

PHILIPPINE PHOSPHATE FERTILIZER CORPORATION, PETITIONER, VS. KAMALIG RESOURCES, INC., RESPONDENT.

G.R. No. 165608. December 13, 2007

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TINGA, J.:

This is an appeal by certiorari under Rule 45 of the Revised Rules of Court from the Decision[1] dated 26 May 2004 promulgated by the Court of Appeals in CA G.R. No. 52553 which reversed the Decision[2] dated 25 September 1995 of the Regional Trial Court (RTC) of Makati City, Branch 63, in Civil Case No. 17641, a case for collection of a sum of money representing overwithdrawals by respondent Kamalig Resources, Inc. (Kamalig) of fertilizer stocks of various grades from the Iloilo and Manila warehouses of petitioner Philippine Phosphate Fertilizer Corporation (Philphos).

The factual and legal antecedents follow.

Kamalig purchased fertilizer products from Philphos for eventual sale to its customers. The agreement governing the business transaction consisted of advance payment to Philphos for Kamalig's purchases of fertilizer products, followed by Philphos's issuance of a Sales Official Receipt and an Authority to Withdraw, indicating the kind of fertilizer product purchased and the location of the warehouse where the merchandise would be picked up. Kamalig would subsequently resell the fertilizer products and issue to its customers the corresponding Delivery Orders signed only by its authorized officers. The customers would then present the Delivery Orders to the proper Philphos warehouse for the release of the fertilizer products.

On 30 September 1985, Kamalig purchased from and made advance payments for fertilizer products of various grades to Philphos in the total sum of P4,548,152.53, embodied in Sales Official Receipt No. 03539,[3] covering the following commercial invoices: (a) Commercial Invoice (CI) No. 04891 for fertilizer products to be withdrawn from the warehouse in Poro Point; (b) CI No. 04892 for fertilizer products to be withdrawn from the Manila supply point; (c) CI No. 04893 for such products to be withdrawn from the Iloilo warehouse; and (d) CI No. 04894 for the products to be withdrawn from the Davao supply point.[4]

Prior to the release of fertilizer products at the said supply points, however, Kamalig requested for a readjustment of the various fertilizer grades and a modification of the locations from which the fertilizer stocks would be picked up. The request was contained in a letter dated 11 October 1985.[5]

In a subsequent letter dated 14 October 1985,[6] Kamalig requested another adjustment, this time a conversion of its stocks in Davao to be delivered and picked up in Manila.

All these requests were approved by Philphos.

In the letter dated 21 July 1986,[7] Philphos informed Kamalig of its overwithdrawal of various fertilizer stocks in the supply depots in Manila and Iloilo. This consisted of 291.45 metric tons (MT) of fertilizer grade 21-0-0 from the Manila supply point and 50 MT each of fertilizer grades 14-14-14, 16-20-0, and 21-0-0 from the Iloilo supply station. According to Philphos, the cost of these overwithdrawals by Kamalig amounted to P1,016,994.21. But

since Philphos also had an obligation to Kamalig in the amount of P470,348.91 representing the Capital Recovery Component, partial compensation took place by operation of law thereby reducing Kamalig's obligation to P546,645.30. Thus, Philphos demanded that this sum be settled on or before 31 July 1986, otherwise Kamalig would be charged 34% interest per annum. Kamalig, however, denied that it had exceeded its withdrawals of fertilizer and thus contended that it should not be made liable for any amount.

On 20 August 1987, Philphos filed the case for collection of a sum of money against Kamalig before the RTC of Makati City. During pre-trial, the parties agreed to confine the issue to whether or not Kamalig overwithdrew 150 MT or 3,000 bags of various grades of fertilizer products amounting to P441,738.50 from Philphos's warehouse in Iloilo and 291.45 MT or 5,829 bags of fertilizer grade 21-0-0 amounting to P575,255.71 from Philphos's warehouse in Manila.[8]

After trial, giving more credence to the evidence presented by Philphos, the RTC disposed of the case in its Decision[9] dated 25 September 1995, thus:

In the light of the foregoing, judgment is hereby rendered as follows:

- 1) Ordering defendant to pay plaintiff the amount of P546,645.30 representing the overwithdrawn stocks made by defendant to plaintiff plus 34% interest per annum from 20 August 1987 until fully paid;
- 2) Ordering defendant to pay plaintiff an amount equivalent to 25% of the total claim as and for attorney's fees; and
- 3) Ordering defendant to pay the costs of suit.

SO ORDERED.[10]

The RTC noted that Kamalig did not categorically deny that there were overwithdrawals of fertilizer products in its stock, and that if there were overwithdrawals, Kamalig merely claimed that it should not be at fault because some of the delivery receipts were signed by Kamalig officers who were not authorized to make such withdrawals. However, the RTC held that the alleged unauthorized withdrawals did not relieve Kamalig from liability for the following reasons: first, Kamalig's policy of not allowing withdrawals via handwritten forms or forms that are not pre-printed or pre-numbered was not communicated to Philphos but was only an internal company policy; second, if it is Kamalig's internal policy not to allow withdrawals by unauthorized officers, then it should have been followed by all of its employees, and the withdrawals by such unauthorized officers only goes to show that said procedure is actually not an internal policy of Kamalig. Therefore, such withdrawals should be for the account of Kamalig.[11]

Kamalig appealed the decision to the Court of Appeals, which found merit in the appeal. The dispositive portion of the Decision dated 26 May 2004 reads:

WHEREFORE, the assailed Decision is REVERSED and SET ASIDE. The complaint is DISMISSED and judgment is rendered ordering Philippine Phosphate Fertilizer Corporation to pay Kamalig Resources, Inc., the following:

- Actual damages in the sum of P470,348.91, representing the value of the Capital Recovery Component, plus legal interest from the date of the filing of the Complaint;

- Actual damages in the sum of P174,841.34, representing the value of unauthorized withdrawals erroneously charged to Kamalig Resources, Inc.;
- Attorney's fees in the amount of P30,000.00; and
- The costs of suit.

SO ORDERED.[12]

The Court of Appeals disagreed with the RTC's finding that Kamalig failed to categorically deny Philphos's claim of overwithdrawal of fertilizer stocks. The appellate court pointed out that there were specific denials in Kamalig's Answer that it had not overwithdrawn its stocks, and in its Pre-Trial Brief that it had withdrawn fertilizer stocks only in such grade and quantity equivalent to the payment it had previously made. A categorical denial having been made by Kamalig, the Court of Appeals declared that the burden of proof had shifted to Philphos to prove such overwithdrawals.[13] The Court of Appeals found, however, that Philphos did not overcome the burden of proof as it failed to prove the alleged overwithdrawal of fertilizer products by Kamalig which is the core of its cause of action. The Court of Appeals also found that Philphos's computations not only included improperly documented withdrawals but also violated Kamalig's policy of authorizing withdrawals based only on pre-printed and numbered forms duly issued to its customers, which policy according to the Court of Appeals, was communicated by Kamalig to Philphos. The Court of Appeals likewise found that it was also Philphos's company policy to disallow withdrawals not using the pre-numbered and pre-printed delivery receipts. By adopting the same policy, the appellate court declared, Philphos should have been forewarned that allowing withdrawals without the proper documentation would be abetting unauthorized withdrawals to its prejudice. Thus, such unauthorized withdrawals should also be deducted from the value of the fertilizer products withdrawn by Kamalig.[14]

Consequently, the unauthorized withdrawals, in the total amount of P378,891.45,[15] should be deducted from the total withdrawals made by Kamalig as stated in the delivery receipts, placed at P4,752,202.62, thereby leaving a difference of P4,373,311.21. Said difference should then be deducted from the purchase price of P4,548,152.55 previously paid by Kamalig, leaving an overpayment of P174,841.34 by Kamalig. Add to this the amount of P470,348.91 representing the Capital Recovery Component which Philphos admitted it owed Kamalig, resulting in the total amount of P645,190.25 owed by Philphos to Kamalig, said the Court of Appeals.

Total value of withdrawals made by Kamalig

P4,752,202.62

Less: Value of unauthorized withdrawals

- 378,891.41

Actual value of withdrawals made by Kamalig

P4,373,311.41

Amount previously paid by Kamalig

P4,548,152.55

Less: Actual value of withdrawals made by Kamalig

- 4,373,311.41

174,841.34

Add: Capital Recovery Component

+ 470,348.91

TOTAL AMOUNT owed by Philphos to Kamalig

P645,190.25[16]

The Court of Appeals likewise held that there was no basis for the imposition of the 34% interest per annum on the principal claim of Philphos, the same being merely a unilateral act on the part of Philphos and no evidence was presented to show that the parties stipulated on the payment of interest. Besides, such interest cannot be awarded since there were no overwithdrawals in the first place. The Court of Appeals also deleted the award of attorney's fees to Philphos, finding that the factual and legal bases of the RTC were erroneous and that Philphos had not met any of the justifications under Article 2208 of the Civil Code to merit the award of attorney's fees. Instead, it awarded attorney's fees to Kamalig which was forced to hire the services of a lawyer to defend itself against an unfounded civil action filed by Philphos that could have been avoided had Philphos been more diligent.[17]

Philphos filed a motion for reconsideration of the Decision but this was denied in the Resolution[18] of 7 October 2004.

In the present appeal by certiorari, Philphos alleges that the Court of Appeals erred in holding that: (a) Philphos is liable to Kamalig for the sum of P645,190.29, considering that based on Philphos's evidence, it is Kamalig who is indebted to Philphos for the sum of P538,486.74; (b) Philphos's evidence is not sufficient to prove the existence of an outstanding obligation; (c) there can be no basis for the imposition of a 34% interest per annum on the outstanding obligation of Kamalig to Philphos; and (d) there is no basis for awarding attorney's fees to Philphos.

Philphos alleges that in issuing the questioned decision, the Court of Appeals omitted some figures and disregarded some material facts which, when taken into account, would have established Kamalig's liability by as much as P538,486.73. First, in coming up with the value of P645,190.25 supposedly owed by Philphos to Kamalig, the Court of Appeals erroneously indicated that Kamalig had withdrawn 1,908.85 MT of fertilizer grade 21-0-0, 150 MT of fertilizer grade 16-20-0 and 150 MT of fertilizer grade 14-14-14, or a total of 2,208.85 MT. In doing so, the Court of Appeals did not consider Kamalig's withdrawals in the other warehouses of Philphos, such as 37.15 MT of 16-20-0 fertilizer grade in Poro Point and 100 MT each of fertilizer grades 14-14-14 and 16-20-0

in Manila per Kamalig's letter dated 11 October 1985. Thus, the appellate court's computation was short by 237.15 MT worth P803,710.55:[19]

FERTILIZER

GRADE

QUANTITY IN

METRIC TONS

PRICE/MT

AMOUNT

14-14-14

100

3,499.10

P 349,910.00

16-20-0

137.15

3,308.79

453,800.55

TOTAL

237.15

P 803,710.55

Second, the Court of Appeals supposedly should not have readily believed Kamalig's claim that the withdrawals based on handwritten delivery orders or those that were not pre-printed and pre-numbered were unauthorized. The evidence presented by Philphos clearly showed that said alleged unauthorized withdrawals amounting to P378,891.41 were sufficiently evidenced by delivery orders signed by Kamalig's authorized signatories and were received by Kamalig's customers. Philphos asseverates that it should not be faulted for honoring the delivery orders that were not written on the standard pre-printed forms. While Kamalig asserts that it communicated its policy of disallowing withdrawals in non-standard forms, Kamalig's own witness and former company president, Ma. Lourdes Nicandro, testified that the policy was not communicated officially through a formal written memorandum or letter. Moreover, the handwritten delivery orders signed by Kamalig's authorized officers would negate the existence of such a policy since said officers are presumed to be knowledgeable about Kamalig's policies and accordingly comply with the same.[20]

Third, the Court of Appeals should have included in its computation the additional deliveries to Kamalig of 292 MT of fertilizer grade 21-0-0 in Manila per the letter dated 14 October 1985. In said letter, Kamalig misrepresented to Philphos that it still had an undelivered balance of 200 MT of various fertilizer grades in Davao when in fact it had none, thus Philphos, in good faith, authorized the delivery of the 292 MT of grade 21-0-0 from the Manila warehouse as requested. The additional withdrawal of 292 MT of grade 21-0-0 was evidenced by delivery orders and delivery receipts and should have been included in the computation of Kamalig's obligation.

Thus, according to Philphos's computations, the fertilizer products withdrawn by Kamalig totals 2,446.55 MT equivalent to P5,556,988.20. Deducting Kamalig's deposit of P4,548,152.55 and capital recovery component of P470,348.91, Kamalig owes Philphos the amount of P538,486.74:

FERTILIZER GRADE

PORO POINT

MANILA

ILOILO

TOTAL

MT

COST/MT

TOTAL

14-14-14

-

100

100

250

3,499.10

P874,775.00

16-20-0

37.15

100

150

287.15

3,308.79

950,119.05

21-0-0

-

1,709.4

200

1,909.4

1,954.59

3,732,094.15

TOTAL

37.15

1,709.4

450

2,446.55

P5,556,988.20

Total value of fertilizer withdrawn

P5,556,998.20

Less: Amount previously paid by Kamalig

– 4,548,152.44

1,008,835.65

Less: Capital Recovery Component

– 470,348.91

TOTAL AMOUNT owed by Kamalig to Philphos

P538,486.74

Since Kamalig's obligation is sufficiently established, Philphos adds that Kamalig is also liable to pay 34% interest per annum as stated in Philphos's demand letters dated 21 July 1986 and 14 October 1986, starting 21 July 1986 or the date of extra-judicial demand. To support its claim, Philphos relies on Article 1589 of the Civil Code which states that the vendee shall owe interest for the period between the delivery of the thing and the payment of the price, should he be in default, from the time of judicial or extra-judicial demand for the payment of the price.[21]

Lastly, Philphos argues that owing to Kamalig's refusal to pay, Philphos was constrained to institute the instant case and incurred an obligation in the sum equivalent to 25% of the total claim as and for attorney's fees at P1,000.00 per appearance, as testified to by Philphos's witness, Ms. Vida Delute. Thus, citing Article 2208 of the Civil Code, Philphos contends that it should recover attorney's fees.[22]

On the other hand, Kamalig, in its Comment[23] dated 28 February 2005, contends that the petition clearly raises questions of fact which are beyond the Court's power to review, since an appeal by certiorari under Rule 45 of the Rules of Court raises only questions of law. Thus, findings of fact of the Court of Appeals being held to be final and conclusive, they can no longer be assailed in the instant appeal by certiorari, especially so when Philphos failed to show that the case falls under any of the exceptions to the rule. In any event, Kamalig maintains that the evidence on record shows that Philphos is indebted to Kamalig and no sufficient evidence was presented to prove Philphos's cause of action. Kamalig also agrees with the Court of Appeals' rulings that there is no basis for the imposition of 34% interest per annum as well as attorney's fees.

The petition is not meritorious, but we find that the decision of the Court of Appeals needs to be modified in

certain aspects.

True it is that the jurisdiction of this Court in a petition for review under Rule 45 is limited to reviewing errors of law since it is not a trier of facts and it is a settled doctrine that findings of fact of the Court of Appeals are binding and conclusive upon this Court, as a general rule.[24] In the case at bar, however, two exceptions to the general rule are present. These are when the findings of the Court of Appeals are contrary to those of the trial court and when the Court of Appeals fails to consider certain facts which would result in a different conclusion.

The complaint for a sum of money filed by Philphos arose from Kamalig's refusal to pay the amount of P575,255.71 of alleged overwithdrawals of fertilizer products from Philphos's Manila and Iloilo warehouses. As admitted by both parties, Kamalig purchased from Philphos P4,548,152.53 worth of fertilizer products to be picked up at different supply points or warehouses of Philphos. According to the CIs,[25] Kamalig purchased the following quantities in metric tons of fertilizer products and paid the corresponding amounts:

FERTILIZER GRADE

PORO
POINT

MANILA

ILOILO

DAVAO

TOTAL
MT

COST/MT

TOTAL

14-14-14

-

-

200

150

350

3,499.10

P 1,224,685.00

16-20-0

300

-

200

150

650

3,308.79

2,150,713.50

21-0-0

175

250

100

75

600

1,954.59

1,172,754.00

P 4,548,152.50

A readjustment of the quantities of fertilizer products and pick up points was made in Kamalig's letter dated 11 October 1985:

FERTILIZER GRADE

PORO

POINT

MANILA

ILOILO

DAVAO

TOTAL

MT

COST/MT

TOTAL

14-14-14

-

100

100

-

200

3,499.10

P 699,820.00

16-20-0

37.15

100

100

-

237.15

3,308.79

784,679.54

21-0-0

-

1,417.4

150

-

1,567.4

1,954.59

3,063,624.30

P 4,548,123.84

The letter clearly indicates that there were no more stocks for pick up in Davao, as it appears that the various amounts and grades previously agreed upon for pick up in Davao were instead distributed among the Poro Point, Manila, and Iloilo supply points.

However, another request for readjustment was made by Kamalig through its letter dated 14 October 1985, this time asking that all its stocks in Davao be converted to only one particular fertilizer grade for pick up in Manila:

Davao

14-14-14 50 MT

P174,955.00

16-20-0 75 MT

248,159.25

21-0-0 75 MT

146,594.25

P569,708.50

Converted to:

Manila

21-0-0 292 MT

P570,740.28[26]

This request was granted and the authority to withdraw was issued accordingly. Philphos claims it granted the request inadvertently, believing as it did that Kamalig still had stocks in Davao when in fact the previous letter of 11 October 1985 indicated that all the stocks in Davao had already been converted to other fertilizer grades for pick up in the other supply points.

Philphos presented evidence to show the withdrawals made by Kamalig from the Iloilo warehouse consisting of Delivery Receipts[27] which tended to show that 500 MT of fertilizer were withdrawn from the Iloilo warehouse, or an overwithdrawal of 150 MT was made as against the total of 350 MT requested in the 11 October 1985 letter.

Kamalig claims that some of the withdrawals from the Iloilo warehouse were made under handwritten delivery orders[28] and not through pre-printed and pre-numbered forms, contrary to its company policy. Philphos admits, too, that its policy is only to honor delivery orders in the prescribed pre-printed forms, but that it also allows withdrawals pursuant to handwritten requests on a "case to case basis," i.e., for as long as the handwritten request is signed by an authorized officer or signatory of Kamalig.[29] The handwritten requests upon which the unauthorized withdrawals were made were all signed by one Angel Supetran, Jr., Senior Salesman of Kamalig's Iloilo branch, and one of the officials authorized to sign the prescribed delivery orders.[30] On this point, the Court of Appeals correctly ruled that Philphos should have been forewarned that allowing withdrawals without the approved standard delivery order would be abetting unauthorized withdrawals to its prejudice.

The pre-printed delivery orders are a vital security measure to prevent unauthorized withdrawals of fertilizer, and benefits not only Kamalig but Philphos as well. As Kamalig explains in its Comment, the pre-printed and pre-numbered forms were so designed in such a way that the person dealing with it will be informed that the delivery order is duly issued by Kamalig and can be relied upon; corollarily, if the customer presents a delivery order that is not in the prescribed pre-printed form, the person dealing with it should be alerted that it was not issued according to standard company practice and anyone acting upon it acts at his own risk.[31] The practice of using these pre-printed delivery orders is obviously the modality in the ordinary course of business between Kamalig and Philphos. Philphos's failure to strictly observe and implement this practice precludes it from complaining of the adverse effects of such failure.

In the case at bar, withdrawals of fertilizer in quantities more than what was paid for was made possible by

Philphos's failure to comply with the policy to use the prescribed forms. The danger sought to be prevented by the policy came to pass because of Philphos's non-compliance with its policy. It is of no moment that Kamalig's own authorized signatory, Mr. Supetran, Jr., accomplished the handwritten delivery orders, since the withdrawals thereon would not have been made had Philphos strictly implemented the policy and did not honor said delivery orders. As Philphos could have prevented the loss, it is but fair that it should suffer the loss. Thus, the value of the unauthorized withdrawals should be for the account of Philphos and not shifted to Kamalig. The total value of the unauthorized withdrawals in Iloilo is P378,891.41, per the handwritten delivery orders, as follows:

FERTILIZER
GRADE

TOTAL
MT

COST/MT

TOTAL

14-14-14

25

3,499.10

P 87,477.50

16-20-0

29

3,308.79

95,954.91

21-0-0

100

1,954.59

195,459.00

P 378,891.41

As to the alleged overwithdrawal of stocks in the Manila warehouse, Philphos presented Delivery Receipts[32] which showed that a total of 291.45 MT of fertilizer grade 21-0-0 valued at P569,665.25 was made in accordance with the letter of 14 October 1985. Philphos did not present the delivery receipts covering all the withdrawals in the Manila warehouse, or the quantity of fertilizer requested in the 11 and 14 October 1985 letters to be withdrawn in Manila, but only the delivery receipts allegedly proving the overwithdrawal of 291.45 MT of fertilizer grade 21-0-0. While it did not present all Manila delivery receipts, Philphos sought to prove that the 1,417.4 MT of fertilizer grade 21-0-0 requested in the 11 October 1985 letter was separate and distinct from the 291.45 MT of the same fertilizer grade represented by the delivery receipts and which were delivered pursuant to

the 14 October 1985 letter. Philphos presented the Certification dated 25 November 1985 and Summary of Withdrawals,[33] jointly prepared by representatives of Kamalig and Philphos, accounting for the 1,417.4 MT of fertilizer grade 21-0-0. According to Philphos's representative, Warehouse Assistant Mario D. Garcia, said Certification and Summary refer to "the confirmation and acknowledgement of receipt by [Kamalig], after due reconciliation, of 1,417.4 MT or 28,348 bags of fertilizer grade 21-0-0 withdrawn and received by [Kamalig] from [Philphos's] Manila warehouse per [Kamalig's] letter dated 11 October 1985." [34]

It appears, however, that the representative of Kamalig who signed the Certification and Summary, Marketing Assistant Ma. Veronica Porciuncula, was not authorized to make or sign such certifications or summaries or to make any reconciliation of the records of fertilizer withdrawals, the same not being part of her functions as marketing assistant.[35] Even Mr. Garcia admitted that Ms. Porciuncula did not present any written authority to sign the Certification and Summary in behalf of Kamalig.[36] Thus, the Certification and Summary cannot be used to prove the delivery and receipt by Kamalig of the 1,417.4 MT of fertilizer grade 21-0-0 separate and distinct from the 291.45 MT of the same fertilizer grade withdrawn in accordance with the 14 October 1985 letter. Neither can the Certification and Summary prove the alleged overwithdrawal of 291.45 MT of fertilizer products from the Manila warehouse. While the withdrawal of the 291.45 MT of fertilizer grade 21-0-0 was substantiated by delivery orders and delivery receipts, no other evidence was presented to prove that said volume was separate and distinct from the 1,417.4 MT withdrawal of the same fertilizer grade.

Thus, Philphos presented proof of overwithdrawal only from the Iloilo warehouse but not from the Manila warehouse.

In its computations, the Court of Appeals arrived at the total value of withdrawals made by Kamalig, pegged at P4,752,202.62, by considering only the withdrawals of fertilizer grade 21-0-0 in Manila and of all fertilizer grades in Iloilo, i.e., by summing up all the amounts in the receipts presented by Philphos. The problem with this tack is that the delivery receipts represent only some but not all of the withdrawals made. In doing so, the Court of Appeals failed to consider the withdrawals of fertilizer grade 16-20-0 in Poro Point and of fertilizer grades 14-14-14 and 16-20-0 in Manila. These withdrawals should have been taken into consideration since the advance deposit of P4,548,152.50 made by Kamalig covered and served as payment for all three kinds of fertilizers to be taken from supply points in Poro Point, Manila, Iloilo and Davao, and not just in Manila and Iloilo.

Since the Court of Appeals considered all the receipts in coming up with the total withdrawals, it also took into account the alleged overwithdrawal of 291.45 MT of 21-0-0 fertilizer grade in Manila. However, since we have already determined that the claimed overwithdrawal has not been proven, the same should not be included in the total withdrawals made by and charged to Kamalig. Thus, the total withdrawals amount to P4,986,247.92, and not just P4,752,202.62, computed as follows:

FERTILIZER GRADE

PORO
POINT

MANILA

ILOILO

DAVAO

TOTAL
MT

COST/MT

TOTAL

14-14-14

-

100

150

-

250

3,499.10

P874,775.00

16-20-0

37.15

100

150

-

287.15

3,308.79

950,119.05

21-0-0

-

1,417.4

200

-

1,617.4

1,954.59

3,161,353.87

P4,986,847.92

From the total withdrawals, the unauthorized withdrawals of P378,891.41 from the Iloilo warehouse should be deducted since Kamalig should not be made liable for such withdrawals but instead entered for the account of Philphos. The difference of P4,607,356.51 would then represent the actual withdrawals from which Kamalig's advance payment of P4,548,152.44 should be deducted, leaving only P59,204.07 representing the

overwithdrawals in Iloilo that Kamalig owes Philphos. Considering that Philphos owes Kamalig P470,348.91 as Capital Recovery Component, Kamalig's liability of P59,204.07 should be deducted from this amount, leaving P411,144.84 which Philphos still owes Kamalig, and not P645,190.25[37] as found by the Court of Appeals. Thus:

Total value of fertilizers withdrawn

P4,986,247.92

Less: Unauthorized withdrawals in Iloilo

- 378,891.41

4,607,356.51

Less: Amount previously paid by Kamalig

- 4,548,152.41

Amount owed by Kamalig

59,204.07

Capital Recovery Component

P470,348.91

Less: Amount owed by Kamalig

- 59,204.07

TOTAL AMOUNT owed by Philphos to Kamalig

P411,144.84

With respect to the 34% per annum interest claimed by Philphos, we agree with the Court of Appeals that no evidence was presented that would show that the parties stipulated on the payment of interest. Under Article 1956 of the Civil Code, no interest shall be due unless it has been expressly stipulated in writing. Philphos presented only its demand letters[38] insisting on payment of the value of the overwithdrawals and imposition of 34%

interest per annum if payment is not made in due time. Said unilateral impositions of interest do not suffice as proof of agreement on the alleged 34% per annum interest.

Philphos claims attorney's fees under Article 2208 of the Civil Code which provides that attorney's fees may be granted where "the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim." Suffice it to say the evidence does not bear out any gross and evident bad faith on the part of Kamalig.

As to the Court of Appeals' award of attorney's fees to Kamalig, it appears that the award was granted under the auspices of Art. 2208, par. (4) of the Civil Code which provides that attorney's fees may be recovered "in case of a clearly unfounded civil action or proceeding against the plaintiff"—or in this case, against then defendant Kamalig—since the appellate court reasoned that Kamalig was compelled to hire the services of a lawyer to defend itself. In this case, overwithdrawals of fertilizer products in Iloilo had been proven, showing that indeed there was cause for filing of a complaint against Kamalig. Kamalig is thus not entitled to attorney's fees. The general rule is that attorney's fees cannot be recovered as part of damages because no premium should be placed on the right to litigate.[39] In short, the grant of attorney's fees as part of damages is the exception rather than the rule, and counsel's fees are not awarded every time a party prevails in a suit.[40]

WHEREFORE, in view of the foregoing, the Decision dated 26 May 2004 of the Court of Appeals is MODIFIED. Petitioner Philippine Phosphate Fertilizer Corporation is ORDERED to PAY respondent Kamalig Resources, Inc. the amount of P411,144.84, plus legal interest from the finality of this Decision,[41] and costs of the suit. The award of attorney's fees by the Court of Appeals in favor of respondent is DELETED.

SO ORDERED.

Quisumbing, Chairperson, Austria-Martinez,[*] Carpio Morales, and Velasco, Jr., JJ., concur.

[*] As replacement of Justice Antonio T. Carpio who inhibited himself from the case for being a former counsel of a party, per Administrative Circular No. 84-2007.

[1] Rollo, pp. 32-45. Penned by Associate Justice Mariano C. del Castillo and concurred in by Associate Justices Marina L. Buzon and Magdangal M. de Leon of the Fourteenth Division.

[2] Id. at 50-60. Penned by Judge Ruben A. Mendiola.

[3] Records, p. 4. Exhibit "A."

[4] Id. at 5-8. Exhibits "A-1" to "A-4."

[5] Id. at 9. Exhibit "B."

[6] Id. at 10. Exhibit "I."

[7] Id. at 133.

[8] Id. at 1-3.

[9] CA rollo, pp. 162-171.

[10] Id. at 171.

[11] Id. at 170.

[12] Rollo, p. 44.

[13] Id. at 37.

[14] Id. at 40.

[15] Representing the value of fertilizer stocks that were withdrawn using handwritten requests and not the pre-printed and pre-numbered Delivery Orders prescribed by Kamalig. See Exhibits "C," "C-1," "C-3," "E-2," "G-3," and "G-4," id. at 67, 68, 70, 83, 94 and 95, respectively.

[16] Id. at 41.

[17] Id. at 42-43.

[18] Id. at 47.

[19] Id. at 18-20.

[20] Id. at 21-22.

[21] Id. at 26-27.

[22] Id. at 27.

[23] Id. at 255-289.

[24] Such factual findings shall not be disturbed unless: (1) the conclusion is a finding grounded entirely on speculations, surmises, or conjectures; (2) the inference made is manifestly mistaken, absurd, or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) 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) the findings of the Court of Appeals are contrary to those of the trial court; (8) the findings of fact are conclusions without citation of specific evidence on which they are based; (9) the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion; and (10) the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. *Litonjua, Jr. v. Eternit Corporation*, G.R. No. 144805, 8 June 2006, 490 SCRA 204, 218.

[25] Records, pp. 5-8. Exhibits "A-1," to "A-4."

[26] *Supra* note 6.

[27] Records, pp. 66, 71-80, 84-90, and 96-103, respectively. Exhibits "D," "D-1" to "D-17," "F" to "F-13," and "H" to "H-13."

[28] Id. at 67, 68, 70, 83, 94 and 95, respectively. Exhibits "C," "C-1," "C-3," "E-2," "G-3," and "G-4."

[29] Id. at 479, TSN, 30 August 1989; 6 November 1989, id. at 452; 11 November 1992, id. at 387 and 389.

[30] Id. at 426-427, TSN, 15 June 1994.

[31] Rollo, p. 279.

[32] Records, pp. 121-131. Exhibits "L" to "L-19."

[33] Id. at 253-258. Exhibits "O" to "O-6."

[34] Id. at 162. Affidavit dated 29 September 1989 by Mario D. Garcia.

[35] Id. at 428-430, TSN, 15 June 1994.

[36] Id. at 441, TSN, 6 November 1989.

[37] Rollo, p. 41, See Court of Appeals Decision.

[38] Records, pp. 133-134, Exhibits "M" and "N."

[39] Sps. Francisco v. Court of Appeals, 449 Phil. 632, 652 (2003).

[40] American Home Assurance Company v. Chua, 368 Phil. 555, 569 (1999).

[41] Eastern Shipping Lines, Inc. v. Court of Appeals, G.R. No. 97412, 12 July 1994, 234 SCRA 78, 96-97.

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