BIENVENIDO DE GUZMAN, PETITIONER, VS. NATIONAL FOOD AUTHORITY, RESPONDENT.

G.R. NO. 145795. August 09, 2006

Ponente: PUNO, J.

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PUNO, J.:

Petitioner Bienvenido de Guzman comes to us via a petition for review on certiorari under Rule 45 of the Rules of Court, assailing the decision[1] and resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 50690 which reversed the decision[3] of the trial court dismissing the complaint filed by respondent National Food Authority (NFA) against him.

Respondent NFA is a government agency created by virtue of Presidential Decree Nos. 1485 and 1770 while petitioner de Guzman is the owner-proprietor of Mabuhay Rice Mill in Tuguegarao, Cagayan.

On December 2, 1986, respondent and petitioner entered into a Contract of Palay Milling[4] (the Contract) whereby petitioner agreed to mill the palay to be delivered by respondent NFA in conformity with the following specifications set by respondent, viz:

> 1) Milling degree Well Milled;
>
> x x x
>
> 3) Guaranteed Milling Recovery 63.5%
>
> x x x
>
> 5) Not less than 65% headrice;
>
> 6) Not more than 35% brokens;
>
> 7) Not more than 14% moisture content;
>
> 8) Not more than 0.3% impurities;
>
> 9) Not more than 3.0% yellow and damaged kernels;
>
> 10) Must be free from live infestation.[5]

The Contract also provided for the following penalties in case of delivery of milled rice which does not conform to the specifications set by respondent and in case the contractor incurs delay in the delivery, viz:

> SPECIAL PROVISIONS:
>
> x x x
>
> - In case the milled rice does not conform with the required milling quality/specifications, NFA will accept delivery subjecting at the same time the CONTRACTOR to a penalty of fifty (P0.50) centavos per kilogram of

> rice. Provided, that if the sub-standard rice so delivered is clearly apparent to NFA that its palay form was obviously changed into an inferior quality or that the same was adulterated, the CONTRACTOR shall be considered authomatically (sic) in default and he shall be liable for the whole value of the stocks based on replacement cost, without prejudice to the incipient criminal liability he may incur therefrom.
>
> Likewise, if rice recoveries and by-products were adulterated, NFA shall have the right to demand replacement cost.
>
> For this purpose, replacement cost shall be based on the latest available replacement cost existing at the time of the issuance of the palay for milling as imposed by NFA.
>
> The foregoing actions shall be without prejudice to such other actions NFA may take under the premises.
>
> - In case the CONTRACTOR fails to make available for delivery to/withdrawal by NFA the rice recoveries and by-products within five (5) calendar days from the last day of milling of NFA stocks based on the capacity of the mill, the CONTRACTOR shall be given another five (5) calendar days within which to deliver. After the aforementioned additional five (5) grace day period, the CONTRACTOR shall be deemed in default with or without demand, in which case CONTRACTOR shall be liable for payment of the replacement cost plus 12% per annum interest.[6]

On January 18, 19 and 20, 1987, petitioner received from respondent NFA a total of 96,150.50 net kilos of palay or its equivalent in rice form of 61,055.58 kilos. On March 12, 14 and April 7, 1987, petitioner de Guzman delivered to respondent NFA a total of 61,055.08 net kilos of milled rice.

An inventory and audit examination of the stocks and empty sacks accountabilities of petitioner de Guzman for the period of October 29, 1986 to April 8, 1987 was conducted by Conrado Pagulayan, the resident auditor of respondent NFA's regional office in Tuguegarao, Cagayan. Based on his findings, petitioner incurred a shortage of 56,372.26 net kilos of palay with an equivalent monetary value of P476,909.31, computed at P8.46 (replacement cost) per kilo. Petitioner was likewise found liable for 12% interest per annum due to late deliveries and penalty of P30,527.54 for deliveries of 61,055.08 net kilos of sub-standard rice, computed at P0.50 per kilo. In all, petitioner de Guzman was found to have a total net shortage of P512,342.72.

A letter of demand[7] dated March 11, 1991 was sent by respondent NFA, through its litigation division, to petitioner de Guzman, demanding that petitioner pay his alleged accountabilities for late delivery, delivery of sub-standard milled rice and shortage, in the amount of P512,342.72. Petitioner de Guzman failed to comply.

Respondent NFA filed a Complaint for Sum of Money and Damages[8] against petitioner, praying that judgment be rendered:

> 1) Ordering defendant to pay plaintiff the sum of P476,909.31 representing the amount covered by the shortages of 35,796.39 kilos of rice or an equivalent of 56,372.26 net kilos of palay;
>
> 2) Ordering defendant to pay plaintiff interest in the amount of P7,941.07 plus 12% interest per annum of the entire obligation to commence from July 3, 1987;
>
> 3) Ordering defendant to pay plaintiff the sum of P30,527.54 as penalty;
>
> 4) Ordering defendant to pay plaintiff the sum of P50,000.00 as exemplary damages;
>
> 5) Ordering defendant to pay plaintiff the sum of P50,000.00 as attorneys fees and other cost and expenses of this suit. . and
>
> 6) Such other and further relief as this Honorable Court may deem just and equitable x x x.[9]

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Petitioner filed his Answer with counterclaim.[10] He admitted having received from respondent 96,150.50 net kilos of palay from January 18 to 20, 1987, but denied incurring any liability for shortage, late deliveries, and failure to deliver rice recoveries in accordance with the specification in the Contract. Petitioner alleged that he delivered 61,055.08 net kilos of milled rice to respondent NFA which complied with the 63.5% guaranteed milling recovery under the Contract. He claimed that the stocks of palay delivered by respondent NFA to him from January 18 to 20, 1987 "were of ages C and D, and on account of their long storage, x x x were within the borderline of yellow and damaged specifications." He allegedly refused to mill said stocks and stored the same at his warehouse for a long time because respondent's representatives failed to retrieve them. However, because of the insistence and assurance of respondent NFA's representatives that said palay stocks would be considered as having "yellow and/or damaged specifications," petitioner eventually agreed to mill the same. Petitioner also contended that it was respondent's representatives who incurred in delay in receiving the milled rice he produced as respondent NFA's warehouse in Tuguegarao, Cagayan was always full and could not accommodate the same. By way of counterclaim, petitioner prayed that respondent be made liable to pay exemplary, compensatory and moral damages, litigation expenses and attorney's fee.

During pre-trial, the parties agreed to litigate the instant case on the following issues, viz:

- Whether or not the defendant incurred the shortage imputed to him by the plaintiff;

- Whether or not the plaintiff is entitled to the damages and penalties claimed by it;

- Whether or not the defendant is entitled to his counterclaim;

- Whether or not defendant is liable for the amount claimed by plaintiff; and

- Whether or not defendant['s] defenses are meritorious or not.[11]

To prove its allegations, respondent presented Auditor Conrado Pagulayan and Saturnino Rola, Jr., the Assistant Director for Legal Affairs of respondent NFA, as witnesses. It likewise presented the following pieces of documentary evidence: 1) the Contract; 2) Demand to Produce all accountable forms and other pertinent documents dated April 8, 1987; 3) Inventory Certificate dated April 8, 1987; 4) Statement of Palay received by petitioner de Guzman from October 29, 1986 to April 8, 1987; 5) Summary of Complete Examination of Stocks and Sack Accountabilities of petitioner de Guzman from October 29, 1986 to April 8, 1987; 6) Valuation of Shortage; 7) Computation of Interest; and 8) Demand Letter dated March 11, 1991.

On the other hand, petitioner de Guzman and his wife, Victoria de Guzman, testified in his defense. He presented as evidence: 1) the Contract; 2) the Certification[12] of Evelyn T. Cunanan, Provincial SQAO of respondent NFA, to prove that some of the stocks issued by respondent NFA for the period of December 1986 to February 1987 were of ages C and D, which, on account of their long-term storage, had acquired characteristics within the borderline of yellow and damaged specifications; and 3) the Memorandum of Edison A. Villasis, Assistant Administrator for Stabilization to the Administrator of respondent NFA, dated January 6, 1993, to prove that other miller-contractors in Tuguegarao, Cagayan received palay of inferior quality from respondent NFA and were likewise protesting against the erroneous assessment of accountabilities.

After trial, the trial court rendered a decision dismissing respondent NFA's complaint "for lack of cause of action" and petitioner de Guzman's counterclaim "for lack of legal and factual basis."[13]

In absolving petitioner from payment of penalty under paragraph 8 of the Special Provisions of the Contract, the trial court held:

> After careful reading of par. 8, it is very clear that the same is applicable only if the contractor delivers to NFA

> rice which does not conform with the required milling quality/specifications and that the contractor changed into an inferior quality the palay form delivered by the plaintiff or that the same was adulterated. In the case at bar, there is no evidence whatsoever presented by the plaintiff that defendant changed the palay stocks delivered by the plaintiff to the defendant for milling into an inferior quality or that defendant adulterated the same with inferior quality. While it is admitted by the defendant that the milled rice delivered to plaintiff were of ages C and D, it was however established by defendant's evidence that the palay stocks delivered for milling by plaintiff were of ages C and D (Exh. 2). Thus, it follows that the milled rice delivered by defendant to the plaintiff was likewise of ages C and D and of the same quality of palay stocks delivered for milling by the plaintiff. Defendant is therefore not liable for plaintiff's claim based on the provision found in par. 8 of the contract.[14]

On appeal, the CA reversed and set aside the decision of the trial court. The dispositive portion of the CA's decision states:

> WHEREFORE, premises considered, the appealed decision in Civil Case No. Q-92-14073 is hereby REVERSED and SET ASIDE and a new one is hereby rendered ordering the defendant-appellee to pay to plaintiff-appellant the following sums:
>
> (1) P516,525.97 representing the value of 61,055.08 net kilos of milled rice based on replacement cost of P8.46 per kilo, with interest at 6% per annum from the finality of this judgment until fully paid;
>
> (2) P10,000.00 as liquidated damages; and
>
> (3) P10,000.00 as attorney's fees.
>
> SO ORDERED.[15]

In reversing the trial court's decision, the CA held:

> We agree with the trial court that paragraph 9 which imposes the payment of replacement cost plus 12% interest per annum, cannot be applied against the appellee because the latter actually delivered the milled rice to appellant. Neither is appellee liable for shortage because the records clearly show that appellant received from appellee 61,055.08 net kilos of milled rice on March 12, 14 and April 7, 1987.
>
> However, We believe that appellee is still liable under paragraph 8 for delivery of sub-standard rice as indicated in Exhibit "4" under the column "Variety." Appellee's claim that the palay delivered by plaintiff for milling was of inferior quality in the first place, was not substantiated by him. This is specially significant in view of the milling contractor's duty to accomplish and submit a Milling Liquidation Report on the basis of a milling logbook wherein entries of the issuance by plaintiff of palay for milling and the delivery of milled rice to plaintiff are supposed to be recorded.
>
> x x x
>
> Since the appellee clearly violated paragraph 8 under Special Provisions (E) in delivering milled rice of inferior quality, he can be considered automatically in default and is liable for the whole value of the stocks based on replacement cost. In view thereof, the amount of total accountabilities of appellee to appellant should be computed as follows:
>
> 61,055.08 net kilos of rice X P8.46 = P516,525.97[16] (emphases supplied)

Petitioner filed a motion for reconsideration[17] of the CA's decision, to no avail.[18] Hence, this petition in which petitioner raises the following arguments, viz:

> [1.] The Honorable Court of Appeals manifestly committed an error in applying the provisions of paragraph 8 of the Special Provisions of the Contract x x x as basis for holding the Petitioner liable for replacement cost x x

x;

x x x

[2.] The finding of fact of the Honorable Court of Appeals that "[a]ppellee's claim that the palay delivered by plaintiff for milling was of inferior quality in the first place, was not substantiated by him" is contradicted by the finding of the trial court and by the evidence on record x x x

[3.] The Honorable Court of Appeals decided an issue which was not raised and litigated in the trial court x x x

x x x

[4.] The finding of the Honorable Court of Appeals that "[t]he delivery by appellee was likewise late or behind schedule, contrary to the findings of the lower court," is contradicted by the evidence on record x x x.[19]

The issue to be resolved is whether petitioner should be held liable for delivery of sub-standard rice under paragraph 8 of the Special Provisions of the Contract.

Petitioner contends that only two situations are provided under paragraph 8 of the Special Provisions of the Contract. In the first scenario, the contractor is subjected to a penalty of P0.50 per kilo of sub-standard rice when the milled rice delivered to respondent NFA does not conform to the required milling quality or specification under the Contract. In the second scenario, the contractor is deemed automatically in default and liable for the whole value of the stocks based on replacement cost when, aside from delivering milled rice which does not conform to the required milling quality under the Contract, it appears to respondent NFA that the palay form of the sub-standard rice delivered was obviously changed into an inferior quality or that the same was adulterated. The CA allegedly erred in considering him automatically in default and making him liable for the whole value of the stocks based on replacement cost as there is no evidence to show that he changed or adulterated the palay stocks delivered by respondent NFA into an inferior quality. Moreover, petitioner points out that respondent NFA's complaint does not allege such a claim. Since the CA decided an issue that was not raised and litigated in the trial court, its decision thereon is allegedly null and void. If at all, petitioner contends that he should only be made liable to pay the penalty of P0.50 per kilo under the first scenario. However, he contends that he is likewise not liable under the first scenario as he was allegedly able to prove that the palay stocks delivered to him by respondent NFA was, in the first place, of inferior quality. The ruling of the CA that he was not able to substantiate this defense is allegedly contrary to the factual finding of the trial court and the evidence on record.[20]

In its Comment,[21] respondent NFA contends that paragraph 8 of the Special Provisions of the Contract is clear that when petitioner, as contractor, delivered to it milled rice of inferior quality, he is considered as automatically in default and is liable for the whole value of the stocks based on replacement cost. It maintains that petitioner's liability for replacement cost under paragraph 8 of the Special Provisions of the Contract is premised on his failure to accomplish and submit a Milling Liquidation Report on the basis of a milling logbook where the issuance of palay and the delivery of the milled rice were supposed to be recorded.

We rule for petitioner.

First, it is a rule that except for questions on jurisdiction, no question will be entertained on appeal unless it has been raised in the court below and it is within the issues made by the parties in their pleadings.[22]

In the case at bar, the CA erred in making petitioner liable for the whole value of stocks based on replacement cost under paragraph 8 of the Special Provisions of the Contract. As correctly held by the trial court and contended by petitioner, paragraph 8 of the Special Provisions of the Contract provides for two different causes of

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action. The first cause of action is the delivery of milled rice of inferior quality to respondent NFA. This makes petitioner liable for the penalty of P0.50 per kilo of sub-standard rice. The second cause of action requires the concurrence of two acts: (1) that milled rice of inferior quality is delivered to respondent NFA; and 2) that the sub-standard rice so delivered is clearly apparent to NFA that its palay form was changed into an inferior quality or that the same was adulterated. The second cause of action makes petitioner liable for the whole value of the stocks based on replacement cost.

In respondent NFA's Complaint before the trial court and appeal before the CA, it consistently prayed that petitioner be made liable to pay the sum of P30,527.54 as penalty for delivering 61,055.08 kilos of sub-standard milled rice, computed at P0.50 per kilo.[23] Respondent NFA never claimed in the courts below that petitioner should be made liable for replacement cost for delivery of sub-standard rice. In fact, it never alleged that petitioner de Guzman committed the second act required to warrant such penalty, i.e., that petitioner changed the palay stocks delivered to him by respondent NFA into an inferior quality or that he adulterated the same.

Moreover, in making petitioner liable for the whole value of the stocks based on replacement cost under paragraph 8 of the Special Provisions of the Contract, the CA merely held that petitioner's act of "delivering milled rice of inferior quality" caused him to be "considered automatically in default and x x x liable for the whole value of the stocks based on replacement cost." This is clearly erroneous as the CA imposed the penalty of replacement cost without a finding that petitioner changed or altered into an inferior quality the palay stocks delivered to him by respondent NFA.

Second, petitioner cannot likewise be held liable for the penalty of P0.50 per kilo of sub-standard rice.

The factual findings of the CA and the trial court are in conflict in giving credence to petitioner's defense that respondent NFA delivered palay stocks of inferior quality to him. Thus, as an exception to the well-entrenched rule that this Court is not a trier of facts,[24] we are duty-bound to reexamine the evidence on record in the case at bar.

Rudimentary is the rule that the findings of the judge who tried the case and heard the witnesses are not to be disturbed on appeal, unless there are substantial facts and circumstances which have been overlooked and which, if properly considered, might affect the result of the case.[25] This is so because the matter of assigning values to declarations at the witness stand is best and most competently performed or carried out by a trial judge who, unlike appellate magistrates, can weigh such testimony in light of the defendant's behavior, demeanor, conduct and attitude at trial.[26]

In the case at bar, we do not find strong and cogent reason to deviate from this well-grounded rule. The evidence on record preponderates in favor of the trial court's factual finding. We quote the pertinent portions of petitionerï¿½s testimony, to wit:

> A - When the palay stocks were unloaded at my rice mill, we found out that the palay was of inferior quality and we were advised by the Milling Supervisor of NFA not to proceed with the actual milling.
>
> Q - When you saw that the quality of palay delivered was inferior, what was your reaction?
>
> A - Well, of course, I told them that this palay may not come up with their specifications especially with the damage in yellow kernels.
>
> Q - Do you have evidence to show that what was delivered to you was an inferior quality of palay for milling?
>
> A - I do not have any physical evidence but then practically all the millers were complaining of the same thing and this thing was supported by a document in your possession I believe at a meeting among the millers and the representative of the National Food Authority.

x x x

Q - So that, Mr. de Guzman, when you apparently objected to the delivery of these palay belonging to the classification C and D, what did you do?

A - Well, we were advised not to mill it immediately so we just stood pat and waited for whatever decision the NFA will give us regarding their stocks.

Q - And how long thereafter after the delivery of these palay in your bodega elapsed when you started milling?

A - That was already in March when we were advised to proceed with the milling so we milled the stocks of the NFA.

Q - Why did you agree to mill this kind of inferior quality of palay which will turn out specification that would not be in accordance with your contract?

A - Well, when it comes to the quality of the rice, we cannot do anything about that anymore and they gave us assurance that they would accept whatever rice that would be the output of their stocks.[27]

Petitioner's testimony is corroborated by the testimony of his wife, Victoria de Guzman, who also managed petitioner's rice mill. The claim that other rice millers in Tuguegarao, Cagayan also experienced the same plight is supported by: a) the Certification issued by Evelyn Cunanan, Provincial SQAO of respondent NFA, that some of the stocks issued by respondent NFA for the period of December 1986 to February 1987 were of ages C and D, which, on account of their long-term storage, had acquired characteristics within the borderline of yellow and damaged specifications; and b) the Memorandum of Edison A. Villasis, Assistant Administrator for Stabilization to the Administrator of respondent NFA dated January 6, 1993, stating that the "Technical Services Directorate, after conducting a joint evaluation on the case of defaulting miller-contractors of Region II, in coordination with the Directorate for Marketing Operations, recommended that the miller-contractors of Region II x x x should not be penalized x x x based on two considerations, namely: (1) that there was a variance in the results of analysis between the source and receiving NFA offices and, (2) that there was a deviation from existing SOP committed by the NFA Provincial offices regarding the conduct of proper reclassification of the palay stocks prior to their issuance to the miller-contractors." The Memorandum shows that other miller-contractors in Tuguegarao, Cagayan, were similarly held accountable for delay and sub-standard delivery when they claim that "they should not be penalized because the problem was not due to their fault but that of NFA." It states that the views of the miller-contractors were "shared both by Director Vergara, TSD, and Atty. Mallabo, DLA, considering that the local COA [had] no access yet [to] the documents relating to the circumstances which led to the delay and sub-standard delivery, hence, their findings [were] based purely on the provisions of the contract."[28]

Moreover, as highlighted by the CA, time is of the essence in the Contract. Paragraph 2 of the Duties and Responsibilities of the Contractor provides that the "CONTRACTOR shall commence milling within twenty-four (24) hours upon receipt of palay stocks in accordance with NFA specifications." Paragraph 2 of the Special Provisions of the Contract also provides that the "CONTRACTOR shall give priority in milling NFA stocks and unless otherwise ordered by the NFA, shall in one (1) operation exclusively and continuously mill the palay. NFA reserves the right to terminate this contract in case of non-prioritization by Contractor in milling NFA stocks."[29] It is, therefore, curious that despite the delivery of the palay stocks to petitioner de Guzman on January 18 to 20, 1987 and the start of the milling only in March 1987, respondent NFA did not raise any objection or exercise its right to cancel the Contract. This further strengthens petitioner's claim that "when the palay stocks were unloaded at [his] mill, [they] found that the palay was of inferior quality and [they] were advised by the Milling Supervisor of NFA not to proceed with the actual milling."

It is noteworthy that respondent NFA did not present any rebuttal evidence against petitioner de Guzman's claim

that the palay stocks delivered to him by respondent were of inferior quality.[30] To the contrary, the pieces of documentary evidence presented by petitioner were issued by respondent NFA's officers in the performance of their duties.[31] The absence of a Milling Liquidation Report is of little relevance as nowhere in the Contract does it provide that the contractor's failure to accomplish a Milling Liquidation Report is a tacit admission that he received palay of good quality from respondent NFA. The absence of this report was not even raised as an argument during trial or on appeal with the CA.

IN VIEW WHEREOF, the petition is GRANTED. The August 18, 2000 Decision and October 11, 2000 Resolution of the Court of Appeals in CA-G.R. CV No. 50690 are reversed and set aside. The Decision dated May 31, 1995 of the Regional Trial Court of Quezon City, Branch 79, in Civil Case No. Q-92-14073 dismissing the instant complaint against petitioner is reinstated.

No costs.

SO ORDERED.

Sandoval-Gutierrez, Corona, Azcuna and Garcia, JJ., concur.

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[1] Dated August 18, 2000, penned by Justice Martin S. Villarama, Jr., and concurred in by Justices Salome A. Motoya and Romeo S. Callejo, Sr.; Rollo, pp. 28-33.

[2] Dated October 11, 2000; Id. at 35.

[3] In Civil Case No. Q-92-14073 dated May 31, 1995 penned by Hon. Godofredo L. Legaspi, Judge of the RTC of Quezon City, Branch 79; Id. at 67-73.

[4] Annex "C-1"; Id. at 41-49.

[5] Id. at 42.

[6] Id. at 46-47.

[7] Original Records, pp. 71-72.

[8] Dated November 20, 1992; rollo, pp. 36-39.

[9] Id. at 39.

[10] Id. at 50-63.

[11] Order of the trial court dated May 21, 1993; Original Records, p. 45.

[12] Exhibit 2; Id. at 103.

[13] Rollo, p. 73.

[14] Id. at 72.

[15] Id. at 32-33.

[16] Id. at 31-32.

[17] Id. at 74-78.

[18] Id. at 35.

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[19] Id. at 17, 20, 22.

[20] Petition for Review on Certiorari; Id. at 17-21.

[21] Comment; Id. at 111-113.

[22] Vencilao v. Vano, G.R. No. L-25660, February 23, 1990, 182 SCRA 491, 498, citing Cordero v. Cabral, G.R. No. L-36789, July 25, 1983, 123 SCRA 532.

[23] CA rollo, pp. 29, 103.

[24] See Buduhan v. Pakurao, G.R. No. 168237, February 22, 2006, citing Naguiat v. Court of Appeals, G.R. No. 118375, October 3, 2003, 412 SCRA 591, 596; Casimiro v. Stern Real Estate Inc., G.R. No. 162233, March 10, 2006, citing Samson v. National Labor Relations Commission, 386 Phil. 669, 681 (2000).

[25] GSIS v. CA, G.R. No. 101439, June 21, 1999, 308 SCRA 559, 570, citing People v. Pareja, No. L-21937, November 29, 1969, 30 SCRA 693, 703.

[26] See Santos v. People, G.R. No. 147615, January 20, 2003, 395 SCRA 507, 521; People v. Magallanes, L-21559-21560, June 29, 1968, 23 SCRA 1274, 1285.

[27] Transcript of Stenographic Notes dated October 7, 1993, pp. 8-11.

[28] Original Records, pp. 104-105.

[29] Id. at 60.

[30] Order of the trial court dated November 10, 1994; Id. at 115.

[31] Note that Atty. Arleen Tagaban, counsel for respondent NFA in the trial court, admitted Exhibits 1, 1-a to 3 of petitioner de Guzman during pre-trial; Id. at 45.

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