CALIBRE TRADERS, INC., MARIO SISON SEBASTIAN, AND MINDA BLANCO SEBASTIAN, PETITIONERS, VS. BAYER PHILIPPINES, INC., RESPONDENT.

G.R. No. 161431. October 13, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

This petition for review on certiorari[1] assails the July 31, 2002 Decision[2] and the December 19, 2003 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 45546, that denied petitioners' action for damages against respondent Bayer Philippines Inc. (Bayerphil) and instead granted the latter's counterclaim for P1,272,103.07, representing unpaid purchases of Bayerphil's products.

Factual Antecedents

Calibre Traders, Inc. (Calibre) was one of Bayerphil's distributors/dealers of its agricultural chemicals within the provinces of Pangasinan and Tarlac.[4] Their last distributorship agreement was effective from June 1989 to June 1991.[5] However, Bayerphil stopped delivering stocks to Calibre on July 31, 1989 after the latter failed to settle its unpaid accounts in the total amount of P1,751,064.56.[6]

As Bayerphil's authorized dealer, Calibre then enjoyed discounts and rebates. Subsequently, however, the parties had a disagreement as to the entitlement and computations of these discounts. Calibre, although aware of the deadline to pay its debts with Bayerphil, nevertheless withheld payment to compel Bayerphil to reconcile its accounts.[7]

In a letter dated August 16, 1989, Calibre requested Bayerphil for a reconciliation of accounts. It enumerated the following claims that amounted to P968,265.82:

> - Interest charged to our 1984-1985 Volume Rebate. These were charged to us without our acknowledgment and was under protest since your people were not serving our account during that period. This amounts to P60,000.00 more or less.
>
> - Request for retroactive application of your special rebate as per our letter dated August 29, 1988 and your reply dated September 3, 1988. The reply is not acceptable to us. This amounts to P33,127.26.
>
> - Special rebates of Machete EC and EN for CY 1988 which [were] not granted to us, [but were] given to the other distributors after we have withdrawn a sizeable quantity. This amounts to P68,244.30.
>
> - The difference between our claim dated March 31, 1989 amounting to P47,746.30 against your Credit Memo 11868 dated April 28, 1989 amounting to P21,214.85. The amount of difference is P26,531.47.
>
> - The difference between our claim dated October 31, 1988 amounting to P23,342.09 against your Credit Memo 11693 dated January 31, 1989 amounting to P21,222.48. The amount of difference is P2,119.61.
>
> - Sales Returns as per your CRR 2159 dated December 19, 1988 amounting to P8,047.71.

- Special rebates of 8% for Machete 5G as per Invoice No. 834159 dated February 14, 1989. This amounts to [P1,376.80].

- Request for Sales returns due to overdelivery as per our letter dated April 3, 1989 amounting to P147,108.86.

- Request for Sales returns due to leakage as per our letter dated April 3, 1989 amounting to P8,681.24.

- 1988-1989 Volume Rebate amounting to P520,548.41.

- 5% Prompt Payment on P1,839,603.15 amounting to P92,480.16 since your Sales Representative was not servicing our account due to his [forth]coming resignation.[8]

Calibre sent follow-up letters dated September 17, October 13, and November 16, 1989.[9]

On September 29, 1989, Bayerphil's credit and collection officer, Leon Abesamis, conferred with Calibre's General Manager Mario Sebastian (Sebastian). The attempt to settle failed. Again, on October 27, 1989, Bayerphils' Sales Manager of the Agro Division, Vidal Lingan, met with Sebastian. The results of their discussion were put in writing in Bayerphil's letter dated November 10, 1989, to wit:

x x x x

Gentlemen:

Following our October 27, 1989 discussions with yourself for the final resolution of your overdue accounts with our company in the amount of exactly P1,718,822.57, we have arrived at a final arrangement which will no doubt be more than fair specially for your firm.

We will now go by your claims per your letter of August 16, 1989[. We] now confirm the following:

- The alleged interest charges of P60,000.00 x x x for unpaid invoices against your volume rebate for the year 1984-1985 was not charged at all. Our records show that we granted your year-end rebate per our

Credit Note #9089 of July 1985 - P 973,511.56
and
Credit Note #9149 of September 1985 - 181,441.15
Total rebate from retention scheme
1984-1985 P1,154,952.71

These credit notes do not bear any interest charges as you claimed during that discussion. It means you were not charged any penalty on delayed payments of subject invoices.

- Retroactive application against inventory of special deal rebates have never been paid to any of our distributors nationwide since we began business operations in this country. As a matter of policy, we regret that we cannot grant this request.

- Special rebates on Machete EN and Machete EC on the basis of 30-day COD arrangement were granted during the last quarter of 1988. This agreement did not apply to your purchases on the same products from January 1, 1988 to September 30, 1988. We found your claim difficult to accept.

- Your claim for P26,531.47 from our 30-day COD terms with 5% rebate on selected products only, i.e., Gusathion, Folidol, Machete EC & EN. You have, in your claim included other products than those listed. Inasmuch as our former Sales Representative agreed to the inclusion of the other [products], we will grant that claim for P26,531.47 net of our earlier issued CM #11868, as an honorable business organization is expected to act.

- Your claim on the difference of P2,119.61 [as stated in] your letter of October 31, 1988 in the amount of

P23,342.09 and our Credit Note #11693 dated January 31, 1989, is granted. Our computations are absolutely correct but we shall not argue over a trivial figure.

- Your claims on returned stocks on December 19, 1988 per CRR No. 2159 for P8,047.71. We issued the corresponding credit note dated July 25, 1989 in the amount of P7,242.26, which is based on the prices of the returned goods at the time you acquired them, not at the time when you returned them when there was a corresponding increase in prices. The difference is P805.45. Any business house will reluctantly consider this claim but we thought we should gallantly grant you that oversight. We are sure you did not intend to do that.

- Special 8% rebates on Machete 5G in the amount of P1,376.80. We have given you a Credit Note #12160 to offset that claim.

- Your volume rebate claim for the year 1988-1989 is in the sum of P520,548.41, however, our computation stands at P479,326.49. Enclosed herewith please find our CM#12250 in the amount of P320,849.42 representing your volume rebate for 1988-1989 on the paid portion of your volume rebate year purchases. As soon as payment is received on your balance of P1,042,248.16 (net of additional volume rebate of P158,477.07 on the unpaid portion and prompt payment rebate of P63,196.06), we shall issue you the aforementioned additional volume rebate and prompt payment rebate CMs.

- Your claim of 5% prompt payment rebate per your note dated June 30, 1989 has been computed to amount to P63,196.06 in view of the returns and application of your volume rebate against the total outstanding unpaid balances.

- Your intention to return stocks per your letter of April 3, 1989. We have withdrawn the following products on October 28, 1989, as follows:

Basagran

250 ml.

-

230 bottles

500 ml.

-

102 bottles

Baycarb

1000 ml.

-

64 ×´

Baythroid

100 ml.

-

373 ×´

250 ml.

-

336 ×´

Gusacarb

500 ml.

-

20 ×´

Roundup

250 ml.

-

30 ×´

Machete EC

500 ml.

-

12 ×´

1000 ml.

-

12 ×´

The net value of the above materials has been computed at P124,493.28, [for which]a credit note will be issued shortly.

We believe that we have been more than fair in meeting your claims. We granted your requests as a gesture of benevolence in assisting your firm in softening the burdens as inevitable consequences of business difficulties.

And as the time tested physical law rightly states - for every action, there must be an equal positive reaction. We feel that you now react favorably in the final and complete resolution of your main problem.

Yours faithfully,

BAYER PHILIPPINES, INC.[10]

Bayerphil's Assistant Sales Manager Rene Garcia (Garcia) gave this letter to Sebastian[11] on November 17, and offered to grant Calibre's claims just so that it may finally settle all its unpaid accounts with Bayerphil. Sebastian wrote Bayerphil to confirm Garcia's offer.[12] In reply, Bayerphil specified in its November 24, 1989 letter the additional claims it granted and clarified the other claims:

x x x x

[Gentlemen]:

We have your letter of November 22, 1989 with your request that we confirm or deny the verbal offer of our Mr. Renato G. Garcia granting all your claims with us per your letter of August 16, 1989.

Please be informed that we confirm that offer subject to the conditions hereunder made explicit, to wit:

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- We will grant you a credit note for P33,127.26 referring to your Item #2 in your letter dated August 16, 1989.

- We will also grant you a credit note for P68,244.30 referring to your Item #3 in your above-named letter.

- We will likewise grant the amount of P6,572.29 by CM to cover your Item #4 in your above-named letter. We have excluded the free goods portion in your claim.

- We will further grant the sum of P2,119.61 by CM as claimed in Item #5 of your above-named letter.

- We will also grant P805.45 through a CM to complete our CM #4975 as per your Item #6 in your said letter.

- Items 7, 8 & 9 in your letter has [sic] been earlier granted by our CM Nos. 12160 and 5263.

- We will also grant your additional volume rebate amounting to P147,590.03 (see also CM#12250 - P320,849.42 VR earlier granted upon full payment of the hereunder mentioned net payable to us).

- Lastly, we will grant you under Item #11 of your August 16 letter, the sum of P79,557.21 (credited free goods and volume rebate which shall be applied against outstanding account are excluded).

All the foregoing are premised on our receipt of your full payment of the sum of P934,086.92, in full and total settlement of your outstanding account after the crediting of the eight (8) above-named concessions totaling to P338,016.15.

We strongly urge you to accept and adhere to the foregoing offer by remitting to us the said sum of P934,086.92 through a bank demand draft on or before close of business hours of December 8, 1989. Your failure to remit the said demand draft within the allotted time shall effectively cancel our herein offer, and much to our regret we shall be left with no other recourse but to protect our interests by and through an appropriately more drastic legal action.

Yours faithfully,

BAYER PHILIPPINES, INC.[13]

In his December 8, 1989 letter, Sebastian expressed discontent in Bayerphil's refusal to credit his claims in full and underscored the alleged inaction of Bayerphil in reconciling Calibre's accounts.[14]

This was followed by a demand letter requiring Bayerphil to pay the sum of P10,000,000.00 for the damages it had allegedly caused to Calibre.[15] Bayerphil replied, reminding that Calibre owed it P1,272,103.07 as of December 31, 1989.[16]

Accusing Bayerphil of maliciously breaching the distributorship agreement by manipulating Calibre's accounts, withholding discounts and rebates due it, charging unwarranted penalties, refusing to supply goods, and favoring the new distributors/dealers to drive it out of business, Calibre, on March 14, 1990, filed a suit for damages, docketed as Civil Case No. 59258, before the Regional Trial Court (RTC) of Pasig.[17] Calibre prayed for P8,000,000.00 actual damages, representing alleged actual losses and profits;[18] P2,000,000.00 award as alleged damage to its goodwill and business reputation; P3,500,000.00 as exemplary damages; and, attorney's fees of P1,500,000.00.

In its Answer with Counterclaim,[19] Bayerphil denied its alleged wanton appointment of other distributors, reasoning that it could not be faulted for a difference in treatment between a paying dealer and a non-paying one. It maintained that Calibre filed the damage suit to avoid paying its overdue accounts. Considering that those purchased on credit remained unpaid, Bayerphil had to refuse to further supply Calibre with its products.

Bayerphil also averred that the dealership agreement provides that rebates and discounts would only be granted if the previous purchases had been first fully paid. It denied that it failed to reconcile Calibre's accounts since it

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conferred with Calibre, and even acceded to a number of deductions demanded by Calibre subject to the latter's settlement of accounts. Bayerphil thus prayed for the collection of P1,272,103.07, with interest of 14% per annum accruing daily and compounded monthly from the date of default (as provided in the dealership agreement); P1,000,000.00 exemplary damages; and, P200,000.00 attorney's fees and costs of suit.

Bayerphil also moved that Mario Sebastian and his wife Minda (Sebastians) be impleaded as co-defendants, considering that the Sebastians bound themselves as solidary debtors under the distributorship/dealership agreement.[20]

Calibre opposed Bayerphil's motion to implead the Sebastians and moved to strike out the counterclaim, reasoning that the spouses are not parties in its suit against Bayerphil and thus are not the proper parties to the counterclaim. It stressed that the issues between the damages suit it filed and Bayerphil's counterclaim for collection of money are totally unrelated.[21]

On the other hand, Bayerphil contended that both causes of action arose from the same contract of distributorship, and that the Sebastians' inclusion is necessary for a full adjudication of Bayerphil's counterclaim to avoid duplication of suits.[22]

In its October 24, 1990 Resolution,[23] the trial court rejected Calibre's arguments and granted the motion to implead the Sebastians as co-defendants in the counterclaim. The spouses then filed their answer to Bayerphil's counterclaim,[24] adopting all the allegations and defenses of Calibre. They raised the issue that the counterclaim against them is permissive, and since Bayerphil failed to pay the required docket fees, the trial court has no jurisdiction over the counterclaim.

Ruling of the Regional Trial Court

On December 6, 1993, the trial court rendered judgment[25] favoring Calibre. It held that Calibre was justified in withholding payment because there was deliberate inaction/employment of dilatory tactics on the part of Bayerphil to reconcile accounts making it liable for damages for `abuse of rights' and `unfair competition' under Articles 19, 20, and 28 of the Civil Code.[26] It opined that Bayerphil unfairly favored other dealers and deliberately refused to supply the plaintiff with its products to drive it out of business. As for Bayerphil's counterclaim, the court a quo adjudged that aside from being unmeritorious for lack of valid demand, the counterclaim was permissive in character. Therefore, it must be dismissed for Bayerphil's failure to pay the required docket fees. The dispositive portion of the Decision states:

> WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendant Bayer Philippines, Inc., ordering said defendant to pay to plaintiff the amounts of P8,000,000.00 as actual damages, plus P80,000.00 as attorney's fees, plus costs.
>
> The "Counter-Complaint" of defendant against the spouses Mario and Minda Sebastian is DISMISSED, for defendant's failure to pay the required docket and filing fees, considering that the counterclaim is permissive in character, and not compulsory. Defendant's counterclaim is likewise DISMISSED for lack of merit.
>
> SO ORDERED.[27]

Ruling of the Court of Appeals

The CA reversed the trial court's factual findings. In its July 31, 2002 Decision, the CA found no reason to award Calibre anything as it has no cause of action against Bayerphil. The CA said:

> We agree with the appellant that nothing in the evidence suggests that it deliberately and maliciously withheld approval of Calibre's claims. Indeed, the correspondences between the parties show that either there was an

> honest difference in the computation of the amount, and/or a variance in opinion as to the validity of the claims. There is abundant evidence that Bayer actually examined its records so much so that through a letter dated November 10, 1989, it gave its explanation why it was denying certain claims. Bayer sent its representatives to discuss the matter with Calibre's General Manager Mario Sebastian. Bayer exerted efforts to arrive at a compromise with Calibre, and expressed its willingness to grant several concessions to plaintiff-appellee (Exhibit "N", Record, pp. 256-257)
>
> Parenthetically, Bayer's offer of compromise cannot be taken as an admission of liability on its part for the entire claim of appellee Calibre. In civil cases, an offer of compromise is not an admission of any liability. The compromise settlement of a claim or cause of action is not an admission that the claim is valid, but merely admits that there is a dispute, and that the amount is being paid just to buy peace. (Servicewide Specialists, Inc. vs. Court of Appeals, G.R. No. 117728, June 26, 1996, 257 SCRA 643) After all, it is the policy of the law to encourage compromises.
>
> x x x x
>
> It must also be noted that plaintiff-appellee was not entitled to be the sole distributor within its area of coverage for Bayer. Under number 3, Part III of the latest Distributorship/Dealership Agreement (p. 231, Record) between the parties, it was stipulated that unless otherwise agreed upon, formally and in writing, plaintiff-appellee's appointment as distributor/dealer was to be on a non-exclusive basis. The agreement expressly reserved Bayer's right to appoint other distributors and/or dealers, in any number desired and anywhere in the appointed area. There is no evidence of a formal and written agreement appointing plaintiff-appellee as sole distributor in Pangasinan and Tarlac. Hence, it cannot validly claim that Bayer caused its business injury by appointing other dealers and distributors within its area.
>
> Significantly, the Distributorship/Dealership Agreement also reserved to both parties the right to cancel the agreement at any time. Under the circumstances obtaining, Bayer was justified, in the exercise of sound business decision, to stop supplying goods to plaintiff-appellee until the latter's outstanding account had been finally settled.[28]

Furthermore, the CA favored Bayerphil's counterclaim. It ruled that Bayerphil's counterclaim was compulsory hence it need not pay the docket and filing fees. It noted that it arose out of the same dealership agreement from which the claims of Calibre in its complaint were likewise based. Finding that Calibre never denied that it owes Bayerphil, and that the evidence of Bayerphil regarding the amount owed by Calibre was unrebutted, the CA deemed justified the award of actual damages. Hence:

> WHEREFORE, premises considered, the Decision of the lower court is hereby REVERSED and SET ASIDE and a new one is entered ordering plaintiff-appellee Calibre Traders and/or Mario Sison Sebastian and Minda Blanco Sebastian to pay defendant-appellant the amount of One Million Two Hundred Seventy-Two Thousand One Hundred Three Pesos and Seven Centavos (P1,272,103.07) with interest thereon at the rate of 14% per annum compounded from December 31, 1989 until fully paid.
>
> Without pronouncement as to costs.
>
> SO ORDERED.[29]

In its December 19, 2003 Resolution,[30] the CA denied the motion for reconsideration.

Issues

Based on the parties' contentions, the Court should now resolve the following issues: a) Calibre's entitlement to an award of damages; and, b) the propriety of granting relief to Bayerphil's counterclaim.

Our Ruling

No form of damages can be awarded to Calibre for it miserably failed to prove its right to the reliefs it sought.

While only questions of law are reviewed in petitions for review on certiorari, the Court shall delve into the factual milieu of this case in view of the conflicting findings of facts by the trial court and the CA.[31] The question arises whether Calibre has a cause of action against Bayerphil. The records before us though, highlight the lack of it.

The lower court's ruling against the latter is premised on a finding of malice or bad faith, i.e., a finding of an abuse of right on Bayerphil's part in exercising inimical acts that prejudiced Calibre's business. However, we agree with the CA's conclusion that there is no adequate proof that Bayerphil was guilty of abusing its rights. "[G]ood faith is presumed and that the burden of proving bad faith rests upon a party alleging the same."[32] "In civil cases, the law requires that the party who alleges a fact and substantially asserts the affirmative of the issue has the burden of proving it."[33] This is where Calibre failed.

As regards the allegations of inaction/refusal to reconcile accounts, accounts manipulation by withholding discounts/rebates, imposition of penalties, and refusal to supply goods, the records reveal that Bayerphil never ignored the request for accounts reconciliation. Bayerphil acted on Calibre's letter and sent its representatives to meet with Sebastian. It wrote a letter answering point-by-point why some demands for discounts and rebates had to be refused. Bayerphil's second letter, wherein some claims were additionally granted, was on Bayerphil's part an act of concession in its desire to be paid since Calibre remained adamant in not paying its accounts. If ever Calibre found the second letter to be apparently inconsistent with the first letter, bad faith cannot be immediately imputed to Bayerphil since the latter is not precluded from making prompt corrections in its computations.

We cannot subscribe to the accusation of accounts manipulation. As the CA had found, this matter involves an "honest difference in the computation of the amount, and/or a variance in opinion as to the validity of the claims." Moreover, Bayerphil could not be blamed for disallowing some of the claimed discounts and rebates. Under the latest dealership agreement and the volume rebate agreement executed, payment is a precondition for the discounts and rebates.[34] Bayerphil, to minimize further losses, was justified in stopping the supply of its products when its dealer still had outstanding accounts. Lastly, Calibre did not specify during the trial the unwarranted penalties Bayerphil had allegedly imposed.

Neither do we find any abuse in Bayerphil's exercise of appointing other distributors within Calibre's area. The fact that the distributors appointed were Calibre's former customers or salesmen or their relatives does not prove any ill intention to drive Calibre out of business. Notably, the distributorship/dealership agreement was on a non-exclusive basis. Bayerphil merely accorded the same business opportunities to others to better themselves. Naturally, an increase in the number of distributors in an area will entail corresponding decline in volume sales of the individual distributors. Even then Bayerphil's assistant sales manager for internal administration Ofelia Castillo, who named during the trial the other distributors Bayerphil appointed in Pangasinan, not only acknowledged that Bayerphil's former salesmen had resigned to be dealers, but also admitted that competition is part of business risk:

> Q
>
> You said in Manaoag, this Rosalyn Agricultural Supply was there as early as 1980 is that correct?
>
> A
>
> At about.
>
> Q

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But somehow, it was a distributor for only 2 or 3 years?

A

Yes, shortly, unlike those dealers who have several years.

Q

This Samson in Urdaneta was also short lived?

A

It began in the area and operating until now.

Q

Would you know when Samson began as a distributor?

A

Between the period '82 and '85.

Q

This San Carlos Agricultural Center owned by William.

A

It is owned by Ricardo Rule. There are two operating in San Carlos.

Q

There are two dealers operating in San Carlos?

A

Yes, Sir.

Q

How many in Urdaneta?

A

Calibre and Samson. Only those two.

Q

You would admit Mrs. Castillo that the Bayer Phils. Salesmen of agro chemicals are experienced in the products of Bayer Philippines?

A

Having worked and dealt with Bayer chemicals, with the training they got, I suppose they get that experience.

Q

And this experience would be invaluable in their distributorship?

A

Valuable.

Q

Very valuable?

A

Very valuable.

Q

And in fact, you know of many salesmen of Bayer Phils who resigned?

A

Yes, sir.

Q

Because the chances of getting more is there if you are an independent distributor?

A

Yes, sir.

Q

In fact, this is true not only in Pangasinan but all over the country, Mrs. Castillo?

A

Yes, because we have mentioned one in Cotabato, in San Jose, Nueva Ecija, in Tuguegarao.

Q

And from the records that you mentioned earlier on, it would seem some of them succeeded beautifully and some closed shop afterwards?

A

Yes, sir.

Q

It is just a matter of luck and yes, business luck?

A

Yes, sir.[35]

Incidentally, under actual or compensatory damages, indemnification comprises not only the value of the loss suffered, but likewise the profits the obligee failed to obtain.[36] In its attempt to support this claim for compensatory damages, Calibre, based its computation of more or less a loss of P8 million on a 10-year sales projection.[37] But as could be gleaned from Sebastian's testimony, there is no solid evidence upon which this sales projection was based:

Q

You prepared a projection of your total sales for another ten (10) years from 1989.

A

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Yes, sir.

Q

In the preparation of your projection, I assume that you based it on the records of your sales of previous years?

A

No.

Q

You did not in preparing your projection of sales to determine your alleged lost profits refer at all to your previous records?

A

No.

Q

What then was the basis of your projection?

A

The basis of my projection is, as one of the valued clients of Bayer Philippines which is a member of the World Club, we are in the bracket of 10 million per year sales.

Q

So you only had capability to sell?

A

Yes.

Q

Have you ever sold before in the 10 million per year sales?

A

Yes.

Q

That is why I am asking you, you did not at all base your assumption on your prior sales record of Bayer Philippines products?

A

I cannot possibly base it on the past sales. Cost of money is going up so I based it on a bracket that Bayer Philippines put us which is in the 10 million per year sales that is projected for another 10 years because we are the valued clients of Bayer.

Q

You also projected your profits for the next 10 years?

A

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Yes, sir.

Q

And you did not consider the profits from the Bayer business of the prior years in making your projection?

A

Yes, sir.

Q

I assume then that in determining your profits for the previous years you used the figures of the summary Exhibit O as to your sales from 1977 to 1989?

A

No, sir.

Q

You did not refer at all to your profits for the previous years?

A

No, sir.

Q

Why did you not refer to your previous profits to determine your projection of probable profits?

A

We projected our projection based on our being a valued client of Bayer Philippines, and based on the contract of the minimum 5% profit.[38]

To justify a grant of actual or compensatory damages, the amount of loss must be proved with a reasonable degree of certainty, based upon competent proof and the best evidence obtainable by the injured party.[39] The projected sum of P10 million sales cannot thus be the proper base in computing actual damages. Calibre computed its lost income based only on its capability to sell around P10 Million, not on the actual income earned in the past years to properly compute the average income/profit.

At any rate, since Calibre had no cause of action at all against Bayerphil, there can be no basis to award it with damages.

Bayerphil's counterclaim is permissive, but the trial court should have given it the opportunity to pay the docket fees since it did not avoid paying said fees.

"A compulsory counterclaim is any claim for money or other relief, which a defending party may have against an opposing party, which at the time of suit arises out of, or is necessarily connected with, the same transaction or occurrence that is the subject matter of plaintiff's complaint. It is compulsory in the sense that it is within the jurisdiction of the court, does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, and will be barred x x x if not set up in the answer to the complaint in the same case. Any other claim is permissive."[40] "[The] Court has already laid down the following tests to determine whether a counterclaim is compulsory or not, to wit: (1) Are the issues of fact or law raised by the claim and the counterclaim largely the same? (2) Would res judicata bar a subsequent suit on defendant's claims, absent the

compulsory counterclaim rule? (3) Will substantially the same evidence support or refute plaintiff's claim as well as the defendant's counterclaim? and (4) Is there any logical relation between the claim and the counterclaim, such that the conduct of separate trials of the respective claims of the parties would entail a substantial duplication of effort and time by the parties and the court?"[41] The fourth test is the `compelling test of compulsoriness'.[42]

Bayerphil's suit may independently proceed in a separate action. Although the rights and obligations of the parties are anchored on the same contract, the causes of action they filed against each other are distinct and do not involve the same factual issues. We find no logical relationship between the two actions in a way that the recovery or dismissal of plaintiff's suit will establish a foundation for the other's claim. The counterclaim for collection of money is not intertwined with or contingent on Calibre's own claim for damages, which was based on the principle of abuse of rights. Both actions involve the presentation of different pieces of evidence. Calibre's suit had to present evidence of malicious intent, while Bayerphil's objective was to prove nonpayment of purchases. The allegations highlighting bad faith are different from the transactions constituting the subject matter of the collection suit. Respondent's counterclaim was only permissive. Hence, the CA erred in ruling that Bayerphil's claim against the petitioners partakes of a compulsory counterclaim.

Be that as it may, the trial court was incorrect in dismissing Bayerphil's counterclaim for non-payment of docket fees.

All along, Bayerphil has never evaded payment of the docket fees on the honest belief that its counterclaim was compulsory. It has always argued against Calibre's contention that its counterclaim was permissive ever since the latter opposed Bayerphil's motion before the RTC to implead the Sebastian spouses. Lastly, Bayerphil's belief was reinforced by Judge Claravall's October 24, 1990 Resolution when she denied Calibre's motion to strike out Bayerphil's counterclaim. Thus:

> With respect to the motion to strike out the counterclaim, the Rejoinder and Reply of CALIBRE mentioned two reasons to support it. These are: 1) that the counterclaim is not against the opposing party only, and 2) that the plaintiff's claim against the defendant is totally unrelated to the latter's claim against the Sebastian spouses because they are "not the same."
>
> To resolve the issues abovementioned, the elements of a compulsory counterclaim are thus given:
> A counterclaim is compulsory and is considered barred if not set up where the following circumstances are present: 1) that it arises out of the, or is necessarily connected with the transaction or occurrence that is the subject matter of the opposing party's claim, 2) that it does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction, and 3) that the court has jurisdiction to entertain the claim. (Javier vs. IAC, 171 SCRA 605)

The provisions of Section 8, Rule 6 must necessarily be mentioned also. To wit:

> Sec. 8, Rule 6. Counterclaim or cross-claim in the answer. - The answer may contain any counterclaim or crossclaim which a party may have at the time against the opposing party or a co-defendant provided, that the court has jurisdiction to entertain the claim and can, if the presence of third parties is essential for its adjudication, acquire jurisdiction of such parties.

The rules and jurisprudence do not require that the parties to the counterclaim be the original parties only. In fact, the presence of third parties is allowed, the only provision being their capacity to be subjected under the court's jurisdiction. As regards the nature of the claims of the parties, neither is it required that they be of the same nature, only that they arise from the same transaction or occurrence.[43]

It cannot be gainsaid that the emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of

technicalities.[44] Rules on the payment of filing fees have already been relaxed:

> 1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject-matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.
>
> 2. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid. The court may also allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period.
>
> 3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee.[45]

It is a settled doctrine that "although the payment of the prescribed docket fees is a jurisdictional requirement, its non-payment x x x should not result in the automatic dismissal of the case provided the docket fees are paid within the applicable prescriptive period."[46] "The prescriptive period therein mentioned refers to the period within which a specific action must be filed. It means that in every case, the docket fee must be paid before the lapse of the prescriptive period. Chapter 3, Title V, Book III of the Civil Code is the principal law governing prescription of actions."[47]

In accordance with the aforementioned rules on payment of docket fees, the trial court upon a determination that Bayerphil's counterclaim was permissive, should have instead ordered Bayerphil to pay the required docket fees for the permissive counterclaim, giving it reasonable time but in no case beyond the reglementary period.[48] At the time Bayerphil filed its counter-claim against Calibre and the spouses Sebastian without having paid the docket fees up to the time the trial court rendered its Decision on December 6, 1993, Bayerphil could still be ordered to pay the docket fees since no prescription has yet set in.[49] Besides, Bayerphil should not suffer from the dismissal of its case due to the mistake of the trial court.

Considering the foregoing discussion, we find no need to remand the case to the trial court for the resolution of Bayerphil's counterclaim. In Metromedia Times Corporation v. Pastorin,[50] we discussed the rule as to when jurisdiction by estoppel applies and when it does not, thus:

> Lack of jurisdiction over the subject matter of the suit is yet another matter. Whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed (Section 2, Rule 9, Rules of Court). This defense may be interposed at any time, during appeal (Roxas vs. Rafferty, 37 Phil. 957) or even after final judgment (Cruzcosa vs. Judge Concepcion, et al., 101 Phil. 146). Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside. In People vs. Casiano (111 Phil. 73, 93-94), this Court, on the issue of estoppel, held:

"The operation of the principle of estoppel on the question of jurisdiction seemingly depends upon whether the lower court actually had jurisdiction or not. If it had no jurisdiction, but the case was tried and decided upon the theory that it had jurisdiction, the parties are not barred, on appeal, from assailing such jurisdiction, for the same must exist as a matter of law, and may not be conferred by consent of the parties or by estoppel' (5 C.J.S., 861-863). However, if the lower court had jurisdiction, and the case was heard and decided upon a given theory, such, for instance, as that the court had no jurisdiction, the party who induced it to adopt such theory will not be

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permitted, on appeal, to assume an inconsistent position - that the lower court had jurisdiction. Here, the principle of estoppel applies. The rule that jurisdiction is conferred by law, and does not depend upon the will of the parties, has no bearing thereon."

In this case, the trial court had jurisdiction over the counterclaim although it erroneously ordered its automatic dismissal. As already discussed, the trial court should have instead directed Bayerphil to pay the required docket fees within a reasonable time. Even then, records show that the trial court heard the counterclaim although it again erroneously found the same to be unmeritorious. Besides, it must also be mentioned that Bayerphil was lulled into believing that its counterclaim was indeed compulsory and thus there was no need to pay docket fees by virtue of Judge Claravall's October 24, 1990 Resolution. Petitioners also actively participated in the adjudication of the counterclaim which the trial court adjudge to be unmeritorious.

However, we are more inclined to affirm the CA's ruling anent Bayerphil's counterclaim. It held thus:

> What remains to be determined now is whether or not defendant-appellant is entitled to its counterclaim. On this score, We note that plaintiff-appellee never denied that it still owes defendant-appellant for purchases it had made. Bayer had already recognized that Calibre was entitled to a volume rebate for the years 1988-1989 in the amount of P320,849.42 on paid purchases, and a 5% prompt payment rebate of P63,196.06 in view of the application of the volume rebate to Calibre's outstanding balance, or a total of P384,045.48, as stated in Bayer's letter dated November 10, 1989 (Exhibit "10", Record, pp. 373-375) earlier quoted.
>
> Since no evidence was presented by plaintiff-appellee to rebut the correctness of Bayer's computation. We therefore assume it to be correct. Moreover, We note that the stocks Bayer had withdrawn per plaintiff-appellee's request under Claims 10 and 11 amounting to P124,493.28 had been credited to plaintiff-appellee as shown by the Statement of Account (Exhibit "4", Record, pp. 366-367) which shows that Calibre's outstanding indebtedness as of December 31, 1989 was One million Two Hundred Seventy-Two Thousand, One Hundred Three Pesos and Seventeen Centavos (P1,272,103.17) (Exhibit "4-E", p. 367). We also note that the Distributorship/Dealership Agreement entered into by the parties provides that default in payment on any account by the DISTRIBUTOR/DEALER when and as they fall due shall entitle BAYERPHIL to interests thereon at the then maximum lawful interest rates which in no case shall be lower than twelve per cent (12%) per annum for accounts fully secured by a mortgage on realty or fourteen per cent (14%) per annum when otherwise unsecured. (Exhibit "1-F", Record, p. 328).[51]

WHEREFORE, the July 31, 2002 Decision of the Court of Appeals in CA-G.R. CV No. 45546 is AFFIRMED. Considering that the counterclaim is permissive, respondent Bayer Philippines, Inc. is ORDERED to pay the prescribed docket fees with the Regional Trial Court of Pasig City within fifteen (15) days from receipt of this Decision.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Perez, JJ., concur.

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[1] Rollo, pp. 12-67.

[2] CA rollo, pp. 399-412; penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Elvi John S. Asuncion and Edgardo F. Sundiam.

[3] Id. at 547-548.

[4] Calibre began as a dealer for Bayerphil in 1977.

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[5] Records, pp. 231-235.

[6] Id. at 336-367; TSN Vidal Lingad, November 28, 1991, p. 15. The last payment of Calibre was in March 1989 in the amount of P216,070.80.

[7] TSN Mario Sebastian, July 31, 1991, pp. 21-22.

[8] Records, pp. 241-242.

[9] Id. at 243, 245, and 247.

[10] Id. at 248-250.

[11] Id. at 376.

[12] Id. at 377.

[13] Id. at 378-379.

[14] Id. at 380-381.

[15] Id. at 382. Dated January 15, 1990.

[16] Id. at 383. Dated March 22, 1990.

[17] Raffled off to Branch 69.

[18] Calibre's computed sales projection in 10 years from 1989. It was based on the minimum 5% profit and the capability to sell P10,000,000/year (thus being inducted by Bayerphil as a member of the "Multimillionaire's Club" for falling into such sales bracket for a number of years), Records, p. 259, TSN Mario Sebastian, July 31, 1991, pp. 5-7.

[19] Records, pp. 39-54.

[20] Records, pp. 36-38.

[21] Id. at 108-114, 125-128.

[22] Id. at 116-124; 132-134.

[23] Id. at 135-136; penned by Judge Graduacion A. Reyes-Claravall.

[24] Id. at 140-144; penned by Judge Willlelmo Fortun.

[25] Id. at 516-530.

[26] The trial court invoked the following provisions:

ART. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Art. 20. Every person who contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

Art. 28. Unfair competition in agricultural, commercial or industrial enterprises or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or highhanded method shall give rise to a right of action by the person who thereby suffers damage.

[27] Records, p. 530.

[28] CA rollo, pp. 408-409.

[29] Id. at 411-412.

[30] Supra note 3.

[31] Ontimare, Jr. v. Elep, G.R. No. 159224, January 20, 2006, 479 SCRA 257, 265. The findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
(2) When the inference made is manifestly mistaken, absurd or impossible;
(3) Where there is a grave abuse of discretion;
(4) When the judgment is based on a misapprehension of facts;
(5) When the findings of fact are conflicting;
(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
(7) When the findings are contrary to those of the trial court;
(8) When the findings of fact 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 petitioners' main and reply briefs are not disputed by the respondents; and
(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

[32] Martires v. Cokieng, 492 Phil. 81, 90 (2005), citing Barons Marketing Corp. v. Court of Appeals, 349 Phil. 769, 778 (1998).

[33] Spouses Hutchison v. Buscas, 498 Phil. 257, 261 (2005).

[34] Pertinent provisions are the following:

Under the Dealership Agreement:

DISTRIBUTOR'S/DEALER'S DISCOUNT

x x x x

c) An additional five percent (5%) discount, hereinafter referred to as CASH DISCOUNT, based on BAYERPHIL'S then existing listed price less BASIC and TURNOVER DISCOUNTS in cases of full CASH BEFORE OR ON DELIVERY payment on purchases.

x x x x

CREDIT LINE, TERM AND CONDITIONS THEREOF

x x x x

(8) BAYERPHIL agrees to grant the DISTRIBUTOR/DEALER a prompt payment rebate equivalent to three percent (3%) of the gross invoiced amount after BASIC and TURNOVER DISCOUNTS provided that the net amount of the invoice shall have been paid on or before the 30[th] day from and after invoice date and provided further that no other invoiced or debited accounts are then outstanding, overdue, and unpaid.

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x x x x

Under the Volume Rebate and Premium Volume Rebate Agreement:

x x x x

I. BASIC VOLUME REBATE

PURCHASE (BRACKET) PERCENTAGE REBATE

P4,500,000.01 to P5,000,000.00 Ten Percent (10%) on total paid net volume purchases
P3,750,000.01 to P4,500,000.00 Eight Percent (8%) on total paid net volume purchases
P2,750,000.01 to P3,750,000.00 Six Percent (6%) on total paid net volume purchases
P1,500,000.01 to P2,750,000.00 Four Percent (4%) on total paid net volume purchases
up to P1,500,000.00 Two Percent (2%) on total paid net volume purchases

x x x x

e. The percentage bracket attained shall be reckoned on total purchases regardless of the fact of payment provided that no rebate shall be allowed on any invoiced or debited purchase where the invoice and/or debit note is not fully paid.

x x x x

g. x x x In cases where all delivered and/or invoiced purchases dated on or before June 30, 1989 shall have been earlier paid in full, BAYERPHIL guarantees to pay accrued rebates within 15 days from receipt of DISTRIBUTOR'S claim therefore. x x x

x x x x

Debit Notes for erroneous billings or price adjustments, Delivery Notes and Invoices appertaining to the period shall not be included in the computation of the actual volume rebate unless fully paid by July 30, 1989 but ½ of said unpaid accounts shall be credited and included in the succeeding annual period for this volume rebates.

[35] TSN Ofelia Castillo, September 4, 1991, pp. 20-22.

[36] Civil Code, Article 2200.

[37] Records, p. 259.

[38] TSN Mario Sebastian, July 31, 1991, pp. 5-7.

[39] Philippine National Bank v. RBL Enterprises, G.R. No. 149569, May 28, 2004, 430 SCRA 299, 309, citing Integrated Packaging Corporation v. Court of Appeals, 388 Phil. 835, 846 (2000).

[40] Cruz-Agana v. Judge Santiago-Lagman, 495 Phil. 188, 193-194 (2005), citing Rule 6, Section 7 of the Rules of Court.

[41] Sandejas v. Ignacio, Jr., G.R No. 155033, December 19, 2007, 541 SCRA 61, 77, citing Tan v. Kaakbay Finance Corporation, 452 Phil. 637, 646-647 (2003), Intestate Estate of Dalisay v. Hon. Marasigan, 327 Phil. 298, 301 (1996) and Quintanilla v. Court of Appeals, 344 Phil. 811, 819 (1997).

[42] Alday v. FGU Insurance Corporation, 402 Phil. 962, 972 (2001).

[43] Records, p. 136. Emphasis supplied.

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[44] Peñoso v. Dona, G.R. No. 154018, April 3, 2007, 520 SCRA 232, 240.

[45] Sun Insurance Office, Ltd. v. Judge Asuncion, 252 Phil. 280, 291-293 (1989). Emphasis supplied.

[46] Alday v. FGU Insurance Corporation, supra note 42 at 975 and Suson v. Court of Appeals, 343 Phil. 816, 827 (1997).

[47] Central Bank of the Philippines v. Court of Appeals, G.R. Nos. 88353 and 92943, May 8, 1992, 208 SCRA 652, 683.

[48] Alday v. FGU Insurance Corporation, supra note 42 at 976.

[49] N.B. Since Bayerphil's claim for sum of money was based on a written contract, it has 10 years to file a claim for collection of money under Art. 1144 (1) of the Civil Code from the time Calibre defaulted in its payments beginning 1989.

[50] 503 Phil. 288, 303-304 (2005), citing Lozon v. National Labor Relations Commission, 310 Phil. 1 (1995).

[51] Rollo, pp. 203-204.

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