PRUDENTIAL GUARANTEE AND ASSURANCE INC., PETITIONER, VS. TRANS-ASIA SHIPPING LINES, INC., RESPONDENT.

G.R. NO. 151890. June 20, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a consolidation of two separate Petitions for Review on Certiorari filed by petitioner Prudential Guarantee and Assurance, Inc. (PRUDENTIAL) in G.R. No. 151890 and Trans-Asia Shipping Lines, Inc. (TRANS-ASIA) in G.R. No. 151991, assailing the Decision[1] dated 6 November 2001 of the Court of Appeals in CA G.R. CV No. 68278, which reversed the Judgment[2] dated 6 June 2000 of the Regional Trial Court (RTC), Branch 13, Cebu City in Civil Case No. CEB-20709. The 29 January 2002 Resolution[3] of the Court of Appeals, denying PRUDENTIAL's Motion for Reconsideration and TRANS-ASIA's Partial Motion for Reconsideration of the 6 November 2001 Decision, is likewise sought to be annulled and set aside.

The Facts

The material antecedents as found by the court a quo and adopted by the appellate court are as follows:

> Plaintiff [TRANS-ASIA] is the owner of the vessel M/V Asia Korea. In consideration of payment of premiums, defendant [PRUDENTIAL] insured M/V Asia Korea for loss/damage of the hull and machinery arising from perils, inter alia, of fire and explosion for the sum of P40 Million, beginning [from] the period [of] July 1, 1993 up to July 1, 1994. This is evidenced by Marine Policy No. MH93/1363 (Exhibits "A" to "A-11"). On October 25, 1993, while the policy was in force, a fire broke out while [M/V Asia Korea was] undergoing repairs at the port of Cebu. On October 26, 1993 plaintiff [TRANS-ASIA] filed its notice of claim for damage sustained by the vessel. This is evidenced by a letter/formal claim of even date (Exhibit "B"). Plaintiff [TRANS-ASIA] reserved its right to subsequently notify defendant [PRUDENTIAL] as to the full amount of the claim upon final survey and determination by average adjuster Richard Hogg International (Phil.) of the damage sustained by reason of fire. An adjuster's report on the fire in question was submitted by Richard Hogg International together with the U-Marine Surveyor Report (Exhibits "4" to "4-115").
>
> On May 29, 1995[,] plaintiff [TRANS-ASIA] executed a document denominated "Loan and Trust receipt", a portion of which read (sic):"Received from Prudential Guarantee and Assurance, Inc., the sum of PESOS THREE MILLION ONLY (P3,000,000.00) as a loan without interest under Policy No. MH 93/1353 [sic], repayable only in the event and to the extent that any net recovery is made by Trans-Asia Shipping Corporation, from any person or persons, corporation or corporations, or other parties, on account of loss by any casualty for which they may be liable occasioned by the 25 October 1993: Fire on Board." (Exhibit "4")

In a letter dated 21 April 1997 defendant [PRUDENTIAL] denied plaintiff's claim (Exhibit "5"). The letter reads:

> "After a careful review and evaluation of your claim arising from the above-captioned incident, it has been ascertained that you are in breach of policy conditions, among them "WARRANTED VESSEL CLASSED AND CLASS MAINTAINED". Accordingly, we regret to advise that your claim is not compensable and hereby DENIED."

> This was followed by defendant's letter dated 21 July 1997 requesting the return or payment of the P3,000,000.00 within a period of ten (10) days from receipt of the letter (Exhibit "6").[4]

Following this development, on 13 August 1997, TRANS-ASIA filed a Complaint[5] for Sum of Money against PRUDENTIAL with the RTC of Cebu City, docketed as Civil Case No. CEB-20709, wherein TRANS-ASIA sought the amount of P8,395,072.26 from PRUDENTIAL, alleging that the same represents the balance of the indemnity due upon the insurance policy in the total amount of P11,395,072.26. TRANS-ASIA similarly sought interest at 42% per annum citing Section 243[6] of Presidential Decreee No. 1460, otherwise known as the "Insurance Code," as amended.

In its Answer,[7] PRUDENTIAL denied the material allegations of the Complaint and interposed the defense that TRANS-ASIA breached insurance policy conditions, in particular: "WARRANTED VESSEL CLASSED AND CLASS MAINTAINED." PRUDENTIAL further alleged that it acted as facts and law require and incurred no liability to TRANS-ASIA; that TRANS-ASIA has no cause of action; and, that its claim has been effectively waived and/or abandoned, or it is estopped from pursuing the same. By way of a counterclaim, PRUDENTIAL sought a refund of P3,000,000.00, which it allegedly advanced to TRANS-ASIA by way of a loan without interest and without prejudice to the final evaluation of the claim, including the amounts of P500,000.00, for survey fees and P200,000.00, representing attorney's fees.

The Ruling of the Trial Court

On 6 June 2000, the court a quo rendered Judgment[8] finding for (therein defendant) PRUDENTIAL. It ruled that a determination of the parties' liabilities hinged on whether TRANS-ASIA violated and breached the policy conditions on WARRANTED VESSEL CLASSED AND CLASS MAINTAINED. It interpreted the provision to mean that TRANS-ASIA is required to maintain the vessel at a certain class at all times pertinent during the life of the policy. According to the court a quo, TRANS-ASIA failed to prove compliance of the terms of the warranty, the violation thereof entitled PRUDENTIAL, the insured party, to rescind the contract.[9]

Further, citing Section 107[10] of the Insurance Code, the court a quo ratiocinated that the concealment made by TRANS-ASIA that the vessel was not adequately maintained to preserve its class was a material concealment sufficient to avoid the policy and, thus, entitled the injured party to rescind the contract. The court a quo found merit in PRUDENTIAL's contention that there was nothing in the adjustment of the particular average submitted by the adjuster that would show that TRANS-ASIA was not in breach of the policy. Ruling on the denominated loan and trust receipt, the court a quo said that in substance and in form, the same is a receipt for a loan. It held that if TRANS-ASIA intended to receive the amount of P3,000,000.00 as advance payment, it should have so clearly stated as such.

The court a quo did not award PRUDENTIAL's claim for P500,000.00, representing expert survey fees on the ground of lack of sufficient basis in support thereof. Neither did it award attorney's fees on the rationalization that the instant case does not fall under the exceptions stated in Article 2208[11] of the Civil Code. However, the court a quo granted PRUDENTIAL's counterclaim stating that there is factual and legal basis for TRANS-ASIA to return the amount of P3,000,000.00 by way of loan without interest.

The decretal portion of the Judgment of the RTC reads:

> WHEREFORE, judgment is hereby rendered DISMISSING the complaint for its failure to prove a cause of action.
>
> On defendant's counterclaim, plaintiff is directed to return the sum of P3,000,000.00 representing the loan extended to it by the defendant, within a period of ten (10) days from and after this judgment shall have

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become final and executory.[12]

The Ruling of the Court of Appeals

On appeal by TRANS-ASIA, the Court of Appeals, in its assailed Decision of 6 November 2001, reversed the 6 June 2000 Judgment of the RTC.

On the issue of TRANS-ASIA's alleged breach of warranty of the policy condition CLASSED AND CLASS MAINTAINED, the Court of Appeals ruled that PRUDENTIAL, as the party asserting the non-compensability of the loss had the burden of proof to show that TRANS-ASIA breached the warranty, which burden it failed to discharge. PRUDENTIAL cannot rely on the lack of certification to the effect that TRANS-ASIA was CLASSED AND CLASS MAINTAINED as its sole basis for reaching the conclusion that the warranty was breached. The Court of Appeals opined that the lack of a certification does not necessarily mean that the warranty was breached by TRANS-ASIA. Instead, the Court of Appeals considered PRUDENTIAL's admission that at the time the insurance contract was entered into between the parties, the vessel was properly classed by Bureau Veritas, a classification society recognized by the industry. The Court of Appeals similarly gave weight to the fact that it was the responsibility of Richards Hogg International (Phils.) Inc., the average adjuster hired by PRUDENTIAL, to secure a copy of such certification to support its conclusion that mere absence of a certification does not warrant denial of TRANS-ASIA's claim under the insurance policy.

In the same token, the Court of Appeals found the subject warranty allegedly breached by TRANS-ASIA to be a rider which, while contained in the policy, was inserted by PRUDENTIAL without the intervention of TRANS-ASIA. As such, it partakes of a nature of a contract d'adhesion which should be construed against PRUDENTIAL, the party which drafted the contract. Likewise, according to the Court of Appeals, PRUDENTIAL's renewal of the insurance policy from noon of 1 July 1994 to noon of 1 July 1995, and then again, until noon of 1 July 1996 must be deemed a waiver by PRUDENTIAL of any breach of warranty committed by TRANS-ASIA.

Further, the Court of Appeals, contrary to the ruling of the court a quo, interpreted the transaction between PRUDENTIAL and TRANS-ASIA as one of subrogation, instead of a loan. The Court of Appeals concluded that TRANS-ASIA has no obligation to pay back the amount of P3,000.000.00 to PRUDENTIAL based on its finding that the aforesaid amount was PRUDENTIAL's partial payment to TRANS-ASIA's claim under the policy. Finally, the Court of Appeals denied TRANS-ASIA's prayer for attorney's fees, but held TRANS-ASIA entitled to double interest on the policy for the duration of the delay of payment of the unpaid balance, citing Section 244[13] of the Insurance Code.

Finding for therein appellant TRANS-ASIA, the Court of Appeals ruled in this wise:

> WHEREFORE, the foregoing consideration, We find for Appellant. The instant appeal is ALLOWED and the Judgment appealed from REVERSED. The P3,000,000.00 initially paid by appellee Prudential Guarantee Assurance Incorporated to appellant Trans-Asia and covered by a "Loan and Trust Receipt" dated 29 May 1995 is HELD to be in partial settlement of the loss suffered by appellant and covered by Marine Policy No. MH93/1363 issued by appellee. Further, appellee is hereby ORDERED to pay appellant the additional amount of P8,395,072.26 representing the balance of the loss suffered by the latter as recommended by the average adjuster Richard Hogg International (Philippines) in its Report, with double interest starting from the time Richard Hogg's Survey Report was completed, or on 13 August 1996, until the same is fully paid.
>
> All other claims and counterclaims are hereby DISMISSED.
>
> All costs against appellee.[14]

Not satisfied with the judgment, PRUDENTIAL and TRANS-ASIA filed a Motion for Reconsideration and Partial Motion for Reconsideration thereon, respectively, which motions were denied by the Court of Appeals in the Resolution dated 29 January 2002.

The Issues

Aggrieved, PRUDENTIAL filed before this Court a Petition for Review, docketed as G.R. No. 151890, relying on the following grounds, viz:

> I.
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> THE AWARD IS GROSSLY UNCONSCIONABLE.
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> II.
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> THE COURT OF APPEALS ERRED IN HOLDING THAT THERE WAS NO VIOLATION BY TRANS-ASIA OF A MATERIAL WARRANTY, NAMELY, WARRANTY CLAUSE NO. 5, OF THE INSURANCE POLICY.
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> III.
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> THE COURT OF APPEALS ERRED IN HOLDING THAT PRUDENTIAL, AS INSURER HAD THE BURDEN OF PROVING THAT THE ASSURED, TRANS-ASIA, VIOLATED A MATERIAL WARRANTY.
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> IV.
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> THE COURT OF APPEALS ERRED IN HOLDING THAT THE WARRANTY CLAUSE EMBODIED IN THE INSURANCE POLICY CONTRACT WAS A MERE RIDER.
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> V.
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> THE COURT OF APPEALS ERRED IN HOLDING THAT THE ALLEGED RENEWALS OF THE POLICY CONSTITUTED A WAIVER ON THE PART OF PRUDENTIAL OF THE BREACH OF THE WARRANTY BY TRANS-ASIA.
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> VI.
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> THE COURT OF APPEALS ERRED IN HOLDING THAT THE "LOAN AND TRUST RECEIPT" EXECUTED BY TRANS-ASIA IS AN ADVANCE ON THE POLICY, THUS CONSTITUTING PARTIAL PAYMENT THEREOF.
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> VII.
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> THE COURT OF APPEALS ERRED IN HOLDING THAT THE ACCEPTANCE BY PRUDENTIAL OF THE FINDINGS OF RICHARDS HOGG IS INDICATIVE OF A WAIVER ON THE PART OF PRUDENTIAL OF ANY VIOLATION BY TRANS-ASIA OF THE WARRANTY.
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> VIII.
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> THE COURT OF APPEALS ERRRED (sic) IN REVERSING THE TRIAL COURT, IN FINDING THAT PRUDENTIAL "UNJUSTIFIABLY REFUSED" TO PAY THE CLAIM AND IN ORDERING PRUDENTIAL TO PAY TRANS-ASIA P8,395,072.26 PLUS DOUBLE INTEREST FROM 13 AUGUST 1996, UNTIL [THE] SAME IS FULLY PAID.[15]

Similarly, TRANS-ASIA, disagreeing in the ruling of the Court of Appeals filed a Petition for Review docketed as G.R. No. 151991, raising the following grounds for the allowance of the petition, to wit:

I.

THE HONORABLE COURT OF APPEALS ERRED IN NOT AWARDING ATTORNEY'S FEES TO PETITIONER TRANS-ASIA ON THE GROUND THAT SUCH CAN ONLY BE AWARDED IN THE CASES ENUMERATED IN ARTICLE 2208 OF THE CIVIL CODE, AND THERE BEING NO BAD FAITH ON THE PART OF RESPONDENT PRUDENTIAL IN DENYING HEREIN PETITIONER TRANS-ASIA'S INSURANCE CLAIM.

II.

THE "DOUBLE INTEREST" REFERRED TO IN THE DECISION DATED 06 NOVEMBER 2001 SHOULD BE CONSTRUED TO MEAN DOUBLE INTEREST BASED ON THE LEGAL INTEREST OF 12%, OR INTEREST AT THE RATE OF 24% PER ANNUM.[16]

In our Resolution of 2 December 2002, we granted TRANS-ASIA's Motion for Consolidation[17] of G.R. Nos. 151890 and 151991;[18] hence, the instant consolidated petitions.

In sum, for our main resolution are: (1) the liability, if any, of PRUDENTIAL to TRANS-ASIA arising from the subject insurance contract; (2) the liability, if any, of TRANS-ASIA to PRUDENTIAL arising from the transaction between the parties as evidenced by a document denominated as "Loan and Trust Receipt," dated 29 May 1995; and (3) the amount of interest to be imposed on the liability, if any, of either or both parties.

Ruling of the Court

Prefatorily, it must be emphasized that in a petition for review, only questions of law, and not questions of fact, may be raised.[19] This rule may be disregarded only when the findings of fact of the Court of Appeals are contrary to the findings and conclusions of the trial court, or are not supported by the evidence on record.[20] In the case at bar, we find an incongruence between the findings of fact of the Court of Appeals and the court a quo, thus, in our determination of the issues, we are constrained to assess the evidence adduced by the parties to make appropriate findings of facts as are necessary.

I.

A. PRUDENTIAL failed to establish that TRANS-ASIA violated and breached the policy condition on WARRANTED VESSEL CLASSED AND CLASS MAINTAINED, as contained in the subject insurance contract.

In resisting the claim of TRANS-ASIA, PRUDENTIAL posits that TRANS-ASIA violated an express and material warranty in the subject insurance contract, i.e., Marine Insurance Policy No. MH93/1363, specifically Warranty Clause No. 5 thereof, which stipulates that the insured vessel, "M/V ASIA KOREA" is required to be CLASSED AND CLASS MAINTAINED. According to PRUDENTIAL, on 25 October 1993, or at the time of the occurrence of the fire, "M/V ASIA KOREA" was in violation of the warranty as it was not CLASSED AND CLASS MAINTAINED. PRUDENTIAL submits that Warranty Clause No. 5 was a condition precedent to the recovery of TRANS-ASIA under the policy, the violation of which entitled PRUDENTIAL to rescind the contract under Sec. 74[21] of the Insurance Code.

The warranty condition CLASSED AND CLASS MAINTAINED was explained by PRUDENTIAL's Senior Manager of the Marine and Aviation Division, Lucio Fernandez. The pertinent portions of his testimony on direct examination is reproduced hereunder, viz:

ATTY. LIM

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Q Please tell the court, Mr. Witness, the result of the evaluation of this claim, what final action was taken?

A It was eventually determined that there was a breach of the policy condition, and basically there is a breach of policy warranty condition and on that basis the claim was denied.

Q To refer you (sic) the "policy warranty condition," I am showing to you a policy here marked as Exhibits "1", "1-A" series, please point to the warranty in the policy which you said was breached or violated by the plaintiff which constituted your basis for denying the claim as you testified.

A Warranted Vessel Classed and Class Maintained.

ATTY. LIM

Witness pointing, Your Honor, to that portion in Exhibit "1-A" which is the second page of the policy below the printed words: "Clauses, Endorsements, Special Conditions and Warranties," below this are several typewritten clauses and the witness pointed out in particular the clause reading: "Warranted Vessel Classed and Class Maintained."

COURT

Q Will you explain that particular phrase?

A Yes, a warranty is a condition that has to be complied with by the insured. When we say a class warranty, it must be entered in the classification society.

COURT

Slowly.

WITNESS

(continued)

A A classification society is an organization which sets certain standards for a vessel to maintain in order to maintain their membership in the classification society. So, if they failed to meet that standard, they are considered not members of that class, and thus breaching the warranty, that requires them to maintain membership or to maintain their class on that classification society. And it is not sufficient that the member of this classification society at the time of a loss, their membership must be continuous for the whole length of the policy such that during the effectivity of the policy, their classification is suspended, and then thereafter, they get reinstated, that again still a breach of the warranty that they maintained their class (sic). Our maintaining team membership in the classification society thereby maintaining the standards of the vessel (sic).

ATTY. LIM

Q Can you mention some classification societies that you know?

A Well we have the Bureau Veritas, American Bureau of Shipping, D&V Local Classification Society, The Philippine Registration of Ships Society, China Classification, NKK and Company Classification Society, and many others, we have among others, there are over 20 worldwide. [22]

At the outset, it must be emphasized that the party which alleges a fact as a matter of defense has the burden of proving it. PRUDENTIAL, as the party which asserted the claim that TRANS-ASIA breached the warranty in the policy, has the burden of evidence to establish the same. Hence, on the part of PRUDENTIAL lies the initiative to show proof in support of its defense; otherwise, failing to establish the same, it remains self-serving. Clearly, if no evidence on the alleged breach of TRANS-ASIA of the subject warranty is shown, a fortiori, TRANS-ASIA would be successful in claiming on the policy. It follows that PRUDENTIAL bears the burden of evidence to

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establish the fact of breach.

In our rule on evidence, TRANS-ASIA, as the plaintiff below, necessarily has the burden of proof to show proof of loss, and the coverage thereof, in the subject insurance policy. However, in the course of trial in a civil case, once plaintiff makes out a prima facie case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff's prima facie case, otherwise, a verdict must be returned in favor of plaintiff.[23] TRANS-ASIA was able to establish proof of loss and the coverage of the loss, i.e., 25 October 1993: Fire on Board. Thereafter, the burden of evidence shifted to PRUDENTIAL to counter TRANS-ASIA's case, and to prove its special and affirmative defense that TRANS-ASIA was in violation of the particular condition on CLASSED AND CLASS MAINTAINED.

We sustain the findings of the Court of Appeals that PRUDENTIAL was not successful in discharging the burden of evidence that TRANS-ASIA breached the subject policy condition on CLASSED AND CLASS MAINTAINED.

Foremost, PRUDENTIAL, through the Senior Manager of its Marine and Aviation Division, Lucio Fernandez, made a categorical admission that at the time of the procurement of the insurance contract in July 1993, TRANS-ASIA's vessel, "M/V Asia Korea" was properly classed by Bureau Veritas, thus:

> Q Kindly examine the records particularly the policy, please tell us if you know whether M/V Asia Korea was classed at the time (sic) policy was procured perthe (sic) insurance was procured that Exhibit "1" on 1[st] July 1993 (sic).
>
> WITNESS
>
> A I recall that they were classed.
>
> ATTY. LIM
>
> Q With what classification society?
>
> A I believe with Bureau Veritas.[24]

As found by the Court of Appeals and as supported by the records, Bureau Veritas is a classification society recognized in the marine industry. As it is undisputed that TRANS-ASIA was properly classed at the time the contract of insurance was entered into, thus, it becomes incumbent upon PRUDENTIAL to show evidence that the status of TRANS-ASIA as being properly CLASSED by Bureau Veritas had shifted in violation of the warranty. Unfortunately, PRUDENTIAL failed to support the allegation.

We are in accord with the ruling of the Court of Appeals that the lack of a certification in PRUDENTIAL's records to the effect that TRANS-ASIA's "M/V Asia Korea" was CLASSED AND CLASS MAINTAINED at the time of the occurrence of the fire cannot be tantamount to the conclusion that TRANS-ASIA in fact breached the warranty contained in the policy. With more reason must we sustain the findings of the Court of Appeals on the ground that as admitted by PRUDENTIAL, it was likewise the responsibility of the average adjuster, Richards Hogg International (Phils.), Inc., to secure a copy of such certification, and the alleged breach of TRANS-ASIA cannot be gleaned from the average adjuster's survey report, or adjustment of particular average per "M/V Asia Korea" of the 25 October 1993 fire on board.

We are not unmindful of the clear language of Sec. 74 of the Insurance Code which provides that, "the violation of a material warranty, or other material provision of a policy on the part of either party thereto, entitles the other to rescind." It is generally accepted that "[a] warranty is a statement or promise set forth in the policy, or by reference incorporated therein, the untruth or non-fulfillment of which in any respect, and without reference to

whether the insurer was in fact prejudiced by such untruth or non-fulfillment, renders the policy voidable by the insurer."[25] However, it is similarly indubitable that for the breach of a warranty to avoid a policy, the same must be duly shown by the party alleging the same. We cannot sustain an allegation that is unfounded. Consequently, PRUDENTIAL, not having shown that TRANS-ASIA breached the warranty condition, CLASSED AND CLASS MAINTAINED, it remains that TRANS-ASIA must be allowed to recover its rightful claims on the policy.

B. Assuming arguendo that TRANS-ASIA violated the policy condition on WARRANTED VESSEL CLASSED AND CLASS MAINTAINED, PRUDENTIAL made a valid waiver of the same.

The Court of Appeals, in reversing the Judgment of the RTC which held that TRANS-ASIA breached the warranty provision on CLASSED AND CLASS MAINTAINED, underscored that PRUDENTIAL can be deemed to have made a valid waiver of TRANS-ASIA's breach of warranty as alleged, ratiocinating, thus:

> Third, after the loss, Prudential renewed the insurance policy of Trans-Asia for two (2) consecutive years, from noon of 01 July 1994 to noon of 01 July 1995, and then again until noon of 01 July 1996. This renewal is deemed a waiver of any breach of warranty.[26]

PRUDENTIAL finds fault with the ruling of the appellate court when it ruled that the renewal policies are deemed a waiver of TRANS-ASIA's alleged breach, averring herein that the subsequent policies, designated as MH94/1595 and MH95/1788 show that they were issued only on 1 July 1994 and 3 July 1995, respectively, prior to the time it made a request to TRANS-ASIA that it be furnished a copy of the certification specifying that the insured vessel "M/V Asia Korea" was CLASSED AND CLASS MAINTAINED. PRUDENTIAL posits that it came to know of the breach by TRANS-ASIA of the subject warranty clause only on 21 April 1997. On even date, PRUDENTIAL sent TRANS-ASIA a letter of denial, advising the latter that their claim is not compensable. In fine, PRUDENTIAL would have this Court believe that the issuance of the renewal policies cannot be a waiver because they were issued without knowledge of the alleged breach of warranty committed by TRANS-ASIA.[27]

We are not impressed. We do not find that the Court of Appeals was in error when it held that PRUDENTIAL, in renewing TRANS-ASIA's insurance policy for two consecutive years after the loss covered by Policy No. MH93/1363, was considered to have waived TRANS-ASIA's breach of the subject warranty, if any. Breach of a warranty or of a condition renders the contract defeasible at the option of the insurer; but if he so elects, he may waive his privilege and power to rescind by the mere expression of an intention so to do. In that event his liability under the policy continues as before.[28] There can be no clearer intention of the waiver of the alleged breach than the renewal of the policy insurance granted by PRUDENTIAL to TRANS-ASIA in MH94/1595 and MH95/1788, issued in the years 1994 and 1995, respectively.

To our mind, the argument is made even more credulous by PRUDENTIAL's lack of proof to support its allegation that the renewals of the policies were taken only after a request was made to TRANS-ASIA to furnish them a copy of the certificate attesting that "M/V Asia Korea" was CLASSED AND CLASS MAINTAINED. Notwithstanding PRUDENTIAL's claim that no certification was issued to that effect, it renewed the policy, thereby, evidencing an intention to waive TRANS-ASIA's alleged breach. Clearly, by granting the renewal policies twice and successively after the loss, the intent was to benefit the insured, TRANS-ASIA, as well as to waive compliance of the warranty.

The foregoing finding renders a determination of whether the subject warranty is a rider, moot, as raised by the PRUDENTIAL in its assignment of errors. Whether it is a rider will not effectively alter the result for the reasons that: (1) PRUDENTIAL was not able to discharge the burden of evidence to show that TRANS-ASIA committed a breach, thereof; and (2) assuming arguendo the commission of a breach by TRANS-ASIA, the same was shown

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to have been waived by PRUDENTIAL.

II.

A. The amount of P3,000,000.00 granted by PRUDENTIAL to TRANS- ASIA via a transaction between the parties evidenced by a document denominated as "Loan and Trust Receipt," dated 29 May 1995 constituted partial payment on the policy.

It is undisputed that TRANS-ASIA received from PRUDENTIAL the amount of P3,000,000.00. The same was evidenced by a transaction receipt denominated as a "Loan and Trust Receipt," dated 29 May 1995, reproduced hereunder:

> LOAN AND TRUST RECEIPT
>
> Claim File No. MH-93-025 May 29, 1995
> P3,000,000.00
> Check No. PCIB066755
>
> Received FROM PRUDENTIAL GUARANTEE AND ASSURANCE INC., the sum of PESOS THREE MILLION ONLY (P3,000,000.00) as a loan without interest, under Policy No. MH93/1353, repayable only in the event and to the extent that any net recovery is made by TRANS ASIA SHIPPING CORP., from any person or persons, corporation or corporations, or other parties, on account of loss by any casualty for which they may be liable, occasioned by the 25 October 1993: Fire on Board.
>
> As security for such repayment, we hereby pledge to PRUDENTIAL GUARANTEE AND ASSURANCE INC. whatever recovery we may make and deliver to it all documents necessary to prove our interest in said property. We also hereby agree to promptly prosecute suit against such persons, corporation or corporations through whose negligence the aforesaid loss was caused or who may otherwise be responsible therefore, with all due diligence, in our own name, but at the expense of and under the exclusive direction and control of PRUDENTIAL GUARANTEE AND ASSURANCE INC.
>
> TRANS-ASIA SHIPPING CORPORATION[29]

PRUDENTIAL largely contends that the "Loan and Trust Receipt" executed by the parties evidenced a loan of P3,000,000.00 which it granted to TRANS-ASIA, and not an advance payment on the policy or a partial payment for the loss. It further submits that it is a customary practice for insurance companies in this country to extend loans gratuitously as part of good business dealing with their assured, in order to afford their assured the chance to continue business without embarrassment while awaiting outcome of the settlement of their claims.[30] According to PRUDENTIAL, the "Trust and Loan Agreement" did not subrogate to it whatever rights and/or actions TRANS-ASIA may have against third persons, and it cannot by no means be taken that by virtue thereof, PRUDENTIAL was granted irrevocable power of attorney by TRANS-ASIA, as the sole power to prosecute lies solely with the latter.

The Court of Appeals held that the real character of the transaction between the parties as evidenced by the "Loan and Trust Receipt" is that of an advance payment by PRUDENTIAL of TRANS-ASIA's claim on the insurance, thus:

> The Philippine Insurance Code (PD 1460 as amended) was derived from the old Insurance Law Act No. 2427 of the Philippine Legislature during the American Regime. The Insurance Act was lifted verbatim from the law of California, except Chapter V thereof, which was taken largely from the insurance law of New York. Therefore, ruling case law in that jurisdiction is to Us persuasive in interpreting provisions of our own

> Insurance Code. In addition, the application of the adopted statute should correspond in fundamental points with the application in its country of origin x x x.
>
> x x x x
>
> Likewise, it is settled in that jurisdiction that the (sic) notwithstanding recitals in the Loan Receipt that the money was intended as a loan does not detract from its real character as payment of claim, thus:"The receipt of money by the insured employers from a surety company for losses on account of forgery of drafts by an employee where no provision or repayment of the money was made except upon condition that it be recovered from other parties and neither interest nor security for the asserted debts was provided for, the money constituted the payment of a liability and not a mere loan, notwithstanding recitals in the written receipt that the money was intended as a mere loan."

What is clear from the wordings of the so-called "Loan and Trust Receipt Agreement" is that appellant is obligated to hand over to appellee "whatever recovery (Trans Asia) may make and deliver to (Prudential) all documents necessary to prove its interest in the said property." For all intents and purposes therefore, the money receipted is payment under the policy, with Prudential having the right of subrogation to whatever net recovery Trans-Asia may obtain from third parties resulting from the fire. In the law on insurance, subrogation is an equitable assignment to the insurer of all remedies which the insured may have against third person whose negligence or wrongful act caused the loss covered by the insurance policy, which is created as the legal effect of payment by the insurer as an assignee in equity. The loss in the first instance is that of the insured but after reimbursement or compensation, it becomes the loss of the insurer. It has been referred to as the doctrine of substitution and rests on the principle that substantial justice should be attained regardless of form, that is, its basis is the doing of complete, essential, and perfect justice between all the parties without regard to form.[31]

We agree. Notwithstanding its designation, the tenor of the "Loan and Trust Receipt" evidences that the real nature of the transaction between the parties was that the amount of P3,000,000.00 was not intended as a loan whereby TRANS-ASIA is obligated to pay PRUDENTIAL, but rather, the same was a partial payment or an advance on the policy of the claims due to TRANS-ASIA.

First, the amount of P3,000,000.00 constitutes an advance payment to TRANS-ASIA by PRUDENTIAL, subrogating the former to the extent of "any net recovery made by TRANS ASIA SHIPPING CORP., from any person or persons, corporation or corporations, or other parties, on account of loss by any casualty for which they may be liable, occasioned by the 25 October 1993: Fire on Board."[32]

Second, we find that per the "Loan and Trust Receipt," even as TRANS-ASIA agreed to "promptly prosecute suit against such persons, corporation or corporations through whose negligence the aforesaid loss was caused or who may otherwise be responsible therefore, with all due diligence" in its name, the prosecution of the claims against such third persons are to be carried on "at the expense of and under the exclusive direction and control of PRUDENTIAL GUARANTEE AND ASSURANCE INC."[33] The clear import of the phrase "at the expense of and under the exclusive direction and control" as used in the "Loan and Trust Receipt" grants solely to PRUDENTIAL the power to prosecute, even as the same is carried in the name of TRANS-ASIA, thereby making TRANS-ASIA merely an agent of PRUDENTIAL, the principal, in the prosecution of the suit against parties who may have occasioned the loss.

Third, per the subject "Loan and Trust Receipt," the obligation of TRANS-ASIA to repay PRUDENTIAL is highly speculative and contingent, i.e., only in the event and to the extent that any net recovery is made by TRANS-ASIA from any person on account of loss occasioned by the fire of 25 October 1993. The transaction, therefore, was made to benefit TRANS-ASIA, such that, if no recovery from third parties is made, PRUDENTIAL cannot be repaid the amount. Verily, we do not think that this is constitutive of a loan.[34] The

liberality in the tenor of the "Loan and Trust Receipt" in favor of TRANS-ASIA leads to the conclusion that the amount of P3,000,000.00 was a form of an advance payment on TRANS-ASIA's claim on MH93/1353.

III.

> A.
> PRUDENTIAL is directed to pay TRANS-ASIA the amount of P8,395,072.26, representing the balance of the loss suffered by TRANS-ASIA and covered by Marine Policy No. MH93/1363.

Our foregoing discussion supports the conclusion that TRANS-ASIA is entitled to the unpaid claims covered by Marine Policy No. MH93/1363, or a total amount of P8,395,072.26.

> B.
> Likewise, PRUDENTIAL is directed to pay TRANS-ASIA, damages in the form of attorney's fees equivalent to 10% of P8,395,072.26.

The Court of Appeals denied the grant of attorney's fees. It held that attorney's fees cannot be awarded absent a showing of bad faith on the part of PRUDENTIAL in rejecting TRANS-ASIA's claim, notwithstanding that the rejection was erroneous. According to the Court of Appeals, attorney's fees can be awarded only in the cases enumerated in Article 2208 of the Civil Code which finds no application in the instant case.

We disagree. Sec. 244 of the Insurance Code grants damages consisting of attorney's fees and other expenses incurred by the insured after a finding by the Insurance Commissioner or the Court, as the case may be, of an unreasonable denial or withholding of the payment of the claims due. Moreover, the law imposes an interest of twice the ceiling prescribed by the Monetary Board on the amount of the claim due the insured from the date following the time prescribed in Section 242[35] or in Section 243,[36] as the case may be, until the claim is fully satisfied. Finally, Section 244 considers the failure to pay the claims within the time prescribed in Sections 242 or 243, when applicable, as prima facie evidence of unreasonable delay in payment.

To the mind of this Court, Section 244 does not require a showing of bad faith in order that attorney's fees be granted. As earlier stated, under Section 244, a prima facie evidence of unreasonable delay in payment of the claim is created by failure of the insurer to pay the claim within the time fixed in both Sections 242 and 243 of the Insurance Code. As established in Section 244, by reason of the delay and the consequent filing of the suit by the insured, the insurers shall be adjudged to pay damages which shall consist of attorney's fees and other expenses incurred by the insured.[37]

Section 244 reads:

> In case of any litigation for the enforcement of any policy or contract of insurance, it shall be the duty of the Commissioner or the Court, as the case may be, to make a finding as to whether the payment of the claim of the insured has been unreasonably denied or withheld; and in the affirmative case, the insurance company shall be adjudged to pay damages which shall consist of attorney's fees and other expenses incurred by the insured person by reason of such unreasonable denial or withholding of payment plus interest of twice the ceiling prescribed by the Monetary Board of the amount of the claim due the insured, from the date following the time prescribed in section two hundred forty-two or in section two hundred forty-three, as the case may be, until the claim is fully satisfied; Provided, That the failure to pay any such claim within the time prescribed in said sections shall be considered prima facie evidence of unreasonable delay in payment.

Sections 243 and 244 of the Insurance Code apply when the court finds an unreasonable delay or refusal in the payment of the insurance claims.

In the case at bar, the facts as found by the Court of Appeals, and confirmed by the records show that there was an

unreasonable delay by PRUDENTIAL in the payment of the unpaid balance of P8,395,072.26 to TRANS-ASIA. On 26 October 1993, a day after the occurrence of the fire in "M/V Asia Korea", TRANS-ASIA filed its notice of claim. On 13 August 1996, the adjuster, Richards Hogg International (Phils.), Inc., completed its survey report recommending the amount of P11,395,072.26 as the total indemnity due to TRANS-ASIA.[38] On 21 April 1997, PRUDENTIAL, in a letter[39] addressed to TRANS-ASIA denied the latter's claim for the amount of P8,395,072.26 representing the balance of the total indemnity. On 21 July 1997, PRUDENTIAL sent a second letter[40] to TRANS-ASIA seeking a return of the amount of P3,000,000.00. On 13 August 1997, TRANS-ASIA was constrained to file a complaint for sum of money against PRUDENTIAL praying, inter alia, for the sum of P8,395,072.26 representing the balance of the proceeds of the insurance claim.

As can be gleaned from the foregoing, there was an unreasonable delay on the part of PRUDENTIAL to pay TRANS-ASIA, as in fact, it refuted the latter's right to the insurance claims, from the time proof of loss was shown and the ascertainment of the loss was made by the insurance adjuster. Evidently, PRUDENTIAL's unreasonable delay in satisfying TRANS-ASIA's unpaid claims compelled the latter to file a suit for collection.

Succinctly, an award equivalent to ten percent (10%) of the unpaid proceeds of the policy as attorney's fees to TRANS-ASIA is reasonable under the circumstances, or otherwise stated, ten percent (10%) of P8,395,072.26. In the case of Cathay Insurance, Co., Inc. v. Court of Appeals,[41] where a finding of an unreasonable delay under Section 244 of the Insurance Code was made by this Court, we grant an award of attorney's fees equivalent to ten percent (10%) of the total proceeds. We find no reason to deviate from this judicial precedent in the case at bar.

> C.
> Further, the aggregate amount (P8,395,072.26 plus 10% thereof as attorney's fees) shall be imposed double interest in accordance with Section 244 of the Insurance Code.

Section 244 of the Insurance Code is categorical in imposing an interest twice the ceiling prescribed by the Monetary Board due the insured, from the date following the time prescribed in Section 242 or in Section 243, as the case may be, until the claim is fully satisfied. In the case at bar, we find Section 243 to be applicable as what is involved herein is a marine insurance, clearly, a policy other than life insurance.

Section 243 is hereunder reproduced:

> SEC. 243. The amount of any loss or damage for which an insurer may be liable, under any policy other than life insurance policy, shall be paid within thirty days after proof of loss is received by the insurer and ascertainment of the loss or damage is made either by agreement between the insured and the insurer or by arbitration; but if such ascertainment is not had or made within sixty days after such receipt by the insurer of the proof of loss, then the loss or damage shall be paid within ninety days after such receipt. Refusal or failure to pay the loss or damage within the time prescribed herein will entitle the assured to collect interest on the proceeds of the policy for the duration of the delay at the rate of twice the ceiling prescribed by the Monetary Board, unless such failure or refusal to pay is based on the ground that the claim is fraudulent.

As specified, the assured is entitled to interest on the proceeds for the duration of the delay at the rate of twice the ceiling prescribed by the Monetary Board except when the failure or refusal of the insurer to pay was founded on the ground that the claim is fraudulent.

> D.
> The term "double interest" as used in the Decision of the Court of Appeals must be interpreted to mean 24% per annum.

PRUDENTIAL assails the award of interest, granted by the Court of Appeals, in favor of TRANS-ASIA in the assailed Decision of 6 November 2001. It is PRUDENTIAL's stance that the award is extortionate and grossly

unsconscionable. In support thereto, PRUDENTIAL makes a reference to TRANS-ASIA's prayer in the Complaint filed with the court a quo wherein the latter sought, "interest double the prevailing rate of interest of 21% per annum now obtaining in the banking business or plus 42% per annum pursuant to Article 243 of the Insurance Code x x x."[42]

The contention fails to persuade. It is settled that an award of double interest is lawful and justified under Sections 243 and 244 of the Insurance Code.[43] In Finman General Assurance Corporation v. Court of Appeals,[44] this Court held that the payment of 24% interest per annum is authorized by the Insurance Code.[45] There is no gainsaying that the term "double interest" as used in Sections 243 and 244 can only be interpreted to mean twice 12% per annum or 24% per annum interest, thus:

> The term "ceiling prescribed by the Monetary Board" means the legal rate of interest of twelve per centum per annum (12%) as prescribed by the Monetary Board in C.B. Circular No. 416, pursuant to P.D. No. 116, amending the Usury Law; so that when Sections 242, 243 and 244 of the Insurance Code provide that the insurer shall be liable to pay interest "twice the ceiling prescribed by the Monetary Board", it means twice 12% per annum or 24% per annum interest on the proceeds of the insurance.[46]

> E. The payment of double interest should be counted from 13 September 1996.

The Court of Appeals, in imposing double interest for the duration of the delay of the payment of the unpaid balance due TRANS-ASIA, computed the same from 13 August 1996 until such time when the amount is fully paid. Although not raised by the parties, we find the computation of the duration of the delay made by the appellate court to be patently erroneous.

To be sure, Section 243 imposes interest on the proceeds of the policy for the duration of the delay at the rate of twice the ceiling prescribed by the Monetary Board. Significantly, Section 243 mandates the payment of any loss or damage for which an insurer may be liable, under any policy other than life insurance policy, within thirty days after proof of loss is received by the insurer and ascertainment of the loss or damage is made either by agreement between the insured and the insurer or by arbitration. It is clear that under Section 243, the insurer has until the 30[th] day after proof of loss and ascertainment of the loss or damage to pay its liability under the insurance, and only after such time can the insurer be held to be in delay, thereby necessitating the imposition of double interest.

In the case at bar, it was not disputed that the survey report on the ascertainment of the loss was completed by the adjuster, Richard Hoggs International (Phils.), Inc. on 13 August 1996. PRUDENTIAL had thirty days from 13 August 1996 within which to pay its liability to TRANS-ASIA under the insurance policy, or until 13 September 1996. Therefore, the double interest can begin to run from 13 September 1996 only.

IV.

> A.
> An interest of 12% per annum is similarly imposed on the TOTAL amount of liability adjudged in section III herein, computed from the time of finality of judgment until the full satisfaction thereof in conformity with this Court's ruling in Eastern Shipping Lines, Inc. v. Court of Appeals.

This Court in Eastern Shipping Lines, Inc. v. Court of Appeals,[47] inscribed the rule of thumb[48] in the application of interest to be imposed on obligations, regardless of their source. Eastern emphasized beyond cavil that when the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, regardless of whether the obligation involves a loan or forbearance of money, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance[49] of credit.

We find application of the rule in the case at bar proper, thus, a rate of 12% per annum from the finality of judgment until the full satisfaction thereof must be imposed on the total amount of liability adjudged to PRUDENTIAL. It is clear that the interim period from the finality of judgment until the satisfaction of the same is deemed equivalent to a forbearance of credit, hence, the imposition of the aforesaid interest.

Fallo

WHEREFORE, the Petition in G.R. No. 151890 is DENIED. However, the Petition in G.R. No. 151991 is GRANTED, thus, we award the grant of attorney's fees and make a clarification that the term "double interest" as used in the 6 November 2001 Decision of the Court of Appeals in CA GR CV No. 68278 should be construed to mean interest at the rate of 24% per annum, with a further clarification, that the same should be computed from 13 September 1996 until fully paid. The Decision and Resolution of the Court of Appeals, in CA-G.R. CV No. 68278, dated 6 November 2001 and 29 January 2002, respectively, are, thus, MODIFIED in the following manner, to wit:

- PRUDENTIAL is DIRECTED to PAY TRANS-ASIA the amount of P8,395,072.26, representing the balance of the loss suffered by TRANS-ASIA and covered by Marine Policy No. MH93/1363;

- PRUDENTIAL is DIRECTED further to PAY TRANS-ASIA damages in the form of attorney's fees equivalent to 10% of the amount of P8,395,072.26;

- The aggregate amount (P8,395,072.26 plus 10% thereof as attorney's fees) shall be imposed double interest at the rate of 24% per annum to be computed from 13 September 1996 until fully paid; and

- An interest of 12% per annum is similarly imposed on the TOTAL amount of liability adjudged as abovestated in paragraphs (1), (2), and (3) herein, computed from the time of finality of judgment until the full satisfaction thereof.

No costs.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

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[1] Penned by Associate Justice Romeo A. Brawner with Associate Justices Elvi John S. Asuncion and Juan Q. Enriquez, Jr., concurring; Rollo (G.R. No. 151890), pp. 59-73; Rollo (G.R. No. 151991), pp. 28-42.

[2] Penned by Judge Menrado P. Paredes, CA rollo, pp. 10-15; Rollo (G.R. No. 151890), pp. 113-118; Rollo (G.R. No. 151991), pp. 86-91.

[3] Rollo (G.R. No. 151890), pp. 75-76; Rollo (G.R. No. 151991), pp. 43-44.

[4] Rollo (G.R. No. 151991), pp. 88-89; Rollo (G.R. No. 151890), pp. 115-116. pp. 30-31.

[5] Records, pp. 1-5.

[6] Sec. 243 of the Insurance Code reads: The amount of any loss or damage for which an insurer may be liable, under any policy other than life insurance policy, shall be paid within thirty days after proof of loss is received by the insurer and ascertainment of the loss or damage is made either by agreement between the insured and the insurer or by arbitration; but if such ascertainment is not had or made within sixty days after such receipt by the insurer of the proof of loss, then the loss or damage shall be paid within ninety days after such receipt. Refusal or failure to pay the loss or damage within the time prescribed herein will entitle the assured to collect interest on the

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proceeds of the policy for the duration of the delay at the rate of twice the ceiling prescribed by the Monetary Board unless such failure or refusal to pay is based on the ground that the claim is fraudulent.

[7] Records, pp. 30-48.

[8] CA rollo, pp. 10-15.

[9] Id.

[10] Section 107 of the Insurance Code reads: "In marine insurance each party is bound to communicate, in addition to what is required by section twenty-eight, all the information which he possesses, material to the risk, except such as is mentioned in section thirty, and to state the exact and whole truth in relation to all matters that he represents, or upon inquiry discloses or assumes to disclose."

[11] Article 2208 of the Civil Code reads: "In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. In all cases, the attorney's fees and expenses of litigation must be reasonable."

[12] CA rollo, p. 15.

[13] Section 244 of the Insurance Code reads: In case of any litigation for the enforcement of any policy or contract of insurance, it shall be the duty of the Commissioner or the Court, as the case may be, to make a finding as to whether the payment of the claim of the insured has been unreasonably denied or withheld; and in the affirmative case, the insurance company shall be adjudged to pay damages which shall consist of attorney's fees and other expenses incurred by the insured person by reason of such unreasonable denial or withholding of payment plus interest of twice the ceiling prescribed by the Monetary Board of the amount of the claim due the insured, from the date following the time prescribed in section two hundred forty-two or in section two hundred forty-three, as the case may be, until such claim within the time prescribed in said sections shall be considered prima facie evidence of unreasonable delay in payment.

[14] CA rollo, p. 145.

[15] Rollo (G.R. No. 151890), p. 17.

[16] Rollo (G.R. No. 151991), p. 18.

[17] Rollo (G.R. No. 151890), pp. 343-348.

[18] Rollo (G.R. No. 151890), p. 349; Rollo (G.R. No. 151991), p. 301.

[19] Mercado v. People, 441 Phil. 216, 224 (2002).

[20] Id. See also Spouses Ricardo Almendrala v. Spouses Wing On Ngo, G.R. No. 142408, 30 September 2005, where the Court enumerated the exceptions to the rule that findings of fact of the Court of Appeals are final and conclusive and cannot be reviewed on appeal by the Supreme Court, provided they are borne out by the record or based on substantial evidence. Thus, the Court may resolve factual issues in the following cases, to wit:
1) when the findings are grounded entirely on speculation, surmises or conjectures; 2) when the inference made is manifestly mistaken, absurd or impossible; 3) when there is grave abuse of discretion; 4) when the judgment is based on a misapprehension of facts; 5) when the findings of facts are conflicting; 6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; 7) when the findings are contrary to the trial court; 8) when the findings are conclusions without citation of specific evidence on which they are based; 9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; 10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or 11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

[21] Sec. 74 of the Insurance Code reads: "The violation of a material warranty, or other material provision of a policy, on the part of either party thereto, entitles the other to rescind."

[22] TSN, June 25, 1999, pp. 20-22.

[23] Francisco L. Jison v. Court of Appeals, 350 Phil. 138, 173 (1998).

[24] TSN, June 25, 1999, pp. 22-23.

[25] William R. Vance, Handbook on the Law of Insurance (3[rd] ed., 1951), p. 408.

[26] Rollo of G.R. No. 151890, p. 66.

[27] Id. at 36-38.

[28] Supra note 25 at 427.

[29] Records, p. 36.

[30] Rollo (G.R. No. 151890), p. 41.

[31] Rollo of G.R. No. 151991, pp. 80-82.

[32] Records, p. 36.

[33] Id.

[34] See Article 1933 of the Civil Code which reads: "By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a commodatum; or money or other consumable thing, upon the condition that the

same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or mutuum."

[35] Section 242 of the Insurance Code reads: "The proceeds of a life insurance policy shall be paid immediately upon maturity of the policy, unless such proceeds are made payable in installments or as an annuity, in which case the installments, or annuities shall be paid as they become due: Provided, however, That in the case of a policy maturing by the death of the insured, the proceeds thereof shall be paid within sixty days after presentation of the claim and filing of the proof of the death of the insured. Refusal or failure to pay the claim within the time prescribed herein will entitle the beneficiary to collect interest on the proceeds of the policy for the duration of the delay at the rate of twice the ceiling prescribed by the Monetary Board, unless such failure or refusal to pay is based on the ground that the claim is fraudulent.

The proceeds of the policy maturing by the death of the insured payable to the beneficiary shall include the discounted value of all premiums paid in advance of their due dates, but are not due and payable at maturity.

[36] Section 243 of the Insurance Code reads: "The amount of any loss or damage for which an insurer may be liable, under any policy other than life insurance policy, shall be paid within thirty days after proof of loss is received by the insurer and ascertainment of the loss or damage is made either by agreement between the insured and the insurer or by arbitration; but if such ascertainment is not had or made within sixty days after such receipt by the insurer of the proof of loss, then the loss or damage shall be paid within ninety days after such receipt. Refusal or failure to pay the loss or damage within the time prescribed herein will entitle the assured to collect interest on the proceeds of the policy for the duration of the delay at the rate of twice the ceiling prescribed by the Monetary Board, unless such failure or refusal to pay is based on the ground that the claim is fraudulent.

[37] Cathay Insurance Company, Incorporated v. Court of Appeals, G.R. No. 85624, 5 June 1989, 174 SCRA 11, 18.

[38] Index of Exhibits for the Plaintiff, Exhibit "C."

[39] Index of Exhibits for the Defendant, Exhibit "5".

[40] Id., Exhibit "6."

[41] Supra note 37.

[42] Rollo (G.R. No. 151890), p. 18.

[43] Supra note 38.

[44] 413 Phil. 531.

[45] Id. at 540.

[46] Teodorico C. Martin, Commentaries and Jurisprudence on the Philippine Commercial Laws, Vol. 2, (1986, Rev. Ed.), pp. 278-279.

[47] G.R. No. 97412, 12 July 1994, 234 SCRA 78.

[48] Id. at 95-97.

I. When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

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II. With regard particularly to an award of interest in the concept of actual or compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, i.e. a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Article 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

[49] Within usury law, the term forbearance signifies contractual obligation of lender or creditor to refrain, during given period of time, from requiring borrower or debtor to repay loan or debt then due and payable. See Black's Law Dictionary, 5[th] ed. , p. 580 (1979), citing Hafer v. Spaeth, 22 Wash. 2d 378, 156 P. 2d 408, 411.

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