

MOBIL OIL PHILIPPINES, INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND FERNANDO A. PEDROSA, RESPONDENTS.

G.R. No. 58122. December 29, 1989

Ponente: PARAS, J.

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PARAS, J.:

Before Us is a petition for review which questions the decision[1] of the Court of Appeals affirming in toto the decision[2] of the Court of First Instance of Quezon City in Civil Case No. Q-18580, the dispositive part of which reads as follows:

"WHEREFORE, judgment is hereby rendered sentencing defendant to pay plaintiff the following sums:

P3,470.00 - for unearned profits on the subject pre-paid order of February 15, 1974;

P2,360.00 - for loss of earnings due to the suspension of gasoline deliveries, occasioned by plaintiff's refusal to pay the price differentials;

P25,000.00 - for exemplary damages

P50,000.00 - for moral damages, and

P10,000.00 - for attorney's fees

P90,830.00 - T o t a l

Defendant's counterclaim against plaintiff is hereby dismissed for lack of merit."

The original case was an action for damages filed by private respondent Fernando A. Pedrosa against petitioner Mobil Oil Philippines alleging that the latter deliberately delayed the delivery of gasoline to him notwithstanding his pre-paid order dated February 14, 1974.

The undisputed facts of the case as found by the lower court and affirmed by the appellate court are as follows:

Plaintiff is a dealer of defendant's petroleum products and accessories, operating a Mobil gasoline service station under the name of Anne Marie Mobil Service Station located at Aurora Blvd., San Juan, Metro Manila. The contractual relationship between plaintiff and defendant is governed by a Retail Dealer Contract, Exh. A, also Exh. 1.

In the later part of 1973, an international oil crisis came about by reason of the concerted action of principal oil producing countries to increase the oil prices. The Philippines was not spared of this economic scourge, and to meet the emergency, as the commodity became scarce while the demand therefore remained the same.

On February 15, 1974 - a Friday - while there was still this oil crisis, plaintiff placed with defendant a pre-paid order for 8,000 liters of premium gasoline and 2,000 liters of regular gasoline paying therefore a PBTC Cashier's Check in the amount of P4,610.00 was received at on the basis of the following computations:

8,000 liters MP at P0.585

P3,510.00

2,000 liters MR at P0.53

1,060.00

Delivery Freight Cargo

____40.00

Total

P4,610.00

The above computation is contained in a product order form, Exh. 3, which was prepared and filled up by defendant's order clerk when plaintiff placed his order on Feb. 15, 1974, as in fact the handwritings thereon are those of the said order clerk. It is stated in Exh. 6 that the order was taken at '2:20' (Exh. 3-A) and 12/15' and the delivery due date is 'Today'.

Mr. Alberto Latuno, defendant's accounting analyst assigned on the order and billing section, explains the processing of an order, thusly: The order clerk prepares the product order form (Exh. 6) and it goes to him for checking then to the credit clerk for checking in their ledger; then to the credit man, Mr. F. Marcella, who has all the necessary documents and the authority to cause the approval of the release of the order; then to the volume comptroller; then to the coupon clerk; then it goes back to him for final invoicing. (Tsn., 9-8-75, pp. 135-144)

Mr. Floro Marcella, defendant's credit man, approved this order of February 15, 1974 (Tsn., 9-3-75, p. 89), although he was no longer involved in its subsequent processing in fact, even when there was a price differential which occurred after his approval was made, the said order was not given back to him for reprocessing (Tsn., 9-3-75, p. 66).

Mr. Alberto Latuno further states that the order, Exh. B, did not come back to him for invoicing that Friday afternoon (February 15, 1974); it was on February 19, 1974 that he received again the order, because the processing thereof by one coupon comptroller was completed only on that day, the reason for the delay being that on February 18 there was a price increase and they had to give priority to the recall of invoices already with their warehouse and dispatcher for repricing. (Tsn., 9-8-75, pp. 144-148). He also stated that since Exh. 8 was covered by the price increase, he altered the computation therein and made the necessary changes; this, he crossed out the old computation and re-filled with a new one based on the new increased price, and placed the words 'short P2,880.00'. (Tsn., 9-8-75, pp. 148-150). Plaintiff was informed of the difference in price, and as the price differential was not paid by plaintiff, he gave Exh. 3 back to the clerk assigned to the order and billing section. (Tsn., 9-8-75, 151).

It appears that due to a posting error committed by defendant's employees in the preparation of plaintiff's monthly statement of account, there remained outstanding against plaintiff an obligation in the sum of P5,653.34, which he paid after proper verification by his accountant. However, plaintiff refused to pay the price differential of P2,880.00 corresponding to the February 15, order, as reflected in Exhibit 3, but this notwithstanding defendant delivered to plaintiff this February 15 order on March 5, 1974, albeit on the basis of the new increased prices thus reflecting an outstanding obligation of P2,880.00 against plaintiff.

(pp. 51-53, Rollo)

Thus it appears from the record that there was an increase in the price of gasoline on February 18, 1974. Plaintiff was charged the cost of the gasoline under the increased rates, or in the total sum of P7,490.00 including delivery

and freight charges. It was defendant's contention that since the gasoline was actually delivered on March 5, 1974, the then prevailing increased rates should be made to apply and not the price prevailing on February 14, 1974 the date when the order was made and paid by plaintiff with a cashier's check.

To such contention, plaintiff disagreed by arguing that defendant committed a contractual breach and incurred in delay that should make it liable for damages when it did not deliver the gasoline to plaintiff on the agreed due date of delivery appearing on the prepaid order i.e. February 15, 1974 and that therefore defendant cannot claim benefits by reason of this breach.

Both the trial court and the appellate court found in favor of plaintiff, as mentioned earlier, hence, defendant now comes to Us on a petition by certiorari submitting that the:

"Respondent Hon. Court of Appeals in its Decision of June 22, 1981 (Annex "A") and its Resolution of September 3, 1981 (Annex "G"), decided questions of substance contrary to law and evidence as well as the applicable decisions of the Honorable Court, and acted without jurisdiction and/or with grave abuse of discretion when it failed to make the finding that:

1. The retail dealer agreement (Exh. 1) is merely a contract to buy and sell, and is not a perfected contract to sell.
2. Under the retail dealer agreement, the respondent, as buyer, must make an order for the products covered, and the petitioner as seller has to approve the order, before there can be a perfected sale.
3. The product order form (Exh. 3) was merely an offer made by the respondent to purchase the goods listed therein and was not a perfected contract of sale.
4. The offer (product order form, Exhibit 3) became a perfected contract of sale only upon delivery of the products ordered.
5. The proper price that should be paid by respondent is that prevailing at the time of actual delivery.
6. Petitioner was not guilty of delay in delivering gasoline.
7. Granting for the sake of argument, that there was delay on the part of petitioner, the same was not deliberate.
8. Petitioner did not suspend gasoline deliveries from February 18 to February 23, 1974.
9. Respondent did not suffer damages, actual or otherwise.

(pp. 172-173, Rollo)

Simply stated, petitioner contends that it did not commit a breach of contract since there was no perfected contract of sale with the private respondent and therefore petitioner cannot be made liable for any damage due to delay or breach of contract. Petitioner contends that Exh. "A" or Exh. "1" the Retail Trade Agreement is merely a contract to buy and sell.

We cannot sustain petitioner's contentions.

The pertinent provision of the Retail Trade Agreement or Exh. "A" or Exh. "1", which is Par. 2 reads as follows:

"2 PRICES, TERMS, DELIVERIES SELLER agrees to sell and BUYER agrees to purchase at SELLER's current wholesale/dealer's prices and/or current dealer's discounts prevailing on date and at point of delivery and in such quantities as the BUYER may from time to time require and the SELLER may approve at SELLER'S option. All prices are payable in cash at the time of delivery or at the time the order is placed, except to the extent credit is extended. x x x (pp. 53-54, Rollo)

Thus, it can be gathered clearly from the above quoted portion of the dealership agreement that "the price prevailing on date and at point of delivery should determine how respondent dealer should pay defendant (petitioner) on the order of February 15, 1974.

A scrutiny of the prepaid product order form dated February 15, 1974 shows that the delivery date was stated as "Today" or February 15, 1974 and also the word "rush". Since the said prepaid order was prepared on the same date by petitioner's Order Clerk and after being thus approved by petitioner's credit man, private respondent paid for the price therein indicated by tendering a Prudential Bank Cashier's Check #19972. Because of this, petitioner Mobil became duty bound to deliver the gasoline to private respondent on February 15, 1974 and the price paid for by private respondent was that price then prevailing which was the amount indicated in private respondent's cashier's check given to petitioner. By actually delivering the gasoline on March 6, 1974, petitioner committed a contractual breach and incurred in delay that should make it liable for damages.

In invoking that no contract of sale was existing, petitioner referred to the RTA dealership as merely a contract to buy and sell. Private respondent agreed that the RTA dealership agreement is not a contract of sale but in the same vein argued that it is a mere trade agreement or contract governing the relationship between Mobil and respondent Pedrosa regarding the operation of a gasoline station and the marketing of Mobil petroleum products and prescribing in general terms, among other things, how the ensuing subsidiary contract orders for Mobil products were to be placed and delivered under said dealership agreement. And one such contract order is that product order form (Exh. "3") which listed down the gasoline ordered by respondent Pedrosa and its corresponding price which was approved by Mobil and paid for by respondent Pedrosa with his Cashier's check as already mentioned earlier. Said prepaid order form was a perfected contract of sale the moment it was approved and accepted by Mobil through its proper representative on the same day and paid for by respondent Pedrosa likewise on the same day as evidenced by Mobil's Cash Receipt No. C-078355. On the part of Pedrosa it can even be said that the contract was consummated as far as he was concerned since he executed his part of the contract by his prepayment of the order.

The other assigned errors of petitioner question the finding of facts of the Court of Appeals affirming those of the trial court quoted as follows:

"The second issue to be resolved is whether or not the delay in the delivery was intentional. The Court finds and so holds that defendant deliberately delayed the delivery of the gasoline in question to a date subsequent to February 15, 1974, in the erroneous belief that thereby it could impose upon the defendant the increased new price that took effect on February 18, 1974, considering the following facts and circumstances to wit:

1. The delay in the delivery of the gasoline according to defendant's witness Mr. Alberto Latuna was due to the fact that the processing of the subject order by the coupon comptroller was completed only on February 19, 1974 because on February 18 there was a price increase and they had to give priority to the recall of invoices already with their warehouse and dispatcher for re-pricing. (Tsn., 9-8-75, pp. 144-176). Thus, another Mobil dealer, plaintiff's witness Joaquin Coronel, suffered the same fate, although his prepaid order was made earlier on February 14, 1974, a Thursday.

2. Defendant alleges that for 'plaintiff refusal to pay the price differential,' aside from the fact that he had an outstanding account with defendant Mobil did not deliver the order of February 15, 1974 until March 5 of the same year, plaintiff having paid the day previously his indebtedness to Mobil in the sum of P5,653.34' (on p. 4 of Memorandum of the Defendant). As heretofore discussed, plaintiff's refusal to pay the price differential was justified, and therefore cannot be considered as a valid reason for the delay. The alleged outstanding account of plaintiff in favor of defendant is admittedly due to a posting error committed by defendant's employees, which upon proper verification by plaintiff's accountant was fully paid. During the month of January 1974, this outstanding account already surfaced which the said posting error was discovered, but it did not affect the

gasoline deliveries for the same month of January and early part of February 1974. However, when defendant anticipated the February 18 increase in oil prices, it conveniently invoked this outstanding account to delay the plaintiff's pre-paid order of February 15. There is evident bad faith in the foregoing actuations of defendant.

3. Defendant argues that plaintiff's pre-paid order of February 15, a Friday, could not be delivered until after February 18 because it was placed at 2:20 p.m. and defendant makes no delivery on Saturdays and Sundays. The argument pales vis-a-vis the fact, as shown by the very evidence of defendants; viz the due date of delivery is February 15, 1974, a Friday. Besides, it has been proved that defendant has made gasoline deliveries on a Saturday, within the months of January and February 1974, to wit: January 5, 1974 (Exhs. J & K; Tsn. 4-22-76, pp. 20 & 27). And February 28, 1974 (Exh. L & M; Tsn., 4-11-76, pp. 26-27, 32-33).

In view of the above findings

a) that defendant committed a contractual breach and incurred in delay with respect to plaintiff's pre-paid order of February 15, 1974, by delivering the subject gasoline beyond the agreed due date of delivery; and

b) that the delay in the delivery was intentional on the part of the defendant, in anticipation of the increase of oil prices on February 18, 1974, for the obvious purpose of profiting thereby;

the Court holds liable to plaintiff for damages, as follows:

1. Plaintiff is entitled to the profits that would have accrued in his favor if the gasoline covered by the subject pre-paid order of February 15, 1974 was timely delivered to him. As reflected in Exh. I, such profits amount to P3,470.00.

2. Due to the suspension in gasoline deliveries between the period from February 18 to 28, 1974, plaintiff suffered loss of earnings amounting to P2,380.00 per computation in Exh. I.

3. Defendant took unfair advantage of the anticipated oil increase on February 18, 1974, motivated by a desire to rake for itself substantial profits that legitimately belonged to its Mobil dealers, similarly situated as plaintiff. It threatened plaintiff and made good its threat to suspend gasoline deliveries, if plaintiff should not accede to its undue demand for the payment of the price differential. These actuations of defendant are indeed oppressive and malevolent that should make it liable for exemplary damages, which this Court assesses in the amount of P25,000.00.

4. On his moral damage claim, plaintiff testified as follows:

ATTY. FERRER

Q Now, aside from this actual damages or compensatory damages that you were testifying to a while ago, can you tell us in what way this particular incident you had with the Company regarding the withholding of the February 15 order and so on, affect you personally and your clientele?

A In the first place, you will recall that this time there was a very harsh demand for gasoline and there were about at least two hundred or three hundred cars lined up waiting for their chance to get their twenty (20) liters fuel for the day and since we have been operating since 1966 we have developed a clientele which relied on us for their fuel supplies, because of the fact that we were unable, by virtue of this failure to deliver by Mobil Oil, to provide our clientele and the public in general with this allocation of ours, my oil customers were highly disgusted with us. And in fact some customers complained to the Metrocom that we are not giving gasoline as required by the President no less.

Q Were you visited by the Metrocom or any other Government Agency regarding your failure to sell gasoline to the public during this period?

A Yes, sir.

Q What happened?

A There was a Metrocom, I believe it was a Lieutenant, who demanded to know why we are not giving gasoline to the public and we could only explain we had no gasoline in the first place. They did not believe us, so we showed them the contents of the tank which was empty. In the second place, a team from the Price Control Council accompanied by a Metrocom Sergeant, visited us to demand from us why we were not supplying our customers. They insinuated that we were hoarding gasoline and in fact the empty oil cans in the gasoline station were brought out and they said there were prima facie evidence of hoarding. In fact I have to remind them that if I am hoarding I would have gasoline, not to mention of course near fistheads (sic) during the day caused near fistfights with my boss in the station. On the personal side I felt that as I explained to Mr. Oliveros, I felt that it was a matter of principle that I would have to stand for what I believe on, any due right to be delivered what I have paid for and that considering that our relationship with Mobil Oil had been such a long standing one, they should have considered that this price increase should have been handled with more objectivity.

Q How about you personally, how did this incident affect you?

ATTY. VENERACION:

That is what he has been answering, Your Honor.

ATTY. FERRER:

Q Personally and emotionally?

A As Mr. Oliveros and Mr. Estagle know I was very very upset over this matter. In fact, I was practically shouting over the telephone over this matter and I was deeply upset over this matter, Your Honor. (Tsn., 1-8-75, pp. 70-76).

Considering the foregoing, the Court holds defendant liable to plaintiff for moral damages, which is assessed at P50,000.00.

5. Plaintiff has been compelled to litigate in this instance, and justifiably so, for which reason this Court holds defendant liable to plaintiff for attorney's fees, which is fixed at P10,000.00. (Amended Record on Appeal, pp. 66-80)

One of the reasons why Mobil Oil Philippines, Inc. did not deliver immediately the pre-paid order of February 15, 1974 involved in this case is because appellee Fernando A. Pedrosa had an unpaid balance of P5,653.34 on his account as of December 31, 1973 and it was company policy to require all dealers to liquidate all their outstanding balances at the end of 1973 before further delivery of oil products would be made to them (T.S.N., January 8, 1975, p. 30; April 2, 1975, pp. 25-27, p. 8) and that the price differential of P2,880.00 had not yet been paid.

However, the exact state of appellee's account balance with Mobil was really immaterial for the purpose of filling appellee's February 15th order because as judicially represented by appellant in their answer, appellee's order of February 15, 1974 involved in this case was duly approved by Mobil's credit man as follows:

On February 15, 1974, plaintiff, thru his representative, placed a product order at 2:20 P.M. and to accommodate plaintiff, the said order was approved by the credit man before closing of the Mobil Terminal at 4:00 P.M. with a final warning that no further delivery would be acted upon unless the outstanding balance of P5,653.34 is fully paid. (Paragraph 5, Affirmative and Special Defenses, Amended Answer, p. 28, Record on Appeal)

Mobil's credit man, Floro Marcella testified that he did approve the order of February 15, 1974 (T.S.N., September 3, 1975, p. 63). This clearly means that Mobil would deliver the order of February 15th although there was still an unpaid balance of P5,653.34 because what would really be affected by the unpaid balance of

P5,653.34 are the order subsequent to the order of February 15, 1974. And that order of February 15 was delivered on March 5 even though appellee had not (and still up to the present has not) yet paid the price differential of P2,880.00 that appellant was demanding. This goes to show, that contrary to appellant's contention, they do deliver orders even if the customer has unpaid balance on account.

Another reason or excuse advanced by the appellant why the delivery of the pre-paid order of February 15, 1974 was suspended was because Mobil does not make any delivery on Saturdays and Sundays effective September 8, 1973 (Exhibit 2).

Dioscoro Franco, another Mobil dealer and witness for appellee, testified that he placed orders on Fridays which were delivered the following day, Saturday, as evidenced by the following exhibits:

1. Exhibits J and K – Sales Invoices Nos. 35416 and 35417 for 6,000 and 12,000 liters of gasoline, respectively, both dated January 4, 1974 (a Friday) and both shipped or delivered on January 5, 1974 (a Saturday). Mr. Franco testified that he actually requested that those particular orders be delivered that same day, Friday, but Mobil delivered them the following day instead, a Saturday (t.s.n., April 22, 1976, pp. 17-21).
2. Exhibits L and M – Sales Invoices Nos. 04295 and 04296 for 12,000 and 14,000 liters of gasoline, respectively, both dated February 22, 1974, (a Friday) and both shipped or delivered on February 23, 1974 (a Saturday). Mr. Franco testified that he requested that those particular orders be delivered the following day, a Saturday, and Mobil complied (surprisingly in the face of its supposed 'no Saturday delivery' rule). (T.s.n., April 22, 1976, pp. 25-26)

Mobil's witness, Mario Oliveros, tried self-exoneratingly to justify and qualify these Saturday deliveries to Mr. Franco as being exceptions but he could not say who in Mobil decides on the exceptions (T.s.n., April 23, 1975, pp. 61-63).

Still, another excuse given by Mobil was that the coupon system was a cause of the delay in the delivery of the fuel.

Appellant's witness Mario Oliveros stated that the coupon system of rationing gasoline among the consumers was another cause for the delay in delivery of plaintiff's pre-paid order of February 15, 1974. The supposed laborious work involved in a dealer submitting these coupons to the oil company when placing an order unduly burdened the system of placement and processing of orders (T.s.n., April 23, 1975, p. 62).

The evidence clearly shows that the coupon system could not be a reason for the delay in appellant's deliveries of appellee's pre-paid order. (Exhibits J, K, L, and M show that the orders of Mr. Dioscoro Franco were served on the day following the date of the invoice and the day of service was even a Saturday.)

Also, there are the rebuttal exhibits regarding Mr. Dioscoro Franco's orders Exhibits Q, Q-1 to Q-24 covering the period from January 14 to February 28, 1974 which are described as follows:

Exhibit

Mobil Sales

Date of

Date Shipped

No.

Invoice No.

Invoice

or Delivered

Q

36083C

Jan. 14, 1974

Jan. 14, 1974

Q-1

36084C

Jan. 14, 1974

Jan. 14, 1974

Q-2

36093C

Jan. 14, 1974

Jan. 14, 1974

Q-3

36271C

Jan. 15, 1974

Jan. 15, 1974

Q-4

36272C

Jan. 15, 1974

Jan. 15, 1974

Q-5

36353C

Jan. 17, 1974

Jan. 17, 1974

Q-6

36354C

Jan. 17, 1974

Jan. 17, 1974

Q-7

36585C

Jan. 21, 1974

Jan. 21, 1974

Q-8

36586C

Jan. 21, 1974

Jan. 21, 1974

Q-9

41453C

Jan. 23, 1974

Jan. 23, 1974

Q-10

41743C

Jan. 28, 1974

Jan. 28, 1974

Q-11

41744C

Jan. 28, 1974

Jan. 28, 1974

Q-12

42347C

Feb. 5, 1974

Feb. 5, 1974

Q-13

42348C

Feb. 5, 1974

Feb. 5, 1974

Q-14

73691

Feb. 8, 1974

Feb. 8, 1974

Q-15

00783D

Feb. 13, 1974

Feb. 13, 1974

Q-16

01564D

Feb. 20, 1974

Feb. 20, 1974

Q-17

01565D

Feb. 20, 1974

Feb. 20, 1974

Q-18

86852B

Feb. 21, 1974

Feb. 21, 1974

Q-19

86853B

Feb. 21, 1974

Feb. 21, 1974

Q-20

04434D

Feb. 25, 1974

Feb. 25, 1974

Q-21

04691D

Feb. 27, 1974

Feb. 27, 1974

Q-22

04692D

Feb. 27, 1974

Feb. 27, 1974

Q-23

06850D

Feb. 28, 1974

Feb. 28, 1974

Q-24

06851D

Feb. 28, 1974

Feb. 28, 1974

The above rebuttal evidence clearly, indisputably and conclusively shows that Mobil Oil Philippines, Inc. made deliveries to Mr. Dioscoro Franco's gasoline station on the same day as the date of the invoices in accordance with the request that the delivery be made "today". These invoices disprove the excuses of Mobil that it had a back-log of gasoline orders and that the coupon system of distribution then in force accounted for the alleged delay in delivery of plaintiff's order.

Another Mobil dealer and witness for appellee, Joaquin Coronel, testified in this case in connection with a pre-paid order he placed with the company on February 14, 1974, a Thursday, which was never delivered because the price increase took effect on February 18, 1974 and Mobil wanted him to pay the price differential.

Mr. Coronel refused to pay the price increase differential and filed an administrative case against Mobil with the Oil Industry Commission (OIC), OIC Case No. 193 entitled "In the Matter of the Refusal to Deliver Prepaid Oil Products, Joaquin P. Coronel, Petitioner, versus Mobil Oil Philippines, Inc., Respondent."

In its decision, the Oil Industry Commission, while finding itself without the jurisdiction or power to grant the relief Mr. Coronel prayed for, nonetheless found respondent Mobil definitely guilty of the charge imputed to it by complainant Coronel. Hence, on pages 4 and 5 of the decision, the Oil Industry Commission said:

On this, it is our considered view that the enticement of additional profit should not be allowed to prevail over the social and economic responsibility that the oil companies assumed the very moment they set out to manufacture and sell petroleum products in this country. When the incident subject matter of this case occurred, the whole country including the Metropolitan Manila Area, was in the grip of an acute fuel shortage. This was precisely the reason why the government, through all the agencies concerned, was pushing through a campaign intended to make available to the consuming public as much product as possible by going against hoarders and blackmarketers and conducting inventories of all kinds of petroleum products in refineries, depots, and gasoline stations. Any act of withholding any quantity of petroleum product from the market then undermined to the same extent the efforts of the government to insure a continuous flow of supply.

x x x. This Commission, however, could see no reason (and no reason really was put forward by respondent) for withholding the delivery, except that respondent had anticipated the grant of the increase in prices, and motivated by a desire to realize more profit, held on to its product instead of causing its immediate delivery to the petitioner. The adverse effect on the jeepney drivers and operators and the commuting public of such ill-advised decision of respondent can only be imagined. But certainly 6,000 liters of diesel oil could have caused many jeepneys to ply their respective routes and carry passengers to their places of work and thereby afforded many segments of the community some form of benefit or another. (Exhibit N, pp. 4 and 5)

Therefore, in the dispositive portion of the decision, the Oil Industry Commission declared:

. . . declares respondent's act of unreasonably delaying delivery of petroleum products ordered and paid for in advance by petitioner to be violative of the directives and regulations on the matter, and hereby sternly warns said respondent that any other similar act that it may commit in the future with respect to herein petitioner or to any of its other dealers shall be dealt with more severely.

(Exhibit N, p. 7)

We will now determine whether the award by the court a quo of P25,000.00 for exemplary and P50,000.00 for moral damages is reasonable or not.

Alberto Latuno, witness for defendant?appellant, on direct examination testified as follows:

Q. What about the 18th, why was it not proceeded on the 18th?

A. Because on the 18th, sir, we had this price increase and we had to give priority to the invoices already with our warehouse and dispatcher which were recalled for re-pricing.

Q. They were recalled, Mr. Latuno, for re-pricing be-cause of the price increase?

A. Yes, sir.

COURT:

Mr. Latuno, in order for your company to increase the price in accordance with the price increase which took effect in February 19?

A. Yes, Your Honor.

COURT:

Proceed.

ATTY. VENERACION:

And this invoice was already in the warehouse.

A. And bulk dispatcher, sir.

Q. So that was given priority?

A. Yes, sir.

(T.S.N., September 3, 1975, pp. 145-147)

Mr. Mario Oliveros, witness for defendant-appellant, also testified that they had to recall and re-process all orders previously invoiced because of the price increase which took effect on February 18, 1974 (T.s.n., April 2, 1975, p. 14).

The above clearly indicates that defendant-appellant gave priority to the recall and reprocess of all invoices already with their warehouse and dispatcher for re--pricing because of the price increase which took effect on February 18, 1974. This means that all invoices covering orders already paid for as early as February 14 and 15, 1974 were recalled and revised to reflect the price increase and said orders were not delivered unless the dealers pay the corresponding price differential. Defendant-appellant cancelled the orders of dealers like Dioscoro Franco and Joaquin P. Coronel who refused to pay the price differentials and their payments were just treated as payments on their respective accounts (T.s.n., April 22, 1976, pp. 61-63)

Therefore, defendant-appellant's act of unreasonably delaying delivery of petroleum products ordered and paid for in advance by its dealers is not only violative of the directives and regulations of the Oil Industry

Commission, but also allowed appellant to amass unreasonably huge profits which if it had exercised fairness, honesty, good faith, and ordinary diligence in its business dealings, said profits should have gone to its dealers to whom it legitimately belonged. Such awards are necessary retribution for the oppressive, malevolent, unfair and high-handed actuations of the defendant-appellant.

(Rollo, pp. 55-67)

We find the above factual findings as a fair, reasonable and just conclusion well grounded on the documentary and testimonial evidence presented in court which were not convincingly disputed by petitioner Mobil Oil Philippines. As We found nothing capricious, whimsical, speculative or arbitrary in the conclusions arrived at, the same cannot be disturbed on appeal.

Finally, We will consider private respondent's motion addressed to Us pending final judgment of this case -

- a) to require petitioner to file a supersedeas bond or deposit with this Court the amount awarded to private respondent by the lower court; and
- b) the judgment award should be adjusted upward by at least 150% in keeping with the inflation that has supervened.

Petitioner in their "Rejoinder and Opposition" assured this Court that "it has more than adequate assets or financial resources to pay any judgment that may be rendered against it, in fact, it emphasized that "it has already taken sufficient steps for the protection of the interest of its creditors and has even appointed trustees x x x, for the purpose of receiving all claims against the petitioner for settlement. Aside from this, the issue has already become moot and academic at this stage. On the second issue for adjustment claims, private respondent has no basis in contract or in law. Parenthetically, the principle We laid down in the case of Commissioner of Public Highways vs. Burgos (96 SCRA 831) can be applied here, to wit:

"xxx an agreement is needed for the effects of an extraordinary inflation to be taken into account to alter the value of the currency at the time of the establishment of the obligation which, as a rule, is always the determinative element, to be varied by agreement that would find reason only in the supervision of extraordinary inflation or deflation." (pp. 837-838 underscoring ours).

Moreover, in his concurring opinion in the same case, Justice Claudio Teehankee stated:

"I concur in the result with the observation that the statements in the main opinion re the applicability or non?applicability of Article 1250 of the Civil Code should be taken as obiter dicta, since said article may not be invoked nor applied without a proper declaration of extraordinary inflation or deflation of currency by the competent authorities." (p. 840, underscoring ours)

In the case at bar, the obligation of the petitioner, if any, is based on law since the same calls for the application of the Civil Code provisions on damages. Moreover, there has been no official pronouncement or declaration of the existence of extraordinary inflation or deflation.

WHEREFORE, premises considered, finding lack of merit in the petition, the same is hereby DISMISSED and the appealed judgment of the appellate court is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Sarmiento, and Regalado, JJ., concur.
Padilla, J., no part; former counsel of petitioner-company.

[1] Penned by Justice Jose A.R. Melo, concurred in by Justices Mama D. Busran and Guillermo P. Villazor.

[2] Penned by Judge Ulpiano Sarmiento.

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