and 41. TSN, 9 September 1991, p. 10.

[11] Id. at 42.

[12] Ibid.

[13] Id. at 121.

[14] Exhibit V.

[15] Exh. W.

[16] Rollo, p. 122.

[17] Ibid.

[18] Ibid.

[19] Id. at 123.

[20] Records, p. 52.

[21] Rollo, p. 125.

[22] Exh. CC. Records (Exhibit Folder), pp. 146-147. The Itemized Claims for Damages allegedly incurred by McLoughlin:

I. CLAIMS FOR STOLEN MONIES AND PERSONAL PROPERTY:

A. US\$2,000.00

US\$4,500.00..... P153,200.00

B. US\$8,000.00 cash and US\$1,200.00 with jewelry..... 257,600.00

II. AIR FARES from Sydney to Manila and back (11trips up to date of testimony)..... 308,880.00

III. PAYMENTS TO TROPICANA APARTMENT HOTEL... 336,207.05

IV. PAYMENTS TO ECHELON TOWER..... 152,683.57

V. Taxes, fees, transportation from residence to Sydney airport and from MIA to hotel in Manila and vice versa..... 179,863.20

VI. MERALCO POWER EXPENSES..... 7,811.94

VII. PLDT EXPENSES(overseas telephone calls)

Paid in the Philippines..... 5,597.68

Paid in Australia..... 166,795.20

VIII. EXPENSES FOR FOOD AND MAINTENANCE..... 356,400.00

IX. BUSINESS/OPPORTUNITY LOSS IN SYDNEY WHILE IN THE PHILIPPINES BECAUSE OF CASE..... 2,160,000.00

X. MORAL DAMAGES..... 500,000.00

XI. EXEMPLARY DAMAGES..... 350,000.00

XII. LITIGATION EXPENSES..... 200,000.00

TOTAL..... P5,135,038.64

ATTORNEY'S FEES..... 200,000.00

Plus, appearance
fee of P3,000.00 for
every court appearance.

[23] Rollo, pp. 141-142.

[24] Id. at 127.

[25] Ibid.

[26] Id. at 134.

[27] Id. at 135.

[28] Id. at 138.

[29] Id. at 63-64.

[30] Id. at 19-20.

[31] People v. Andales, G.R. Nos. 152624-25, February 5, 2004; People v. Fucio, G.R. No. 151186-95, February 13, 2004; People v. Preciados, G.R. No. 122934, January 5, 2001, 349 SCRA 1; People v. Toyco, Sr., G.R. No. 138609, January 17, 2001, 349 SCRA 385; People v. CabareHo, G.R. No. 138645, January 16, 2001, 349 SCRA 297; People v. Valdez, G.R. No. 128105, January 24, 2001, 350 SCRA 189.

[32] People v. Dimacuha, G.R. Nos. 152592-93, February 13, 2004; People v. Yang, G.R. No. 148077, February 16, 2004; People v. Betonio, G.R. No. 119165, September 26, 1997, 279 SCRA 532; People v. Cabel, G.R. No. 121508, 282 SCRA 410.

[33] Id. at 125.

[34] Id. at 128.

[35] Campo, et al. v. Camarote and Gemilga, 100 Phil. 459 (1956).

[36] Art. 2194. The responsibility of two or more persons who are liable for a quasi-delict is solidary.

[37] Art. 1998. The deposit of effects made by travelers in hotels or inns shall also be regarded as necessary. The keepers of hotels or inns shall be responsible for them as depositaries, provided that notice was given to them, or to their employees, of the effects brought by the guests and that, on the part of the latter, they take the precautions which said hotel-keepers or their substitutes advised relative to the care and vigilance of their effects.

Art. 1999. The hotel-keeper is liable for the vehicles, animals and articles which have been introduced or placed in the annexes of the hotel.

Art. 2000. The responsibility referred to in the two preceding articles shall include the loss of, or injury to the personal property of the guests caused by the servants or employees of the keepers of hotels or inns as well as by strangers; but not that which may proceed from any force majeure. The fact that travellers are constrained to rely on the vigilance of the keeper of the hotel or inn shall be considered in determining the degree of care required of him.

Art. 2001. The act of a thief or robber, who has entered the hotel is not deemed force majeure, unless it is done with the use of arms or through an irresistible force.

[38] De Los Santos v. Tan Khey, 58 O.G. No. 45-53, p. 7693.

[39] Ibid at 7694-7695.

[40] Exh. W.

[41] Art. 2000, New Civil Code.

[42] Art. 2001, supra at note 39.

[43] Art. 2002. The hotel-keeper is not liable for compensation if the loss is due to the acts of the guest, his family, servants or visitors, or if the loss arises from the character of the things brought into the hotel.

[44] 26 C.J.S. 731 citing Griffith v. Zipperwick, 28 Ohio St. 388.

[45] Rollo, pp. 31-32.

[46] Air France v. Carrascoso, et al., 124 Phil. 722 (1966).

[47] Zagala v. Jimenez, G.R. No. 33050, July 23, 1987, 152 SCRA 147. "According to the case of Phoenix Assurance Company v. Macondray & Co., Inc., (64 SCRA 15) a judgment awarding an amount in U.S. dollars may be paid with its equivalent amount in local currency based on the conversion rate prevailing at the time of payment. If the parties cannot agree on the same, the trial court should determine such conversion rate. Needless to say, the judgment debtor may simply satisfy said award by paying in full the amount in U.S. dollars."

[48] Exh. V.

[49] Exh. CC, p. 146.

[50] Id. The Court of Appeals noted that during his stay in the Philippines, McLoughlin's time was not totally devoted to following up his claim as he had business arrangements to look into.

[51] Ibid.

[52] Ibid.

[53] Ibid. Expenses for power and air-conditioning were separate from room payment.

[54] Ibid. Business losses were rejected because of lack of proof.

[55] Prudenciado v. Alliance Transport System, Inc., G.R. No. 33836, March 16, 1987.

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