

**ORIENT FREIGHT INTERNATIONAL, INC., PETITIONER, V.
KEIHIN-EVERETT FORWARDING COMPANY, INC., RESPONDENT.**

G.R. No. 191937. August 09, 2017

Ponente: LEONEN, J.

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LEONEN, J.:

Article 2176 of the Civil Code does not apply when the party's negligence occurs in the performance of an obligation. The negligent act would give rise to a quasi-delict only when it may be the basis for an independent action were the parties not otherwise bound by a contract.

This resolves a Petition for Review[1] on Certiorari under Rule 45 of the Rules of Court, assailing the January 21, 2010 Decision[2] and April 21, 2010 Resolution[3] of the Court of Appeals, which affirmed the Regional Trial Court February 27, 2008 Decision.[4] The Regional Trial Court found that petitioner Orient Freight International, Inc.'s (Orient Freight) negligence caused the cancellation of Keihin-Everett Forwarding Company, Inc.'s (Keihin-Everett) contract with Matsushita Communication Industrial Corporation of the Philippines (Matsushita).[5]

On October 16, 2001, Keihin-Everett entered into a Trucking Service Agreement with Matsushita. Under the Trucking Service Agreement, Keihin-Everett would provide services for Matsushita's trucking requirements. These services were subcontracted by Keihin-Everett to Orient Freight, through their own Trucking Service Agreement executed on the same day.[6]

When the Trucking Service Agreement between Keihin-Everett and Matsushita expired on December 31, 2001, Keihin-Everett executed an In-House Brokerage Service Agreement for Matsushita's Philippine Economic Zone Authority export operations. Keihin-Everett continued to retain the services of Orient Freight, which sub-contracted its work to Schmitz Transport and Brokerage Corporation.[7]

In April 2002, Matsushita called Keihin-Everett's Sales Manager, Salud Rizada, about a column in the April 19, 2002 issue of the tabloid newspaper Tempo. This news narrated the April 17, 2002 interception by Caloocan City police of a stolen truck filled with shipment of video monitors and CCTV systems owned by Matsushita.[8]

When contacted by Keihin-Everett about this news, Orient Freight stated that the tabloid report had blown the incident out of proportion. They claimed that the incident simply involved the breakdown and towing of the truck, which was driven by Ricky Cudas (Cudas), with truck helper, Rubelito Aquino[9] (Aquino). The truck was promptly released and did not miss the closing time of the vessel intended for the shipment.[10]

Keihin-Everett directed Orient Freight to investigate the matter. During its April 20, 2002 meeting with Keihin-Everett and Matsushita, as well as in its April 22, 2002 letter addressed to Matsushita, Orient Freight reiterated that the truck merely broke down and had to be towed.[11]

However, when the shipment arrived in Yokohama, Japan on May 8, 2002, it was discovered that 10 pallets of the shipment's 218 cartons, worth US\$34,226.14, were missing.[12]

Keihin-Everett independently investigated the incident. During its investigation, it obtained a police report from the Caloocan City Police Station. The report stated, among others, that at around 2:00 p.m. on April 17, 2002, somewhere in Plaza Dilao, Paco Street, Manila, Cudas told Aquino to report engine trouble to Orient Freight. After Aquino made the phone call, he informed Orient Freight that the truck had gone missing. When the truck was intercepted by the police along C3 Road near the corner of Dagat-Dagatan Avenue in Caloocan City, Cudas escaped and became the subject of a manhunt.[13]

When confronted with Keihin-Everett's findings, Orient Freight wrote back on May 15, 2002 to admit that its previous report was erroneous and that pilferage was apparently proven.[14]

In its June 6, 2002 letter, Matsushita terminated its In-House Brokerage Service Agreement with Keihin-Everett, effective July 1, 2002. Matsushita cited loss of confidence for terminating the contract, stating that Keihin-Everett's way of handling the April 17, 2002 incident and its nondisclosure of this incident's relevant facts "amounted to fraud and signified an utter disregard of the rule of law." [15]

Keihin-Everett, by counsel, sent a letter dated September 16, 2002 to Orient Freight, demanding P2,500,000.00 as indemnity for lost income. It argued that Orient Freight's mishandling of the situation caused the termination of Keihin-Everett's contract with Matsushita.[16]

When Orient Freight refused to pay, Keihin-Everett filed a complaint dated October 24, 2002 for damages with Branch 10, Regional Trial Court, Manila. The case was docketed as Civil Case No. 02-105018.[17] In its complaint, Keihin-Everett alleged that Orient Freight's "misrepresentation, malice, negligence and fraud" caused the termination of its In-House Brokerage Service Agreement with Matsushita. Keihin-Everett prayed for compensation for lost income, with legal interest, exemplary damages, attorney's fees, litigation expenses, and the costs of the suit.[18]

In its December 20, 2002 Answer, Orient Freight claimed, among others, that its initial ruling of pilferage was in good faith as manifested by the information from its employees and the good condition and the timely shipment of the cargo. It also alleged that the contractual termination was a prerogative of Matsushita. Further, by its own Audited Financial Statements on file with the Securities and Exchange Commission, Keihin-Everett derived income substantially less than what it sued for. Along with the dismissal of the complaint, Orient Freight also asserted counterclaims for compensatory and exemplary damages, attorney's fees, litigation expenses, and the costs of the suit.[19]

The Regional Trial Court rendered its February 27, 2008 Decision,[20] in favor of Keihin-Everett. It found that Orient Freight was "negligent in failing to investigate properly the incident and make a factual report to Keihin[-Everett] and Matsushita," despite having enough time to properly investigate the incident.[21]

The trial court also ruled that Orient Freight's failure to exercise due diligence in disclosing the true facts of the incident to Keihin-Everett and Matsushita caused Keihin-Everett to suffer income losses due to Matsushita's cancellation of their contract.[22] The trial court ordered Orient Freight "to pay [Keihin-Everett] the amount of [P] 1,666,667.00 as actual damages representing net profit loss incurred" and P50,000.00 in attorney's fees.[23] However, it denied respondent's prayer for exemplary damages, finding that petitioner did not act with gross negligence.[24]

Orient Freight appealed the Regional Trial Court Decision to the Court of Appeals. On January 21, 2010, the Court of Appeals issued its Decision[25] affirming the trial court's decision. It ruled that Orient Freight "not only had knowledge of the foiled hijacking of the truck carrying the . . . shipment but, more importantly, withheld [this] information from [Keihin-Everett]."[26]

The Court of Appeals ruled that the oral and documentary evidence has established both the damage suffered by Keihin-Everett and Orient Freight's fault or negligence. Orient Freight was negligent in not reporting and not thoroughly investigating the April 17, 2002 incident despite Keihin-Everett's instruction to do so.[27] It further ruled that while Keihin-Everett sought to establish its claim for lost income of P2,500,000.00 by submitting its January 2002 to June 2002 net income statement,[28] this was refuted by Orient Freight by presenting Keihin-Everett's own audited financial statements. The Court of Appeals held that the trial court correctly arrived at the amount of P1,666,667.00 as the award of lost income.[29]

The Court of Appeals denied Orient Freight's Motion for Reconsideration in its April 21, 2010 Resolution.[30]

On June 9, 2010, Orient Freight filed this Petition for Review on Certiorari under Rule 45 with this Court, arguing that the Court of Appeals incorrectly found it negligent under Article 2176 of the Civil Code.[31] As there was a subsisting Trucking Service Agreement between Orient Freight itself and Keihin-Everett, petitioner avers that there was a pre-existing contractual relation between them, which would preclude the application of the laws on quasi-delicts.[32]

Applying the test in *Far East Bank and Trust Company v. Court of Appeals*,[33] petitioner claims that its failure to inform respondent Keihin-Everett about the hijacking incident could not give rise to a quasi-delict since the Trucking Service Agreement between the parties did not include this obligation. It argues that there being no obligation under the Trucking Service Agreement to inform Keihin-Everett of the hijacking incident, its report to Keihin-Everett was done in good faith and did not constitute negligence. Its representations regarding the hijacking incident were a sound business judgment and not a negligent act.[34] Finally, it claims that the Court of Appeals incorrectly upheld the award of damages, as the trial court had based its computation on, among others, Keihin-Everett's profit and loss statement.[35]

On August 2, 2010, Keihin-Everett filed its Comment,[36] arguing that the petition does not contain the names of the parties in violation of Rule 45, Section 4 of the Rules of Court. It contends that the issues and the arguments raised in this petition are the same issues it raised in the Regional Trial Court and the Court of Appeals.[37] It claims that the findings of fact and law of the Court of Appeals are in accord with this Court's decisions.[38]

On October 7, 2010, Orient Freight filed its Reply.[39] It notes that a cursory reading of the petition would readily show the parties to the case. It claims that what is being contested and appealed is the application of the law on negligence by lower courts and, while the findings of fact by the lower courts are entitled to great weight, the exceptions granted by jurisprudence apply to this case. It reiterates that the pre-existing contractual relation between the parties should bar the application of the principles of quasi-delict. Because of this, the terms and conditions of the contract between the parties must be applied. It also claimed that the Regional Trial Court's computation of the award included figures from respondent's Profit and Loss Statement, which the trial court had allegedly rejected. It rendered the computation unreliable.[40]

This Court issued a Resolution[41] dated February 16, 2011, requiring petitioner to submit a certified true copy of the Regional Trial Court February 27, 2008 Decision.

On March 31, 2011, petitioner filed its Compliance,[42] submitting a certified true copy of the Regional Trial Court Decision.

The issues for this Court's resolution are:

First, whether the failure to state the names of the parties in this Petition for Review, in accordance with Rule 45, Section 4 of the Rules of Court, is a fatal defect;

Second, whether the Court of Appeals, considering the existing contracts in this case, erred in applying Article 2176 of the Civil Code;

Third, whether Orient Freight, Inc. was negligent for failing to disclose the facts surrounding the hijacking incident on April 17, 2002, which led to the termination of the Trucking Service Agreement between Keihin-Everett Forwarding Co., Inc. and Matsushita Communication Industrial Corporation of the Philippines; and

Finally, whether the trial court erred in the computation of the awarded actual and pecuniary loss by basing it on, among others, the Profit and Loss Statement submitted by Keihin-Everett Forwarding Co., Inc.

The petition is denied.

I

The petition does not violate Rule 45, Section 4 of the Rules of Court[43] for failing to state the names of the parties in the body. The names of the parties are readily discernable from the caption of the petition, clearly showing the appealing party as the petitioner and the adverse party as the respondent. The Court of Appeals had also been erroneously impleaded in the petition. However, this Court in *Aguilar v. Court of Appeals, et al.*[44] ruled that inappropriately impleading the lower court as respondent does not automatically mean the dismissal of the appeal. This is a mere formal defect.[45]

II

Negligence may either result in culpa aquiliana or culpa contractual.[46] Culpa aquiliana is the "the wrongful or negligent act or omission which creates a vinculum juris and gives rise to an obligation between two persons not formally bound by any other obligation,"[47] and is governed by Article 2176 of the Civil Code:

Article 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

Negligence in culpa contractual, on the other hand, is "the fault or negligence incident in the performance of an obligation which already-existed, and which increases the liability from such already existing obligation." [48] This is governed by Articles 1170 to 1174 of the Civil Code:[49]

Article 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

Article 1171. Responsibility arising from fraud is demandable in all obligations. Any waiver of an action for future fraud is void.

Article 1172. Responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances.

Article 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of articles 1171 and 2201, paragraph 2, shall apply.

If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required.

Article 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or

when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable.

Actions based on contractual negligence and actions based on quasi-delicts differ in terms of conditions, defenses, and proof. They generally cannot co-exist.[50] Once a breach of contract is proved, the defendant is presumed negligent and must prove not being at fault. In a quasi-delict, however, the complaining party has the burden of proving the other party's negligence.[51] In *Huang v. Phil. Hoteliers, Inc.*:[52]

[T]his Court finds it significant to take note of the following differences between quasi-delict (*culpa aquilina*) and breach of contract (*culpa contractual*). In quasi-delict, negligence is direct, substantive and independent, while in breach of contract, negligence is merely incidental to the performance of the contractual obligation; there is a pre-existing contract or obligation, In quasi-delict, the defense of "good father of a family" is a complete and proper defense insofar as parents, guardians and employers are concerned, while in breach of contract, such is not a complete and proper defense in the selection and supervision of employees. In quasi-delict, there is no presumption of negligence and it is incumbent upon the injured party to prove the negligence of the defendant, otherwise, the former's complaint will be dismissed, while in breach of contract, negligence is presumed so long as it can be proved that there was breach of the contract and the burden is on the defendant to prove that there was no negligence in the carrying out of the terms of the contract; the rule of *respondeat superior* is followed.[53] (Emphasis in the original, citations omitted)

In *Government Service Insurance System v. Spouses Labung-Deang*,[54] since the petitioner's obligation arose from a contract, this Court applied the Civil Code provisions on contracts, instead of those of Article 2176:

The trial court and the Court of Appeals treated the obligation of GSIS as one springing from quasi-delict. We do not agree. Article 2176 of the Civil Code defines quasi-delict as follows:

"Whoever by act or omission causes damages to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter (*italics ours*)."

Under the facts, there was a pre-existing contract between the parties. GSIS and the spouses Deang had a loan agreement secured by a real estate mortgage. The duty to return the owner's duplicate copy of title arose as soon as the mortgage was released. GSIS insists that it was under no obligation to return the owner's duplicate copy of the title immediately. This insistence is not warranted. Negligence is obvious as the owners' duplicate copy could not be returned to the owners. Thus, the more applicable provisions of the Civil Code are:

"Article 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay and those who in any manner contravene the tenor thereof are liable for damages."

"Article 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted . . ."

Since good faith is presumed and bad faith is a matter of fact which should be proved, we shall treat GSIS as a party who defaulted in its obligation to return the owners' duplicate copy of the title. As an obligor in good faith, GSIS is liable for all the "natural and probable consequences of the breach of the obligation." The inability of the spouses Deang to secure another loan and the damages they suffered thereby has its roots in the failure of the GSIS to return the owners' duplicate copy of the title.[55] (Citations omitted)

Similarly, in *Syquia v. Court of Appeals*,[56] this Court ruled that private respondent would have been held liable for a breach of its contract with the petitioners, and not for quasi-delict, had it been found negligent:

With respect to herein petitioners' averment that private respondent has committed *culpa aquiliana*, the Court

of Appeals found no negligent act on the part of private respondent to justify an award of damages against it. Although a pre-existing contractual relation between the parties does not preclude the existence of a culpa aquiliana, We find no reason to disregard the respondent's Court finding that there was no negligence.

....

In this case, it has been established that the Syquias and the Manila Memorial Park Cemetery, Inc., entered into a contract entitled "Deed of Sale and Certificate of Perpetual Care" on August 27, 1969. That agreement governed the relations of the parties and defined their respective rights and obligations. Hence, had there been actual negligence on the part of the Manila Memorial Park Cemetery, Inc., it would be held liable not for a quasi-delict or culpa aquiliana, but for culpa contractual as provided by Article 1170 of the Civil Code[.][57]

However, there are instances when Article 2176 may apply even when there is a pre-existing contractual relation. A party may still commit a tort or quasi-delict against another, despite the existence of a contract between them.[58]

In *Cangco v. Manila Railroad*,[59] this Court explained why a party may be held liable for either a breach of contract or an extra-contractual obligation for a negligent act:

It is evident, therefore, that in its decision in the *Yamada* case, the court treated plaintiff's action as though founded in tort rather than as based upon the breach of the contract of carriage, and an examination of the pleadings and of the briefs shows that the questions of law were in fact discussed upon this theory. Viewed from the standpoint of the defendant the practical result must have been the same in any event. The proof disclosed beyond doubt that the defendant's servant was grossly negligent and that his negligence was the proximate cause of plaintiff's injury. It also affirmatively appeared that defendant had been guilty of negligence in its failure to exercise proper discretion in the direction of the servant. Defendant was, therefore, liable for the injury suffered by plaintiff, whether the breach of the duty were to be regarded as constituting culpa aquilina or culpa contractual. As *Manresa* points out . . . whether negligence occurs as an incident in the course of the performance of a contractual undertaking or is itself (he source of an extra-contractual obligation, its essential characteristics are identical. There is always an act or omission productive of damage due to carelessness or inattention on the part of the defendant. Consequently, when the court holds that a defendant is liable in damages for having failed to exercise due care, either directly, or in failing to exercise proper care in the selection and direction of his servants, the practical result is identical in either case . . . ,

The true explanation of such cases is to be found by directing the attention to the relative spheres of contractual and extra-contractual obligations. The field of non-contractual obligation is much more broader [sic] than that of contractual obligation, comprising, as it does, the whole extent of juridical human relations. These two fields, figuratively speaking, concentric; that is to say, the mere fact that a person is bound to another by contract does not relieve him from extra-contractual liability to such person. When such a contractual relation exists the obligor may break the contract under such conditions that the same act which constitutes a breach of the contract would have constituted the source of an extra-contractual obligation had no contract existed between the parties.[60] (Emphasis supplied, citation omitted)

If a contracting party's act that breaches the contract would have given rise to an extra-contractual liability had there been no contract, the contract would be deemed breached by a tort,[61] and the party may be held liable under Article 2176 and its related provisions.[62]

In *Singson v. Bank of the Philippine Islands*,[63] this Court upheld the petitioners' claim for damages based on a quasi-delict, despite the parties' relationship being contractual in nature:

After appropriate proceedings, the Court of First Instance of Manila rendered judgment dismissing the complaint upon the ground that plaintiffs cannot recover from the defendants upon the basis of a quasi-delict, because the relation between the parties is contractual in nature; because this case does not fall under Article

2219 of our Civil Code, upon which plaintiffs rely; and because plaintiffs have not established the amount of damages allegedly sustained by them.

The lower court held that plaintiffs' claim for damages cannot be based upon a tort or quasi-delict, their relation with the defendants being contractual in nature. We have repeatedly held, however, that the existence of a contract between the parties does not bar the commission of a tort by the one against the other and the consequent recovery of damages therefor. Indeed, this view has been in effect, reiterated in a comparatively recent case. Thus, in *Air France vs. Carrasco*, involving an airplane passenger who, despite his first-class ticket, had been illegally ousted from his first-class accommodation, and compelled to take a seat in the tourist compartment, was held entitled to recover damages from the air-carrier, upon the ground of tort on the latter's part, for, although the relation between a passenger and the carrier is "contractual both in origin and nature . . . the act that breaks the contract may also be a tort".^[64] (Citations omitted)

However, if the act complained of would not give rise to a cause of action for a quasi-delict independent of the contract, then the provisions on quasi-delict or tort would be inapplicable.^[65]

In *Philippine School of Business Administration v. Court of Appeals*,^[66] petitioner's obligation to maintain peace and order on campus was based on a contract with its students. Without this contract, the obligation does not exist. Therefore, the private respondents' cause of action must be founded on the breach of contract and cannot be based on Article 2176:

Because the circumstances of the present case evince a contractual relation between the PSBA and Carlitos Bautista, the rules on quasi-delict do not really govern. A perusal of Article 2176 shows that obligations arising from quasi-delicts or tort, also known as extra-contractual obligations, arise only between parties not otherwise bound by contract, whether express or implied. However, this impression has not prevented this Court from determining the existence of a tort even when there obtains a contract. In *Air France vs. Carroscoso* (124 Phil. 722), the private respondent was awarded damages for his unwarranted expulsion from a first-class seat aboard the petitioner airline. It is noted, however, that the Court referred to the petitioner-airline's liability as one arising from tort, not one arising from a contract of carriage. In effect, *Air France* is authority for the view that liability from tort may exist even if there is a contract, for the act that breaks the contract may be also a tort. (*Austro-America S.S. Co. vs. Thomas*, 248 Fed. 231).

This view was not all that revolutionary, for even as early as 1918, this Court was already of a similar mind. In *Cangco vs. Manila Railroad* (38 Phil. 780), Mr. Justice Fisher elucidated thus:

"The field of non-contractual obligation is much more broader [sic] than that of contractual obligation, comprising, as it does, the whole extent of juridical human relations. These two fields, figuratively speaking, concentric; that is to say, the mere fact that a person is bound to another by contract does not relieve him from extra-contractual liability to such person. When such a contractual relation exists the obligor may break the contract under such conditions that the same act which constitutes a breach of the contract would have constituted the source of an extra-contractual obligation had no contract existed between the parties."

Immediately what comes to mind is the chapter of the Civil Code on Human Relations, particularly Article 21, which provides:

"Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage." (Italics supplied)

Air France penalized the racist policy of the airline which emboldened the petitioner's employee to forcibly oust the private respondent to cater to the comfort of a white man who allegedly "had a better right to the seat." In *Austro-American*, supra, the public embarrassment caused to the passenger was the justification for the Circuit Court of Appeals, (Second Circuit), to award damages to the latter. From the foregoing, it can be concluded that

should the act which breaches a contract be done in bad faith and be violative of Article 21, then there is a cause to view the act as constituting a quasi-delict.

In the circumstances obtaining in the case at bar, however, there is, as yet, no finding that the contract between the school and Bautista had been breached thru the former's negligence in providing proper security measures. This would be for the trial court to determine. And, even if there be a finding of negligence, the same could give rise generally to a breach of contractual obligation only. Using the test of Cangco, *supra*, the negligence of the school would not be relevant absent a contract. In fact, that negligence becomes material only because of the contractual relation between PSBA and Bautista. In other words, a contractual relation is a condition sine qua non to the school's liability. The negligence of the school cannot exist independently on the contract, unless the negligence occurs under the circumstances set out in Article 21 of the Civil Code.[67] (Citations omitted)

In situations where the contractual relation is indispensable to hold a party liable, there must be a finding that the act or omission complained of was done in bad faith and in violation of Article 21 of the Civil Code to give rise to an action based on tort.[68]

In *Far East Bank and Trust Company v. Court of Appeals*,[69] as the party's claim for damages was based on a contractual relationship, the provisions on quasi-delict generally did not apply. In this case, this Court did not award moral damages to the private respondent because the applicable Civil Code provision was Article 2220,[70] not Article 21, and neither fraud nor bad faith was proved:

We are not unaware of the previous rulings of this Court, such as in *American Express International, Inc. vs. Intermediate Appellate Court* (167 SCRA 209) and *Bank of [the] Philippine Islands vs. Intermediate Appellate Court* (206 SCRA 408), sanctioning the application of Article 21, in relation to Article 2217 and Article 2219 of the Civil Code to a contractual breach similar to the case at bench. Article 21 states:

"Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage."

Article 21 of the Code, it should be observed, contemplates a conscious act to cause harm. Thus, even if we are to assume that the provision could properly relate to a breach of contract, its application can be warranted only when the defendant's disregard of his contractual obligation is so deliberate as to approximate a degree of misconduct certainly no less worse [sic] than fraud or bad faith. Most importantly, Article 21 is a mere declaration of a general principle in human relations that clearly must, in any case, give way to the specific provision of Article 2220 of the Civil Code authorizing the grant of moral damages in culpa contractual solely when the breach is due to fraud or bad faith.

....

The Court has not in the process overlooked another rule that a quasi-delict can be the cause for breaching a contract that might thereby permit the application of applicable principles on tort even where there is a pre-existing contract between the plaintiff and the defendant (*Phil. Airlines vs. Court of Appeals*, 106 SCRA 143; *Singson vs. Bank of the Phil. Islands*, 23 SCRA 1117; and *Air France vs. Carrascoso*, 18 SCRA 155). This doctrine, unfortunately, cannot improve private respondents' case for it can aptly govern only where the act or omission complained of would constitute an actionable tort independently of the contract. The test (whether a quasi-delict can be deemed to underlie the breach of a contract) can be stated thusly: Where, without a pre-existing contract between two parties, an act or omission can nonetheless amount to an actionable tort by itself, the fact that the parties are contractually bound is no bar to the application of quasi-delict provisions to the case. Here, private respondents' damage claim is predicated solely on their contractual relationship; without such agreement, the act or omission complained of cannot by itself be held to stand as a separate cause of action or as

an independent actionable tort.[71] (Citations omitted)

Here, petitioner denies that it was obliged to disclose the facts regarding the hijacking incident since this was not among the provisions of its Trucking Service Agreement with respondent. There being no contractual obligation, respondent had no cause of action against petitioner:

Applying said test, assuming for the sake of argument that petitioner indeed failed to inform respondent of the incident where the truck was later found at the Caloocan Police station, would an independent action prosper based on such omission? Assuming that there is no contractual relation between the parties herein, would petitioner's omission of not informing respondent that the truck was impounded gives [sic] rise to a quasi-delict? Obviously not, because the obligation, if there is any in the contract, that is to inform plaintiff of said incident, could have been spelled out in the very contract itself duly executed by the parties herein specifically in the Trucking Service Agreement. It is a fact that no such obligation or provision existed in the contract. Absent said terms and obligations, applying the principles on tort as a cause for breaching a contract would therefore miserably fail as the lower Court erroneously did in this case.[72]

The obligation to report what happened during the hijacking incident, admittedly, does not appear on the plain text of the Trucking Service Agreement. Petitioner argues that it is nowhere in the agreement. Respondent does not dispute this claim. Neither the Regional Trial Court nor the Court of Appeals relied on the provisions of the Trucking Service Agreement to arrive at their respective conclusions. Breach of the Trucking Service Agreement was neither alleged nor proved.

While petitioner and respondent were contractually bound under the Trucking Service Agreement and the events at the crux of this controversy occurred during the performance of this contract, it is apparent that the duty to investigate and report arose subsequent to the Trucking Service Agreement. When respondent discovered the news report on the hijacking incident, it contacted petitioner, requesting information on the incident.[73] Respondent then requested petitioner to investigate and report on the veracity of the news report. Pursuant to respondent's request, petitioner met with respondent and Matsushita on April 20, 2002 and issued a letter dated April 22, 2002, addressed to Matsushita.[74] Respondent's claim was based on petitioner's negligent conduct when it was required to investigate and report on the incident:

The defendant claimed that it should not be held liable for damages suffered by the plaintiff considering that the proximate cause of the damage done to plaintiff is the negligence by employees of Schmitz trucking. This argument is untenable because the defendant is being sued in this case not for the negligence of the employees of Schmitz trucking but based on defendant's own negligence in failing to disclose the true facts of the hijacking incident to plaintiff Keihin and Matsushita.[75]

Both the Regional Trial Court and Court of Appeals erred in finding petitioner's negligence of its obligation to report to be an action based on a quasi-delict. Petitioner's negligence did not create the *vinculum juris* or legal relationship with the respondent, which would have otherwise given rise to a quasi-delict. Petitioner's duty to respondent existed prior to its negligent act. When respondent contacted petitioner regarding the news report and asked it to investigate the incident, petitioner's obligation was created. Thereafter, petitioner was alleged to have performed its obligation negligently, causing damage to respondent.

The doctrine "the act that breaks the contract may also be a tort," on which the lower courts relied, is inapplicable here. Petitioner's negligence, arising as it does from its performance of its obligation to respondent, is dependent on this obligation. Neither do the facts show that Article 21 of the Civil Code applies, there being no finding that petitioner's act was a conscious one to cause harm, or be of such a degree as to approximate fraud or bad faith:

To be sure, there was inaction on the part of the defendant which caused damage to the plaintiff, but there is nothing to show that the defendant intended to conceal the truth or to avoid liability. When the facts became

apparent to defendant, the latter readily apologized to Keihin and Matsushita for their mistake.[76]

Consequently, Articles 1170, 1172, and 1173 of the Civil Code on negligence in the performance of an obligation should apply.

III

Under Article 1170 of the Civil Code, liability for damages arises when those in the performance of their obligations are guilty of negligence, among others. Negligence here has been defined as "the failure to observe that degree of care, precaution and vigilance that the circumstances just demand, whereby that other person suffers injury." [77] If the law or contract does not provide for the degree of diligence to be exercised, then the required diligence is that of a good father of a family. [78] The test to determine a party's negligence is if the party used "the reasonable care and caution which an ordinarily prudent person would have used in the same situation" [79] when it performed the negligent act. If the party did not exercise reasonable care and caution, then it is guilty of negligence.

In this case, both the Regional Trial Court and the Court of Appeals found that petitioner was negligent in failing to adequately report the April 17, 2002 hijacking incident to respondent and not conducting a thorough investigation despite being directed to do so. The trial court's factual findings, when affirmed by the Court of Appeals, are binding on this Court and are generally conclusive. [80]

The Regional Trial Court found that petitioner's conduct showed its negligent handling of the investigation and its failure to timely disclose the facts of the incident to respondent and Matsushita:

[Orient Freight] was clearly negligent in failing to investigate properly the incident and make a factual report to Keihin and Matsushita. [Orient Freight] claimed that it was pressed for time considering that they were given only about one hour and a half to investigate the incident before making the initial report. They claimed that their employees had no reason to suspect that the robbery occurred considering that the seal of the van remained intact. Moreover, the priority they had at that time was to load the cargo to the carrying vessel on time for shipment on April 19, 200[2]. They claimed that they made arrangement with the Caloocan Police Station for the release of the truck and the cargo and they were able to do that and the objective was achieved. This may be true but the Court thinks that [Orient Freight] had enough time to investigate properly the incident. The hijacking incident happened on April 17, 200[2] and the tabloid Tempo published the hijacking incident only on April 19, 200[2]. This means that [Orient Freight] had about two (2) days to conduct a diligent inquiry about the incident. It took them until May 15, 200[2] to discover that a robbery indeed occurred resulting in the loss of ten pallets or 218 cartons valued at US \$34,226.14. They even denied that there was no police report only to find out that on May 15, 200[2] that there was such a report. It was [Orient Freight] 's duty to inquire from the Caloocan Police Station and to find out if they issued a police report, Yet, it was plaintiff Keihin which furnished them a copy of the police report. The failure of [Orient Freight] to investigate properly the incident and make a timely report constitutes negligence. Evidently, [Orient Freight] failed to exercise due diligence in disclosing the true facts of the incident to plaintiff Keihin and Matsushita. As a result, plaintiff Keihin suffered income losses by reason of Matsushita's cancellation of their contract which primarily was caused by the negligence of [Orient Freight]. [81]

The Court of Appeals affirmed the trial court's finding of negligence:

From the foregoing account, it is evident that [Orient Freight] not only had knowledge of the foiled hijacking of the truck carrying the subject shipment but, more importantly, withheld said information from [Keihin-Everett]. Confronted with the April 19, 2002 tabloid account thereof, [Orient Freight] appears to have further compounded its omission by misleading [Keihin-Everett] and Matsu[s]hita into believing that the subject incident was irresponsibly reported and merely involved a stalled vehicle which was towed to avoid

obstruction of traffic. Given that the police report subsequently obtained by [Keihin-Everett] was also dated April 17, 2002, [Orient Freight's insistence on its good faith on the strength of the information it gathered from its employees as well as the timely shipment and supposed good condition of the cargo clearly deserve scant consideration.[82]

Petitioner's argument that its acts were a "sound business judgment which the court cannot supplant or question nor can it declare as a negligent act"[83] lacks merit. The Regional Trial Court found that the circumstances should have alerted petitioner to investigate the incident in a more circumspect and careful manner:

On this score, [Orient Freight] itself presented the circumstances which should have alerted [Orient Freight] that there was more to the incident than simply a case of mechanical breakdown or towing of the container truck to the police station. [Orient Freight] pointed to specific facts that would naturally arouse suspicion that something was wrong when the container was found in the premises of the Caloocan Police Station and that driver Ricky Cudas was nowhere to be found. The police does [sic] not ordinarily impound a motor vehicle if the problem is merely a traffic violation. More important, driver Ricky Cudas disappeared and was reported missing. When the Caloocan Police chanced upon the container van, it was found straying at C-3 which is outside its usual route. All these circumstances should have been enough for [Orient Freight] to inquire deeper on the real circumstances of the incident.

....

[Orient Freight] talked to Rubelito Aquino and apparently failed to listen closely to the statement given by their truck helper to the Caloocan Police. The truck helper recounted how the engine of the truck stalled and the driver was able to start the engine but thereafter, he was nowhere to be seen. By this circumstance alone, it should have become apparent to [Orient Freight] that the truck driver gypped the truck helper into calling the company and had a different intention which was to run away with the container van. It readily shows that Ricky Cudas intended to hijack the vehicle by feigning or giving the false appearance of an engine breakdown. Yet, [Orient Freight] dismissed the incident as a simple case of a unit breakdown and towing of vehicle allegedly due to traffic violation. Under the circumstances, therefore, the defendant failed to exercise the degree of care, precaution and vigilance which the situation demands.[84]

Despite the circumstances which would have cautioned petitioner to act with care while investigating and reporting the hijacking incident, petitioner failed to do so. Petitioner is responsible for the damages that respondent incurred due to the former's negligent performance of its obligation.

IV

Articles 2200 and 2201 of the Civil Code provide for the liability for damages in contractual obligations:

Article 2200. Indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain.

Article 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.

In *Central Bank of the Philippines v. Court of Appeals*,^[85] this Court explained the principles underlying Articles 2200 and 2201:

Construing these provisions, the following is what this Court held in *Cerrano vs. Tan Chuco*, 38 Phil. 392:

"... Article 1106 (now 2200) of the Civil Code establishes the rule that prospective profits may be recovered as damages, while article 1107 (now 2201) of the same Code provides that the damages recoverable for the breach of obligations not originating in fraud (*dolo*) are those which were or might have been foreseen at the time the contract was entered into. Applying these principles to the facts in this case, we think that it is unquestionable that defendant must be deemed to have foreseen at the time he made the contract that in the event of his failure to perform it, the plaintiff would be damaged by the loss of the profit he might reasonably have expected to derive from its use.

"When the existence of a loss is established, absolute certainty as to its amount is not required. The benefit to be derived from a contract which one of the parties has absolutely failed to perform is of necessity to some extent, a matter of speculation, but the injured party is not to be denied all remedy for that reason alone. He must produce the best evidence of which his case is susceptible and if that evidence warrants the inference that he has been damaged by the loss of profits which he might with reasonable certainty have anticipated but for the defendant's wrongful act, he is entitled to recover. As stated in *Sedgwick on Damages* (Ninth Ed., par. 177):

"The general rule is, then, that a plaintiff may recover compensation for any gain which he can make it appear with reasonable certainty the defendant's wrongful act prevented him from acquiring, . . ." (See also *Algarra vs. Sandejas*, 27 Phil. Rep., 284, 289; *Hicks vs. Manila Hotel Co.*, 28 Phil. Rep., 325.)" (At pp. 398-399.)[86]

The lower courts established that petitioner's negligence resulted in Matsushita's cancellation of its contract with respondent. The Regional Trial Court found:

In the letter dated June 6, 2002, Matsushita pre-terminated its In-House Brokerage Service Agreement with plaintiff Keihin for violation of the terms of said contract. Its President, KenGo Toda, stated that because of the incident that happened on April 17, 2002 involving properties which the plaintiff failed to inform them, Matsushita has lost confidence in plaintiff's capability to handle its brokerage and forwarding requirements. There was clearly a breach of trust as manifested by plaintiff's failure to disclose facts when it had the duty to reveal them and it constitutes fraud. Moreover, the negligence of plaintiff personnel cannot be tolerated as Matsushita is bound to protect the integrity of the company.[87]

It could be reasonably foreseen that the failure to disclose the true facts of an incident, especially when it turned out that a crime might have been committed, would lead to a loss of trust and confidence in the party which was bound to disclose these facts. Petitioner caused the loss of trust and confidence when it misled respondent and Matsushita into believing that the incident had been irresponsibly reported and merely involved a stalled truck.[88] Thus, petitioner is liable to respondent for the loss of profit sustained due to Matsushita's termination of the In-House Brokerage Service Agreement.

As regards the amount of damages, this Court cannot rule on whether the Regional Trial Court erred in using the Profit and Loss Statement submitted by respondent for its computation. The amount of the award of damages is a factual matter generally not reviewable in a Rule 45 petition,[89] The damages awarded by the Regional Trial Court, as affirmed by the Court of Appeals, were supported by documentary evidence such as respondent's audited financial statement. The trial court clearly explained how it reduced the respondent's claimed loss of profit and arrived at the damages to be awarded:

The difference between the total gross revenue of plaintiff for 2002 as reported in the monthly profit and loss statement of [P]14,801,744.00 and the audited profit and loss statement of the amount of [P]10,434,144.00 represents 1/3 of the total gross revenues of the plaintiff for the six months period. Accordingly, the net profit loss of [P]2.5 million pesos as reported in the monthly profit and loss statement of the plaintiff should be reduced by 1/3 or the amount of [P]833,333.33. Therefore, the net profit loss of the plaintiff for the remaining period of six months should only be the amount of [P] 1,666,667.70 and not [P]2.5 million as claimed.[90]

Petitioner has not sufficiently shown why the computation made by the trial court should be disturbed.

WHEREFORE, the petition is DENIED. The January 21, 2010 Decision and April 21, 2010 Resolution of the Court of Appeals in CA-G.R. CV No. 91889 are AFFIRMED.

SO ORDERED.

Carpio (Chairperson), Peralta, Mendoza, and Martires, JJ., concur.

[1] Rollo, pp. 8-30.

[2] Id. at 32-43. The Decision, docketed as CA-G.R. CV No. 91889, was penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Estela M. Perlas-Bernabe (now an Associate Justice of this Court) and Jane Aurora C. Lantion of the Sixth Division, Court of Appeals, Manila.

[3] Id. at 45-46. The Resolution was penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Estela M. Perlas-Bernabe (now an Associate Justice of this Court) and Jane Aurora C. Lantion of the Former Sixth Division, Court of Appeals, Manila.

[4] Id. at 70-92. The Decision, docketed as Civil Case No. 02-105018, was rendered by Judge Virgilio M. Alameda of Branch 10, Regional Trial Court, Manila.

[5] The Court of Appeals Decision refers to it as "Matsuhita."

[6] Rollo, p. 33.

[7] Id.

[8] Id.

[9] Referred to as "Rudelito Aquino" in the Court of Appeals Decision.

[10] Id. at 33.

[11] Id. at 34.

[12] Id.

[13] Id.

[14] Id.

[15] Id. at 34-35.

[16] Id. at 35.

[17] Id. at 70.

[18] Id. at 35.

[19] Id.

[20] Id. at 70-92.

[21] Id. at 86.

[22] Id. at 89.

[23] Id. at 92.

[24] Id. at 91.

[25] Id. at 32-43.

[26] Id. at 38.

[27] Id. at 39. The Court of Appeals Decision mentioned "August 17, 2002" but meant "April 17, 2002."

[28] Id. at 41.

[29] Id.

[30] Id. at 45-46.

[31] Id. at 15.

[32] Id. at 17-18.

[33] 311 Phil. 783 (1995) [Per J. Vitug, En Banc].

[34] Rollo, pp. 19-20.

[35] Id. at 23-24.

[36] Id. at 53-57.

[37] Id. at 53.

[38] Id. at 55.

[39] Id. at 59-62.

[40] Id. at 60.

[41] Id. at 65.

[42] Id. at 67-68.

[43] Section 4 of Rule 45 of the Rules of Court states, in part:

Section 4. Contents of petition. - The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents[.] (Emphasis supplied)

[44] 617 Phil. 543 (2009) [Per J. Brion, En Banc].

[45] Id. at 552-553.

[46] *Spouses Batal v. Spouses Tominaga*, 534 Phil. 798, 804 (2006) [Per J. Austria-Martinez, First Division].

[47] Id.

[48] Id.

[49] Id. at 804-805.

[50] *Fores v. Miranda*, 105 Phil. 266, 275 (1959) [Per J. Reyes, J.B.L., En Banc].

[51] Consolidated Bank and Trust Corp. v. Court of Appeals, 457 Phil. 688, 708 (2003) [Per J. Carpio, First Division].

[52] 700 Phil. 327 (2012) [Per J. Perez, Second Division].

[53] Id. at 357-358.

[54] 417 Phil. 662 (2001) [Per J. Pardo, First Division].

[55] Id. at 670-671.

[56] 291 Phil. 653 (1993) [Per J. Campos, Jr., Second Division].

[57] Id. at 659-660.

[58] Singson v. Bank of the Philippine Islands, 132 Phil. 597, 599-600 (1968) [Per J. Concepcion, En Banc].

[59] 38 Phil. 768 (1918) [Per J. Fisher, En Banc].

[60] Id. at 779-781.

[61] The general formulation of this principle is "the act that breaks the contract may also be a tort" (Air France v. Carrascoso, 124 Phil. 722, 739 (1966) [Per J. Sanchez, En Banc]). The use of the word "tort" instead of "quasi-delict" is significant since this Court has noted that a "quasi-delict, as defined in Article 2176 of the Civil Code ... is homologous but not identical to tort under the common law, which includes not only negligence, but also intentional criminal acts, such as assault and battery, false imprisonment, and deceit." (Coca-Cola Bottlers Philippines, Inc. v. Court of Appeals, 298 Phil. 52, 61 (1993) [Per J. Davide, Jr., First Division], citing the Report of the Code Commission on the Proposed Civil Code of the Philippines).

[62] See American Express International, Inc. v. Cordero, 509 Phil. 619 (2005) [Per J. Sandoval-Gutierrez, Third Division]; Singson v. Bank of the Philippine Islands, 132 Phil. 597 (1968) [Per J. Concepcion, En Banc]; Coca-Cola Bottlers Philippines, Inc. v. Court of Appeals, 298 Phil. 52 (1993) [Per J. Davide, Jr., First Division]; Light Rail Transit Authority v. Navidad, 445 Phil. 31 (2003) [Per J. Vitug, First Division].

[63] 132 Phil. 597 (1968) [Per J. Concepcion, En Banc].

[64] Id. at 599-600.

[65] Far East Bank and Trust Company v. Court of Appeals, 311 Phil. 783, 792-793 (1995) [Per J. Vitug, En Banc].

[66] 282 Phil. 759 (1992) [Per J. Padilla, Second Division].

[67] Id. at 765-766.

[68] Id.

[69] 311 Phil. 783 (1995) [Per J. Vitug, En Banc].

[70] CIVIL CODE, art. 2220 states:

Article 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[71] Far East Bank and Trust Company v. Court of Appeals, 311 Phil. 783, 788-793 (1995) [Per J. Vitug, En

Banc].

[72] Rollo, pp. 17-18.

[73] Id. at 76.

[74] Id. at 33-34.

[75] Id. at 88.

[76] Id. at 91.

[77] *Filinvest Land, Inc. v. Flood-Affected Homeowners of Meritville Alliance*, 556 Phil. 622, 628 (2007) [Per J. Sandoval-Gutierrez, First Division].

[78] CIVIL CODE, art. 1173.

[79] *United Coconut Planters Bank v. Ramos*, 461 Phil. 277, 295 (2003) [Per J. Callejo, Second Division].

[80] *Garcia, Jr. v. Salvador*, 547 Phil. 463, 469-470 (2007) [Per J. Ynares-Santiago, Third Division].

[81] Rollo, p. 86. While this paragraph stated that the year was 2001, the trial court indicated 2002 throughout the Decision.

[82] Id. at 38-39.

[83] Id. at 20.

[84] Id. at 84-86.

[85] 159-A Phil. 21 (1975) [Per J. Barredo, Second Division].

[86] Id. at 50-51.

[87] Rollo, p. 83.

[88] Id. at 38.

[89] *Spouses Lam v. Kodak Philippines, Ltd.*, G.R. No. 167615, January 11, 2016, 778 SCRA 96, 126 [Per J. Leonen, Second Division].

[90] Rollo, p. 90.

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