

**JOSEPH CHAN, WILSON CHAN and LILY CHAN, PETITIONERS, vs.
BONIFACIO S. MACEDA, JR., [] RESPONDENT.**

G.R. No. 142591. April 30, 2003

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

A judgment of default does not automatically imply admission by the defendant of the facts and causes of action of the plaintiff. The Rules of Court require the latter to adduce evidence in support of his allegations as an indispensable condition before final judgment could be given in his favor.[1] The trial judge has to evaluate the allegations with the highest degree of objectivity and certainty. He may sustain an allegation for which the plaintiff has adduced sufficient evidence, otherwise, he has to reject it. In the case at bar, judicial review is imperative to avert the award of damages that is unreasonable and without evidentiary support.

Assailed in this petition for review under Rule 45 of the 1997 Rules of Civil Procedure, as amended, is the Decision[2] dated June 17, 1999 of the Court of Appeals in CA-G.R. CV No. 57323, entitled “Bonifacio S. Maceda, Jr. versus Joseph Chan, et. al.,” affirming in toto the Decision[3] dated December 26, 1996 of the Regional Trial Court, Branch 160, Pasig City, in Civil Case No. 53044.

The essential antecedents are as follows:

On July 28, 1976, Bonifacio S. Maceda, Jr., herein respondent, obtained a P7.3 million loan from the Development Bank of the Philippines for the construction of his New Gran Hotel Project in Tacloban City.

Thereafter, on September 29, 1976, respondent entered into a building construction contract with Moreman Builders Co., Inc., (Moreman). They agreed that the construction would be finished not later than December 22, 1977.

Respondent purchased various construction materials and equipment in Manila. Moreman, in turn, deposited them in the warehouse of Wilson and Lily Chan, herein petitioners. The deposit was free of charge.

Unfortunately, Moreman failed to finish the construction of the hotel at the stipulated time. Hence, on February 1, 1978, respondent filed with the then Court of First Instance (CFI, now Regional Trial Court), Branch 39, Manila, an action for rescission and damages against Moreman, docketed as Civil Case No. 113498.

On November 28, 1978, the CFI rendered its Decision[4] rescinding the contract between Moreman and respondent and awarding to the latter P 445,000.00 as actual, moral and liquidated damages; P20,000.00 representing the increase in the construction materials; and P35,000.00 as attorney’s fees. Moreman interposed an appeal to the Court of Appeals but the same was dismissed on March 7, 1989 for being dilatory. He elevated the case to this Court via a petition for review on certiorari. In a Decision[5] dated February 21, 1990, we denied the petition. On April 23, 1990,[6] an Entry of Judgment was issued.

Meanwhile, during the pendency of the case, respondent ordered petitioners to return to him the construction

materials and equipment which Moreman deposited in their warehouse. Petitioners, however, told them that Moreman withdrew those construction materials in 1977.

Hence, on December 11, 1985, respondent filed with the Regional Trial Court, Branch 160, Pasig City, an action for damages with an application for a writ of preliminary attachment against petitioners,[7] docketed as Civil Case No. 53044.

In the meantime, on October 30, 1986, respondent was appointed Judge of the Regional Trial Court, Branch 12, San Jose Antique.[8]

On August 25, 1989, or after almost four (4) years, the trial court dismissed respondent's complaint for his failure to prosecute and for lack of interest."[9] On September 6, 1994, or five years thereafter, respondent filed a motion for reconsideration, but the same was denied in the Order dated September 9, 1994 because of the failure of respondent and his counsel to appear on the scheduled hearing.[10]

On October 14, 1994, respondent filed a second motion for reconsideration. This time, the motion was granted and the case was ordered reinstated on January 10, 1995, or ten (10) years from the time the action was originally filed.[11] Thereafter, summons, together with the copies of the complaint and its annexes, were served on petitioners.

On March 2, 1995, counsel for petitioners filed a motion to dismiss on several grounds.[12] Respondent, on the other hand, moved to declare petitioners in default on the ground that their motion to dismiss was filed out of time and that it did not contain any notice of hearing.[13]

On April 27, 1995, the trial court issued an order declaring petitioners in default.[14]

Petitioners filed with the Court of Appeals a petition for certiorari[15] to annul the trial court's order of default, but the same was dismissed in its Order[16] dated August 31, 1995. The case reached this Court, and in a Resolution dated October 25, 1995,[17] we affirmed the assailed order of the Court of Appeals. On November 29, 1995,[18] the corresponding Entry of Judgment was issued.

Thus, upon the return of the records to the RTC, Branch 160, Pasig City, respondent was allowed to present his evidence ex-parte.

Upon motion of respondent, which was granted by the trial court in its Order dated April 29, 1996,[19] the depositions of his witnesses, namely, Leonardo Conge, Alfredo Maceda and Engr. Damiano Nadera were taken in the Metropolitan Trial Court in Cities, Branch 2, Tacloban City.[20] Deponent Leonardo Conge, a labor contractor, testified that on December 14 up to December 24, 1977, he was contracted by petitioner Lily Chan to get bags of cement from the New Gran Hotel construction site and to store the same into the latter's warehouse in Tacloban City. Aside from those bags of cement, deponent also hauled about 400 bundles of steel bars from the same construction site, upon order of petitioners. Corresponding delivery receipts were presented and marked as Exhibits "A", "A-1", "A-2", "A-3" and "A-4".[21]

Deponent Alfredo Maceda testified that he was respondent's Disbursement and Payroll Officer who supervised the construction and kept inventory of the properties of the New Gran Hotel. While conducting the inventory on November 23, 1977, he found that the approximate total value of the materials stored in petitioners' warehouse was P214,310.00. This amount was accordingly reflected in the certification signed by Mario Ramos, store clerk and representative of Moreman who was present during the inventory.[22]

Deponent Damiano Nadera testified on the current cost of the architectural and structural requirements needed to complete the construction of the New Gran Hotel.[23]

On December 26, 1996, the trial court rendered a decision in favor of respondent, thus:

“WHEREFORE, foregoing considered, judgment is hereby rendered ordering defendants to jointly and severally pay plaintiff:

1)

P1,930,000.00 as actual damages;

2)

P2,549,000.00 as actual damages;

3)

Moral damages of P150,000.00; exemplary damages of P50,000.00 and attorney’s fees of P50,000.00 and to pay the costs.

“SO ORDERED.”

The trial court ratiocinated as follows:

“The inventory of other materials, aside from the steel bars and cement is found highly reliable based on first, the affidavit of Arthur Edralin dated September 15, 1979, personnel officer of Moreman Builders that he was assigned with others to guard the warehouse; (Exhs. “M” & “O”); secondly, the inventory (Exh. “C”) dated November 23, 1977 shows (sic) deposit of assorted materials; thirdly, that there were items in the warehouse as of February 3, 1978 as shown in the balance sheet of Moreman’s stock clerk Jose Cedilla.

“Plaintiff is entitled to payment of damages for the overhauling of materials from the construction site by Lily Chan without the knowledge and consent of its owner. Article 20 of the Civil Code provides:

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

“As to the materials stored inside the bodega of defendant Wilson Chan, the inventory (Exh. “C”) show (sic), that the same were owned by the New Gran Hotel. Said materials were stored by Moreman Builders Co., Inc. since it was attested to by the warehouseman as without any lien or encumbrances, the defendants are duty bound to release it. Article 21 of the Civil Code provides:

‘Art. 21. Any person who willfully caused loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.’

“Plaintiff is entitled to payment of actual damages based on the inventory as of November 23, 1977 amounting to P1,930,080.00 (Exhs. “Q” & “Q-1”). The inventory was signed by the agent Moreman Builders Corporation and defendants.

“Plaintiff is likewise entitled to payment of 12,500 bags of cement and 400 bundles of steel bars totaling P2,549,000.00 (Exhs. “S” & “S-1”; Exhs. “B” & “B-3”).

“Defendants should pay plaintiff moral damages of P150,000.00; exemplary damages of P50,000.00 and attorney’s fees of P50,000.00 and to pay the costs.

“The claim of defendant for payment of damages with respect to the materials appearing in the balance sheets as of February 3, 1978 in the amount of P3,286,690.00, not having been established with enough preponderance of evidence cannot be given weight.”[24]

Petitioners then elevated the case to the Court of Appeals, docketed as CA-G.R. CV No. 57323. On June 17,

1999, the Appellate Court rendered the assailed Decision[25] affirming in toto the trial court's judgment, ratiocinating as follows:

"Moreover, although the prayer in the complaint did not specify the amount of damages sought, the same was satisfactorily proved during the trial. For damages to be awarded, it is essential that the claimant satisfactorily prove during the trial the existence of the factual basis thereof and its causal connection with the adverse party's act (PAL, Inc. vs. NLRC, 259 SCRA 459. In sustaining appellee's claim for damages, the court a quo held as follows:

'The Court finds the contention of plaintiff that materials and equipment of plaintiff were stored in the warehouse of defendants and admitted by defendants in the certification issued to Sheriff Borja. x x x

'Evidence further revealed that assorted materials owned by the New Gran Hotel (Exh. "C") were deposited in the bodega of defendant Wilson Chan with a total market value of P1,930,000.00, current price.

'The inventory of other materials, aside from the steel bars and cement, is highly reliable based on first, the affidavit of Arthur Edralin dated September 15, 1979, personnel officer of Moreman Builders; that he was assigned, with others to guard the warehouse (Exhs. M & O); secondly, the inventory (Exh. C) November 23, 1977 shows deposit of assorted materials; thirdly, that there were items in the warehouse as of February 3, 1978, as shown in the balance sheet of Moreman's stock clerk, Jose Cedilla (pp. 60-61, Rollo).'

"The Court affirms the above findings.

"Well settled is the rule that 'absent any proper reason to depart from the rule, factual conclusions reached by the trial court are not to be disturbed (People vs. Dupali, 230 SCRA 62).' Hence, in the absence of any showing that serious and substantial errors were committed by the lower court in the appraisal of the evidence, the trial judge's assessment of the credibility of the witnesses is accorded great weight and respect (People vs. Jain, 254 SCRA 686). And, there being absolutely nothing on record to show that the court a quo overlooked, disregarded, or misinterpreted facts of weight and significance, its factual findings and conclusions must be given great weight and should not be disturbed on appeal.

"WHEREFORE, being in accord with law and evidence, the appealed decision is hereby **AFFIRMED** in toto."

Hence, this petition for review on certiorari anchored on the following grounds:

"I

The Court of Appeals acted with grave abuse of discretion and under a misapprehension of the law and the facts when it affirmed in toto the award of actual damages made by the trial court in favor of respondent in this case.

II

The awards of moral and exemplary damages of the trial court to respondent in this case and affirmed in toto by the Court of Appeals are unwarranted by the evidence presented by respondent at the a quo hearing of this case and should, therefore, be eliminated or at least reduced.

III

The award of attorney's fees by the trial court to respondent in this case and affirmed by the Court of Appeals should be deleted because of the failure of the trial court to state the legal and factual basis of such award."

Petitioners contend inter alia that the actual damages claimed by respondent in the present case were already awarded to him in Civil Case No. 113498[26] and hence, cannot be recovered by him again. Even assuming that respondent is entitled to damages, he can not recover P4,479,000.00 which is eleven (11) times more than the total actual damages of P365,000.00 awarded to him in Civil Case No. 113498.[27]

In his comment on the petition, respondent maintains that petitioners, as depositaries under the law, have both the fiduciary and extraordinary obligations not only to safely keep the construction material deposited, but also to return them with all their products, accessories and accessions, pursuant to Articles 1972,[28] 1979,[29] 1983,[30] and 1988[31] of the Civil Code. Considering that petitioners' duty to return the construction materials in question has already become impossible, it is only proper that the prices of those construction materials in 1996 should be the basis of the award of actual damages. This is the only way to fulfill the "duty to return" contemplated in the applicable laws.[32] Respondent further claims that petitioners must bear the increase in market prices from 1977 to 1996 because liability for fraud includes "all damages which may be reasonably attributed to the non-performance of the obligation." Lastly, respondent insists that there can be no double recovery because in Civil Case No. 113498,[33] the parties were respondent himself and Moreman and the cause of action was the rescission of their building contract. In the present case, however, the parties are respondent and petitioners and the cause of action between them is for recovery of damages arising from petitioners' failure to return the construction materials and equipment.

Obviously, petitioners' assigned errors call for a review of the lower court's findings of fact.

Succinct is the rule that this Court is not a trier of facts and does not normally undertake the re-examination of the evidence submitted by the contending parties during the trial of the case considering that findings of fact of the Court of Appeals are generally binding and conclusive on this Court.[34] The jurisdiction of this Court in a petition for review on certiorari is limited to reviewing only errors of law,[35] not of fact, unless it is shown, *inter alia*, that: (1) the conclusion is a finding grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd and impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; and (6) the Court of Appeals, in making its findings went beyond the issues of the case and the same is contrary to the admission of both parties.[36]

Petitioners submit that this case is an exception to the general rule since both the trial court and the Court of Appeals based their judgments on misapprehension of facts.

We agree.

At the outset, the case should have been dismissed outright by the trial court because of patent procedural infirmities. It bears stressing that the case was originally filed on December 11, 1985. Four (4) years thereafter, or on August 25, 1989, the case was dismissed for respondent's failure to prosecute. Five (5) years after, or on September 6, 1994, respondent filed his motion for reconsideration. From here, the trial court already erred in its ruling because it should have dismissed the motion for reconsideration outright as it was filed far beyond the fifteen-day reglementary period.[37] Worse, when respondent filed his second motion for reconsideration on October 14, 1994, a prohibited pleading,[38] the trial court still granted the same and reinstated the case on January 10, 1995. This is a glaring gross procedural error committed by both the trial court and the Court of Appeals.

Even without such serious procedural flaw, the case should also be dismissed for utter lack of merit.

It must be stressed that respondent's claim for damages is based on petitioners' failure to return or to release to him the construction materials and equipment deposited by Moreman to their warehouse. Hence, the essential issues to be resolved are: (1) Has respondent presented proof that the construction materials and equipment were actually in petitioners' warehouse when he asked that the same be turned over to him? (2) If so, does respondent have the right to demand the release of the said materials and equipment or claim for damages?

Under Article 1311 of the Civil Code, contracts are binding upon the parties (and their assigns and heirs) who

execute them. When there is no privity of contract, there is likewise no obligation or liability to speak about and thus no cause of action arises. Specifically, in an action against the depositary, the burden is on the plaintiff to prove the bailment or deposit and the performance of conditions precedent to the right of action.[39] A depositary is obliged to return the thing to the depositor, or to his heirs or successors, or to the person who may have been designated in the contract. [40]

In the present case, the record is bereft of any contract of deposit, oral or written, between petitioners and respondent. If at all, it was only between petitioners and Moreman. And granting *arguendo* that there was indeed a contract of deposit between petitioners and Moreman, it is still incumbent upon respondent to prove its existence and that it was executed in his favor. However, respondent miserably failed to do so. The only pieces of evidence respondent presented to prove the contract of deposit were the delivery receipts.[41] Significantly, they are unsigned and not duly received or authenticated by either Moreman, petitioners or respondent or any of their authorized representatives. Hence, those delivery receipts have no probative value at all. While our laws grant a person the remedial right to prosecute or institute a civil action against another for the enforcement or protection of a right, or the prevention or redress of a wrong,[42] every cause of action *ex-contractu* must be founded upon a contract, oral or written, express or implied.

Moreover, respondent also failed to prove that there were construction materials and equipment in petitioners' warehouse at the time he made a demand for their return.

Considering that respondent failed to prove (1) the existence of any contract of deposit between him and petitioners, nor between the latter and Moreman in his favor, and (2) that there were construction materials in petitioners' warehouse at the time of respondent's demand to return the same, we hold that petitioners have no corresponding obligation or liability to respondent with respect to those construction materials.

Anent the issue of damages, petitioners are still not liable because, as expressly provided for in Article 2199 of the Civil Code,[43] actual or compensatory damages cannot be presumed, but must be 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 by the injured party and on the best obtainable evidence of the actual amount thereof. It must point out specific facts which could afford a basis for measuring whatever compensatory or actual damages are borne.[44]

Considering our findings that there was no contract of deposit between petitioners and respondent or Moreman and that actually there were no more construction materials or equipment in petitioners' warehouse when respondent made a demand for their return, we hold that he has no right whatsoever to claim for damages.

As we stressed in the beginning, a judgment of default does not automatically imply admission by the defendant of plaintiff's causes of action. Here, the trial court merely adopted respondent's allegations in his complaint and evidence without evaluating them with the highest degree of objectivity and certainty.

WHEREFORE, the petition is GRANTED. The challenged Decision of the Court of Appeals dated June 17, 1999 is REVERSED and SET ASIDE. Costs against respondent.

SO ORDERED.

Puno, (Chairman), Panganiban, Corona, and Carpio Morales, JJ., concur.

[·] Presently Executive Judge, Regional Trial Court, Las Piñas City and Presiding Judge, RTC, Branch 275, Las Piñas City.

- [1] Monarch Insurance Co., Inc. vs. Court of Appeals, 333 SCRA 71 (2000).
- [2] Penned by Associate Justice Artemio G. Tuquero and concurred in by Associate Justices Eubolo G. Verzola and Candido V. Rivera (retired), Rollo at 32-36.
- [3] Penned by Judge Mariano M. Umali, Records at 206-213.
- [4] Rollo at 40-76.
- [5] G.R. No. 88310.
- [6] Rollo at 112.
- [7] Records at 1-15.
- [8] Id. at 34.
- [9] Id. at 32.
- [10] Id. at 39.
- [11] Id. at 45.
- [12] Id. at 61-67.
- [13] Id. at 69-70.
- [14] Id. at 78.
- [15] CA-G.R. No. SP-37328.
- [16] Records at 87-96.
- [17] Id. at 122.
- [18] Id. at 121.
- [19] Id. at 124.
- [20] Records at 128-152.
- [21] Id. at 152-A-152-E; TSN, September 6, 1996 at 4-10; Id. at 131-137.
- [22] Exhs. "C", "C-1", "C-2", "C-3", "C-4"; Records at 154-A.
- [23] Records at 143-150.
- [24] Rollo at 211-213.
- [25] Supra.

[26] The dispositive portion of the trial court's decision reads:

"FOR ALL THE FOREGOING CONSIDERATIONS, the Court, hereby renders judgment, declaring the building contract (Exh. A), rescinded and all subsequent contracts and agreements entered into by the parties relative thereto and, consequently, orders the defendants, jointly and severally, to pay the plaintiffs:

1.

The amount of P30,000.00 for liquidated damages;

2.

The amount of P365,000.00 for actual damages;

3.

The amount of P25,000.00 for moral damages;

4.

The amount of P25,000.00 for exemplary damages;

5.

The amount of P20,000.00 representing increase in the construction materials to finish the construction; and

6.

The amount of P35,000.00 for attorney's fees, and to pay the costs of these proceedings.

"Consequently, the counterclaim for damages is hereby dismissed.

"In addition, the Court, in the supreme interest of justice and equity, considers as suspended the running of the period of availment of the proceeds of the loan of the plaintiffs, from February 3, 1978, and directs that the amount of P1,003,000.00 as already granted for release before the restraining order of this Court was issued, be released to the plaintiffs; lifting the restraining order partially, insofar as the release of the said amount to the plaintiffs is concerned, who may resume construction of the New Gran Hotel, and such other amounts still pending release by the Development Bank of the Philippines from the loan of the plaintiffs, pursuant to the provisions of the loan agreement. The restraining order, however, is converted into a permanent injunction, insofar as it enjoins the defendants, their agents, representatives, personnel and employees from continuing with the project or participating in any manner therein, after the plaintiffs have posted a bond to be approved, in the amount of P100,000.00, within five days from receipt of a copy of this decision." (Rollo at 75-76).

[27] Rollo at 40.

[28] Art. 1972. The depositary is obliged to keep the thing safely and to return it, when required, to the depositor, or to his heirs and successors, or to the person who may have been designated in the contract. His responsibility, with regard to the safekeeping and the loss of the thing, shall be governed by the provisions of Title I of this Book.

If the deposit is gratuitous, this fact shall be taken into account in determining the degree of care that the depositary must observe.

[29] Art. 1979. The depositary is liable for the loss of the thing through a fortuitous event:

- If it is so stipulated;
- If he uses the thing without the depositor's permission;
- If he delays its return;
- If he allows others to use it, even though he himself may have been authorized to use the same.

[30] Art. 1983. The thing deposited shall be returned with all its products, accessories and accessions.

Should the deposit consist of money, the provisions relative to agents in article 1896 shall be applied to the

depository.

[31] Art. 1988. The thing deposited must be returned to the depositor upon demand, even though a specified period or time for such return may have been fixed.

This provision shall not apply when the thing is judicially attached while in the depository's possession, or should he have been notified of the opposition of a third person to the return or removal of the thing deposited. In these cases, the depository must immediately inform the depositor of the attachment or opposition.

[32] Rollo at 122.

[33] Rollo at 40-76.

[34] Congregation of the Religious of the Virgin Mary vs. Court of Appeals, G.R. No. 126363, June 26, 1998, citing Dela Cerna vs. Court of Appeals, 233 SCRA 325.

[35] Section 1, Rule 45, Revised Rules of Court .

[36] Fule vs. Court of Appeals, G.R. No. 112212, March 2, 1998.

[37] Section 3, Rule 41 in relation to Sec. 1, Rule 37 of the 1997 Rules of Civil Procedure, as amended.

[38] Section 5(2), Rule 37, id.

[39] 26 C.J.S. § 6.

[40] Article 1972 of the Civil Code.

[41] Record at 152-A to 152-E.

[42] Section 3 (a), Rule 1, 1997 Rules of Civil Procedure, as amended.

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

[44] Development Bank of the Philippines vs. Court of Appeals, G.R. No. 118342, January 5, 1998.

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