Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ASIAN TERMINALS, INC.,
Petitioner,

- versus -

PADOSON STAINLESS STEEL CORPORATION,
Respondent.

G.R. No. 211876

Present:

LEONARDO-DE CASTRO,*
Acting Chairperson,
DEL CASTILLO,**
Acting Chairperson,
JARDELEZA,
TIJAM, and
GESMUNDO, *JJ.****

Promulgated:

JUN 25 2018

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DECISION

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Asian Terminals, Inc. (ATI) assailing the Decision[2] dated July 23, 2013 and Resolution[3] dated March 26, 2014 of the Court of the Appeals (CA) in CA-G.R. CV No. 99435, which affirmed the Decision[4] dated July 16, 2012 of the Regional Trial Court (RTC) of Manila, Branch 41 in Civil Case No. 06-115638.

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* Designated Acting Chairperson per Special Order No. 2559 dated May 11, 2018; On official leave.

** Designated as Acting Chairperson per Special Order No. 2562 dated June 20, 2018.

*** Designated as Acting Member per Special Order No. 2560 dated May 11, 2018.

[1] *Rollo*, pp. 10-36.

[2] Penned by Associate Justice Mariflor P. Punzalan Castillo, concurred in by Associate Justices Amy C. Lazaro-Javier and Zenaida T. Galapate-Laguilles; id. at 38-47.

[3] Id. at 49-50.

[4] Rendered by Presiding Judge Rosalyn D. Mislos-Loja; id. at 51-68.

Factual Antecedents

Respondent Padoson Stainless Steel Corporation (Padoson) hired ATI to provide arrastre, wharfage and storage services at the South Harbor, Port of Manila. ATI rendered storage services in relation to a shipment, consisting of nine stainless steel coils and 72 hot-rolled steel coils which were imported on October 5, 2001 and October 30, 2001, respectively in favor of Padoson, as consignee. The shipments were stored within ATI's premises until they were discharged on July 29, 2006.[5]

Meanwhile, the shipments became the subject of a Hold-Order[6] issued by the Bureau of Customs (BOC) on September 7, 2001. This was an offshoot of a Customs case filed by the BOC against Padoson due to the latter's tax liability over its own shipments. The Customs case, docketed as Civil Case No. 01-102440, was pending with the RTC of Manila, Branch 173.[7]

For the storage services it rendered, ATI made several demands from Padoson for the payment of arrastre, wharfage and storage services (heretofore referred to as storage fees), in the following amounts: ₱540,474.48 for the nine stainless steel coils which were stored at ATI's premises from October 12, 2001 to July 29, 2006; and ₱8,374,060.80 for the 72 hot-rolled steel coils stored at ATI's premises from November 8, 2001 to July 29, 2006.[8]

The demands, however, went unheeded. Thus, on August 4, 2006, ATI filed a Complaint[9] with the RTC of Manila, Branch 41 for a Sum of Money and Damages with Prayer for the Issuance of Writ of Preliminary Attachment against Padoson, docketed as Civil Case No. 06-115638. ATI ultimately prayed that Padoson be ordered to pay the following amounts: ₱8,914,535.28 plus legal interest, representing the unpaid storage fees; ₱100,000.00 as exemplary damages; and ₱100,000.00 as attorney's fees.

In its Answer with Compulsory Counterclaim with Opposition to Application for Writ of Preliminary Attachment,[10] Padoson claimed among others, that: (1) during the time when the shipments were in ATI's custody and possession, they suffered material and substantial deterioration; (2) ATI failed to exercise the extraordinary diligence required of an arrastre operator and thus it should be held responsible for the damages; (3) the Hold-Order issued by the BOC was merely a leverage to claim Padoson's alleged unpaid

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[5] Id. at 39 and 159.
[6] Id. at 101.
[7] Id. at 39.
[8] Id.
[9] Id. at 70-75.
[10] Id. at 79-99.

duties; (4) relative to the Customs case pending with RTC, Branch 173, Padoson filed a Motion for Ocular Inspection[11] and in the course of the inspection, Sheriff Romeo V. Diaz (Sheriff Diaz) discovered that the shipments were found in an open area and were in a deteriorating state; (5) due to this, Padoson was compelled to file a Manifestation and Motion dated January 27, 2004 praying for the release of the shipments, which was in turn, granted by the RTC on June 25, 2004;[12] (6) on April 17, 2006, the RTC issued a Resolution,[13] granting Padoson's Motion for Issuance of Writ of Execution and accordingly issued the Writ of Execution, allowing Padoson to take possession of the shipment; (7) Sheriff Diaz in his Sheriff's Partial Return on Execution[14] dated August 8, 2006, stated that one of the nine steel coils which were part of the shipments, were missing; and (8) That due to the deterioration of the 72 hot-rolled steel coils, their value depreciated and when Padoson sold the same, he incurred a loss of ₱13.8 Million in lost profits. As to the stainless steel coils, he incurred a total loss of ₱2,992,000.00 corresponding to the value of the one steel coil lost (₱882,000.00) and the lost profits for the sale of the remaining steel coils (₱2,110,000.00).[15]

In its Answer to Compulsory Counterclaim, ATI countered that it exercise due diligence in the storage of the shipments and that the same were withdrawn from its custody in the same condition and quantity as when they they were unloaded from the vessel.[16]

Pre-trial was scheduled on August 12, 2009.[17] Thereafter, trial ensued.

During the trial, Padoson presented a certain Mr. Gregory Ventura (Ventura), who allegedly took pictures of the shipments. The pictures, however, were not pre-marked during the pre-trial. Consequently, the RTC issued an Order[18] dated September 8, 2011, disallowing the marking of the said pictures and Ventura's testimony thereon. To assail the said order, Padoson filed a Petition for *Certiorari* before the CA but the same was denied in the CA Decision[19] dated July 1, 2013, which became final and executory on July 24, 2013.[20]

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[11] Id. at 179-181.
[12] Id. at 182-186.
[13] Id. at 109-110.
[14] Id. at 189-194.
[15] Id. at 83-86, and 91.
[16] Id. at 54.
[17] Id. at 55.
[18] Id. at 130-131.
[19] Id. at 133-140.
[20] Id. at 111-112.

ATI called to the witness stand its Cash Billing Supervisor, Mr. Samuel Goutana (Goutana) to explain how ATI computed the amount of storage fees prayed for in its Complaint against Padoson.[21]

On July 16, 2012, the RTC rendered its Decision,[22] dismissing ATI's complaint and Padoson's counterclaim. The RTC held that although the computation of storage fees to be paid by Padoson as prayed for in ATI's complaint to the tune of ₱8,914,535.28 plus legal interest, were "clear and unmistakable" and which Padoson never denied, the liability to pay the same should be borne by the BOC. Relying on the case of *Subic Bay Metropolitan Authority v. Rodriguez, et al.*[23] (SBMA), the RTC reasoned out that by virtue of the Hold-Order over Padoson's shipments, the BOC has acquired constructive possession over the same. Consequently, the BOC should be the one liable to ATI's money claims. The RTC, however, pointed out that since ATI did not implead the BOC in its complaint, the BOC cannot be held to answer for the payment of the storage fees.

ATI appealed the RTC decision, but the same was denied by the CA in its Decision[24] dated July 23, 2013. The CA ruled that the RTC did not err in holding that Padoson's shipments were under the BOC's constructive possession upon its issuance of the Hold-Order. The CA, likewise, ruled that there is substantial evidence to prove that the shipments suffered loss and deterioration or damage while they were stored in ATI's premises. But since the BOC had acquired constructive possession over the shipments, the CA ruled that neither ATI could be held liable for damages nor Padoson be held liable for the storage fees. Lastly, the CA pronounced that the RTC was correct in holding that no relief may be given to both ATI and Padoson since the BOC was not impleaded in ATI's complaint.

Aggrieved, ATI filed a Motion for Reconsideration,[25] stating among others, that: (1) the documents attached to Padoson's Answer are inadmissible and insufficient to prove that the shipments were damaged while in ATI's premises; (2) those documents were related to the Customs case in which ATI was not impleaded as a party, and thus, was not given an opportunity to contest them; (3) with respect to the photographs over the shipments allegedly taken on January 16, 2004, the same should be inadmissible for lack of authentication; (4) that Padoson's witness, a certain Mary Jane Lorenzo (Lorenzo), was not competent to testify on the photographs since she admitted that she was not the one who took the photographs and that the same do not indicate that they pertain to Padoson's shipment; (5) Sheriff Dizon's declaration in his Report on Ocular Inspection that the shipments, were "already in a deteriorating condition," were merely

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[21] Id. at 62.
[22] Id. at 51-68.
[23] 633 Phil. 196 (2010).
[24] *Rollo*, pp. 38-47.
[25] Id. at 113-129.

conclusory; and (6) Sheriff Dizon who prepared the Partial Return on Execution dated August 8, 2006, was not called to the witness stand to testify on the contents of the said Return.[26]

On March 26, 2014, the CA issued a Resolution[27] denying ATI's motion for reconsideration.

Hence, this petition for review on *certiorari* which submits the following arguments in support thereof:

> A. The [CA] erred in ruling that the Subject Shipments were in the constructive possession of the [BOC];[28]
>
> B. The [CA] erred in ruling that Padoson can no longer be held liable to ATI for arrastre, wharfage and storage fees because of said constructive possession[;][29]
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> C. Padoson failed to establish that the Subject Shipments sustained damage while in ATI's custody[;][30]
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> D. ATI is entitled to an award of damages[; and][31]
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> E. The instant case should be decided on its merits. It should not have been dismissed based on the theory of constructive possession proposed by the trial court and adopted by the [CA.][32]

Ruling of the Court

The petition is granted.

Essentially, the issue posed before us is whether or not the CA erred in affirming the RTC decision.

We answer in the affirmative.

While this Court is not a trier of facts, still when the inference drawn by the CA from the facts is manifestly mistaken, as in the present case, we can, in the interest of justice, review the evidence to allow us to arrive at the correct factual conclusions based on the record.[33]

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[26] Id. at 122-124.
[27] Id. at 49-50.
[28] Id. at 17.
[29] Id. at 19.
[30] Id. at 22.
[31] Id. at 27.
[32] Id.
[33] *Spouses Chung v. Ulanday Construction, Inc.*, 647 Phil. 1, 12 (2010).

The CA and the RTC misapplied the case of SBMA

In *SBMA*,[34] we dealt with the following issues: (1) which court has the exclusive original jurisdiction over seizure and forfeiture proceedings; and (2) the propriety of the issuance by the RTC of a Temporary Restraining Order against the BOC. In ruling that it is the BOC, and not the RTC, which has exclusive original jurisdiction over seizure and forfeiture of the subject shipment, this Court explained that:

> The Collector of Customs sitting in seizure and forfeiture proceedings has exclusive jurisdiction to hear and determine all questions touching on the seizure and forfeiture of dutiable goods. Regional trial courts are devoid of any competence to pass upon the validity or regularity of seizure and forfeiture proceedings conducted by the BOC and to enjoin or otherwise interfere with these proceedings. x x x
>
> x x x [T]he rule is that from the moment imported goods are ***actually*** in the possession or control of the Customs authorities, even if no warrant for seizure or detention had previously been issued by the Collector of Customs in connection with the seizure and forfeiture proceedings, the BOC acquires exclusive jurisdiction over such imported goods for the purpose of enforcing the customs laws, subject to appeal to the Court of Tax Appeals whose decisions are appealable to this Court. x x x.[35] (Citations omitted and emphasis ours)

Nowhere in the *SBMA* case did we exclaim that the moment a Hold-Order has been issued, the BOC acquires constructive possession over the subject shipment. On the contrary, what we stated is that once the BOC is *actually* in possession of the subject shipment by virtue of a Hold-Order, it acquires exclusive jurisdiction over the same for the purpose of enforcing the customs laws. In fact, in *SBMA*, it is clear that the BOC's issuance of the Hold-Order was to direct the port officers to hold the delivery of the shipment and to transfer the same to the security warehouse.[36] The BOC, thus, had actual and *not* constructive possession over the subject shipment in said case. Here, the actual possession over Padoson's shipment remained with ATI since they were stored at its premises.

Likewise, in the *SBMA* case, We emphasize that the BOC's exclusive jurisdiction over the subject shipment is for the purpose of enforcing customs laws, so as to render effective and efficient the collection of import and export duties due the State.[37] It has nothing to do with the collection by a private company, like ATI in this case, of the storage fees for the services it rendered to its client, Padoson.

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[34] Supra note 23.
[35] Id. at 210-211.
[36] Id. at 202.
[37] Id. at 211.

Further, there is no implication in the *SBMA* case that the BOC's mere issuance of a Hold-Over directed against the subject shipment constitutes constructive possession, which may exculpate the private consignee from its storage fee obligation with the arrastre operator.

Accordingly, there is no basis for the CA in holding that the RTC did *not* err in declaring that the subject shipments were deemed placed under BOC's constructive possession by its issuance of a Hold-Order over Padoson's shipment.

The alleged constructive possession by virtue of BOC's Hold-Order of Padoson's shipment was not even raised as an issue in this case

The matter concerning the BOC's alleged constructive possession was erroneously considered by the RTC and the CA in their respective decisions. The records show that this matter was neither alleged in Padoson's Answer nor was it raised in the stipulation of facts contained in the RTC's pre-trial Order dated August 12, 2009. Padoson never made an assertion to the effect that it could not be held liable for the storage fees because of the BOC's Hold-Order against its shipment. The disclosure that Padoson's shipments were subject of the BOC's Hold-Order was never raised in relation to Padoson's affirmative defense that it should not pay for the storage fees which arose from its contract of services with ATI.[38] In fact, it was the RTC, through its July 16, 2012 Decision, that brought up the concept of constructive possession by misapplying the *SBMA* case, as explained earlier.

As held in *LICOMCEN, Inc. v. Engr. Abainza*:[39]

> Although a pre-trial order is not meant to catalogue each issue that the parties may take up during the trial, issues not included in the pre-trial order may be considered only if they are impliedly included in the issues raised or inferable from the issues raised by necessary implication. The basis of the rule is simple. Petitioners are bound by the delimitation of the issues during the pre-trial because they themselves agreed to the same.[40] (Citation omitted)

As already elucidated, the theory of constructive possession espoused by the RTC and concurred in by the CA cannot be deemed to be impliedly included in the issue raised by ATI in its complaint, since it was not even touched upon in the RTC's pre-trial order.

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[38] Id. at 42.
[39] 704 Phil. 166 (2013).
[40] Id. at 174.

Padoson, and not BOC, is liable to ATI for the payment of storage fees for the services rendered by ATI

First, granting, without admitting, that the BOC has constructive possession over Padoson's shipment, this does not, in itself release Padoson from its obligation to pay the storage fees due to ATI. It has been established that Padoson engaged ATI to perform arrastre, wharfage and storage services over its shipments from October 12, 2001 and November 8, 2001, until it was discharged from ATI's premises on July 29, 2006. Although Padoson's shipments were the subject of BOC's Hold-Order dated September 7, 2001, the fact remains that it was Padoson, and not BOC, that entered into a contract of service with ATI and consequently was the one who was benefited therefrom.

The basic principle of relativity of contracts is that contracts can only bind the parties who entered into it, and cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof.[41] Indeed, "[w]here there is no privity of contract, there is likewise no obligation or liability to speak about."[42]

Guided by this doctrine, Padoson, cannot shift the burden of paying the storage fees to BOC since the latter has never been privy to the contract of service between Padoson and ATI. To rule otherwise would create an absurd situation wherein a private party may free itself from liability arising from a contract of service, by merely invoking that the BOC has constructive possession over its shipment by the issuance of a Hold-Order.

Second, the BOC's Hold-Order is not in any way related to the contract of service between ATI and Padoson. Rather, it is directed at Padoson's shipment by reason of Padoson's tax liability and which triggered the filing of the Customs Case. The BOC's exclusive jurisdiction over the shipment is solely for the purpose of enforcing customs laws against Padoson's tax delinquency. The BOC's interest over the shipment was limited to discharging its duty to collect Padoson's tax liability. Put a bit differently, the BOC's Hold-Order is extraneous to Padoson's obligation to pay the storage fees in favor of ATI. Even Padoson admitted that the Hold-Order was issued by the BOC merely as a leverage to claim Padoson's alleged unpaid duties.[43] Clearly, Padoson has two monetary obligations, albeit of different characters – one is its liability for storage fees with ATI based on its contract of service, and the other is its tax liability with the BOC which is the subject of the Customs case pending with the RTC.

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[41] *Sps. Borromeo v. Hon. Court of Appeals, et al.*, 573 Phil. 400, 412 (2008).
[42] *Philippine National Bank v. Dee, et.al.*, 727 Phil. 473, 480 (2014).
[43] *Rollo*, p. 83.

Third, the RTC's pronouncement which was affirmed by the CA, to the effect that the BOC, and not Padoson, should have been held liable for the storage fees had it been impleaded in ATI's complaint, is erroneous. This presupposes that BOC is an indispensable party, which it is not.

In the consolidated case of *PNB v. Heirs of Militar*,[44] the Court explained that:

> An indispensable party is one whose interest will be affected by the court's action in the litigation, and without whom no final determination of the case can be had. The party's interest in the subject matter of the suit and in the relief sought are so inextricably intertwined with the other parties' that his legal presence as a party to the proceeding is an absolute necessity. In his absence there cannot be a resolution of the dispute of the parties before the court which is effective, complete, or equitable.
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> Conversely, a party is not indispensable to the suit if his interest in the controversy or subject matter is distinct and divisible from the interest of the other parties and will not necessarily be prejudiced by a judgment which does complete justice to the parties in court. He is not indispensable if his presence would merely permit complete relief between him and those already parties to the action or will simply avoid multiple litigation.[45] (Citations omitted)

In this case, the ultimate relief sought by ATI in its complaint for a sum of money with damages, is the recovery of the storage fees from Padoson, which arose from the contract of service which they have validly entered into. BOC, as explained earlier, was never privy to this contract. It was Padoson who engaged ATI's storage services. It was Padoson who benefited from ATI's storage services. It was Padoson who subsequently sold the shipments and suffered losses.

Recall too, that ATI was *not* a party to the Customs case filed by BOC against Padoson for the latter's tax delinquency. BOC's interest over the shipment which is the subject matter of the Customs case is merely to collect from Padoson its tax dues; it is separate and distinct from the claim of ATI in its complaint for a sum of money – which is to demand from Padoson the payment of storage fees based on their contract of service. The BOC's Hold-Order did not have the effect of relieving Padoson from its contractual obligation with ATI.

These facts reveal that BOC's interest over the shipments is not inextricably intertwined with ATI's collection suit against Padoson, so as to require its legal presence as a party to the proceeding. In other words, complete relief can still be afforded to ATI without the presence of the BOC and the case can still be decided on the merits without prejudicing BOC's

[44] 504 Phil. 634 (2005).
[45] Id. at 640-641.

rights. Thus, the BOC is not an indispensable party to the complaint for a sum of money filed by ATI against Padoson.

Padoson failed to prove that its shipment sustained damage while in ATI's custody

To substantiate its claim that ATI failed to exercise due diligence over the shipments causing them to be in a dismal condition, Padoson presented photographs which were allegedly taken by Ventura.

During the trial, however, the RTC observed that the said photographs were not pre-marked as evidence and that the pre-trial orders did not contain a reservation for presentation of additional evidence for Padoson. Consequently, in its September 8, 2011 Order, the RTC disallowed the identification of the unmarked photographs. Padoson moved for a reconsideration of the order, but it was denied. Its subsequent petition for *certiorari* was likewise denied by the CA in its Decision dated July 1, 2013, which became final and executory. Thus, at the time the CA rendered its July 23, 2013 Decision, the RTC had already ruled that the photographs were inadmissible and were not admitted in evidence. Yet, this fact was clearly disregarded by the CA when it promulgated its assailed decision. This runs counter to the "rule that evidence which has not been admitted cannot be validly considered by the courts in arriving at their judgments."[46]

Likewise, in support of its allegation of damage to the shipments, Padoson relied on the following documents: Sheriff's Report on Ocular Inspection; Manifestation and Motion dated January 27, 2004; Resolution dated June 25, 2004; Resolution dated April 17, 2006; Sheriff's Partial Return on Execution dated August 8, 2006; and the photographs allegedly taken on January 16, 2004. These documents, however, relate to the Customs case. Notably, ATI was not impleaded and has no participation in the Customs case.[47] As such, it would be unfair that ATI be bound by the RTC's proceedings and findings of fact in the Customs case without giving it the chance to hear its side. To rule otherwise would deprive ATI of due process. The essence of due process is the opportunity to be heard, logically preconditioned on prior notice, before judgment is rendered.[48] Indeed, "[n]o man shall be affected by any proceeding to which he is a stranger."[49]

In particular, the sheriff's declaration in the Sheriff's Report on Ocular Inspection that the steel coils which were part of the shipment, were "already in a deteriorating condition," is a mere uncorroborated conclusion for having no evidence to back it up. There is no showing that Sheriff Diaz had

[46] *Dra. Dela Llano v. Biong*, 722 Phil. 743, 758 (2013).
[47] *Rollo*, p. 122.
[48] *Pangilinan v. Balatbat, et al.*, 694 Phil. 605, 618 (2012).
[49] *Orquiola v. Court of Appeals*, 435 Phil. 323, 332 (2002).

personal knowledge of the original condition of the shipment, for him to arrive at the conclusion that it deteriorated while it was docked at ATI's premises.[50] Mere allegation and speculation is not evidence, and is not equivalent to proof.[51]

So too, the Sheriff's Partial Return on Execution is a document solely prepared by the sheriff. Padoson, however, did not present Sheriff Diaz to testify on the contents thereof. Evidently, ATI was not given a chance to cross-examine him to test the truthfulness of the allegations made in the said Return.[52]

Anent the photographs on the shipment allegedly taken on January 16, 2004, the same were not properly authenticated and identified.[53] "Indeed, photographs, when presented in evidence, must be identified by the photographer as to its production and he must testify as to the circumstances under which they were produced."[54] "The value of this kind of evidence lies in its being a correct representation or reproduction of the original."[55] However, in this case, Padoson's witness, Ms. Lorenzo simply admitted that she did *not* take the pictures and that the same do not indicate that they pertain to the shipments.[56]

Additionally, we have observed from the records that Padoson did not present any evidence on the supposed condition of the shipment at the time they were already discharged from the vessels. As such, there can be no basis for Padoson to claim that its shipments deteriorated while they were in ATI's possession and custody up to the time they were withdrawn from ATI's premises. Thus, Padoson cannot impute negligence upon ATI.

Padoson is liable to pay the amount prayed for in ATI's Complaint

In its complaint, ATI demanded from Padoson to pay the total amount of ₱8,914,535.28 plus legal interest, representing the unpaid storage fees, consisting of the nine stainless steel coils and the 72 hot-rolled steel coils. During the trial, ATI's Cash Billing Supervisor, Goutana testified on the breakdown of the said amount. As to the nine stainless steel coils, Goutana explained, thus:

> Q: And for this particular cargo, Mr. witness, comprising of nine (9) stainless steel coils, what was the metric ton of the said shipment?

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[50] *Rollo*, p. 123.
[51] *Navarro v. Clerk of Court Cerezo*, 492 Phil. 19, 22 (2002).
[52] *Rollo*, p. 123.
[53] Id.
[54] *People v. Gonzales*, 582 Phil. 412, 421 (2008).
[55] *Sison v. People*, 320 Phil. 112, 131 (1995).
[56] *Rollo*, p. 123.

A: For nine (9) coils, we have 36.725 metric tons, sir.

x x x x

Q: So how [did] you arrive at the amount of Five Hundred Forty Thousand Four Hundred Seventy Four and Forty Eighty Centavos (₱540,474.48), Mr. [W]itness?

A: Total metric tons 36.725 x 7.50, the rates and the number of days 1,752 plus 12% VAT, so we arrived in the amount of Five Hundred Forty Thousand Four Hundred Seventy Four and Forty Eighty Centavos (₱540,474.48), sir.[57]

With respect to the 72 hot-rolled steel coils, Goutana narrated, thus:

Atty. Braceros:

And how did you come up with this particular total, Mr. Witness?

A: To arrive at this amount of Eight Million Three Hundred Seventy Four Thousand Sixty Pesos and Eighty Centavos (₱8,374,060.80), we have the metric ton – 577.920 metric tons x number of days – 1725 days and the rate is 7.50 plus 12% VAT, sir.[58]

It bears stressing that the computation of the amount ATI sought from Padoson for the latter's payment of storage fees has already been found by the RTC, which in turn was concurred in by the CA, as "clear and unmistakable." In fact, as correctly observed by the RTC, even Padoson, has never denied its obligation with ATI. Thus:

> Deduced from the foregoing, **the computation of the amounts sought to be paid** by [ATI] **are clear and unmistakable**. Notably, likewise, **[Padoson] never denied such obligation**, only that, **it turned the table against** [ATI].[59] (Emphasis ours)

Clearly, in order to evade its liability, Padoson merely turned the table against ATI by arguing in the RTC that due to the dismal condition of the shipment, ATI should be held liable. But, as We have explained earlier, Padoson did not adduce sufficient evidence to prove that ATI was negligent in the storage of the shipment so as to entitle Padoson to recover damages. To put it differently, Padoson's obligation with ATI for the storage fees and its computation thereon has already been settled by the RTC and was no longer raised as an issue by Padoson. Thus, Padoson cannot now renege on its obligation by merely attributing negligence to ATI.

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[57] Id. at 62.
[58] Id. at 64.
[59] Id. at 66.

Corollarily, as to the interest rate applicable, we explained in *Nacar v. Gallery Frames, et al.*, that:[60]

> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
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> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.,* a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% *per annum* to be computed from default, *i.e.,* from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>
> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
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> 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[61] (Citations omitted and italics in the original)

It should be noted, however, that the new rate of six percent (6%)[62] *per annum* could only be applied prospectively and not retroactively. Consequently, the former rate of twelve percent (12%) *per annum* legal interest shall apply only until June 30, 2013. Come July 1, 2013, the new rate of six percent (6%) *per annum* shall be the prevailing rate of interest when applicable.[63]

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[60] 716 Phil. 267 (2013).

[61] Id. at 278-279.

[62] Effective starting on July 1, 2013, pursuant to Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013; *Nacar v. Gallery Frames, et al.*, supra at 281.

[63] *Federal Builders, Inc. v. Foundation Specialists, Inc.*, 742 Phil. 433, 446 (2014).

Nonetheless, the need to determine whether the obligation involved in this case is a loan and forbearance of money exists.

"The term 'forbearance,' within the context of usury law, has been described as a contractual obligation of a lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to repay the loan or debt then due and payable."[64] "Forbearance of money, goods or credits, should therefore refer to arrangements other than loan agreements, where a person acquiesces to the temporary use of his money, goods or credits pending happening of certain events or fulfillment of certain conditions."[65] Consequently, if those conditions are breached, said person is entitled not only to the return of the principal amount paid, but also to compensation for the use of his money which would be the same rate of legal interest applicable to a loan since the use or deprivation of funds therein is similar to a loan.[66]

This case, however, does not involve an acquiescence to the temporary use of a party's money but merely a failure to pay the storage fees arising from a valid contract of service entered into between ATI and Padoson.

Considering that there is an absence of any stipulation as to interest in the agreement between the parties herein, the matter of interest award arising from the dispute in this case would actually fall under the category of an "obligation, not constituting a loan or forbearance of money" as aforecited. Consequently, this necessitates the imposition of interest at the rate of 6%. The six percent (6%) interest rate shall further be imposed from the finality of the judgment herein until satisfaction thereof, in light of our recent ruling in *Nacar*.[67]

Thus, guided by aforementioned disquisition, the rate of interest on the amount of ₱8,914,535.28, representing the unpaid storage fees shall be twelve percent (12%) from August 4, 2006, the date when ATI made a judicial demand by filing its complaint against Padoson, to June 30, 2013. From July 1, 2013, the effective date of BSP-MB Circular No. 799, until full satisfaction of the monetary award, the rate of interest shall be six percent (6%).[68]

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[64] *S.C. Megaworld Construction and Development Corporation v. Engr. Parada*, 717 Phil. 752 771 (2013), citing *Sunga-Chan, et al. v. CA, et al.*, 578 Phil. 262, 276 (2008).

[65] *Estores v. Sps. Supangan*, 686 Phil. 86, 97 (2012).

[66] Id.

[67] Supra note 60.

[68] *Heirs of Leandro Natividad and Juliana V. Natividad v. Mauricio-Natividad, et al.*, 781 Phil. 803, 816 (2016).

ATI is not entitled to exemplary damages and attorney's fees

Pursuant to Articles 2229[69] and 2234[70] of the Civil Code, exemplary damages may be awarded only in addition to moral, temperate, liquidated, or compensatory damages. Since ATI is not entitled to either moral, temperate, liquidated, or compensatory damages, then their claim for exemplary damages is bereft of merit. It has been held that as a requisite for the award of exemplary damages, the act must be accompanied by bad faith or done in wanton, fraudulent or malevolent manner[71] — circumstances which are absent in this case.

Finally, considering the absence of any of the circumstances under Article 2208[72] of the Civil Code where attorney's fees may be awarded, the same cannot be granted to ATI.

From the foregoing, we hold that the CA erred in affirming the RTC's decision. Accordingly, it is Padoson and not the BOC, that is liable to ATI for the payment of storage fees on the basis of the contract of service between Padoson and ATI.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated July 23, 2013 and Resolution dated March 26, 2014 of the Court of Appeals in CA-G.R. CV No. 99435 are **REVERSED** and **SET ASIDE**. Respondent Padoson Stainless Steel Corporation is **ORDERED** to pay Asian Terminals Inc. the amount of ₱8,914,535.28, plus interest thereon at twelve percent (12%) *per annum*, computed from August 4, 2006 to June 30, 2013, and six percent (6%) *per annum*, from July 1, 2013, until full satisfaction of the judgment award.

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[69] Article 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

[70] Article 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. x x x

[71] *Francisco v. Ferrer, Jr.*, 403 Phil. 741, 750 (2001).

[72] 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.

SO ORDERED.

NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:

(On official leave)
TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice
Acting Chairperson

FRANCIS H. JARDELEZA
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIANO C. DEL CASTILLO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)