

VOLTAIRE HANS N. BONGCAYAO, DOING BUSINESS UNDER THE NAME AND STYLE OF VHB BIOPRO ENTERPRISES, AND PETE NICOMEDES PRADO, PETITIONERS, VS. CONFEDERATION OF SUGAR PRODUCERS COOPER...

G.R. No. 225438. January 20, 2021

Ponente: INTING, J.

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INTING, J.:

Before the Court is a Petition for Review[1] on Certiorari under Rule 45 of the Rules of Court assailing the Decision[2] dated January 19, 2016 and the Resolution[3] dated June 28, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 102712 that reversed and set aside the Decision[4] dated March 11, 2014 of Branch 133, Regional Trial Court (RTC), Makati City in Civil Case No. 08-222.

The pertinent facts are as follows:

On October 16, 2007, the Confederation of Sugar Producers Cooperatives (CONFED) solicited the services of VHB Biopro Enterprises (VHB Biopro) and Voltaire Hans N. Bongcayao, through a Letter of Intent[5] signed by the Chief Operating Officer and General Manager of CONFED, Mr. Jose J. Jison (Jison), regarding its intention to purchase urea fertilizers. On October 29, 2017, petitioner Pete Nicomedes Prado (Prado), the attorney-in-fact of VHB Biopro, informed CONFED of VHB Biopro's willingness to supply urea fertilizers.[6]

On December 11, 2007, VHB Biopro and CONFED executed a Sales and Purchase Agreement.[7] In the agreement, VHB Biopro committed to supply and deliver to CONFED 250,000 bags of urea agricultural grade fertilizer in Bredco Port, Bacolod City after CONFED's opening of domestic letter of credit. Likewise, the parties agreed that VHB Biopro shall procure in favor of CONFED, a Performance Bond,[8] through Prudential Guarantee and Assurance, Inc. (PGAI) amounting to P5,000,000.00, to guarantee the performance of VHB Biopro's contractual obligations.[9]

On December 26, 2007, VHB Biopro, represented by Prado, procured a Performance Bond from PGAI in the amount of P5,000,000.00 and secured its payment with a real estate mortgage.

On January 14, 2008, CONFED opened and secured Irrevocable Transferrable Documentary Credit No. BCD2008-01D[10] (Domestic Letter of Credit) from the Land Bank of the Philippines in the amount of P177,500,000.00 in favor of VHB Biopro.

However, VHB Biopro reneged on its obligation to deliver urea fertilizers to CONFED. As a result, CONFED, through its Chairman Roberto J. Cuenca, demanded from PGAI to pay the amount of P5,000,000.00 in accordance with the Performance Bond.[11] In no time, PGAI paid CONFED the amount of the Performance Bond as evidenced by a release and quitclaim and an Official Receipt[12] dated April 2, 2008.

When VHB Biopro and Prado received a notice from PGAI that CONFED made a claim on the Performance

Bond, they immediately filed a Complaint (with Application for the Issuance of Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction)[13] dated March 17, 2008 before the RTC. VHB Biopro and Prado prayed for the nullification of the Sales and Purchase Agreement they executed with CONFED on the ground that the period within which CONFED shall confirm its acceptance of the delivery of the urea fertilizers and the period within which the balance of the purchase price may be collected were not clearly reflected in the Sales and Purchase Agreement. Also, they wanted to enjoin PGAI from foreclosing, processing, and/or collecting on any claim involving the Performance Bond that it issued in favor of CONFED.[14]

VHB Biopro and Prado argued that prior to the signing of the agreement, they observed that the Sales and Purchase Agreement was silent on the time frame within which CONFED shall confirm its acceptance of the delivery of the urea fertilizers and on the period within which the balance of the purchase price may be collected. According to them, Jison repeatedly assured them that the balance of the purchase price shall be payable within seven days from the physical delivery of the urea fertilizers which will be confirmed in writing. Relying on Jison's representation, VHB Biopro and Prado signed the subject Sales and Purchase Agreement. Likewise, VHB Biopro and Prado alleged that the bank required the information as to when CONFED will submit the buyer's acceptance certificate which led them to clarify the matter with CONFED. Prado repeatedly requested CONFED to confirm the time frame in which it will accept the delivery of the urea fertilizers, but CONFED disregarded the requests.[15]

For its part, CONFED denied that Jison assured VHB Biopro that the balance of the purchase price shall be payable within seven days from the physical delivery of urea fertilizers. CONFED maintained that based on Article 09 of the Sales and Purchase Agreement, CONFED shall pay: "First is 50% of the total shipment value upon submission of all documents specified in Article 12 covering the 50% of the Total Shipment Value, Quantity and Quality. Second payment is the balance of Fifty (50%) of the Total Shipment Value as Full Payment upon completion of delivery and final acceptance by the buyer of the Total Shipment Quantity." [16]

CONFED likewise asserted that there is no ambiguity in the Sales and Purchase Agreement because the acceptance certificate will be issued immediately only after the inspection of the product in accordance with Article 07 of the Sales and Purchase Agreement.[17]

CONFED finally asserted that VHB Biopro's failure to deliver the fertilizer on March 4, 2008, which is the agreed delivery date, gave it the legal right to collect the Performance Bond issued by PGAI. By way of counterclaim, CONFED claimed P30,000,000.00 as actual and compensatory damages in the form of tremendous losses in terms of profits from intended sales to CONFED's members/cooperatives. CONFED also demanded P5,000,000.00 by way of temperate damages, P2,000,000.00 as moral damages, and P1,000,000.00 as attorney's fees.[18]

For PGAI, it claimed that it had faithfully complied with its obligation to pay CONFED, as a surety, pursuant to the Performance Bond. PGAI emphasized that VHB Biopro and Prado executed an indemnity agreement wherein they bound themselves to unconditionally pay or reimburse the former the P5,000,000.00 that it had paid. PGAI claimed, by way of counterclaim, the amounts of P1,000,000.00 as compensatory damages, P500,000.00 as exemplary damages, P100,000.00 as attorney's fees, and P5,000.00 per court appearance.[19]

On April 10, 2008, the RTC issued a TRO[20] against PGAI restraining it from foreclosing and collecting any claim involving the Performance Bond. Upon motion of PGAI, the RTC dissolved the injunction on August 1, 2012.[21]

The Ruling of the RTC

On March 11, 2014, the RTC rendered a Decision.[22] The dispositive portion of the Decision reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs Voltaire Hans Boncayao and Pete Nicomedes Prado and against defendants Confederation of Sugar Producers Cooperatives and Prudential Guarantee and Assurance Inc., and the Court issues the following orders, to wit:

1.

Defendant Confederation of Sugar Producers Cooperatives is directed to return to Prudential Guarantee and Assurance Inc., the amount of Five Million Pesos (P5,000,000.00) representing the amount of the Performance Bond;

2.

Defendant Prudential Guarantee and Assurance Inc. is directed to return to plaintiff Pete Nicomedes Prado the property or document evidencing the security given by plaintiff Pete Nicomedes Prado for the Performance Bond free from the mortgage or any other lien or encumbrance arising out of the procurement of the Performance Bond or the claim made upon the Performance Bond by defendant Confederation of Sugar Producers Cooperative; and finally,

3.

The counter-claim of the defendants is DISMISSED.

SO ORDERED.[23]

On April 14, 2014, PGAI filed a Notice of Partial Appeal.[24] On the other hand, CONFED and Jison filed a Notice of Appeal[25] on April 15, 2014. Both assailed the RTC Decision.

The Ruling of the CA

On January 19, 2016, the CA reversed and set aside the RTC. It disposed of the case as follows:

WHEREFORE, premises considered, the Partial Appeal filed by Defendant-Appellant Prudential Guarantee and Assurance Inc., and Appeal filed by Defendant-Appellant Confederation of Sugar Producers Cooperatives and Jose J. Jison are hereby GRANTED. The assailed Decision dated March 11, 2014 of the Regional Trial Court, City of Makati, Branch 133 in Civil Case No. 08-222 is hereby REVERSED. Consequently, the RTC's directive in the assailed Decision 1) ordering Confederation of Sugar Producers Cooperatives to return Php5,000,000.00 to Prudential Guarantee and Assurance Inc. representing the performance bond and 2) ordering Prudential Guarantee and Assurance Inc. to return the property or document evidencing such security, are hereby SET ASIDE.

A new judgment is hereby rendered DISMISSING Plaintiffs- Appellees' complaint for lack of merit.

Defendant-Appellant Prudential Guarantee and Assurance Inc.'s counterclaims are hereby DISMISSED for lack of evidence.

Meanwhile, Defendant-Appellant Confederation of Sugar Producers Cooperative's claim for compensatory damages is hereby GRANTED. Plaintiffs-Appellees VHB Biopro Enterprises and Dr. Pete [Nicomedes] Prado are hereby ordered to pay, jointly and solidarily, the amount of Php30,000,000.00 by way of damages for lost profits. Confederation of Sugar Producers Cooperative's claims for moral damages and attorney's fees are hereby denied for lack of merit.

SO ORDERED.[26]

Aggrieved, petitioners come before the Court raising the following grounds, to wit:

I

The Honorable Court of Appeals committed error of law when it reversed the Decision of the RTC of Makati.

II

Assuming, for the sake of argument, that petitioner VHB Biopro was in default, the Honorable Court of Appeals committed error of law when it awarded compensatory damages in favor of respondent CONFED.[27]

Petitioners contend that the subject Sales and Purchase Agreement does not reflect their verbal agreement that the balance of the purchase price shall be paid seven days upon complete delivery of the urea fertilizers. Thus, they insist that the Sales and Purchase Agreement is ambiguous. Moreover, petitioners claim that the lack of a fixed time frame on inspection and payment makes the subject contract void because it is as if inspection and payment depend upon the will of CONFED which violates the principle of mutuality of contracts under the Civil Code of the Philippines (Civil Code). Finally, petitioners posit that granting, arguendo, that VHB Biopro was in default, the compensatory damages awarded in favor of CONFED is unjust.

Our Ruling

The Court denies the petition.

The crux of the controversy is the determination of whether the Sales and Purchase Agreement entered into by the parties is clear and whether petitioners breached it making CONFED's resort to the Performance Bond proper.

The Court reiterates that in a petition for review on certiorari under Rule 45 of the Rules of Court, its jurisdiction is generally limited to reviewing errors of law. Section 1, Rule 45 of the Rules of Court states that the petition filed shall raise only questions of law, which must be distinctly set forth. The Court explained the difference between a question of fact and a question of law in this wise:

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, its resolution must not involve an examination of the probative value of the evidence presented by the litigants but must rely solely on what the law provides on the given set of facts. If the facts are disputed or if the issues require an examination of the evidence, the question posed is one of fact. The test, therefore, is not the appellation given to a question by the party raising it, but whether the appellate court can resolve the issue without examining or evaluating the evidence, in which case, it is a question of law, otherwise, it is a question of fact.[28]

However, the foregoing rule admits of several exceptions such as where the findings of the RTC and the CA are conflicting or contradictory[29] as in the case at bench. Thus, the Court is constrained to make its own factual findings in order to resolve the issues raised.

The Court is tasked to determine if petitioners breached the terms of the Sales and Purchase Agreement.

It is well settled that when the terms of a contract are clear and leave no room for interpretation, the literal meaning of its stipulations shall therefore control.[30] Thus, once a contract is perfected, it binds both parties and the stipulations therein shall be respected.[31] Considering that the parties entered into a clear and unambiguous Sales and Purchase Agreement, it constituted the law between them. It is the formal expression of their rights, duties, and obligations.[32]

In *Norton Resources and Dev't. Corp. v. All Asia Bank Corp.*,[33] the Court ruled thus:

The cardinal rule in the interpretation of contracts is embodied in the first paragraph of Article 1370 of the Civil Code: "[i]f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control." x x x. A court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them. The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous. A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations. Where the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the contract as a matter of law. If the contract is determined to be ambiguous, then the interpretation of the contract is left to the court, to resolve the ambiguity in the light of the intrinsic evidence.[34]

Here, the Court finds that the provisions of the subject Sales and Purchase Agreement are clear. A careful scrutiny of the parties' agreement would reveal that they agreed on the following terms:[35]

(a)

Within 7 days after the signing of the sales agreement, VHB shall procure a performance bond from PGAI in favor of CONFED;[36]

(b)

CONFED shall open a Letter of Credit within 10 days from the acceptance of the performance bond;[37]

(c)

VHB will deliver the urea within 45 days after the opening of the letter of credit;[38]

(d)

Both parties will execute and issue certain documents corresponding to the sale of urea;[39]

(e)

50% of the total shipment value will be paid by CONFED to VHB after submission of all documents required under Article 12 of the Agreement;[40] and

(f)

Upon completion of the delivery and final acceptance of CONFED of the delivery, the remaining 50% of the total shipment value shall be paid by CONFED.[41]

There is no room for interpretation especially as regards the terms of payment and the corresponding obligations of the parties. Based on the Sales and Purchase Agreement, VHB Biopro undertook to deliver the fertilizer within 45 days from the opening of the Letter of Credit. VHB Biopro cannot be permitted to renege on its obligations by claiming that there are ambiguities in the Sales and Purchase Agreement which it entered with respondents.

Reciprocal obligations are those which arise from the same cause, and in which each party is a debtor and creditor of the other, such that the obligation of one is dependent upon the obligation of the other. They are to be

performed simultaneously, so that the performance of one is conditioned upon the simultaneous fulfillment of the other.[42] In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon them. From the moment one of the parties fulfills their obligation, delay by the other begins.[43]

In this case, it is clear that the parties agreed to undertake reciprocal obligations as provided in the Sales and Purchase Agreement. VHB Biopro has the obligation to deliver the urea within 45 days after CONFED opens the letter of credit. The first half of the total shipment value will be paid by CONFED to VHB Biopro after submission of all documents, while the other half will be paid upon completion of the delivery by VHB Biopro and final acceptance of CONFED of the delivery. However, despite VHB Biopro's receipt of a copy of the Domestic Letter of Credit on January 18, 2008, it failed to comply with its undertaking to deliver the agreed urea fertilizers. This failure on the part of VHB Biopro justified CONFED's claim against the Performance Bond.

In *The Hongkong & Shanghai Banking Corp., Limited v. National Steel Corp., et al.*, [44] the Court judiciously discussed the nature of letter of credit, thus:

A letter of credit is a commercial instrument developed to address the unique needs of certain commercial transactions. It is recognized in our jurisdiction and is sanctioned under Article 567 of the Code of Commerce and in numerous jurisprudence defining a letter of credit, the principles relating to it, and the obligations of parties arising from it.

x x x x

A letter of credit generally arises out of a separate contract requiring the assurance of payment of a third party. In a transaction involving a letter of credit, there are usually three transactions and three parties. The first transaction, which constitutes the underlying transaction in a letter of credit, is a contract of sale between the buyer and the seller. The contract may require that the buyer obtain a letter of credit from a third party acceptable to the seller. The obligations of the parties under this contract are governed by our law on sales.

The second transaction is the issuance of a letter of credit between the buyer and the issuing bank. The buyer requests the issuing bank to issue a letter of credit naming the seller as the beneficiary. In this transaction, the issuing bank undertakes to pay the seller upon presentation of the documents identified in the letter of credit. The buyer, on the other hand, obliges himself or herself to reimburse the issuing bank for the payment made. In addition, this transaction may also include a fee for the issuing bank's services. This transaction constitutes an obligation on the part of the issuing bank to perform a service in consideration of the buyer's payment. The obligations of the parties and their remedies in cases of breach are governed by the letter of credit itself and by our general law on obligations, as our civil law finds suppletory application in commercial documents.

The third transaction takes place between the seller and the issuing bank. The issuing bank issues the letter of credit for the benefit of the seller. The seller may agree to ship the goods to the buyer even before actual payment provided that the issuing bank informs him or her that a letter of credit has been issued for his or her benefit. This means that the seller can draw drafts from the issuing bank upon presentation of certain documents identified in the letter of credit. The relationship between the issuing bank and the seller is not strictly contractual since there is no privity of contract nor meeting of the minds between them. It also does not constitute a stipulation pour autrui in favor of the seller since the issuing bank must honor the drafts drawn against the letter of credit regardless of any defect in the underlying contract. Neither can it be considered as an assignment by the buyer to the seller-beneficiary as the buyer himself cannot draw on the letter. From its inception, only the seller can demand payment under the letter of credit. It is also not a contract of suretyship or guaranty since it involves primary liability in the event of default. Nevertheless, while the relationship between the seller-beneficiary and the issuing bank is not strictly contractual, strict payment under the terms of a letter of credit is an enforceable right. This enforceable right finds two legal underpinnings. First, letters of credit, as will be further explained, are governed by recognized international norms which dictate strict

compliance with its terms. Second, the issuing bank has an existing agreement with the buyer to pay the seller upon proper presentation of documents. Thus, as the law on obligations applies even in commercial documents, the issuing bank has a duty to the buyer to honor in good faith its obligation under their agreement. As will be seen in the succeeding discussion, this transaction is also governed by international customs which this Court has recognized in this jurisdiction.

In simpler terms, the various transactions that give rise to a letter of credit proceed as follows: Once the seller ships the goods, he or she obtains the documents required under the letter of credit. He or she shall then present these documents to the issuing bank which must then pay the amount identified under the letter of credit after it ascertains that the documents are complete. The issuing bank then holds on to these documents which the buyer needs in order to claim the goods shipped. The buyer reimburses the issuing bank for its payment at which point the issuing bank releases the documents to the buyer. The buyer is then able to present these documents in order to claim the goods. At this point, all the transactions are completed. The seller received payment for his or her performance of his obligation to deliver the goods. The issuing bank is reimbursed for the payment it made to the seller. The buyer received the goods purchased.

X X X X

The value of letters of credit in commerce hinges on an important aspect of such a commercial transaction. Through a letter of credit, a seller-beneficiary is assured of payment regardless of the status of the underlying transaction. International contracts of sales are perfected and consummated because of the certainty that the seller will be paid thus making him or her willing to part with the goods even prior to actual receipt of the amount agreed upon. The legally demandable obligation of an issuing bank to pay under the letter of credit, and the enforceable right of the seller-beneficiary to demand payment, are indispensable essentials for the system of letters of credit, if it is to serve its purpose of facilitating commerce. Thus, a touchstone of any law or custom governing letters of credit is an emphasis on the imperative that issuing banks respect their obligation to pay, and that seller-beneficiaries may reasonably expect payment, in accordance with the terms of a letter of credit.[45]

A letter of credit is an engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit.[46] Through a letter of credit, the bank merely substitutes its own promise to pay for the promise to pay of one of its customers who in return promises to pay the bank the amount of funds mentioned in the letter of credit plus credit or commitment fees mutually agreed upon.[47] Once the issuing bank shall have paid the beneficiary after the latter's compliance with the terms of the letter of credit, the issuing bank is entitled to reimbursement for the amount it paid under the letter of credit.[48] In other words, if the customer of the bank is the buyer in a contract of sale or sales agreement, as in the case at bench, the bank guarantees to the seller-beneficiary that the buyer's payment of the goods will be received in accordance with the agreement. Once the bank pays the seller-beneficiary, it is entitled to reimbursement from its customer, the buyer. Clearly, the letter of credit is an assurance to the seller that he/she will be paid the agreed amount at a certain period of time.

Here, the Domestic Letter of Credit No. BCD2008-01D issued by Land Bank of the Philippines, states:

We hereby authorize you to value on LAND BANK OF THE PHILIPPINES your draft on CONFEDERATION OF SUGAR PRODUCERS COOPERATIVES (CONFED) xxx xxx xxx or sums not exceeding PESOS: ONE HUNDRED SEVENTY SEVEN MILLION FIVE HUNDRED THOUSAND ONLY (Php177,500,000.00) to be accompanied by the following documents:

xxx xxx xxx

All terms and conditions must be in accordance with the Sales and Purchase Agreement duly signed and dated December 11, 2007.[49]

Despite VHB Biopro's receipt of a copy of the Domestic Letter of Credit on January 18, 2008, it failed to perform its obligation to deliver the agreed urea fertilizers to CONFED. Simply stated, despite the bank's assurance to VHB Biopro that it will be paid the amount covered in the letter of credit, the latter failed to initiate the delivery of the fertilizers to CONFED. In view of VHB Biopro's default, the Court finds that the amount corresponding to the performance bond was properly paid by PGAI to CONFED.

Considering that there was a clear failure of VHB Biopro to deliver the urea fertilizers to CONFED under the terms of the Sales and Purchase Agreement, the amount corresponding to the Performance Bond was properly paid by PGAI to CONFED. The Performance Bond was executed for the purpose of ensuring VHB Biopro's faithful compliance with the terms of the Sales and Purchase Agreement. Article 11 thereof provides:

"ARTICLE 11: Performance Bond:

To guarantee the performance of the SELLER'S contractual obligations, the SELLER shall issue to the Buyer through Prudential Guarantee and Assurance Corporation a Performance Bond amounting to Five Million Pesos (P5,000,000.00). The Performance Bond will be submitted to the BUYER within seven (7) days after the signing of this Sales and Purchase Agreement. The BUYER's letter of credit will be opened within ten (10) days after the receipt and acceptance of the Performance Bond by the BUYER."

Having established VHB Biopro's default, the Court finds proper CONFED's claim and PGAI's payment of the Performance Bond's value. The rule is that when the principal obligor defaults in its obligation, the liability of the surety attaches. Article 2047 of the Civil Code is clear:

ARTICLE 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.

If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship. (1822a)

Through a contract of suretyship, one party called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of another party, called the obligee.[50] As a result, the surety is considered in law as being the same party as the debtor in relation to whatever is adjudged touching upon the obligation of the latter, and their liabilities are interwoven as to be inseparable.[51]

In this case, it is evident in Article 11 of the Sales and Purchase Agreement that the purpose of the Performance Bond is to guarantee the performance of VHB Biopro's contractual obligations. As surety, PGAI rightfully paid the amount of the Performance Bond upon demand from CONFED and foreclosed the mortgage executed by VHB Biopro. Notably, VHB Biopro executed a real estate mortgage in order to secure payment corresponding to the Performance Bond. Likewise, VHB Biopro executed an indemnity agreement binding it and Mr. Prado to reimburse PGAI in the event that the latter pays CONFED the value of the Performance Bond. Based on the real estate mortgage and the Indemnity Agreement, it is apparent that PGAI has the right to be reimbursed upon payment to CONFED. Records reveal that VHB Biopro failed to redeem the foreclosed property; thus, there is no obstacle for PGAI to transfer the ownership of the property to its name.

As to the PGAI's counterclaims, the CA correctly denied them for lack of evidence. Likewise, as to CONFED's claim for compensatory damages, the Court finds that it is not supported by substantial evidence.

Article 2200 of the Civil Code provides that 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. Moreover, Article 2201 of the Civil Code instructs that 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.[52]

In *Central Bank of the Phils. v. Court of Appeals*,[53] the 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 (1918):

"x x x 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): x x x[54]

The Court in *San Miguel Foods, Inc., et al. v. Magtuto*[55] reiterated that there are two kinds of actual or compensatory damages: (1) the loss of what a person already possesses, and (2) the failure to receive as a benefit that which would have pertained to them. In the latter instance, the familiar rule is that damages consisting of unrealized profits, frequently referred to as *ganacias frustradas* or *lucrum cessans*, are not to be granted on the basis of mere speculation, conjecture, or surmise, but rather by reference to some reasonably definite standard such as market value, established experience, or direct inference from known circumstances.[56] Thus, to justify a grant of actual or compensatory damages, it is necessary to prove with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party, the actual amount of loss.

In the case at bench, CONFED failed to present any persuasive proof that it is entitled to the compensatory damages awarded by the CA. Its claim for lost profits remained unsubstantiated and unproven. It is a fundamental principle of the law on damages that, while one injured by a breach of contract shall be awarded fair and just compensation commensurate with the loss sustained as a consequence of the defendant's acts or omission, a party is entitled only to such compensation for the pecuniary loss that he or she has duly proven. Actual damages cannot be presumed and cannot be based on flimsy, remote, speculative and non-substantial proof.[57]

In any case, under Article 2224 of the Civil Code, temperate damages may be recovered when pecuniary loss has been suffered but the amount cannot be proven with certainty. In such cases, the amount of the award is left to the discretion of the courts, according to the circumstances of each case, but the same should be reasonable, considering that temperate damages should be more than nominal but less than compensatory.[58]

Here, the lower courts made factual findings that VHB Biopro failed to perform its obligation to deliver the agreed urea fertilizers to CONFED despite its receipt of the Domestic Letter of Credit in January 2008. This factual finding is deemed conclusive and the circumstances appearing on record convinced the Court that CONFED suffered some pecuniary loss due to its failure to sell the fertilizers to its buyers. Understandably, it is

difficult, if not impossible, to adduce solid proof of the losses suffered by CONFED as a consequence of VHB Biopro's breach. Certainly, however, one cannot simply discount the fact that business opportunities were lost. Hence, it is only just that CONFED be awarded temperate or moderate damages. In view of the income estimated to have been lost which is about P30,000,000.00, but not duly proven, the Court deems the amount of P4,000,000.00 as temperate damages reasonable under the circumstances.[59]

Further, the deletion of the award of moral damages is proper because it is not recoverable in a mere breach of contract. Moral damages may be awarded when in a breach of contract the defendant acted in bad faith, or was guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligation.[60] It is true that VHB Biopro committed a breach in the performance of its obligation in the Sales and Purchase Agreement. However, absent a clear showing that VHB Biopro acted in bad faith, or in an oppressive manner, it cannot be held liable for moral damages.

Finally, the attorney's fees were also correctly deleted by the CA. The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate.[61] They are not to be awarded every time a party wins a suit.[62] The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification.[63] Attorney's fees are awarded only in those instances enumerated in Article 2208[64] of the Civil Code which must always be reasonable.[65] Here, there is no factual evidence to award attorney's fees; thus, the CA did not err in denying CONFED's claim for attorney's fees.

WHEREFORE, the petition is DENIED. The Decision dated January 19, 2016 and the Resolution dated June 28, 2016 of the Court of Appeals in CA-G.R. CV No. 102712 are AFFIRMED with MODIFICATION in that the amount of P30,000,000.00 as damages for lost profits is deleted and, in lieu thereof, petitioners VRB BIOPRO ENTERPRISES and Pete Nicomedes Prado are found liable, jointly and solidarily, to pay respondent Confederation of Sugar Producers Cooperatives the amount of P4,000,000.00 as temperate damages.

SO ORDERED.

Leonen (Chairperson), Hernando, and Delos Santos, JJ., concur.
Rosario, J., on official leave.

[*] Spelled as Boncayao in some parts of the rollo.

[1] Rollo, pp. 12-34.

[2] Id. at 35-52; penned by Associate Justice Noel G. Tijam with Associate justices Francisco P. Acosta and Eduardo B. Peralta, Jr., concurring.

[3] Id. at 53-59.

[4] Records, Vol. IV, pp. 1736-1747; penned by Presiding Judge Elpidio R. Calis.

[5] Records, Vol. I, pp. 16-17.

[6] Id. at 18.

[7] Rollo, pp. 62-67.

[8] Records, Vol. I, p. 25.

[9] See Article 11 of the Sale and Purchase Agreement, id. at 22.

[10]Id. at 140-141.

[11] See Letter dated March 13, 2008 of the Confederation of Sugar Producers Cooperatives (CONFED), id. at 38.

[12] Id. at 210.

[13] Id. at 1-13.

[14] Rollo, p. 37.

[15] Id. at 37-38.

[16] Id. at 38, 64.

[17] Id. at 38.

[18] Id.

[19] Id. at 39.

[20] See Order dated April 10, 2008 of Branch 133, Regional Trial Court (RTC), Makati City, records, Vol. I, pp. 99-102.

[21] See Order dated August 1, 2012 of Branch 133, RTC, Makati City, records, Vol. II, p. 605.

[22] Records, Vol. IV, pp. 1736-1747.

[23] Id. at 1746-1747.

[24] Id. at 1754-1756.

[25] Id. at 1749-1750.

[26] Rollo, pp. 51-52.

[27] Id. at 20.

[28] *Tina v. Sta. Clara Estate, Inc.*, G.R. No. 239979, February 17, 2020, citing *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 767 (2013).

[29] *Mira v. Vda. de Erederos, et al.*, 721 Phil. 772, 786 (2013). See also *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, 665 Phil. 784, 789 (2011), where the Court enumerated the following exceptions to the general rule: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) When the findings are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

[30] See Article 1370 of the Civil Code of the Philippines (Civil Code).

[31] See *Power Sector Assets and Liabilities Management Corp. v. Pozzolanic Phils. Inc.*, 671 Phil. 731 (2011).

[32] Felsan Realty & Dev't. Corp. v. Commonwealth of Australia, 561 Phil. 726, 735-736 (2007), citing Arwood Industries, Inc. v. D.M Consunji, Inc., 442 Phil. 203, 212 (2002).

[33] 620 Phil. 381 (2009).

[34] Id. at 388, citing Benguet Corp., et al. v. Cabildo, 585 Phil. 23, 34-35 (2008).

[35] Rollo, pp. 43-44.

[36] Article 11 of the Agreement

ARTICLE 11: PERFORMANCE BOND

To guarantee the performance of the SELLER's contractual obligations, the SELLER shall issue to the Buyer through Prudential Guarantee and Assurance Corporation a Performance Bond amounting to Five Million Pesos (P5,000,000.00). The Performance Bond will be submitted to the BUYER within seven (7) days after the signing of this Sales and Purchase Agreement. The BUYER's letter of credit will be opened within ten (10) days after receipt and acceptance of the performance bond by the BUYER.

[37] Id.

[38] Article 05 of the Sales and Purchase Agreement

ARTICLE 05: PRODUCT DELIVERY

The shipment of TWO HUNDRED FIFTY THOUSAND (250,000.00) bags will be unloaded and delivered ex-pier, Bredco Port, Bacolod City, within forty-five (45) days after the opening of the BUYER'S DOMESTIC Letter of Credit.

[39] Article 12 of the Agreement

ARTICLE 12: PAYMENT DOCUMENTATION

A full set of the following documents will be issued and duly accomplished/ signed by both parties in order to collect payment from the domestic letter of credit:

- Bank draft
- SELLER's Commercial Invoice
- SELLER's Official Delivery Receipt duly signed by both parties
- BUYER's Acceptance Certificate as to Quantity and Quality of the Product delivered as per contract.

[40] Article 9 of the Agreement

ARTICLE 09: PAYMENT TERMS

Irrevocable, confirmed, transferable, Domestic Letter of Credit (DLC) payable on two payment basis. First is Fifty (50%) of the Total Shipment Value upon submission of all documents specified in Article 12 covering the 50% of the Total Shipment Value, Quantity and Quality. Second payment is the balance of Fifty (50%) of the Total Shipment Value as Full Payment upon completion of delivery and final acceptance by the BUYER of the Total Shipment Quantity.

[41] Id.

[42] Consolidated Industrial Gases, Inc. v. Alabang Medical Center, 721 Phil. 155, 168 (2013), citing Cortes v. Court of Appeals, 527 Phil. 153, 160 (2006), further citing Asuncion v. Evangelista, 375 Phil. 328, 356 (1999).

[43] Article 1169 of the Civil Code of the Philippines (Civil Code) provides:

ARTICLE 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1)

When the obligation or the law expressly so declare; or

(2)

When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3)

When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins. (1100a)

[44] 781 Phil. 551-583. Citations omitted.

[45] Id. at 566-570.

[46] Bank of Commerce v. Serrano, 491 Phil. 661, 666 (2005), citing Prudential Bank v. Intermediate Appellate Court, 290-A Phil. 1, 11-12 (1992).

[47] Id.

[48] Galvez, et al. v. Court of Appeals, et al., 686 Phil. 924, 938 (2012), citing Prudential Bank v. Intermediate Appellate Court, 290-A Phil. 1 (1992).

[49] Records, Vol. I, pp. 140-141.

[50] The Mercantile Insurance Co., Inc. v. DMCI-Laing Construction, Inc., G.R. No. 205007, September 16, 2019, citing People's Trans-East Asia Insurance Corp. v. Doctors of New Millennium Holdings, Inc., 741 Phil. 149, 161 (2014), further citing Stronghold Insurance Company v. Tokyu Construction Company, Ltd., 606 Phil. 400, 411 (2009).

[51] Id., citing Trade and Investment Development Corporation of the Philippines v. Asia Paces Corporation, 726 Phil. 555, 565 (2014).

[52] Article 2201 of the Civil Code provides:

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.

[53] 159-A Phil. 21 (1975).

[54] Id. at 50-51.

[55] G.R. No. 225007, July 24, 2019.

[55] G.R. No. 225007, July 24, 2019.

[56] *Id.*, citing *Terminal Facilities & Services Corp. v. PPA*, 428 Phil. 99, 138 (2002).

[57] *Rep. of the Phils. v. Looyuko, et al.*, 788 Phil. 1, 17 (2016), citing *Sps. Sabio v. The International Corporate Bank, Inc.*, 416 Phil. 785, 826 (2001), further citing *Lufthansa German Airlines v. CA*, 313 Phil. 503, 526 (1995) and *Sps. Ong v. CA*, 361 Phil. 338, 353 (1999); see also *Luxuria Homes, Inc. v. CA*, 361 Phil. 989, 1002 (1999).

[58] *Id.* citing Articles 2224 and 2216 of the Civil Code.

[59] *Id.* See also *Philippine Airlines, Inc. v. Lao Lim, et al.*, 697 Phil. 497 (2012) and *Newsounds Broadcasting Network Inc., and Consolidated Broadcasting System, Inc., v. Hon. Dy, et al.*, 602 Phil. 255 (2009).

[60] *Integrated Packaging Corp. v. Court of Appeals*, 388 Phil. 835, 847 (2000), citing J. Vitug, *Compendium of Civil Law and Jurisprudence*, p. 841 (1993).

[61] *PNCC v. APAC Marketing Corp.*, 710 Phil. 389, 396 (2013).

[62] *Id.*

[63] *Id.*

[64] Article 2208 of the Civil Code provides:

ARTICLE 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1)

When exemplary damages are awarded;

(2)

When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3)

In criminal cases of malicious prosecution against the plaintiff;

(4)

In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5)

Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs plainly valid, just and demandable claim;

(6)

In actions for legal support;

(7)

In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8)

In actions for indemnity under workmen's compensation and employer's liability laws;

(9)

In a separate civil action to recover civil liability arising from a crime;

(10)

When at least double judicial costs are awarded;

(11)

In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. In all cases, the attorney's fees and expenses of litigation must be reasonable.

[65] *Torres, Jr., et al. v. Lapinid, et al.*, 748 Phil. 537, 599 (2014).

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