# MCC INDUSTRIAL SALES CORPORATION, PETITIONER, VS. SSANGYONG CORPORATION, RESPONDENT.

*G.R. No. 170633. October 17, 2007*

Ponente: NACHURA, J.

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**NACHURA, J.:**

Before the Court is a petition for review on certiorari of the Decision[1] of the Court of Appeals in CA-G.R. CV No. 82983 and its Resolution[2] denying the motion for reconsideration thereof.

Petitioner MCC Industrial Sales (MCC), a domestic corporation with office at Binondo, Manila, is engaged in the business of importing and wholesaling stainless steel products.[3] One of its suppliers is the Ssangyong Corporation (Ssangyong),[4] an international trading company[5] with head office in Seoul, South Korea and regional headquarters in Makati City, Philippines.[6] The two corporations conducted business through telephone calls and facsimile or telecopy transmissions.[7] Ssangyong would send the pro forma invoices containing the details of the steel product order to MCC; if the latter conforms thereto, its representative affixes his signature on the faxed copy and sends it back to Ssangyong, again by fax.[8]

On April 13, 2000, Ssangyong Manila Office sent, by fax, a letter[9] addressed to Gregory Chan, MCC Manager [also the President[10] of Sanyo Seiki Stainless Steel Corporation], to confirm MCC's and Sanyo Seiki's order of 220 metric tons (MT) of hot rolled stainless steel under a preferential rate of US$1,860.00 per MT. Chan, on behalf of the corporations, assented and affixed his signature on the conforme portion of the letter.[11]

On April 17, 2000, Ssangyong forwarded to MCC Pro Forma Invoice No. ST2-POSTSO401[12] containing the terms and conditions of the transaction. MCC sent back by fax to Ssangyong the invoice bearing the conformity signature[13] of Chan. As stated in the pro forma invoice, payment for the ordered steel products would be made through an irrevocable letter of credit (L/C) at sight in favor of Ssangyong.[14] Following their usual practice, delivery of the goods was to be made after the L/C had been opened.

In the meantime, because of its confirmed transaction with MCC, Ssangyong placed the order with its steel manufacturer, Pohang Iron and Steel Corporation (POSCO), in South Korea[15] and paid the same in full.

Because MCC could open only a partial letter of credit, the order for 220MT of steel was split into two,[16] one for 110MT covered by Pro Forma Invoice No. ST2-POSTS0401-1[17] and another for 110MT covered by ST2-POSTS0401-2,[18] both dated April 17, 2000.

On June 20, 2000, Ssangyong, through its Manila Office, informed Sanyo Seiki and Chan, by way of a fax transmittal, that it was ready to ship 193.597MT of stainless steel from Korea to the Philippines. It requested that the opening of the L/C be facilitated.[19] Chan affixed his signature on the fax transmittal and returned the same, by fax, to Ssangyong.[20]

Two days later, on June 22, 2000, Ssangyong Manila Office informed Sanyo Seiki, thru Chan, that it was able to secure a US$30/MT price adjustment on the contracted price of US$1,860.00/MT for the 200MT stainless steel,

and that the goods were to be shipped in two tranches, the first 100MT on that day and the second 100MT not later than June 27, 2000. Ssangyong reiterated its request for the facilitation of the L/C's opening.[21]

Ssangyong later, through its Manila Office, sent a letter, on June 26, 2000, to the Treasury Group of Sanyo Seiki that it was looking forward to receiving the L/C details and a cable copy thereof that day.[22] Ssangyong sent a separate letter of the same date to Sanyo Seiki requesting for the opening of the L/C covering payment of the first 100MT not later than June 28, 2000.[23] Similar letters were transmitted by Ssangyong Manila Office on June 27, 2000.[24] On June 28, 2000, Ssangyong sent another facsimile letter to MCC stating that its principal in Korea was already in a difficult situation[25] because of the failure of Sanyo Seiki and MCC to open the L/C's.

The following day, June 29, 2000, Ssangyong received, by fax, a letter signed by Chan, requesting an extension of time to open the L/C because MCC's credit line with the bank had been fully availed of in connection with another transaction, and MCC was waiting for an additional credit line.[26] On the same date, Ssangyong replied, requesting that it be informed of the date when the L/C would be opened, preferably at the earliest possible time, since its Steel Team 2 in Korea was having problems and Ssangyong was incurring warehousing costs.[27] To maintain their good business relationship and to support MCC in its financial predicament, Ssangyong offered to negotiate with its steel manufacturer, POSCO, another US$20/MT discount on the price of the stainless steel ordered. This was intimated in Ssangyong's June 30, 2000 letter to MCC.[28] On July 6, 2000, another follow-up letter[29] for the opening of the L/C was sent by Ssangyong to MCC.

However, despite Ssangyong's letters, MCC failed to open a letter of credit.[30] Consequently, on August 15, 2000, Ssangyong, through counsel, wrote Sanyo Seiki that if the L/C's were not opened, Ssangyong would be compelled to cancel the contract and hold MCC liable for damages for breach thereof amounting to US$96,132.18, inclusive of warehouse expenses, related interests and charges.[31]

Later, Pro Forma Invoice Nos. ST2-POSTS080-1[32] and ST2-POSTS080-2[33] dated August 16, 2000 were issued by Ssangyong and sent via fax to MCC. The invoices slightly varied the terms of the earlier pro forma invoices (ST2-POSTSO401, ST2-POSTS0401-1 and ST2-POSTS0401-2), in that the quantity was now officially 100MT per invoice and the price was reduced to US$1,700.00 per MT. As can be gleaned from the photocopies of the said August 16, 2000 invoices submitted to the court, they both bear the conformity signature of MCC Manager Chan.

On August 17, 2000, MCC finally opened an L/C with PCIBank for US$170,000.00 covering payment for 100MT of stainless steel coil under Pro Forma Invoice No. ST2-POSTS080-2.[34] The goods covered by the said invoice were then shipped to and received by MCC.[35]

MCC then faxed to Ssangyong a letter dated August 22, 2000 signed by Chan, requesting for a price adjustment of the order stated in Pro Forma Invoice No. ST2-POSTS080-1, considering that the prevailing price of steel at that time was US$1,500.00/MT, and that MCC lost a lot of money due to a recent strike.[36]

Ssangyong rejected the request, and, on August 23, 2000, sent a demand letter[37] to Chan for the opening of the second and last L/C of US$170,000.00 with a warning that, if the said L/C was not opened by MCC on August 26, 2000, Ssangyong would be constrained to cancel the contract and hold MCC liable for US$64,066.99 (representing cost difference, warehousing expenses, interests and charges as of August 15, 2000) and other damages for breach. Chan failed to reply.

Exasperated, Ssangyong through counsel wrote a letter to MCC, on September 11, 2000, canceling the sales contract under ST2-POSTS0401-1/ST2-POSTS0401-2, and demanding payment of US$97,317.37 representing losses, warehousing expenses, interests and charges.[38]


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Ssangyong then filed, on November 16, 2001, a civil action for damages due to breach of contract against defendants MCC, Sanyo Seiki and Gregory Chan before the Regional Trial Court of Makati City. In its complaint,[39] Ssangyong alleged that defendants breached their contract when they refused to open the L/C in the amount of US$170,000.00 for the remaining 100MT of steel under Pro Forma Invoice Nos. ST2-POSTS0401-1 and ST2-POSTS0401-2.

After Ssangyong rested its case, defendants filed a Demurrer to Evidence[40] alleging that Ssangyong failed to present the original copies of the pro forma invoices on which the civil action was based. In an Order dated April 24, 2003, the court denied the demurrer, ruling that the documentary evidence presented had already been admitted in the December 16, 2002 Order[41] and their admissibility finds support in Republic Act (R.A.) No. 8792, otherwise known as the Electronic Commerce Act of 2000. Considering that both testimonial and documentary evidence tended to substantiate the material allegations in the complaint, Ssangyong's evidence sufficed for purposes of a prima facie case.[42]

After trial on the merits, the RTC rendered its Decision[43] on March 24, 2004, in favor of Ssangyong. The trial court ruled that when plaintiff agreed to sell and defendants agreed to buy the 220MT of steel products for the price of US$1,860 per MT, the contract was perfected. The subject transaction was evidenced by Pro Forma Invoice Nos. ST2-POSTS0401-1 and ST2-POSTS0401-2, which were later amended only in terms of reduction of volume as well as the price per MT, following Pro Forma Invoice Nos. ST2-POSTS080-1 and ST2-POSTS080-2. The RTC, however, excluded Sanyo Seiki from liability for lack of competent evidence. The fallo of the decision reads:

> WHEREFORE, premises considered, Judgment is hereby rendered ordering defendants MCC Industrial Sales Corporation and Gregory Chan, to pay plaintiff, jointly and severally the following:
>
> 1) Actual damages of US$93,493.87 representing the outstanding principal claim plus interest at the rate of 6% per annum from March 30, 2001.
>
> 2) Attorney's fees in the sum of P50,000.00 plus P2,000.00 per counsel's appearance in court, the same being deemed just and equitable considering that by reason of defendants' breach of their obligation under the subject contract, plaintiff was constrained to litigate to enforce its rights and recover for the damages it sustained, and therefore had to engage the services of a lawyer.
>
> 3) Costs of suit.
>
> No award of exemplary damages for lack of sufficient basis.
>
> SO ORDERED.[44]

On April 22, 2004, MCC and Chan, through their counsel of record, Atty. Eladio B. Samson, filed their Notice of Appeal.[45] On June 8, 2004, the law office of Castillo Zamora & Poblador entered its appearance as their collaborating counsel.

In their Appeal Brief filed on March 9, 2005,[46] MCC and Chan raised before the CA the following errors of the RTC:

> - THE HONORABLE COURT A QUO PLAINLY ERRED IN FINDING THAT APPELLANTS VIOLATED THEIR CONTRACT WITH APPELLEE
>
> - THE HONORABLE COURT A QUO PLAINLY ERRED IN FINDING THAT APPELLANTS AGREED TO PURCHASE 200 METRIC TONS OF STEEL PRODUCTS FROM APPELLEE, INSTEAD OF ONLY 100 METRIC TONS.

> - THE HONORABLE COURT A QUO PLAINLY ERRED IN ADMITTING IN EVIDENCE THE PRO FORMA INVOICES WITH REFERENCE NOS. ST2- POSTS0401-1 AND ST2-POSTS0401-2.

- THE HONORABLE COURT A QUO PLAINLY ERRED IN AWARDING ACTUAL DAMAGES TO APPELLEE.

- THE HONORABLE COURT A QUO PLAINLY ERRED IN AWARDING ATTORNEY'S FEES TO APPELLEE.

- THE HONORABLE COURT A QUO PLAINLY ERRED IN FINDING APPELLANT GREGORY CHAN JOINTLY AND SEVERALLY LIABLE WITH APPELLANT MCC.[47]

On August 31, 2005, the CA rendered its Decision[48] affirming the ruling of the trial court, but absolving Chan of any liability. The appellate court ruled, among others, that Pro Forma Invoice Nos. ST2-POSTS0401-1 and ST2-POSTS0401-2 (Exhibits "E", "E-1" and "F") were admissible in evidence, although they were mere facsimile printouts of MCC's steel orders.[49] The dispositive portion of the appellate court's decision reads:

> WHEREFORE, premises considered, the Court holds:
>
> (1) The award of actual damages, with interest, attorney's fees and costs ordered by the lower court is hereby AFFIRMED.
>
> (2) Appellant Gregory Chan is hereby ABSOLVED from any liability.
>
> SO ORDERED.[50]

A copy of the said Decision was received by MCC's and Chan's principal counsel, Atty. Eladio B. Samson, on September 14, 2005.[51] Their collaborating counsel, Castillo Zamora & Poblador,[52] likewise, received a copy of the CA decision on September 19, 2005.[53]

On October 4, 2005, Castillo Zamora & Poblador, on behalf of MCC, filed a motion for reconsideration of the said decision.[54] Ssangyong opposed the motion contending that the decision of the CA had become final and executory on account of the failure of MCC to file the said motion within the reglementary period. The appellate court resolved, on November 22, 2005, to deny the motion on its merits,[55] without, however, ruling on the procedural issue raised.

Aggrieved, MCC filed a petition for review on certiorari[56] before this Court, imputing the following errors to the Court of Appeals:

> THE COURT OF APPEALS DECIDED A LEGAL QUESTION NOT IN ACCORDANCE WITH JURISPRUDENCE AND SANCTIONED A DEPARTURE FROM THE USUAL AND ACCEPTED COURSE OF JUDICIAL PROCEEDINGS BY REVERSING THE COURT A QUO'S DISMISSAL OF THE COMPLAINT IN CIVIL CASE NO. 02-124 CONSIDERING THAT:
>
> - THE COURT OF APPEALS ERRED IN SUSTAINING THE ADMISSIBILITY IN EVIDENCE OF THE PRO-FORMA INVOICES WITH REFERENCE NOS. ST2-POSTSO401-1 AND ST2-POSTSO401-2, DESPITE THE FACT THAT THE SAME WERE MERE PHOTOCOPIES OF FACSIMILE PRINTOUTS.
>
> - THE COURT OF APPEALS FAILED TO APPRECIATE THE OBVIOUS FACT THAT, EVEN ASSUMING PETITIONER BREACHED THE SUPPOSED CONTRACT, THE FACT IS THAT PETITIONER FAILED TO PROVE THAT IT SUFFERED ANY DAMAGES AND THE AMOUNT THEREOF.
>
> - THE AWARD OF ACTUAL DAMAGES IN THE AMOUNT OF US$93,493.87 IS SIMPLY

> UNCONSCIONABLE AND SHOULD HAVE BEEN AT LEAST REDUCED, IF NOT DELETED BY THE COURT OF APPEALS.[57]

In its Comment, Ssangyong sought the dismissal of the petition, raising the following arguments: that the CA decision dated 15 August 2005 is already final and executory, because MCC's motion for reconsideration was filed beyond the reglementary period of 15 days from receipt of a copy thereof, and that, in any case, it was a pro forma motion; that MCC breached the contract for the purchase of the steel products when it failed to open the required letter of credit; that the printout copies and/or photocopies of facsimile or telecopy transmissions were properly admitted by the trial court because they are considered original documents under R.A. No. 8792; and that MCC is liable for actual damages and attorney's fees because of its breach, thus, compelling Ssangyong to litigate.

The principal issues that this Court is called upon to resolve are the following:

I - Whether the CA decision dated 15 August 2005 is already final and executory;

II - Whether the print-out and/or photocopies of facsimile transmissions are electronic evidence and admissible as such;

III - Whether there was a perfected contract of sale between MCC and Ssangyong, and, if in the affirmative, whether MCC breached the said contract; and

IV - Whether the award of actual damages and attorney's fees in favor of Ssangyong is proper and justified.

**- I -**

It cannot be gainsaid that in Albano v. Court of Appeals,[58] we held that receipt of a copy of the decision by one of several counsels on record is notice to all, and the period to appeal commences on such date even if the other counsel has not yet received a copy of the decision. In this case, when Atty. Samson received a copy of the CA decision on September 14, 2005, MCC had only fifteen (15) days within which to file a motion for reconsideration conformably with Section 1, Rule 52 of the Rules of Court, or to file a petition for review on certiorari in accordance with Section 2, Rule 45. The period should not be reckoned from September 29, 2005 (when Castillo Zamora & Poblador received their copy of the decision) because notice to Atty. Samson is deemed notice to collaborating counsel.

We note, however, from the records of the CA, that it was Castillo Zamora & Poblador, not Atty. Samson, which filed both MCC's and Chan's Brief and Reply Brief. Apparently, the arrangement between the two counsels was for the collaborating, not the principal, counsel to file the appeal brief and subsequent pleadings in the CA. This explains why it was Castillo Zamora & Poblador which filed the motion for the reconsideration of the CA decision, and they did so on October 5, 2005, well within the 15-day period from September 29, 2005, when they received their copy of the CA decision. This could also be the reason why the CA did not find it necessary to resolve the question of the timeliness of petitioner's motion for reconsideration, even as the CA denied the same.

Independent of this consideration though, this Court assiduously reviewed the records and found that strong concerns of substantial justice warrant the relaxation of this rule.

In Philippine Ports Authority v. Sargasso Construction and Development Corporation,[59] we ruled that:

> In Orata v. Intermediate Appellate Court, we held that where strong considerations of substantive justice are manifest in the petition, this Court may relax the strict application of the rules of procedure in the exercise of its legal jurisdiction. In addition to the basic merits of the main case, such a petition usually embodies justifying circumstance which warrants our heeding to the petitioner's cry for justice in spite of the earlier negligence of counsel. As we held in Obut v. Court of Appeals:


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> [W]e cannot look with favor on a course of action which would place the administration of justice in a straight jacket for then the result would be a poor kind of justice if there would be justice at all. Verily, judicial orders, such as the one subject of this petition, are issued to be obeyed, nonetheless a non-compliance is to be dealt with as the circumstances attending the case may warrant. What should guide judicial action is the principle that a party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities.

The rules of procedure are used only to secure and not override or frustrate justice. A six-day delay in the perfection of the appeal, as in this case, does not warrant the outright dismissal of the appeal. In Development Bank of the Philippines vs. Court of Appeals, we gave due course to the petitioner's appeal despite the late filing of its brief in the appellate court because such appeal involved public interest. We stated in the said case that the Court may exempt a particular case from a strict application of the rules of procedure where the appellant failed to perfect its appeal within the reglementary period, resulting in the appellate court's failure to obtain jurisdiction over the case. In Republic vs. Imperial, Jr., we also held that there is more leeway to exempt a case from the strictness of procedural rules when the appellate court has already obtained jurisdiction over the appealed case. We emphasize that:

> [T]he rules of procedure are mere tools intended to facilitate the attainment of justice, rather than frustrate it. A strict and rigid application of the rules must always be eschewed when it would subvert the rule's primary objective of enhancing fair trials and expediting justice. Technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.[60]

Moreover, it should be remembered that the Rules were promulgated to set guidelines in the orderly administration of justice, not to shackle the hand that dispenses it. Otherwise, the courts would be consigned to being mere slaves to technical rules, deprived of their judicial discretion. Technicalities must take a backseat to substantive rights. After all, it is circumspect leniency in this respect that will give the parties the fullest opportunity to ventilate the merits of their respective causes, rather than have them lose life, liberty, honor or property on sheer technicalities.[61]

The other technical issue posed by respondent is the alleged pro forma nature of MCC's motion for reconsideration, ostensibly because it merely restated the arguments previously raised and passed upon by the CA.

In this connection, suffice it to say that the mere restatement of arguments in a motion for reconsideration does not per se result in a pro forma motion. In Security Bank and Trust Company, Inc. v. Cuenca,[62] we held that a motion for reconsideration may not be necessarily pro forma even if it reiterates the arguments earlier passed upon and rejected by the appellate court. A movant may raise the same arguments precisely to convince the court that its ruling was erroneous. Furthermore, the pro forma rule will not apply if the arguments were not sufficiently passed upon and answered in the decision sought to be reconsidered.

**- II -**

The second issue poses a novel question that the Court welcomes. It provides the occasion for this Court to pronounce a definitive interpretation of the equally innovative provisions of the Electronic Commerce Act of 2000 (R.A. No. 8792) vis-à-vis the Rules on Electronic Evidence.

Although the parties did not raise the question whether the original facsimile transmissions are "electronic data messages" or "electronic documents" within the context of the Electronic Commerce Act (the petitioner merely assails as inadmissible evidence the photocopies of the said facsimile transmissions), we deem it appropriate to determine first whether the said fax transmissions are indeed within the coverage of R.A. No. 8792 before ruling

on whether the photocopies thereof are covered by the law. In any case, this Court has ample authority to go beyond the pleadings when, in the interest of justice or for the promotion of public policy, there is a need to make its own findings in order to support its conclusions.[63]

Petitioner contends that the photocopies of the pro forma invoices presented by respondent Ssangyong to prove the perfection of their supposed contract of sale are inadmissible in evidence and do not fall within the ambit of R.A. No. 8792, because the law merely admits as the best evidence the original fax transmittal. On the other hand, respondent posits that, from a reading of the law and the Rules on Electronic Evidence, the original facsimile transmittal of the pro forma invoice is admissible in evidence since it is an electronic document and, therefore, the best evidence under the law and the Rules. Respondent further claims that the photocopies of these fax transmittals (specifically ST2-POSTS0401-1 and ST2-POSTS0401-2) are admissible under the Rules on Evidence because the respondent sufficiently explained the non-production of the original fax transmittals.

In resolving this issue, the appellate court ruled as follows:

> Admissibility of Pro Forma
> Invoices; Breach of Contract
> by Appellants
>
> Turning first to the appellants' argument against the admissibility of the Pro Forma Invoices with Reference Nos. ST2-POSTS0401-1 and ST2-POSTS0401-2 (Exhibits "E", "E-1" and "F", pp. 215-218, Records), appellants argue that the said documents are inadmissible (sic) being violative of the best evidence rule.
>
> The argument is untenable.
>
> The copies of the said pro-forma invoices submitted by the appellee are admissible in evidence, although they are mere electronic facsimile printouts of appellant's orders. Such facsimile printouts are considered Electronic Documents under the New Rules on Electronic Evidence, which came into effect on August 1, 2001. (Rule 2, Section 1 [h], A.M. No. 01-7-01-SC).
> "(h) `Electronic document' refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes digitally signed documents and any printout or output, readable by sight or other means, which accurately reflects the electronic data message or electronic document. For purposes of these Rules, the term `electronic document' may be used interchangeably with `electronic data message'.

An electronic document shall be regarded as the equivalent of an original document under the Best Evidence Rule, as long as it is a printout or output readable by sight or other means, showing to reflect the data accurately. (Rule 4, Section 1, A.M. No. 01-7-01-SC)

The ruling of the Appellate Court is incorrect. R.A. No. 8792,[64] otherwise known as the Electronic Commerce Act of 2000, considers an electronic data message or an electronic document as the functional equivalent of a written document for evidentiary purposes.[65] The Rules on Electronic Evidence[66] regards an electronic document as admissible in evidence if it complies with the rules on admissibility prescribed by the Rules of Court and related laws, and is authenticated in the manner prescribed by the said Rules.[67] An electronic document is also the equivalent of an original document under the Best Evidence Rule, if it is a printout or output readable by sight or other means, shown to reflect the data accurately.[68]

Thus, to be admissible in evidence as an electronic data message or to be considered as the functional equivalent of an original document under the Best Evidence Rule, the writing must foremost be an "electronic data message"

or an "electronic document."

The Electronic Commerce Act of 2000 defines electronic data message and electronic document as follows:

> Sec. 5. Definition of Terms. For the purposes of this Act, the following terms are defined, as follows:
>
> xxx
>
> c. "Electronic Data Message" refers to information generated, sent, received or stored by electronic, optical or similar means.
>
> xxx
>
> f. "Electronic Document" refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically.

The Implementing Rules and Regulations (IRR) of R.A. No. 8792,[69] which was signed on July 13, 2000 by the then Secretaries of the Department of Trade and Industry, the Department of Budget and Management, and then Governor of the Bangko Sentral ng Pilipinas, defines the terms as:

> Sec. 6. Definition of Terms. For the purposes of this Act and these Rules, the following terms are defined, as follows:
>
> xxx
>
> (e) "Electronic Data Message" refers to information generated, sent, received or stored by electronic, optical or similar means, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy. Throughout these Rules, the term "electronic data message" shall be equivalent to and be used interchangeably with "electronic document."
>
> x x x x
>
> (h) "Electronic Document" refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. Throughout these Rules, the term "electronic document" shall be equivalent to and be used interchangeably with "electronic data message."

The phrase "but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy" in the IRR's definition of "electronic data message" is copied from the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law (UNCITRAL),[70] from which majority of the provisions of R.A. No. 8792 were taken.[71] While Congress deleted this phrase in the Electronic Commerce Act of 2000, the drafters of the IRR reinstated it. The deletion by Congress of the said phrase is significant and pivotal, as discussed hereunder.

The clause on the interchangeability of the terms "electronic data message" and "electronic document" was the result of the Senate of the Philippines' adoption, in Senate Bill 1902, of the phrase "electronic data message" and the House of Representative's employment, in House Bill 9971, of the term "electronic document."[72] In order to expedite the reconciliation of the two versions, the technical working group of the Bicameral Conference Committee adopted both terms and intended them to be the equivalent of each one.[73] Be that as it may, there is a slight difference between the two terms. While "data message" has reference to information electronically sent, stored or transmitted, it does not necessarily mean that it will give rise to a right or extinguish an obligation,[74]


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unlike an electronic document. Evident from the law, however, is the legislative intent to give the two terms the same construction.

The Rules on Electronic Evidence promulgated by this Court defines the said terms in the following manner:

> SECTION 1. Definition of Terms. - For purposes of these Rules, the following terms are defined, as follows:
>
> x x x x
>
> (g) "Electronic data message" refers to information generated, sent, received or stored by electronic, optical or similar means.
>
> (h) "Electronic document" refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes digitally signed documents and print-out or output, readable by sight or other means, which accurately reflects the electronic data message or electronic document. For purposes of these Rules, the term "electronic document" may be used interchangeably with "electronic data message."

Given these definitions, we go back to the original question: Is an original printout of a facsimile transmission an electronic data message or electronic document?

The definitions under the Electronic Commerce Act of 2000, its IRR and the Rules on Electronic Evidence, at first glance, convey the impression that facsimile transmissions are electronic data messages or electronic documents because they are sent by electronic means. The expanded definition of an "electronic data message" under the IRR, consistent with the UNCITRAL Model Law, further supports this theory considering that the enumeration "xxx [is] not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy." And to telecopy is to send a document from one place to another via a fax machine.[75]

As further guide for the Court in its task of statutory construction, Section 37 of the Electronic Commerce Act of 2000 provides that

> Unless otherwise expressly provided for, the interpretation of this Act shall give due regard to its international origin and the need to promote uniformity in its application and the observance of good faith in international trade relations. The generally accepted principles of international law and convention on electronic commerce shall likewise be considered.

Obviously, the "international origin" mentioned in this section can only refer to the UNCITRAL Model Law, and the UNCITRAL's definition of "data message":

> "Data message" means information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.[76]

is substantially the same as the IRR's characterization of an "electronic data message."

However, Congress deleted the phrase, "but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy," and replaced the term "data message" (as found in the UNCITRAL Model Law ) with "electronic data message." This legislative divergence from what is assumed as the term's "international origin" has bred uncertainty and now impels the Court to make an inquiry into the true intent of the framers of the law. Indeed, in the construction or interpretation of a legislative measure, the primary rule is to search for and determine the intent and spirit of the law.[77] A construction should be rejected that gives to the language used in a statute a meaning that does not accomplish the purpose for which the statute was enacted, and that tends to

defeat the ends which are sought to be attained by the enactment.[78]

Interestingly, when Senator Ramon B. Magsaysay, Jr., the principal author of Senate Bill 1902 (the predecessor of R.A. No. 8792), sponsored the bill on second reading, he proposed to adopt the term "data message" as formulated and defined in the UNCITRAL Model Law.[79] During the period of amendments, however, the term evolved into "electronic data message," and the phrase "but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy" in the UNCITRAL Model Law was deleted. Furthermore, the term "electronic data message," though maintaining its description under the UNCITRAL Model Law, except for the aforesaid deleted phrase, conveyed a different meaning, as revealed in the following proceedings:

> x x x x
>
> Senator Santiago. Yes, Mr. President. I will furnish a copy together with the explanation of this proposed amendment.
>
> And then finally, before I leave the Floor, may I please be allowed to go back to Section 5; the Definition of Terms. In light of the acceptance by the good Senator of my proposed amendments, it will then become necessary to add certain terms in our list of terms to be defined. I would like to add a definition on what is "data," what is "electronic record" and what is an "electronic record system."
>
> If the gentleman will give me permission, I will proceed with the proposed amendment on Definition of Terms, Section 5.
>
> Senator Magsaysay. Please go ahead, Senator Santiago.
>
> Senator Santiago. We are in Part 1, short title on the Declaration of Policy, Section 5, Definition of Terms.
>
> At the appropriate places in the listing of these terms that have to be defined since these are arranged alphabetically, Mr. President, I would like to insert the term DATA and its definition. So, the amendment will read: "DATA" MEANS REPRESENTATION, IN ANY FORM, OF INFORMATION OR CONCEPTS.
>
> The explanation is this: This definition of "data" or "data" as it is now fashionably pronounced in America - - the definition of "data" ensures that our bill applies to any form of information in an electronic record, whether these are figures, facts or ideas.
>
> So again, the proposed amendment is this: "DATA" MEANS REPRESENTATIONS, IN ANY FORM, OF INFORMATION OR CONCEPTS.
>
> Senator Magsaysay. May I know how will this affect the definition of "Data Message" which encompasses electronic records, electronic writings and electronic documents?
>
> Senator Santiago. These are completely congruent with each other. These are compatible. When we define "data," we are simply reinforcing the definition of what is a data message.
>
> Senator Magsaysay. It is accepted, Mr. President.
>
> Senator Santiago. Thank you. The next term is "ELECTRONIC RECORD." The proposed amendment is as follows:
>
> "ELECTRONIC RECORD" MEANS DATA THAT IS RECORDED OR STORED ON ANY MEDIUM IN OR BY A COMPUTER SYSTEM OR OTHER SIMILAR DEVICE, THAT CAN BE READ OR PERCEIVED BY A PERSON OR A COMPUTER SYSTEM OR OTHER SIMILAR DEVICE. IT INCLUDES A DISPLAY, PRINTOUT OR OTHER OUTPUT OF THAT DATA.
>
> The explanation for this term and its definition is as follows: The term "ELECTRONIC RECORD" fixes the

scope of our bill. The record is the data. The record may be on any medium. It is electronic because it is recorded or stored in or by a computer system or a similar device.

The amendment is intended to apply, for example, to data on magnetic strips on cards or in Smart cards. As drafted, it would not apply to telexes or faxes, except computer-generated faxes, unlike the United Nations model law on electronic commerce. It would also not apply to regular digital telephone conversations since the information is not recorded. It would apply to voice mail since the information has been recorded in or by a device similar to a computer. Likewise, video records are not covered. Though when the video is transferred to a website, it would be covered because of the involvement of the computer. Music recorded by a computer system on a compact disc would be covered.

In short, not all data recorded or stored in digital form is covered. A computer or a similar device has to be involved in its creation or storage. The term "similar device" does not extend to all devices that create or store data in digital form. Although things that are not recorded or preserved by or in a computer system are omitted from this bill, these may well be admissible under other rules of law. This provision focuses on replacing the search for originality proving the reliability of systems instead of that of individual records and using standards to show systems reliability.

Paper records that are produced directly by a computer system such as printouts are themselves electronic records being just the means of intelligible display of the contents of the record. Photocopies of the printout would be paper record subject to the usual rules about copies, but the original printout would be subject to the rules of admissibility of this bill.

However, printouts that are used only as paper records and whose computer origin is never again called on are treated as paper records. In that case, the reliability of the computer system that produces the record is irrelevant to its reliability.

Senator Magsaysay. Mr. President, if my memory does not fail me, earlier, the lady Senator accepted that we use the term "Data Message" rather than "ELECTRONIC RECORD" in being consistent with the UNCITRAL term of "Data Message." So with the new amendment of defining "ELECTRONIC RECORD," will this affect her accepting of the use of "Data Message" instead of "ELECTRONIC RECORD"?

Senator Santiago. No, it will not. Thank you for reminding me. The term I would like to insert is ELECTRONIC DATA MESSAGE in lieu of "ELECTRONIC RECORD."

Senator Magsaysay. Then we are, in effect, amending the term of the definition of "Data Message" on page 2A, line 31, to which we have no objection.

Senator Santiago. Thank you, Mr. President.

x x x x

Senator Santiago. Mr. President, I have proposed all the amendments that I desire to, including the amendment on the effect of error or change. I will provide the language of the amendment together with the explanation supporting that amendment to the distinguished sponsor and then he can feel free to take it up in any session without any further intervention.

Senator Magsaysay. Before we end, Mr. President, I understand from the proponent of these amendments that these are based on the Canadian E-commerce Law of 1998. Is that not right?

Senator Santiago. That is correct.[80]

Thus, when the Senate consequently voted to adopt the term "electronic data message," it was consonant with the explanation of Senator Miriam Defensor-Santiago that it would not apply "to telexes or faxes, except computer-generated faxes, unlike the United Nations model law on electronic commerce." In explaining the term


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"electronic record" patterned after the E-Commerce Law of Canada, Senator Defensor-Santiago had in mind the term "electronic data message." This term then, while maintaining part of the UNCITRAL Model Law's terminology of "data message," has assumed a different context, this time, consonant with the term "electronic record" in the law of Canada. It accounts for the addition of the word "electronic" and the deletion of the phrase "but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy." Noteworthy is that the Uniform Law Conference of Canada, explains the term "electronic record," as drafted in the Uniform Electronic Evidence Act, in a manner strikingly similar to Sen. Santiago's explanation during the Senate deliberations:

> "Electronic record" fixes the scope of the Act. The record is the data. The record may be any medium. It is "electronic" because it is recorded or stored in or by a computer system or similar device. The Act is intended to apply, for example, to data on magnetic strips on cards, or in smart cards. As drafted, it would not apply to telexes or faxes (except computer-generated faxes), unlike the United Nations Model Law on Electronic Commerce. It would also not apply to regular digital telephone conversations, since the information is not recorded. It would apply to voice mail, since the information has been recorded in or by a device similar to a computer. Likewise video records are not covered, though when the video is transferred to a Web site it would be, because of the involvement of the computer. Music recorded by a computer system on a compact disk would be covered.
>
> In short, not all data recorded or stored in "digital" form is covered. A computer or similar device has to be involved in its creation or storage. The term "similar device" does not extend to all devices that create or store data in digital form. Although things that are not recorded or preserved by or in a computer system are omitted from this Act, they may well be admissible under other rules of law. This Act focuses on replacing the search for originality, proving the reliability of systems instead of that of individual records, and using standards to show systems reliability.
>
> Paper records that are produced directly by a computer system, such as printouts, are themselves electronic records, being just the means of intelligible display of the contents of the record. Photocopies of the printout would be paper records subject to the usual rules about copies, but the "original" printout would be subject to the rules of admissibility of this Act.
>
> However, printouts that are used only as paper records, and whose computer origin is never again called on, are treated as paper records. See subsection 4(2). In this case the reliability of the computer system that produced the record is relevant to its reliability.[81]

There is no question then that when Congress formulated the term "electronic data message," it intended the same meaning as the term "electronic record" in the Canada law. This construction of the term "electronic data message," which excludes telexes or faxes, except computer-generated faxes, is in harmony with the Electronic Commerce Law's focus on "paperless" communications and the "functional equivalent approach"[82] that it espouses. In fact, the deliberations of the Legislature are replete with discussions on paperless and digital transactions.

Facsimile transmissions are not, in this sense, "paperless," but verily are paper-based.

A facsimile machine, which was first patented in 1843 by Alexander Bain,[83] is a device that can send or receive pictures and text over a telephone line. It works by digitizing an image--dividing it into a grid of dots. Each dot is either on or off, depending on whether it is black or white. Electronically, each dot is represented by a bit that has a value of either 0 (off) or 1 (on). In this way, the fax machine translates a picture into a series of zeros and ones (called a bit map) that can be transmitted like normal computer data. On the receiving side, a fax machine reads the incoming data, translates the zeros and ones back into dots, and reprints the picture.[84] A fax machine is essentially an image scanner, a modem and a computer printer combined into a highly specialized package. The

scanner converts the content of a physical document into a digital image, the modem sends the image data over a phone line, and the printer at the other end makes a duplicate of the original document.[85] Thus, in Garvida v. Sales, Jr.,[86] where we explained the unacceptability of filing pleadings through fax machines, we ruled that:

> A facsimile or fax transmission is a process involving the transmission and reproduction of printed and graphic matter by scanning an original copy, one elemental area at a time, and representing the shade or tone of each area by a specified amount of electric current. The current is transmitted as a signal over regular telephone lines or via microwave relay and is used by the receiver to reproduce an image of the elemental area in the proper position and the correct shade. The receiver is equipped with a stylus or other device that produces a printed record on paper referred to as a facsimile.
>
> x x x A facsimile is not a genuine and authentic pleading. It is, at best, an exact copy preserving all the marks of an original. Without the original, there is no way of determining on its face whether the facsimile pleading is genuine and authentic and was originally signed by the party and his counsel. It may, in fact, be a sham pleading.[87]

Accordingly, in an ordinary facsimile transmission, there exists an original paper-based information or data that is scanned, sent through a phone line, and re-printed at the receiving end. Be it noted that in enacting the Electronic Commerce Act of 2000, Congress intended virtual or paperless writings to be the functional equivalent and to have the same legal function as paper-based documents.[88] Further, in a virtual or paperless environment, technically, there is no original copy to speak of, as all direct printouts of the virtual reality are the same, in all respects, and are considered as originals.[89] Ineluctably, the law's definition of "electronic data message," which, as aforesaid, is interchangeable with "electronic document," could not have included facsimile transmissions, which have an original paper-based copy as sent and a paper-based facsimile copy as received. These two copies are distinct from each other, and have different legal effects. While Congress anticipated future developments in communications and computer technology[90] when it drafted the law, it excluded the early forms of technology, like telegraph, telex and telecopy (except computer-generated faxes, which is a newer development as compared to the ordinary fax machine to fax machine transmission), when it defined the term "electronic data message."

Clearly then, the IRR went beyond the parameters of the law when it adopted verbatim the UNCITRAL Model Law's definition of "data message," without considering the intention of Congress when the latter deleted the phrase "but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy." The inclusion of this phrase in the IRR offends a basic tenet in the exercise of the rule-making power of administrative agencies. After all, the power of administrative officials to promulgate rules in the implementation of a statute is necessarily limited to what is found in the legislative enactment itself. The implementing rules and regulations of a law cannot extend the law or expand its coverage, as the power to amend or repeal a statute is vested in the Legislature.[91] Thus, if a discrepancy occurs between the basic law and an implementing rule or regulation, it is the former that prevails, because the law cannot be broadened by a mere administrative issuance--an administrative agency certainly cannot amend an act of Congress.[92] Had the Legislature really wanted ordinary fax transmissions to be covered by the mantle of the Electronic Commerce Act of 2000, it could have easily lifted without a bit of tatter the entire wordings of the UNCITRAL Model Law.

Incidentally, the National Statistical Coordination Board Task Force on the Measurement of E-Commerce,[93] on November 22, 2006, recommended a working definition of "electronic commerce," as "[a]ny commercial transaction conducted through electronic, optical and similar medium, mode, instrumentality and technology. The transaction includes the sale or purchase of goods and services, between individuals, households, businesses and governments conducted over computer-mediated networks through the Internet, mobile phones, electronic data interchange (EDI) and other channels through open and closed networks." The Task Force's proposed definition is similar to the Organization of Economic Cooperation and Development's (OECD's) broad definition as it covers

transactions made over any network, and, in addition, it adopted the following provisions of the OECD definition: (1) for transactions, it covers sale or purchase of goods and services; (2) for channel/network, it considers any computer-mediated network and NOT limited to Internet alone; (3) it excludes transactions received/placed using fax, telephone or non-interactive mail; (4) it considers payments done online or offline; and (5) it considers delivery made online (like downloading of purchased books, music or software programs) or offline (deliveries of goods).[94]

We, therefore, conclude that the terms "electronic data message" and "electronic document," as defined under the Electronic Commerce Act of 2000, do not include a facsimile transmission. Accordingly, a facsimile transmission cannot be considered as electronic evidence. It is not the functional equivalent of an original under the Best Evidence Rule and is not admissible as electronic evidence.

Since a facsimile transmission is not an "electronic data message" or an "electronic document," and cannot be considered as electronic evidence by the Court, with greater reason is a photocopy of such a fax transmission not electronic evidence. In the present case, therefore, Pro Forma Invoice Nos. ST2-POSTS0401-1 and ST2-POSTS0401-2 (Exhibits "E" and "F"), which are mere photocopies of the original fax transmittals, are not electronic evidence, contrary to the position of both the trial and the appellate courts.

**- III -**

Nevertheless, despite the pro forma invoices not being electronic evidence, this Court finds that respondent has proven by preponderance of evidence the existence of a perfected contract of sale.

In an action for damages due to a breach of a contract, it is essential that the claimant proves (1) the existence of a perfected contract, (2) the breach thereof by the other contracting party and (3) the damages which he/she sustained due to such breach. Actori incumbit onus probandi. The burden of proof rests on the party who advances a proposition affirmatively.[95] In other words, a plaintiff in a civil action must establish his case by a preponderance of evidence, that is, evidence that has greater weight, or is more convincing than that which is offered in opposition to it.[96]

In general, contracts are perfected by mere consent,[97] which is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute.[98] They are, moreover, obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present.[99] Sale, being a consensual contract, follows the general rule that it is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price. From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts.[100]

The essential elements of a contract of sale are (1) consent or meeting of the minds, that is, to transfer ownership in exchange for the price, (2) object certain which is the subject matter of the contract, and (3) cause of the obligation which is established.[101]

In this case, to establish the existence of a perfected contract of sale between the parties, respondent Ssangyong formally offered in evidence the testimonies of its witnesses and the following exhibits:

Exhibit

Description

Purpose


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**E**

Pro forma Invoice dated 17 April 2000 with Contract No. ST2-POSTS0401-1, photocopy

To show that defendants contracted with plaintiff for the delivery of 110 MT of stainless steel from Korea payable by way of an irrevocable letter of credit in favor of plaintiff, among other conditions.

**E-1**

Pro forma Invoice dated 17 April 2000 with Contract No. ST2-POSTS0401, contained in facsimile/thermal paper faxed by defendants to plaintiff showing the printed transmission details on the upper portion of said paper as coming from defendant MCC on 26 Apr 00 08:41AM

To show that defendants sent their confirmation of the (i) delivery to it of the specified stainless steel products, (ii) defendants' payment thereof by way of an irrevocable letter of credit in favor of plaintiff, among other conditions.

**E-2**

Conforme signature of Mr. Gregory Chan, contained in facsimile/thermal paper faxed by defendants to plaintiff showing the printed transmission details on the upper portion of said paper as coming from defendant MCC on 26 Apr 00 08:41AM

To show that defendants sent their confirmation of the (i) delivery to it of the total of 220MT specified stainless steel products, (ii) defendants' payment thereof by way of an irrevocable letter of credit in favor of plaintiff, among other conditions.

**F**

Pro forma Invoice dated 17 April 2000 with Contract No. ST2-POSTSO401-2, photocopy

To show that defendants contracted with plaintiff for delivery of another 110 MT of stainless steel from Korea payable by way of an irrevocable letter of credit in favor of plaintiff, among other conditions.

**G**

Letter to defendant SANYO SEIKE dated 20 June 2000, contained in facsimile/thermal paper

To prove that defendants were informed of the date of L/C opening and defendant's conforme/approval thereof.

**G-1**

Signature of defendant Gregory Chan, contained in facsimile/thermal paper.

**H**

Letter to defendants dated 22 June 2000, original

To prove that defendants were informed of the successful price adjustments secured by plaintiff in favor of former and were advised of the schedules of its L/C opening.

**I**

Letter to defendants dated 26 June 2000, original

To prove that plaintiff repeatedly requested defendants for the agreed opening of the Letters of Credit, defendants' failure and refusal to comply with their obligations and the problems of plaintiff is incurring by reason of defendants' failure and refusal to open the L/Cs.

**J**

Letter to defendants dated 26 June 2000, original

**K**

Letter to defendants dated 27 June 2000, original

**L**

Facsimile message to defendants dated 28 June 2000, photocopy

**M**

Letter from defendants dated 29 June 2000, contained in facsimile/thermal paper faxed by defendants to plaintiff showing the printed transmission details on the upper portion of said paper as coming from defendant MCC on 29 June 00 11:12 AM

To prove that defendants admit of their liabilities to plaintiff, that they requested for "more extension" of time for the opening of the Letter of Credit, and begging for favorable understanding and consideration.

**M-1**

Signature of defendant Gregory Chan, contained in facsimile/thermal paper faxed by defendants to plaintiff showing the printed transmission details on the upper portion of said paper as coming from defendant MCC on June 00 11:12 AM

**N**

Letter to defendants dated 29 June 2000, original

**O**

Letter to defendants dated 30 June 2000, photocopy

To prove that plaintiff reiterated its request for defendants to L/C opening after the latter's request for extension of time was granted, defendants' failure and refusal to comply therewith extension of time notwithstanding.

**P**

Letter to defendants dated 06 July 2000, original


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**Q**

Demand letter to defendants dated 15 Aug 2000, original

To prove that plaintiff was constrained to engaged services of a lawyer for collection efforts.

**R**

Demand letter to defendants dated 23 Aug 2000, original

To prove that defendants opened the first L/C in favor of plaintiff, requested for further postponement of the final L/C and for minimal amounts, were urged to open the final L/C on time, and were informed that failure to comply will cancel the contract.

**S**

Demand letter to defendants dated 11 Sept 2000, original

To show defendants' refusal and failure to open the final L/C on time, the cancellation of the contract as a consequence thereof, and final demand upon defendants to remit its obligations.

**W**

Letter from plaintiff SSANGYONG to defendant SANYO SEIKI dated 13 April 2000, with fax back from defendants SANYO SEIKI/MCC to plaintiff SSANGYONG, contained in facsimile/thermal paper with back-up photocopy

To prove that there was a perfected sale and purchase agreement between the parties for 220 metric tons of steel products at the price of US$1,860/ton.

**W-1**

Conforme signature of defendant Gregory Chan, contained in facsimile/thermal paper with back-up photocopy

To prove that defendants, acting through Gregory Chan, agreed to the sale and purchase of 220 metric tons of steel products at the price of US$1,860/ton.

**W-2**

Name of sender MCC Industrial Sales Corporation

To prove that defendants sent their conformity to the sale and purchase agreement by facsimile transmission.

**X**

Pro forma Invoice dated 16 August 2000, photocopy

To prove that defendant MCC agreed to adjust and split the confirmed purchase order into 2 shipments at 100 metric tons each at the discounted price of US$1,700/ton.


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**X-1**

Notation "1/2", photocopy

To prove that the present Pro forma Invoice was the first of 2 pro forma invoices.

**X-2**

Ref. No. ST2-POSTS080-1, photocopy

To prove that the present Pro forma Invoice was the first of 2 pro forma invoices.

**X-3**

Conforme signature of defendant Gregory Chan, photocopy

To prove that defendant MCC, acting through Gregory Chan, agreed to the sale and purchase of the balance of 100 metric tons at the discounted price of US$1,700/ton, apart from the other order and shipment of 100 metric tons which was delivered by plaintiff SSANGYONG and paid for by defendant MCC.

**DD**

Letter from defendant MCC to plaintiff SSANGYONG dated 22 August 2000, contained in facsimile/thermal paper with back-up photocopy

To prove that there was a perfected sale and purchase agreement between plaintiff SSANGYONG and defendant MCC for the balance of 100 metric tons, apart from the other order and shipment of 100 metric tons which was delivered by plaintiff SSANGYONG and paid for by defendant MCC.

**DD-1**

Ref. No. ST2-POSTS080-1, contained in facsimile/thermal paper with back-up photocopy

To prove that there was a perfected sale and purchase agreement between plaintiff SSANGYONG and defendant MCC for the balance of 100 metric tons, apart from the other order and shipment of 100 metric tons which was delivered by plaintiff SSANGYONG and paid for by defendant MCC.

**DD-2**

Signature of defendant Gregory Chan, contained in facsimile/thermal paper with back-up photocopy

To prove that defendant MCC, acting through Gregory Chan, agreed to the sale and purchase of the balance of 100 metric tons, apart from the other order and shipment of 100 metric tons which was delivered by plaintiff Ssangyong and paid for by defendant MCC.[102]

Significantly, among these documentary evidence presented by respondent, MCC, in its petition before this Court, assails the admissibility only of Pro Forma Invoice Nos. ST2-POSTS0401-1 and ST2-POSTS0401-2 (Exhibits "E" and "F"). After sifting through the records, the Court found that these invoices are mere photocopies of their original fax transmittals. Ssangyong avers that these documents were prepared after MCC asked for the splitting of the original order into two, so that the latter can apply for an L/C with greater facility. It, however, failed to explain why the originals of these documents were not presented.

To determine whether these documents are admissible in evidence, we apply the ordinary Rules on Evidence, for

as discussed above we cannot apply the Electronic Commerce Act of 2000 and the Rules on Electronic Evidence.

Because these documents are mere photocopies, they are simply secondary evidence, admissible only upon compliance with Rule 130, Section 5, which states, "[w]hen the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated." Furthermore, the offeror of secondary evidence must prove the predicates thereof, namely: (a) the loss or destruction of the original without bad faith on the part of the proponent/offeror which can be shown by circumstantial evidence of routine practices of destruction of documents; (b) the proponent must prove by a fair preponderance of evidence as to raise a reasonable inference of the loss or destruction of the original copy; and (c) it must be shown that a diligent and bona fide but unsuccessful search has been made for the document in the proper place or places. It has been held that where the missing document is the foundation of the action, more strictness in proof is required than where the document is only collaterally involved.[103]

Given these norms, we find that respondent failed to prove the existence of the original fax transmissions of Exhibits E and F, and likewise did not sufficiently prove the loss or destruction of the originals. Thus, Exhibits E and F cannot be admitted in evidence and accorded probative weight.

It is observed, however, that respondent Ssangyong did not rely merely on Exhibits E and F to prove the perfected contract. It also introduced in evidence a variety of other documents, as enumerated above, together with the testimonies of its witnesses. Notable among them are Pro Forma Invoice Nos. ST2-POSTS080-1 and ST2-POSTS080-2 which were issued by Ssangyong and sent via fax to MCC. As already mentioned, these invoices slightly varied the terms of the earlier invoices such that the quantity was now officially 100MT per invoice and the price reduced to US$1,700.00 per MT. The copies of the said August 16, 2000 invoices submitted to the court bear the conformity signature of MCC Manager Chan.

Pro Forma Invoice No. ST2-POSTS080-1 (Exhibit "X"), however, is a mere photocopy of its original. But then again, petitioner MCC does not assail the admissibility of this document in the instant petition. Verily, evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment.[104] Issues not raised on appeal are deemed abandoned.

As to Pro Forma Invoice No. ST2-POSTS080-2 (Exhibits "1-A" and "2-C"), which was certified by PCIBank as a true copy of its original,[105] it was, in fact, petitioner MCC which introduced this document in evidence. Petitioner MCC paid for the order stated in this invoice. Its admissibility, therefore, is not open to question.

These invoices (ST2-POSTS0401, ST2-POSTS080-1 and ST2-POSTS080-2), along with the other unchallenged documentary evidence of respondent Ssangyong, preponderate in favor of the claim that a contract of sale was perfected by the parties.

This Court also finds merit in the following observations of the trial court:

> Defendants presented Letter of Credit (Exhibits "1", "1-A" to "1-R") referring to Pro Forma Invoice for Contract No. ST2POSTS080-2, in the amount of US$170,000.00, and which bears the signature of Gregory Chan, General Manager of MCC. Plaintiff, on the other hand, presented Pro Forma Invoice referring to Contract No. ST2-POSTS080-1, in the amount of US$170,000.00, which likewise bears the signature of Gregory Chan, MCC. Plaintiff accounted for the notation "1/2" on the right upper portion of the Invoice, that is, that it was the first of two (2) pro forma invoices covering the subject contract between plaintiff and the defendants. Defendants, on the other hand, failed to account for the notation "2/2" in its Pro Forma Invoice (Exhibit "1-A"). Observably further, both Pro Forma Invoices bear the same date and details, which logically


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> mean that they both apply to one and the same transaction.[106]

Indeed, why would petitioner open an L/C for the second half of the transaction if there was no first half to speak of?

The logical chain of events, as gleaned from the evidence of both parties, started with the petitioner and the respondent agreeing on the sale and purchase of 220MT of stainless steel at US$1,860.00 per MT. This initial contract was perfected. Later, as petitioner asked for several extensions to pay, adjustments in the delivery dates, and discounts in the price as originally agreed, the parties slightly varied the terms of their contract, without necessarily novating it, to the effect that the original order was reduced to 200MT, split into two deliveries, and the price discounted to US$1,700 per MT. Petitioner, however, paid only half of its obligation and failed to open an L/C for the other 100MT. Notably, the conduct of both parties sufficiently established the existence of a contract of sale, even if the writings of the parties, because of their contested admissibility, were not as explicit in establishing a contract.[107] Appropriate conduct by the parties may be sufficient to establish an agreement, and while there may be instances where the exchange of correspondence does not disclose the exact point at which the deal was closed, the actions of the parties may indicate that a binding obligation has been undertaken.[108]

With our finding that there is a valid contract, it is crystal-clear that when petitioner did not open the L/C for the first half of the transaction (100MT), despite numerous demands from respondent Ssangyong, petitioner breached its contractual obligation. It is a well-entrenched rule that the failure of a buyer to furnish an agreed letter of credit is a breach of the contract between buyer and seller. Indeed, where the buyer fails to open a letter of credit as stipulated, the seller or exporter is entitled to claim damages for such breach. Damages for failure to open a commercial credit may, in appropriate cases, include the loss of profit which the seller would reasonably have made had the transaction been carried out.[109]

**- IV -**

This Court, however, finds that the award of actual damages is not in accord with the evidence on record. It is axiomatic that actual or compensatory damages cannot be presumed, but must be proven with a reasonable degree of certainty.[110] In Villafuerte v. Court of Appeals,[111] we explained that:

> Actual or compensatory damages are those awarded in order to compensate a party for an injury or loss he suffered. They arise out of a sense of natural justice and are aimed at repairing the wrong done. Except as provided by law or by stipulation, a party is entitled to an adequate compensation only for such pecuniary loss as he has duly proven. It is hornbook doctrine that to be able to recover actual damages, the claimant bears the onus of presenting before the court actual proof of the damages alleged to have been suffered, thus:
> A party is entitled to an adequate compensation for such pecuniary loss actually suffered by him as he has duly proved. Such damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. We have emphasized that these damages cannot be presumed and courts, in making an award must point out specific facts which could afford a basis for measuring whatever compensatory or actual damages are borne.[112]

In the instant case, the trial court awarded to respondent Ssangyong US$93,493.87 as actual damages. On appeal, the same was affirmed by the appellate court. Noticeably, however, the trial and the appellate courts, in making the said award, relied on the following documents submitted in evidence by the respondent: (1) Exhibit "U," the Statement of Account dated March 30, 2001; (2) Exhibit "U-1," the details of the said Statement of Account); (3) Exhibit "V," the contract of the alleged resale of the goods to a Korean corporation; and (4) Exhibit "V-1," the authentication of the resale contract from the Korean Embassy and certification from the Philippine Consular Office.


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The statement of account and the details of the losses sustained by respondent due to the said breach are, at best, self-serving. It was respondent Ssangyong itself which prepared the said documents. The items therein are not even substantiated by official receipts. In the absence of corroborative evidence, the said statement of account is not sufficient basis to award actual damages. The court cannot simply rely on speculation, conjecture or guesswork as to the fact and amount of damages, but must depend on competent proof that the claimant had suffered, and on evidence of, the actual amount thereof.[113]

Furthermore, the sales contract and its authentication certificates, Exhibits "V" and "V-1," allegedly evidencing the resale at a loss of the stainless steel subject of the parties' breached contract, fail to convince this Court of the veracity of its contents. The steel items indicated in the sales contract[114] with a Korean corporation are different in all respects from the items ordered by petitioner MCC, even in size and quantity. We observed the following discrepancies:

> List of commodities as stated in Exhibit "V":
>
> COMMODITY: Stainless Steel HR Sheet in Coil, Slit Edge
> SPEC: SUS304 NO. 1
> SIZE/Q'TY:

2.8MM X 1,219MM X C 8.193MT
3.0MM X 1,219MM X C 7.736MT
3.0MM X 1,219MM X C 7.885MT
3.0MM X 1,219MM X C 8.629MT
4.0MM X 1,219MM X C 7.307MT
4.0MM X 1,219MM X C 7.247MT
4.5MM X 1,219MM X C 8.450MT
4.5MM X 1,219MM X C 8.870MT
5.0MM X 1,219MM X C 8.391MT
6.0MM X 1,219MM X C 6.589MT
6.0MM X 1,219MM X C 7.878MT
6.0MM X 1,219MM X C 8.397MT

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TOTAL: 95.562MT[115]

> List of commodities as stated in Exhibit "X" (the invoice that was not paid):
>
> DESCRIPTION: Hot Rolled Stainless Steel Coil SUS 304
> SIZE AND QUANTITY:
>
> 2.6 MM X 4' X C 10.0MT
> 3.0 MM X 4' X C 25.0MT
> 4.0 MM X 4' X C 15.0MT
> 4.5 MM X 4' X C 15.0MT
> 5.0 MM X 4' X C 10.0MT
> 6.0 MM X 4' X C 25.0MT
>
> ---
>
> TOTAL: 100MT[116]

From the foregoing, we find merit in the contention of MCC that Ssangyong did not adequately prove that the

items resold at a loss were the same items ordered by the petitioner. Therefore, as the claim for actual damages was not proven, the Court cannot sanction the award.

Nonetheless, the Court finds that petitioner knowingly breached its contractual obligation and obstinately refused to pay despite repeated demands from respondent. Petitioner even asked for several extensions of time for it to make good its obligation. But in spite of respondent's continuous accommodation, petitioner completely reneged on its contractual duty. For such inattention and insensitivity, MCC must be held liable for nominal damages. "Nominal damages are `recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown.'"[117] Accordingly, the Court awards nominal damages of P200,000.00 to respondent Ssangyong.

As to the award of attorney's fees, it is well settled that no premium should be placed on the right to litigate and not every winning party is entitled to an automatic grant of attorney's fees. The party must show that he falls under one of the instances enumerated in Article 2208 of the Civil Code.[118] In the instant case, however, the Court finds the award of attorney's fees proper, considering that petitioner MCC's unjustified refusal to pay has compelled respondent Ssangyong to litigate and to incur expenses to protect its rights.

WHEREFORE, PREMISES CONSIDERED, the appeal is PARTIALLY GRANTED. The Decision of the Court of Appeals in CA-G.R. CV No. 82983 is MODIFIED in that the award of actual damages is DELETED. However, petitioner is ORDERED to pay respondent NOMINAL DAMAGES in the amount of P200,000.00, and the ATTORNEY'S FEES as awarded by the trial court.

**SO ORDERED.**

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

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[1] Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Danilo B. Pine and Arcangelita Romilla Lontok, concurring; CA rollo, pp. 120-131.

[2]CA rollo, pp. 164-165.

[3] Records, p. 2.

[4] TSN, June 18, 2003, pp. 7-8.

[5] TSN, August 21, 2002, p. 7.

[6] Records, p. 198; Exhibit "A."

[7] CA rollo, p. 97.

[8] TSN, August 21, 2002, p. 18.

[9] Records, pp. 336-337; Exhibit "W." The document is an original copy of the fax transmittal in thermal paper received by Ssangyong, however, the same is accompanied by a photocopy thereof containing a clearer print of its contents.

[10]Records, p. 49.

[11]Id. at 336-337; Exhibit "W-1."

[12] Id. at 216-217; Exhibits "E-1." The document is an original copy of the fax transmittal in thermal paper

received by Ssangyong, however, the same is accompanied by a photocopy thereof containing a clearer print of its contents.

[13] Id.; Exhibit "E-2."

[14]Id.; Exhibit "E-1."

[15] TSN, August 21, 2002, pp. 41-42, 67-68.

[16]TSN, October 15, 2003, pp. 89-92.

[17]Records, p. 215; Exhibit "E." This is a mere photocopy of the fax transmittal.

[18] Id. at 218; Exhibit "F." This is a mere photocopy of the fax transmittal.

[19] Id. at 219-220; Exhibit "G." The document is an original copy of the fax transmittal in thermal paper received by Ssangyong, however, the same is accompanied by a photocopy thereof containing a clearer print of its contents.

[20] Id.; Exhibit "G-1."

[21] Id. at 221; Exhibit "H."

[22] Id. at 223; Exhibit "I."

[23] Id. at 224; Exhibit "J."

[24] Id. at 225; Exhibit "K."

[25]Id. at 226; Exhibit "L." The document is a mere photocopy of the original fax message.

[26] Id. at 227-228; Exhibit "M." The document is an original copy of the fax transmittal in thermal paper received by Ssangyong, however, the same is accompanied by a photocopy thereof containing a clearer print of its contents.

[27]Id. at 229; Exhibit "N."

[28] Id. at 230; Exhibit "O." The document is a mere photocopy of the original letter.

[29]Id. at 231; Exhibit "P."

[30]Id. at 232-233; Exhibit "Q."

[31] Id. at 232.

[32] Id. at 338; Exhibit "X." The document is a mere photocopy of the original fax transmittal.

[33] Id. at 321; Exhibit "2-C." The document was certified as the true copy of its original by PCIBank.

[34]Id. at 318-320; Exhibits "2", "2-A" and "2-B." These documents were certified as true copies of their originals by PCIBank.

[35] Id. at 300-317; Exhibits "1-B" to "1-R."

[36] Id. at 378-379; Exhibit "DD." The document is an original copy of the fax transmittal in thermal paper received by Ssangyong, however, the same is accompanied by a photocopy thereof containing a clearer print of its contents.


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[37] Id. at 234; Exhibit "R."

[38] Id. at 235; Exhibit "S."

[39]Id. at 1-10.

[40]Id. at 262-267.

[41] Id. at 254.

[42] Id. at 275.

[43]Id. at 408-412.

[44]Id. at 411-412.

[45] Id. at 444.

[46] CA rollo, pp. 29-49.

[47]Id. at 36.

[48]Supra note 1.

[49]CA rollo, pp. 127-128.

[50]Id. at 131.

[51]Id. at 160.

[52] The firm's name was later changed to Zamora Poblador Vasquez & Bretaña.

[53] CA rollo, p. 161.

[54]Id. at 140-150.

[55] Supra note 2.

[56] Rollo, pp. 9-26.

[57] Id. at 15.

[58]415 Phil. 761 (2001).

[59]G.R. No. 146478, July 30, 2004, 435 SCRA 512.

[60] Philippine Ports Authority v. Sargasso Construction & Development Corporation, supra, at 527-528.

[61] Yuchengco v. Court of Appeals, G.R. No. 165793, October 27, 2006, 505 SCRA 716, 723.

[62] 396 Phil. 1081 (2000).

[63] Maharlika Publishing Corporation v. Tagle, 226 Phil. 456, 463-464 (1986).

[64]Entitled "An Act Providing for the Recognition and Use of Electronic Commercial and Non-Commercial Transactions and Documents, Penalties for Unlawful Use Thereof and For Other Purposes." Approved on June 14, 2000.

[65] Sections 6, 7 and 10 of R.A. No. 8792 read:


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Sec. 6. Legal Recognition of Data Messages. Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the data message purporting to give rise to such legal effect, or that it is merely referred to in that electronic data message.

Sec. 7. Legal Recognition of Electronic Documents. - Electronic documents shall have the legal effect, validity or enforceability as any other document or legal writing, and -

(a) Where the law requires a document to be in writing, that requirement is met by an electronic document if the said electronic document maintains its integrity and reliability and can be authenticated so as to be usable for subsequent reference, in that -

> (i) The electronic document has remained complete and unaltered, apart from the addition of any endorsement and any authorized change, or any change which arises in the normal course of communication, storage and display; and
>
> (ii) The electronic document is reliable in the light of the purpose for which it was generated and in the light of all the relevant circumstances.

(b) Paragraph (a) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the document not being presented or retained in its original form.

(c) Where the law requires that a document be presented or retained in its original form, that requirement is met by an electronic document if -

> (i) There exists a reliable assurance as to the integrity of the document from the time when it was first generated in its final form; and
>
> (ii) That document is capable of being displayed to the person to whom it is to be presented: Provided, That no provision of this Act shall apply to vary any and all requirements of existing laws on formalities required in the execution of documents for their validity.

For evidentiary purposes, an electronic document shall be the functional equivalent of a written document under existing laws.

This Act does not modify any statutory rule relating to the admissibility of electronic data messages or electronic documents, except the rules relating to authentication and best evidence.

Sec. 10. Original Documents. - (1) Where the law requires information to be presented or retained in its original form, that requirement is met by an electronic data message or electronic document if:

(a) The integrity of the information from the time when it was first generated in its final form, as an electronic data message or electronic document is shown by evidence aliunde or otherwise; and

(b) Where it is required that information be presented, that the information is capable of being displayed to the person to whom it is to be presented.

(2) Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the information not being presented or retained in its original form.

(3) For the purposes of subparagraph (a) of paragraph (1):

(a) the criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage and display; and


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(b) the standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all relevant circumstances.

[66]A.M. No. 01-7-01-SC, effective on August 1, 2001.

[67] Rule 3 of the Rules on Electronic Evidence reads:

**RULE 3**

**ELECTRONIC DOCUMENTS**

SECTION 1. Electronic Documents as functional equivalent of paper-based documents. - Whenever a rule of evidence refers to the term writing, document, record, instrument, memorandum or any other form of writing, such term shall be deemed to include an electronic document as defined in these Rules.

SEC. 2. Admissibility. - An electronic document is admissible in evidence if it complies with the rules on admissibility prescribed by the Rules of Court and related laws and is authenticated in the manner prescribed by these Rules.

[68] Rule 4 of the Rules on Electronic Evidence reads:

**RULE 4**

**BEST EVIDENCE RULE**

SECTION 1. Original of an Electronic Document. - An electronic document shall be regarded as the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately.

SEC. 2. Copies as equivalent of the originals. - When a document is in two or more copies executed at or about the same time with identical contents, or is a counterpart produced by the same impression as the original, or from the same matrix, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original, such copies or duplicates shall be regarded as the equivalent of the original.

Notwithstanding the foregoing, copies or duplicates shall not be admissible to the same extent as the original if:

(a) a genuine question is raised as to the authenticity of the original; or

(b) in the circumstances it would be unjust or inequitable to admit the copy in lieu of the original.

[69] The Electronic Commerce Act of 2000 provides, in its Section 34, that the DTI [Department of Trade and Industry], Department of Budget and Management and the Bangko Sentral ng Pilipinas are empowered to enforce the provisions of the Act and issue implementing rules and regulations necessary, in coordination with the Department of Transportation and Communications, National Telecommunications Commission, National Computer Center, National Information Technology Council, Commission on Audit, other concerned agencies and the private sector, to implement the Act within sixty (60) days after its approval.

[70]On June 12, 1996, the Commission, after consideration of the text of the draft Model Law as revised by the drafting group, decided to adopt the said law and to recommend that all States give favorable consideration to the said Model Law on Electronic Commerce when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives of paper-based forms of communication and storage of information


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(UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996 with additional article 5 bis as adopted in 1998, United Nations Publication, New York, 1999).

[71]Record of the Senate, Vol. III, No. 61, February 16, 2000, p. 405.

[72] R.A. No. 8792 is a consolidation of Senate Bill 1902 and House Bill 9971 (Senate Proceedings, June 8, 2000, p. 90).

[73] The Electronic Commerce Act and its Implementing Rules and Regulations, Annotations by Atty. Jesus M. Disini, Jr., Legislative History by Janette C. Toral, published by the Philippine Exporters Confederation, Inc. in September 2000.

[74] House of Representatives' Transcript of Proceedings, June 5, 2000.

[75] (visited August 27, 2007).

[76] UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996 with additional article 5 bis as adopted in 1998, United Nations publication, New York, 1999.

[77] People v. Purisima, 176 Phil. 186, 204 (1978).

[78] De Guia v. Commission on Elections, G.R. No. 104712, May 6, 1992, 208 SCRA 420, 425.

[79]III RECORD, SENATE 11[th] CONGRESS 2[nd] SESSION 399 (February 16, 2000).

[80] Senate Transcript of Proceedings, Vol. II, No. 88, April 3, 2000, pp. 32-37.

[81] BLG, Consolidated E-Commerce Statutes, Part II-Electronic Evidence Laws, UEEA, Copyright © Carswell, a Division of Thomson Canada Ltd. or its Licensors; (visited August 27, 2007).

[82]In its Guide to Enactment, the UNCITRAL explains the functional-equivalent approach of the Model Law in this way:

"E. The `functional-equivalent' approach

"15. The Model Law is based on the recognition that legal requirements prescribing the use of traditional paper-based documentation constitute the main obstacle to the development of modern means of communication. In the preparation of the Model Law, consideration was given to the possibility of dealing with impediments to the use of electronic commerce posed by such requirements in national laws by way of extension of the scope of such notions as `writing', `signature' and `original', with a view to encompassing computer-based techniques. Such an approach is used in a number of existing legal instruments, e.g., article 7 of the UNCITRAL Model Law on International Commercial Arbitration and article 13 of the United Nations Convention on Contracts for the International Sale of Goods. It was observed that the Model Law should permit States to adapt their domestic legislation to developments in communications technology applicable to trade law without necessitating the wholesale removal of the paper-based requirements themselves or disturbing the legal concepts and approaches underlying those requirements. At the same time, it was said that electronic fulfillment of writing requirements might in some cases necessitates the development of new rules. This was due to one of many distinctions between EDI messages and paper-based documents, namely, that the latter were readable by the human eye, while the former were not so readable unless reduced to paper or displayed on a screen.

"16. The Model Law thus relies on a new approach, sometimes referred to as the `functional equivalent approach', which is based on an analysis of the purposes and functions of the traditional paper-based requirement with a view to determining how those purposes or functions could be fulfilled through electronic-commerce techniques. For

example, among the functions served by a paper document are the following: to provide that a document would be legible by all; to provide that a document would remain unaltered over time; to allow for the reproduction of a document so that each party would hold a copy of the same data; to allow for the authentication of data by means of a signature; and to provide that a document would be in a form acceptable to public authorities and courts. It should be noted that in respect of all of the above-mentioned functions of paper, electronic records can provide the same level of security as paper and, in most cases, a much higher degree of reliability and speed, especially with respect to the identification of the source and content of the data, provided that a number of technical and legal requirements are met. However, the adoption of the functional-equivalent approach should not result in imposing on users of electronic commerce more stringent standards of security (and the related costs) than in a paper-based environment.

"17. A data message, in and of itself, cannot be regarded as an equivalent of a paper document in that it is of a different nature and does not necessarily perform all conceivable functions of a paper document. That is why the Model Law adopted a flexible standard, taking into account the various layers of existing requirements in a paper-based environment: when adopting the "functional-equivalent" approach, attention was given to the existing hierarchy of form requirements, which provides distinct levels of reliability, traceability and inalterability with respect to paper-based documents. For example, the requirement that date be presented in written form (which constitutes a `threshold requirement') is not to be confused with more stringent requirements such as `signed writing,' `signed original' or `authenticated legal act'.

"18. The Model Law does not attempt to define a computer-based equivalent to any kind of paper document. Instead, it singles out basic functions of paper-based form requirements, with a view to providing criteria which, once they are met by data messages, enable such data messages to enjoy the same level of legal recognition as corresponding paper documents performing the same function. It should be noted that the functional-equivalent approach has been taken in articles 6 to 8 of the Model Law with respect to the concepts of `writing', `signature' and `original' but not with respect to other legal concepts dealt with in the Model Law. For example, article 10 does not attempt to create a functional equivalent of existing storage requirements." (UNCITRAL Model Law on Electronic Commerce with Guide to Enactment 1996 with additional article 5 bis as adopted in 1998, United Nations publication, New York, 1999.)

[83] (visited August 27, 2007).

[84] 2F web-opedia.internet.com%2FTERM%2Ff%2Ffax -machine.html> (visited August 27, 2007).

[85] (visited August 27, 2007).

[86]338 Phil. 484, 496-497 (1997).

[87] Go v. Commission on Elections, G.R. No. 147741, May 10, 2001, 357 SCRA 739, involving the filing of a withdrawal of certificate of candidacy thru fax, but the original copy thereof was filed on the following day; see also Justice Cuevas v. Muñoz, 401 Phil. 752 (2000), in which the facsimile transmission of the request for provisional arrest and other supporting documents was allowed in extradition proceedings; Heirs of Lourdes Sabanpan v. Comorposa, 456 Phil. 161 (2003), concerning a facsimile signature; and Cathay Pacific Airways v. Fuentebella, G.R. No. 142541, December 15, 2005, 478 SCRA 97, which involves a facsimile transmission of a notice of hearing.

[88] III RECORD, SENATE 11[th] CONGRESS 2[nd] SESSION 781-783 (March 22, 2000).

[89] House of Representatives' Transcript of Proceedings, June 5, 2000.

[90] III RECORD, SENATE 11[th] CONGRESS 2[nd] SESSION 437 (February 21, 2000); III RECORD, SENATE 11[th] CONGRESS 2[nd] SESSION 450-451 (February 22, 2000).

[91]Public Schools District Supervisors Association. v. De Jesus, G.R. 157286, June 16, 2006, 491 SCRA 55, 71.

[92] Nasipit Lumber Co. v. National Wages and Productivity Commission, 352 Phil. 503, 518 (1998).

[93]The Philippine Statistical System (PSS), through the NSCB, created the Task Force to address the statistical information requirements of the Electronic Commerce Act of 2000. The composition of the Task Force is as follows: the Department of Trade and Industry as Chair; the NSCB as Vice Chair; and the Bangko Sentral ng Pilipinas, the Commission on Audit, the Department of Budget and Management, the Department of Labor and Employment, the Department of Science and Technology, the Department of Transportation and Communications/National Telecommunications Commission, the National Computer Center, the National Economic and Development Authority, the National Statistics Office, the Statistical Research and Training Center, and the Philippine Internet Services Organization, as members.

[94] Recommendations of the NSCB Task Force on the Measurement of e-Commerce, November 22, 2006, p. 5 (visited August 27, 2007).

[95] Black's Law Dictionary, 5th ed. (1979).

[96] Heirs of Cipriano Reyes v. Calumpang, G.R. No. 138463, October 30, 2006, 506 SCRA 56, 72.

[97] Civil Code, Art. 1315.

[98] Johannes Schuback & Sons Philippine Trading Corporation v. Court of Appeals, G.R. No. 105387, November 11, 1993, 227 SCRA 717, 721.

[99] San Lazaro Development Corporation v. Court of Appeals, G.R. No. 124242, January 21, 2005, 449 SCRA 99, 111.

[100] Civil Code, Art. 1475.

[101] San Lazaro Development Corporation v. Court of Appeals, supra note 99, at 113.

[102] Records, pp. 193-195 and 332-334.

[103] Lee v. People, G.R. No. 159288, October 19, 2004, 440 SCRA 662, 683-684.

[104] Interpacific Transit, Inc. v. Aviles, G.R. No. 86062, June 6, 1990, 186 SCRA 385, 390.

[105] Under Rule 130, Section 7, a certified true copy is an admissible evidence only when the original document is a public record.

[106] Records, p. 411.

[107] Standard Bent Glass Corp. v. Glassrobots Oy, 333 F. 3d 440.

[108] Maharlika Publishing Corporation v. Tagle, 226 Phil. 456, 468 (1986), quoting American Jurisprudence 2d., Section 73 (pp. 186-187).

[109] Reliance Commodities, Inc. v. Daewoo Industrial Company, Ltd., G.R. No. 100831, December 17, 1993, 228 SCRA 545, 555.

[110] Development Bank of the Philippines v. Court of Appeals, 348 Phil. 15, 34 (1998).


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[111] G.R. No. 134239, May 26, 2005, 459 SCRA 58.

[112] Villafuerte v. Court of Appeals, supra, at 69.

[113] Id. at 74-75.

[114] Records, p. 245.

[115] Id. at 243 and 245.

[116] Id. at 338.

[117] Francisco v. Ferrer, Jr., 405 Phil. 741, 751 (2001).

[118] Tanay Recreation Center and Development Corp. v. Fausto, G.R. No. 140182, April 12, 2005, 455 SCRA 436, 457.

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