GOVERNMENT SERVICE INSURANCE SYSTEM, PETITIONER, VS. PACIFIC AIRWAYS CORPORATION, ELY BUNGABONG, AND MICHAEL GALVEZ, RESPONDENTS.

G.R. No. 170414. August 25, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court are three consolidated petitions for review[1] of the 28 October 2004 Decision[2] and the 15 November 2005 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 73214. The 28 October 2004 Decision affirmed the 27 July 2001 Decision[4] of the Regional Trial Court (Branch 112) of Pasay City. The 15 November 2005 Resolution modified the 28 October 2004 Decision of the Court of Appeals.

The Antecedent Facts

On 2 April 1996, at around 6:45 p.m., the Twin Otter aircraft of Philippine Airways Corporation (PAC) arrived at the Manila International Airport[5] from El Nido, Palawan.[6] In command of the aircraft was Ely B. Bungabong.[7] With Bungabong in the cockpit was Michael F. Galvez as co-pilot.[8]

Upon touchdown, the Twin Otter taxied along the runway and proceeded to the Soriano Hangar to disembark its passengers.[9] After the last passenger disembarked, PAC's pilots started the engine of the Twin Otter in order to proceed to the PAC Hangar located at the other end of the airport.[10] At around 7:18 p.m., Galvez contacted ground control to ask for clearance to taxi to taxiway delta.[11] Rogelio Lim, ground traffic controller on duty at the Air Transportation Office (ATO), issued the clearance on condition that he be contacted again upon reaching taxiway delta intersection.[12]

PAC's pilots then proceeded to taxi to taxiway delta at about 7:19 and 19 seconds.[13] Upon reaching the intersection of taxiway delta, Galvez repeated the request to taxi to taxiway delta, which request was granted.[14] Upon reaching fox 1, Galvez requested clearance to make a right turn to fox 1 and to cross runway 13 in order to proceed to fox 1 bravo.[15] ATO granted the request.[16] At this point, the Twin Otter was still 350 meters away from runway 13.[17] Upon reaching runway 13, PAC's pilots did not make a full stop at the holding point to request clearance right before crossing runway 13.[18] Without such clearance, PAC's pilots proceeded to cross runway 13.

Meanwhile, the Philippine Airlines' (PAL) Boeing 737, manned by pilots Rogelio Casiño and Ruel Isaac, was preparing for take-off along runway 13. The PAL pilots requested clearance to push and start[19] on runway 13. Ernesto Linog, Jr., air traffic controller on duty at the ATO issued the clearance.[20] Subsequently, at 7:20 and 18 seconds, Linog, Jr. gave PAL's Boeing 737 clearance to take off.[21] Pilots Casiño and Isaac then proceeded with the take-off procedure.[22] While already on take-off roll, Casiño caught a glimpse of the Twin Otter on the left side of the Boeing 737 about to cross runway 13.[23]

While the Twin Otter was halfway through runway 13, Galvez noticed the Boeing 737 and told Bungabong that an airplane was approaching them from the right side.[24] Bungabong then said, "Diyos ko po" and gave full power to the Twin Otter.[25] The PAL pilots attempted to abort the take-off by reversing the thrust of the aircraft.[26] However, the Boeing 737 still collided with the Twin Otter.[27]

The Boeing 737 dragged the Twin Otter about 100 meters away.[28] When the Twin Otter stopped, PAC's pilots ran away from the aircraft for fear it might explode.[29] While observing the Twin Otter from a safe distance, they saw passengers running down from the Boeing 737.[30] When PAC's pilots returned to the aircraft to get their personal belongings, they saw that the Twin Otter was a total wreck.[31]

At 7:21 and 2 seconds on that fateful evening, the PAL pilots informed ATO's control tower that they had hit another aircraft, referring to the Twin Otter.[32] Bungabong suffered sprain on his shoulder while Galvez had laceration on his left thumb.[33] An ambulance brought the two pilots to Makati Medical Center where they were treated for serious and slight physical injuries.[34]

On 7 May 1996, PAC, Bungabong, and Galvez filed in the Regional Trial Court (Branch 112) of Pasay City a complaint[35] for sum of money and damages against PAL, Casiño, Isaac, ATO, Lim, Linog, Jr., and ATO's traffic control supervisor, Danilo Alzola. The Government Service Insurance System (GSIS), as insurer of the Boeing 737 that figured in the collision, intervened.

The Ruling of the Trial Court

The trial court ruled that the proximate cause of the collision was the negligence of Alzola, Lim, and Linog, Jr., as ATO's traffic control supervisor, ground traffic controller, and air traffic controller, respectively, at the time of the collision. The trial court further held that the direct cause of the collision was the negligence of Casiño and Isaac, as the pilots of the Boeing 737 that collided with the Twin Otter. The decretal portion of the trial court's decision reads:

> PREMISES CONSIDERED, judgment is hereby rendered ordering defendants Philippine Air Lines and its pilots, Rogelio Casiño and Ruel Isaac, and Air Transportation Office and its comptrollers, Danilo Alzola, Rogelio Lim and Ernesto Linog, Jr., jointly and severally, to pay:
>
> a) Plaintiff Pacific Airways Corporation the amount of Php15,000,000.00 and the further amount of Php100,000.00 a day from April 2, 1996 until it is fully reimbursed for the value of its RP-C1154 plane, as actual damages, and the amount of Php3,000,000.00, as exemplary damages, and the amount of Php1,000,000.00, as and for attorney's fees and expenses of litigation;
>
> b) Plaintiffs Ely B. Bongabong[36] and Michael F. Galvez, the amount of Php5,000.00 each, as actual damages; the amount of Php500,000.00, as and for moral damages; Php500,000.00 as and for exemplary damages, and the amount of Php50,000.00, as and for attorney's fees;
>
> c) Defendants are, likewise, ordered to pay, jointly and severally, to plaintiffs the costs of this suit.
>
> SO ORDERED.[37]

PAL, Casiño, Isaac, GSIS, ATO, Alzola, Lim, and Linog, Jr., all appealed the trial court's Decision to the Court of Appeals.

The Ruling of the Court of Appeals

The Court of Appeals found that the trial court did not commit any reversible error. In its 28 October 2004 decision, the Court of Appeals affirmed in toto the decision of the trial court, thus:

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> WHEREFORE, the instant appeal is hereby DISMISSED. The decision of the Regional Trial Court, Branch 112, Pasay City dated July 27, 2001 is hereby AFFIRMED in toto.
>
> SO ORDERED.[38]

PAL, Casiño, Isaac, GSIS, ATO, Alzola, Lim, and Linog, Jr., filed their respective motions for reconsideration. The appellate court denied for lack of merit all the motions for reconsideration except the one filed by Linog, Jr.

The Court of Appeals gave weight to the 20 March 2003 Decision[39] on appeal of the RTC (Branch 108) of Pasay City in Criminal Case No. 02-1979 acquitting Linog, Jr., who was convicted in the original Decision together with Alzola and Lim, of reckless imprudence resulting in damage to property with serious and slight physical injuries in connection with the collision. Since Alzola and Lim did not appeal, the judgment of conviction against them became final. Alzola and Lim were sentenced to arresto mayor or imprisonment for two (2) months.[40]

The Court of Appeals reasoned that since the trial court in the criminal case has ruled that Linog, Jr. was not negligent, then the act from which the civil liability might arise did not exist. In its 15 November 2005 Resolution, the Court of Appeals decreed:

> WHEREFORE, the decision subject of the motions for reconsideration is MODIFIED in that the case against defendant-appellant ERNESTO LINOG, JR. is dismissed. The decision is AFFIRMED in all other respects.
>
> SO ORDERED.[41]

Hence, the instant consolidated petitions for review.

In G.R. No. 170418, petitioners PAL, Casiño, and Isaac argue that the Court of Appeals should have applied the emergency rule instead of the last clear chance doctrine. Petitioners claim that even if the PAL pilots were negligent, PAL had exercised due diligence in the selection and supervision of its pilots. Petitioners contend that the Court of Appeals awarded damages without any specific supporting proof as required by law. Petitioners also claim that the Court of Appeals should have awarded their counterclaim for damages.

In G.R. No. 170414, petitioner GSIS points out that PAC's pilots were the ones guilty of negligence as they violated the Rules of the Air, which provide that right of way belongs to the aircraft on take-off roll and the aircraft on the right side of another. GSIS stresses that such negligence was the proximate cause of the collision. GSIS posits that PAC, Bungabong, and Galvez should be held solidarily liable to pay GSIS the cost of repairing the insured aircraft.

In G.R. No. 170460, petitioners ATO, Alzola, and Lim call our attention to the fact that PAC was a mere lessee, not the owner of the Twin Otter. They argue that PAC, as mere lessee, was not the real party-in-interest in the complaint seeking recovery for damages sustained by the Twin Otter. Petitioners maintain that ground and air traffic clearances were the joint responsibility of ATO and the pilots-in-command. Petitioners aver that Bungabong and Galvez were negligent in asking for clearance to cross an active runway while still 350 meters away from the runway. Petitioners claim that PAL had the right of way and that PAC's pilots had the last clear chance to prevent the collision.

The Issue

The sole issue for resolution is who among the parties is liable for negligence under the circumstances.

The Court's Ruling

The petitions are meritorious.

In a petition for review under Rule 45, only questions of law may be raised. This rule, however, admits of certain exceptions as when the judgment of the Court of Appeals is premised on a misapprehension of facts or the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion.[42]

After thoroughly going over the evidence on record in this case, we are unable to sustain the finding of fact and legal conclusion of the Court of Appeals.

To ascertain who among the parties is liable for negligence, we must refer to the applicable rules governing the specific traffic management of aircrafts at an airport. The Rules of the Air[43] of the Air Transportation Office apply to all aircrafts registered in the Philippines.[44] The Boeing 737 and the Twin Otter in this case were both registered in the Philippines. Both are thus subject to the Rules of the Air. In case of danger of collision between two aircrafts, the Rules of the Air state:

> 2.2.4.7 Surface Movement of Aircraft. In case of danger of collision between two aircrafts taxiing on the maneuvering area of an aerodrome, the following shall apply:
>
> a) When two aircrafts are approaching head on, or approximately so, each shall stop or where practicable, alter its course to the right so as to keep well clear.
>
> b) When two aircrafts are on a converging course, the one which has the other on its right shall give way.[45] (Emphasis supplied)

In this case, however, the Boeing 737 and the Twin Otter were not both taxiing at the time of the collision. Only the Twin Otter was taxiing. The Boeing 737 was already on take-off roll. The Rules of the Air provide:

> 2.2.4.6 Taking Off. An aircraft taxiing on the maneuvering area of an aerodrome shall give way to aircraft taking off or about to take off.[46] (Emphasis supplied)

Therefore, PAL's aircraft had the right of way at the time of collision, not simply because it was on the right side of PAC's aircraft, but more significantly, because it was "taking off or about to take off."

PAC's Pilots

For disregarding PAL's right of way, PAC's pilots were grossly negligent. Gross negligence is one that is characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected.[47]

We find it hard to believe that PAC's pilots did not see the Boeing 737 when they looked to the left and to the right before approaching the runway. It was a clear summer evening in April and the Boeing 737, only 200 meters away, had its inboard lights, outboard lights, taxi lights, and logo lights on before and during the actual take-off roll.[48] The only plausible explanation why PAC's pilots did not see the Boeing 737 was that they did not really look to the left and to the right before crossing the active runway.

Records show that PAC's pilots, while still 350 meters away, prematurely requested clearance to cross the active runway.[49] ATO points out that PAC's pilots should have made a full stop at the holding point to ask for updated clearance right before crossing the active runway.[50] Had PAC's pilots done so, ATO would by then be in a position to determine if there was an aircraft on a take-off roll at the runway. The collision would not have happened.

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ATO, Alzola, Lim, and Linog, Jr.

The Rules of Air Control govern airplane traffic management and clearance at the then Manila International Airport. It contains several provisions indicating that airplane traffic management and clearance are not the sole responsibility of ATO and its traffic controllers, but of the pilots-in-command of aircrafts as well. The Rules of Air Control state:

> 1.3 The pilot-in-command of an aircraft shall, whether manipulating the controls or not, be responsible for the operation of the aircraft in accordance with the rules of the air, except that he may depart from these rules in circumstances that render such departure absolutely necessary in the interest of safety. (Emphasis supplied)
>
> 1.5 The pilot-in-command of an aircraft shall have final authority as to the disposition of the aircraft while he is in command.[51] (Emphasis supplied)
>
> 3.1 Clearances are based solely on expediting and separating aircraft and do not constitute authority to violate any applicable regulations for promoting safety of flight operations or for any other purpose. (Emphasis supplied)
>
> x x x x
>
> If an air traffic control clearance is not suitable to the pilot-in-command of an aircraft, he may request, and, if practicable, obtain an amended clearance. [52] (Emphasis supplied)
>
> 10.1.5 Clearances issued by controllers relate to traffic and aerodrome conditions only and do not relieve a pilot of any responsibility whatsoever in connection with a possible violation of applicable rules and regulations.[53] (Emphasis supplied)

Therefore, even if ATO gave both PAL's pilots and PAC's pilots clearance to take off and clearance to cross runway 13, respectively, it remained the primary responsibility of the pilots-in-command to see to it that the respective clearances given were suitable. Since the pilots-in-command have the final authority as to the disposition of the aircraft, they cannot, in case a collision occurs, pass the blame to ATO for issuing clearances that turn out to be unsuitable.

The clearance to cross runway 13, premature as it was, was not an absolute license for PAC's pilots to recklessly maneuver the Twin Otter across an active runway. PAC's pilots should have stopped first at the holding point to ask for clearance to cross the active runway. It was wrong for them to have relied on a prematurely requested clearance which was issued while they were still 350 meters away. Their defense, that it did not matter whether the clearance was premature or not as long as the clearance was actually granted,[54] only reveals their poor judgment and gross negligence in the performance of their duties.

On the other hand, evidence on record shows that the air traffic controller properly issued the clearance to take off to the Boeing 737. Nothing on record indicates any irregularity in the issuance of the clearance. In fact, the trial court, in the criminal case for reckless imprudence resulting in damage to property with serious and slight physical injuries in connection with the collision, ruled that air traffic controller Linog, Jr. was not negligent. The Court of Appeals, in its 15 November 2005 Resolution, absolved Linog, Jr. of civil liability for damages based on his acquittal in the criminal case.

While Alzola and Lim, as found by the trial court in the criminal case for reckless imprudence, may have been negligent in the performance of their functions, such negligence is only contributory.[55] Their contributory negligence arises from their granting the premature request of PAC's pilots for clearance to cross runway 13 while the Twin Otter was still 350 meters away from runway 13. However, as explained earlier, the granting of their premature request for clearance did not relieve PAC's pilots from complying with the Rules of the Air.

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PAL's Pilots

Records show that PAL's pilots timely requested clearance to take off. Linog, Jr., ATO's air traffic controller, duly issued the clearance to take off.[56] Under the Rules of the Air, PAL's aircraft being on take-off roll undisputedly had the right of way.[57] Further, the Rules of Air Control provide:

> 2.2.4.1 The aircraft that has the right of way shall maintain its heading and speed, x x x. [58] (Emphasis supplied)

Thus, even if Casiño noticed from the corner of his eye a small airplane taxiing on the left side and approaching halfway of fox 1,[59] it was fairly reasonable for PAL's pilots to assume that they may proceed with the take-off because the taxiing aircraft would naturally respect their right of way and not venture to cross the active runway while the Boeing 737 was on take-off roll.

Applicable by analogy is the case of Santos v. BLTB,[60] where the Court applied the principle that a motorist who is properly proceeding on his own side of the highway, even after he sees an approaching motorist coming toward him on the wrong side, is generally entitled to assume that the other motorist will return to his proper lane of traffic.

Proximate Cause

After assiduously studying the records of this case and carefully weighing the arguments of the parties, we are convinced that the immediate and proximate case of the collision is the gross negligence of PAC's pilots. Proximate cause is defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.[61] In this case, the fact that PAC's pilots disregarded PAL's right of way and did not ask for updated clearance right before crossing an active runway was the proximate cause of the collision. Were it not for such gross negligence on the part of PAC's pilots, the collision would not have happened.

The Civil Code provides that when a plaintiff's own negligence is the immediate and proximate cause of his injury, he cannot recover damages.

> Art. 2179. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded. (Emphasis supplied)

Under the law and prevailing jurisprudence,[62] PAC and its pilots, whose own gross negligence was the immediate and proximate cause of their own injuries, must bear the cost of such injuries. They cannot recover damages. Civil Case No. 96-0565 for sum of money and damages, which PAC, Bungabong, and Galvez filed against PAL, Casiño, Isaac, ATO, Alzola, Lim, and Linog, Jr. should have been dismissed for lack of legal basis.

PAL's Counterclaims

We find supported by law and evidence on record PAL's counterclaim for actual or compensatory damages but only in the amount of US$548,819.93[63] representing lease charges during the period the Boeing 737 was not flying. The said amount cannot be claimed against the insurance policy covering the Boeing 737. In this connection, the Civil Code provides:

> Art. 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated

> the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury. (Emphasis supplied)

Under the law, GSIS, as insurer subrogee of PAL's right to claim actual or compensatory damages in connection with the repair of the damaged Boeing 737, is entitled to reimbursement for the amount it advanced. GSIS claims reimbursement for the amount of US$2,775,366.84.[64] In support of its claim, GSIS presented statements of account, check vouchers, and invoices[65] proving payment for the repair of the Boeing 737 in the total amount of US$2,775,366.84. We find the claim fully supported by evidence on record and thus we resolve to grant the same.

With regard to PAL's other counterclaims, settled is the rule that the award of moral and exemplary damages as well as attorney's fees is discretionary based on the facts and circumstances of each case. The actual losses sustained by the aggrieved parties and the gravity of the injuries must be considered in arriving at reasonable levels.[66] Understandably, Casiño and Isaac suffered sleepless nights and were temporarily unable to work after the collision. They are thus entitled to moral damages as well as exemplary damages considering that PAC's pilots acted with gross negligence.[67] Attorney's fees are generally not recoverable except when exemplary damages are awarded[68] as in this case. We thus deem the amounts of P100,000 in moral damages, P100,000 in exemplary damages, and P50,000 in attorney's fees to be in accordance with prevailing jurisprudence and appropriate given the circumstances.

WHEREFORE, we GRANT the petitions. We SET ASIDE the 28 October 2004 Decision and the 15 November 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 73214 affirming in toto the 27 July 2001 Decision of the Regional Trial Court (Branch 112) of Pasay City. However, we SUSTAIN the dismissal of the case against Ernesto Linog, Jr.

Civil Case No. 96-0565 for sum of money and damages, filed by Pacific Airways Corporation (PAC), Ely B. Bungabong, and Michael F. Galvez, is DISMISSED for lack of legal basis.

Pacific Airways Corporation, Ely B. Bungabong, and Michael F. Galvez are ORDERED to solidarily pay:

(1) Philippine Airlines, Inc. actual or compensatory damages in the amount of US$548,819.93;

(2) Rogelio Casiño and Ruel Isaac individually moral damages in the amount of P100,000, exemplary damages in the amount of P100,000, and attorney's fees in the amount of P50,000; and

(3) the Government Service Insurance System, as insurer subrogee of Philippine Airlines, actual or compensatory damages in the amount of US$2,775,366.84.

No pronouncement as to costs.

SO ORDERED.

Peralta, Abad, Perez,[**] and Mendoza, JJ., concur.

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[*] "Rogelio" in some parts of the Records.

[**]Designated additional member per Raffle dated 23 August 2010.

[1] Under Rule 45 of the Rules of Court.

[2] Rollo (G.R. No. 170414), pp. 11-35. Penned by Associate Justice Eloy R. Bello, Jr., with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring.

[3] Id. at 36-38. Penned by Associate Justice Mario L. Guarina III, with Associate Justices Roberto A. Barrios and Mariflor Punzalan Castillo, concurring.

[4] Id. at 155-180. Penned by Judge Manuel P. Dumatol.

[5] Now "Ninoy Aquino International Airport."

[6] Stipulation of Facts. Records, p. 1503.

[7] "Bongabong" in some parts of the Records. TSN, 6 October 1997, pp. 6-7

[8] TSN, 6 October 1997, p. 6.

[9] Id. at 9.

[10] Id. at 10.

[11] Id. at 11.

[12] Id. at 12.

[13] TSN, 12 October 1998, p. 32.

[14] TSN, 6 October 1997, p. 12.

[15] Id.

[16] TSN, 12 October 1998, p. 33.

[17] TSN, 7 January 1999, p. 15.

[18] Records, p. 776.

[19] TSN, 12 October 1998, p. 36.

Q: What is this push and start clearance?

A: Push and start clearance, when the aircraft is already ready ... the passenger ... they have to be pushed to the starting point and start the engine.

[20] Id. at 36-37.

[21] Id. at 38.

[22] Id. at 37.

[23] TSN, 17 May 1999, p. 55.

[24] TSN, 6 October 1997, pp. 15-16.

[25] Id. at 16.

[26] TSN, 8 June 2000, pp. 17-18.

[27] TSN, 16 June 1999, pp. 4-5.

[28] TSN, 6 October 1997, p. 17.

[29] Id.

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[30] Id. at 18.

[31] Id. at 19.

[32] TSN, 12 October 1998, p. 38.

[33] TSN, 6 October 1997, pp. 19-20.

[34] Id. at 20.

[35] Records, pp. 1-11.

[36] See note 7.

[37] Records, pp. 1495-1520.

[38] Rollo (G.R. No. 170414), p. 206.

[39] Rollo (G.R. No. 170418), pp. 144-150. Penned by Judge Priscilla C. Mijares.

[40] Id. at 146.

[41] Rollo (G.R. No. 170414), p. 38.

[42] MEA Builders, Inc. v. Court of Appeals, 490 Phil. 565 (2005).

[43] Formally offered by ATO as Exhibit "9."

[44] 1.1.1 of the Rules of the Air.

[45] Records, p. 779.

[46] Id.

[47] Magaling v. Ong, G.R. No. 173333, 13 August 2008, 562 SCRA 152.

[48] TSN, 17 May 1999, pp. 45-49.

[49] TSN, 7 January 1999, pp. 14-15.

[50] Rollo (G.R. No. 170460), ATO's Memorandum, pp. 640-641.

[51] Records, p. 777.

[52] Id. at 776.

[53] Id. at 778.

[54] Rollo (G.R. No. 170418), p. 178. Consolidated Comment of Respondents, p. 20.

[55] Ramos v. C.O.L. Realty Corporation, G.R. No. 184905, 28 August 2009, 597 SCRA 526.

[56] TSN, 12 October 1998, pp. 36-37.

[57] Records, p. 779.

[58] Id.

[59] TSN, 17 May 1999, pp. 60-61.

[60] 145 Phil. 422 (1970).

[61] Ramos v. C.O.L. Realty Corporation, supra note 55.

[62] Id.

[63] Rollo (G.R. No. 170418), p. 373. Defendant's Formal Offer of Exhibits, Exhibit "29," p. 25.

[64] Rollo (G.R. No. 170414), p. 723.

[65] Records, pp. 1439, 1450. Defendant's Formal Offer of Exhibits, Exhibit "24-b," p. 16.

[66] Pleno v. Court of Appeals, 244 Phil. 213 (1988).

[67] Article 2231 of the Civil Code provides:

Art. 2231. In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence.

[68] Article 2208 of the Civil Code provides:

Art. 2208. 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;

x x x x

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