Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

UCPB GENERAL INSURANCE CO., INC.,	**G.R. No. 244407**
Petitioner,	Present:
- versus -	PERALTA, *C.J.*, *Chairperson*, CAGUIOA, CARANDANG, ZALAMEDA, GAERLAN, *JJ*
ASGARD CORRUGATED BOX MANUFACTURING CORPORATION,	
Respondent.	Promulgated: JAN 26 2021

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DECISION

CARANDANG, *J.*:

Assailed in this Petition for Partial Review on *Certiorari*[1] under Rule 45 of the Rules of Court is the Decision[2] dated August 31, 2018 and the Resolution[3] dated January 8, 2019 of the Court of Appeals (CA) in CA-G.R.CV No. 109543 which partially granted petitioner UCPB General Insurance Co., Inc.'s (UCPB Insurance) appeal by deleting the awards of exemplary damages and attorney's fees and denied for lack of merit UCPB Insurance's motion for partial reconsideration.

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1 *Rollo*, pp. 3-29.

2 Penned by Associate Justice Pedro B. Corales, with the concurrence of Associate Justices Nina G. Antonio-Valenzuela and Ma. Luisa Quijano-Padilla; id. at 34-39.

3 Id. at 51-52.

Facts of the Case

This case stemmed from a complaint for "Sum of Money with Application for Writ of Preliminary Attachment"[4] filed by respondent Asgard Corrugated Manufacturing Corp. (Asgard) against UCPB Insurance.[5]

On February 1, 2006, Asgard and Milestone Paper Products, Inc. (Milestone) entered into a Toll Manufacturing Agreement (TMA)[6] whereby Asgard undertook to perform toll-manufacturing of paper products for Milestone, effective until January 31, 2008, unless earlier terminated by either party upon 60-day prior written notice.[7] The TMA shall be deemed automatically extended on a month-to-month basis if no new agreement is executed after the lapse of said time. Section 19 of the TMA provides:

> 19. EFFECTIVITY AND DURATION
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> This Agreement shall become effective upon signing hereof and shall be in full force and effect until 31st of January 2008, unless earlier terminated by either Party upon sixty (60) days prior written notice to the other if without cause, or in accordance with the following Clause. In the event the parties fail to execute a new toll manufacturing agreement upon the lapse of time indicated in this paragraph, the term of this Agreement shall be deemed automatically extended on a month to month basis only.
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> Termination or expiration of this Agreement will not abrogate, impair, release or extinguish any debt, obligation, or liability of either party incurred or arising prior to the date of termination and all undertakings, obligations, releases or indemnities which by their terms or by reasonable implication are to survive, or are to be performed in whole or in part after the termination of this Agreement, will survive such terminations or expiration.
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> Any renewal of this Agreement, under terms and conditions to be mutually agreed upon, may at the option of the parties be done by a letter-agreement signed by both Parties. Should this Agreement expire without a written renewal thereof, the Parties shall continue their relationship herein and the provisions of this Agreement shall continue to govern them except for the term of the Agreement, which shall henceforth be from month to month.[8]

Under the TMA, Asgard undertook to perform for Milestone toll-manufacturing of paper products in accordance with the volume and specifications as Milestone may define from time to time.[9] Milestone shall

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4 Id. at 54-61.
5 Id.
6 Id. at 64-76.
7 Id. at 54-55.
8 Id. at 71.
9 Id. at 64.

advise Asgard of its requirements for the products to be toll-manufactured via a purchase order submitted monthly at least fifteen (15) days in advance of Milestone's desired delivery or withdrawal date stated therein to enable Asgard to timely complete production thereof. The toll-manufacturing requirements of Milestone shall be performed at Asgard's premises at Asgard Corrugated Box Manufacturing Corporation, No. 80 P. de la Cruz, Street, San Bartolome, Novaliches (the Plant) with the use of the facilities therein. Milestone shall source materials and supplies and cause the same to be delivered to the Plant.[10]

It appears that Asgard needed additional capital for the purchase of new equipment for its manufacturing plant. So, it invited Milestone to invest in the company. Instead of immediately investing, Milestone proposed to take over the management and operations of Asgard to determine the probability of the business. Milestone installed new equipment for the manufacturing plant and paper mill. After months of managing and operating the business, Milestone accepted Asgard's invitation by contributing the installed equipment and infusing such amount of capital as may be necessary for the operations of the company.[11]

Sometime in 2007, Asgard and Milestone further agreed that the latter would convert the paper products into corrugated carton boxes using the corrugating machines owned by Asgard. The agreement likewise included the modification of the corrugated machines by replacing the parts with the ones owned by Milestone. As a result thereof, all vital parts of the corrugating machines of Asgard were detached and replaced with parts owned by Milestone.[12]

On December 22, 2007, due to financial difficulties, Asgard filed with the Regional Trial Court (RTC) of Quezon City, Branch 90 an Amended Petition for Corporate Rehabilitation.[13] It submitted an Amended Rehabilitation Plan stating, among others, that Milestone shall contribute ₱150,000,000.00 worth of machinery and equipment in Asgard's business.[14] However, the rehabilitation court disapproved the Amended Plan finding the same to be vague, unrealistic and not feasible, and denied the rehabilitation petition in the Order[15] dated June 9, 2009. The rehabilitation court ruled that it would be extremely difficult for Asgard to undergo corporate rehabilitation with a paid-up capital of only ₱12,500,000.00 and negative retained earnings of ₱168,341,292.51.[16]

On August 7, 2009, Asgard and Milestone took out an insurance policy from UCPB Insurance.[17] Upon payment of insurance premium, UCPB

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10 Id. at 65.
11 Id. at 35.
12 Id. at 408-409. No New Agreement (aside from the TMA) was attached or offered as evidence.
13 Id. at 77-94.
14 Id. at 102.
15 Id. at 95-105.
16 Id. at 104-105.
17 CA *rollo*, p. 57.

Insurance issued Industrial All Risk Policy No. HOF09FD-FAR087915 (Policy)[18] to Milestone and/or Market Link and/or Nova Baile and/or Asgard to insure, among others, Asgard's machinery and equipment of every kind and description in Novaliches, Quezon City for ₱500,000,000.00 covering the period August 1, 2009 to August 1, 2010.[19]

On July 15, 2010, Milestone pulled out its stocks, machinery, and equipment from Asgard's plant in Novaliches, Quezon City for relocation to Milestone's own premises in Laguna. In the course thereof, it caused damage to Asgard's complete line of Isowa corrugating machine and accessories as well as its printer-slotter-stacker.[20] Physical inventory of machinery and equipment conducted by the staff of Paul Uy Ong of Asgard showed that the following machinery and equipment were damaged:

> 1. "Isowa" corrugating machines such as Single Facer "A" and "B" Flutes, "Lechida" Single Facer "A" Flute, "Ishikawa" Single facer "E" Flute and other accessories, originally installed at ground level were dismantled and were dumped at the rear portion of the warehouse.
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> 2. "Isowa" dual backer conveyor heater, Slitter station, Cut-Off Station, Akebono Tsusho Printer Slotter Machine were welded to steel pole which appear to be unstable.
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> 3. Other machine parts were unaccounted.[21]

Asgard notified UCPB Insurance about the loss and filed an insurance claim under the Policy based on the Malicious Damage Endorsement provision which reads:

> It is hereby declared and agreed that the insurance under the said Riot and Strike endorsement shall extend to include MALICIOUS DAMAGE, which for the purpose of this extension shall mean:
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> LOSS OF OR DAMAGE TO THE PROPERTY INSURED DIRECTLY CAUSED BY THE MALICIOUS ACT OF ANY PERSON (WHETHER OR NOT SUCH ACT IS COMMITTED IN THE COURSE OF DISTURBANCE OF THE PUBLIC PEACE) NOT BEING AN ACT AMOUNTING TO OR COMMITTED IN CONNECTION WITH AN OCCURRENCE MENTIONED IN SPECIAL CONDITION NO. 6 OF THE SAID RIOT AND STRIKE ENDORSEMENT.[22]

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18 Records, pp. 151-188.
19 Id.
20 *Rollo*, p. 37.
21 Id. at 56.
22 Id. at 55-56.

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UCPB Insurance denied the claim explaining that the Policy had no cross liability cover, and the malicious damage was committed by Milestone, one of the name insured, and not committed by a third party.[23]

Asgard moved for reconsideration but UCPB Insurance denied[24] the same contending that Milestone's infliction of damage is not among the acts contemplated under Section 87 (now Section 89) of the Insurance Code which provides:

> Section 87. An insurer is not liable for a loss caused by the willful act or through the connivance of the insured; but he is not exonerated by the negligence of the insured, or of the insurance agents of others.[25]

Hence, Asgard filed a complaint for sum of money with application for writ of preliminary attachment praying for actual damages in the amount of ₱147,000,000.00 plus legal interest.[26] Asgard alleged that it solely owns the damaged corrugating machine and Milestone has no insurable interest therein; thus, Section 87 (now Section 89) of the Insurance Code is inapplicable. Further, UCPB Insurance's consolidation of the building, various machineries, equipment and stocks, which are owned by different entities then occupying one compound, into a single insurance policy may have been resorted to only for convenience, and did not reflect the actual and separate ownership thereof. The damaged machine could be repaired for ₱147,000,000.00 which was paid by Asgard's sister company, Diamond Packaging Industrial Corporation,[27] as evidenced by 98 Philippine Business Bank checks issued as payment to Taiphil.[28]

In its Answer with Compulsory Counterclaim,[29] UCPB Insurance countered that the inclusion of Milestone's name among the insured in the Policy was upon Asgard's request while the malicious damage admittedly caused by Milestone was not among the risks covered by the Policy pursuant to Section 87 (now Section 89) of the Insurance Code. Even if Asgard was in fact the sole owner of the machine, Milestone still has an insurable interest therein because it would suffer a loss upon its destruction as it cannot produce the corrugated boxes. Asgard and Milestone's insurable interests were not also separate and distinct as the machine would be inoperable without the parts provided by Milestone.[30]

On July 10, 2012, UCPB Insurance filed a Motion for Summary Judgment[31] contending that there was no genuine issue of fact since Asgard already admitted that Milestone, its co-insured, maliciously caused the damage, and that UCPB Insurance had consolidated the insurable interests

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23 Id. at 149-150.
24 Id. at 154.
25 Id.
26 Id. at 59.
27 Id. at 57.
28 CA *rollo*, pp. 97-99.
29 *Rollo*, pp. 178-183.
30 Id. at 180-181.
31 Records, pp. 280-299.

into only one policy. Hence, the applicability of Section 87 (now Section 89) of the Insurance Code remains to be the only legal issue.[32]

The RTC granted the motion and dismissed Asgard's complaint in its Order[33] dated October 9, 2012. In granting the motion, the RTC declared that no genuine factual issue is extant in this case that would warrant threshing the same in a full blown trial. Further, the issue on the insurable interest of Milestone over the property is a legal issue which does not necessitate a presentation of the parties' respective pieces of evidence considering that this may be determined by referring to specific provisions of the Insurance Code governing the matter.[34] In dismissing Asgard's complaint, the RTC ruled that Milestone had insurable interest over the property. It had actual and real interest in the preservation of the corrugating machines not only because its maintenance was necessary for Asgard but also because it owns the parts which were incorporated into Asgard's corrugating machines. Even if Milestone was not the owner of the whole machine, it would still be benefited by its preservation and would be damnified by its loss. Also, Asgard had already made a judicial admission that Milestone is one of the named insured under the Policy.[35]

On appeal by Asgard, the CA reversed and set aside the RTC's ruling and remanded the case for further proceedings. The issues raised therein were as follows:

> I. Whether the trial court patently erred in law and in fact when it granted defendant-appellee's motion for summary judgment despite the clear existence of genuine issues of fact.[36]
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> II. Whether the trial court patently erred in law and in fact when it ruled that plaintiff-appellant had impliedly admitted MPPI's insurable interest over plaintiff-appellant's machinery and equipment since plaintiff-appellant admitted MPPI is one of the co-insured and invoked the malicious damage endorsement of the policy.[37]
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> III. Whether the trial court patently erred in law and in fact when it absolved defendant-appellee from any liability under the policy.[38]
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> IV. Whether the trial court patently erred in law and in fact when it took cognizance of defendant-appellee's motion for summary judgment despite the fact that it failed to comply with Rules 35, Sec 3 of the 1997 Rules of Procedure.[39]

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32 Id. at 285-287.
33 *Rollo*, pp. 187-200.
34 Records, pp. 413-415.
35 Id. at 417.
36 Id. at 423.
37 Id. at 428.
38 Id. at 429.
39 Id. at 434.

The CA, in its Decision[40] dated April 3, 2014, held that summary judgment cannot be rendered in this case as there are clearly factual issues disputed or contested by the parties. A trial is necessary to ascertain which of the conflicting parties' allegations are true. The issue on the existence of insurable interest is a factual and triable issue which the trial court could not resolve on the basis of the provisions of the Insurance Code. The fact that Asgard admitted that MPPI (Milestone) is a co-insured at the time the Policy was taken does not amount to an admission that Milestone has insurable interest at the time when the machinery and equipment were maliciously damaged. The CA ruled that the core issue is whether Milestone has insurable interest at the time of the loss, not at the time the Policy was taken.

Asgard gave the testimony of its Corporate Treasurer, Claire U. Ong,[41] who confirmed that only one policy was issued over Asgard's machine and Milestone was among those insured. When the petition for rehabilitation was denied, Asgard asked Milestone to pull out their stocks, machinery, and equipment from the plant. When Milestone finally complied, it maliciously damaged Asgard's complete line of corrugating machine and left several other machines "floating" on temporary posts. Asgard had the incident blottered. It also repeatedly asked Milestone to restore the damaged machine to no avail. Asgard notified UCPB Insurance of the loss, but the latter denied the insurance claim and the demand for reimbursement of replacement costs amounting to ₱147,000,000.00. Asgard was constrained to replace the damaged machine. Since it did not have the money, Asgard asked its sister company, Diamond Packaging Industrial Corporation, to pay to Taiphil Machinery and Equipment Sales Services which replaced the damaged parts.

UCPB Insurance presented Agripina De Luna,[42] the Multi-Lines Section Head of UCPB Claim's Department. She testified that Universal Adjuster-Appraisers Co., Inc. (Universal) conducted an investigation on the insurance claim of Asgard. It advised UCPB Insurance that Asgard could not claim for damage maliciously caused by Milestone. UCPB Insurance also based the denial of Asgard's claim on the exception under the policy for loss, damage, or destruction caused or occasioned by or happening through any willful act committed by or with the connivance of any relative of the insured. De Luna further testified that UCPB Insurance usually checked for insurable interest in issuing a policy and Milestone had an insurable interest at the time the Policy took effect because it owned some parts of Asgard's damaged machine.

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40 Penned by Associate Justice Magdangal M. De Leon, with the concurrence of Associate Justices Stephen C. Cruz and Eduardo B. Peralta, Jr.; records, Vol. II, pp. 5-20.

41 Judicial Affidavit of Claire U. Ong, Exh. "NNNNN."

42 Judicial Affidavit of Ms. Agripina de Luna, Exh. "8."

Ruling of the Regional Trial Court

In its Order[43] dated June 15, 2011, the RTC, Branch 59, Makati City issued a writ of preliminary attachment upon Asgard's posting of a bond fixed at ₱147,000,000.00, directing the Branch Sheriff to attach all the properties, real or personal, of UCPB Insurance.[44]

On February 17, 2017, the RTC rendered a Decision[45] which granted Asgard's complaint, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered in favor of the plaintiff, ordering the defendant to pay the plaintiff:
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> 1. **One Hundred Forty-Seven Million Pesos (Php147,000,000.00)** as actual damages, with legal interest at the rate of six percent (6%) per annum from date of demand on May 11, 2011;
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> 2. Exemplary damages in the amount of Five Hundred Thousand Pesos (Php500,000.00);
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> 3. Attorney's fees in the amount of Four Hundred Thousand Pesos (Php400,000.00); and
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> 4. Defendant to pay the costs of suit.
>
> **SO ORDERED**.[46]

The RTC held that UCPB Insurance is liable for the insurance claim of Asgard. It did not apply Section 87 (now Section 89) of the Insurance Code stressing that Milestone cannot be considered as an insured with respect to the damaged machine as it has no insurable interest either at the time the policy took effect or at the time of the loss considering that the TMA was valid only until January 31, 2008; the rehabilitation petition was denied by the rehabilitation court; and any business relationship with Asgard was effectively terminated when Milestone removed its equipment and left Asgard's premises.[47]

UCPB Insurance moved for reconsideration but it was denied in the Order dated May 11, 2017.[48]

An appeal was filed by UCPB Insurance with the CA.

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43 *Rollo*, p. 177.
44 Id.
45 Id. at 216- 224.
46 Id. at 224.
47 Id. at 220-224.
48 Id. at 242.

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Ruling of the Court of Appeals

In the Decision[49] dated August 31, 2018, the CA partially granted UCPB's appeal by deleting the awards of exemplary damages and attorney's fees.[50] It upheld UCPB Insurance's liability to Asgard under the Policy. The CA agreed with the RTC that Milestone lacked insurable interest and could not properly be considered an insured under the Policy. At the time the Policy took effect, Milestone had an insurable interest in the parts of the machine by virtue of ownership and it also had insurable interest in Asgard's machine by virtue of its existing TMA with Asgard. However, Milestone terminated any existing relationship with Asgard and any remaining insurable interest in Asgard's machine when it removed therefrom its parts and pulled out its other properties on July 15, 2010. Hence, Milestone had no insurable interest at the time of the loss, and could no longer be deemed an insured under the Policy. Accordingly, the damage inflicted by Milestone on the insured property could neither be considered to have arisen from an excepted risk nor be deemed to have been caused by the willful act or through the connivance of the insured under Section 87 (now Section 89) of the Insurance Code.[51]

UCPB Insurance filed a motion for partial reconsideration but it was denied by the CA in its Resolution[52] dated January 8, 2019.

Hence, this Petition for Partial Review on *Certiorari* filed by UCPB Insurance anchored on the following grounds:

> I. THE COURT OF APPEALS ERRED IN RULING THAT MILESTONE DID NOT HAVE INSURABLE INTEREST OVER THE CORRUGATING MACHINES AT THE TIME OF THE LOSS, CONSIDERING THAT BOTH ASCARD AND MILESTONE ARE CO-INSURED UNDER THE INSURANCE POLICY AND THAT THE AGREEMENT, WHICH THE COURT INTERPRETED AS HAVING TERMINATED TO SUPPORT ITS RULING ON LACK OF INSURABLE INTEREST, CLEARLY SUBSISTED AND CONTINUED TO TAKE EFFECT AT THE TIME MILESTONE CAUSED MALICIOUS DAMAGE TO SAID MACHINES.
>
> II. THE COURT OF APPEALS ERRED IN RULING THAT SECTION 87 OF THE INSURANCE CODE (WHICH RELIEVES THE INSURER FROM LIABILITY FOR LOSS CAUSED BY THE WILLFUL ACT OF THE INSURED) IS INAPPLICABLE CONSIDERING THAT MILESTONE WAS A CO-INSURED AND HAD INSURABLE INTEREST OVER THE MACHINES WHICH IT MALICIOUSLY DAMAGED.

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49 Supra note 2.
50 *Rollo*, p. 46.
51 Id. at 43-45.
52 Supra note 3.

III. THE COURT OF APPEALS ERRED IN DISREGARDING UCPB GEN'S ARGUMENT THAT THE MALICIOUS DAMAGE ENDORSEMENT REFERS ONLY TO STRIKES AND LOCK-OUTS GIVEN THE CLEAR AND UNMISTAKABLE TERMS OF THE INSURANCE POLICY THAT SUCH CLAUSE APPLIES ONLY IN CONNECTION WITH THE EXISTENCE OF A STRIKE OR LOCK-OUT. MOREOVER, ASSUMING WITHOUT CONCEDING THAT SAID ARGUMENT WAS RAISED FOR THE FIRST TIME ON APPEAL, THE SME CLEARLY FALLS UNDER THE PUBLIC POLICY EXCEPTION ENUNCIATED BY THE HONORABLE COURT.[53]

UCPB Insurance's Arguments

UCPB Insurance argues that Milestone had insurable interest over the corrugating machines at the time of the loss considering that both Asgard and Milestone are named insured under the Policy. It claimed that the TMA remained in effect at the time of the loss when Milestone left Asgard's premises by virtue of the provisions of the TMA itself. The TMA provides that unless there is notice of termination in writing, the TMA would continue to subsist and govern the relationship of the parties on a month-to-month basis.[54] The fact that Milestone detached the parts it installed on the corrugating machines and decided to leave the compound owned by Asgard in July 2010 could not have the effect of terminating the TMA, much less divesting it of insurable interest over the machines because under Section 22 thereof, Asgard shall only allow the withdrawal of materials and supplies provided by Milestone in the event of termination of the TMA. UCPB Insurance claims that since the TMA was not validly terminated, as it was automatically renewed on a month-to-month basis, the withdrawal of the parts installed on the corrugating machines was unauthorized. The performance of unauthorized act could not have the effect of rendering Milestone's insurable interest inexistent. Milestone had actual and real interest in the preservation of the corrugating machines considering that its loss or damage would mean that Milestone would not be able to comply with its obligations under the TMA.[55]

Further, since Asgard raised the issue of the non-existence of Milestone's insurable interest over the corrugating machines, the burden of proving said allegation lies on Asgard – a burden which it failed to discharge. Since Milestone had insurable interest in the corrugating machines, both at the beginning of the policy and at the time of loss, Section 89 of the Insurance Code is applicable. Milestone, one of the insured under the Policy caused the malicious damage, hence, UCPB Insurance should be exonerated from liability for the loss of or damage to the machines.[56]

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53 *Rollo*, pp. 12-13.
54 Id. at 13-15.
55 Id. at 15-16.
56 Id. at 17-18.

In addition, UCPB Insurance contends that the Malicious Damage Endorsement is a mere extension of the Riot and Strike Endorsement such that the former cannot exists independently of the latter.[57] What the Malicious Damage Endorsement seeks to cover is malicious damage caused by any person during a strike or lock-out because the probability of occurrence of malicious damage is higher during a strike or lock-out. To do away with the strike or lock-out requirement would allow the insured to recover from the insurer in any event just because its property is maliciously damaged. This would increase the possibility of connivance with the insured, and although such a situation exempts the insurer from liability under Section 87 (now Section 89) under the Insurance Code, the same is usually very difficult to prove, to the detriment of the insurer and the insurance industry as a whole.[58]

Asgard's Comment

Asgard asserts that the CA correctly ruled that Milestone did not have any insurable interest over its corrugating machines at the time of the loss, thus, Milestone could not be deemed an insured under the Policy.[59] Under paragraph 20 of the TMA, it uses the word "may" and does not limit the means by which the same may be terminated. When Milestone left Asgard's premises and remove its own equipment, the business relationship, assuming there was still any at that time, was effectively terminated. Thus, when Milestone maliciously damaged Asgard's machinery and equipment in July 2010, Milestone had no insurable interest over these machinery and equipment as it could no longer be damnified by the loss and/or destruction thereof.[60]

Further, Asgard avers that the Policy also covers the loss of or damage to the property insured directly caused by the malicious act of any person. Milestone, which did not have any insurable interest over Asgard's machinery and equipment at the time of the loss, is included in the phrase "any party" and not as an "insured", making UCPB Insurance liable. Also, as the Policy is an "all risk policy," it is incumbent upon UCPB Insurance to prove that the loss was caused by an excepted risk. Having failed to show that the loss was caused by the risk excepted, UCPB Insurance is liable to pay Asgard's insurance claim.[61]

Lastly, Asgard claims that the CA correctly ruled that UCPB Insurance's argument that the endorsement refers only to employee's strikes and lock-out or a disturbance of public peace cannot be considered for the first time on appeal.[62] The Policy contains a Malicious Damage Endorsement and/or includes loss of or damage to the property insured directly caused by the malicious act of any person. This covers the malicious damage caused by Milestone to Asgard's corrugating machines.[63] The amount of

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57 Id. at 20.
58 Id. at 27.
59 Id. at 324.
60 Id. at 325.
61 Id. at 329-331.
62 Id. at 331.
63 Id. at 332.

₱147,000,000.00 being claimed by Asgard is within the maximum limit of liability under the Policy.[64]

UCPB Insurance's Reply

UCPB Insurance maintains that the TMA was not terminated upon the withdrawal of materials and supplies. There should be a valid termination of the Agreement either by a 60-day prior written notice or simply a written notice if termination is for a cause. Neither party is authorized to terminate their relationship with the other except pursuant to the terms of the TMA. It is immaterial whether Milestone have anything more to do with Asgard's operations, properties, or machines because it is the TMA that governs the parties' respective obligations. Considering that the TMA was not never terminated, it follows that Milestone's insurable interest over Asgard's corrugating machines continued to subsist.[65]

Ruling of the Court

The petition is meritorious.

In petitions for review under Rule 45, the jurisdiction of this Court is limited to reviewing questions of law which involves no examination of the probative value of the evidence presented by the litigants or any of them. The Supreme Court is not a trier of facts; its function is not to analyze or weigh evidence all over again. Accordingly, findings of fact of the appellate court are generally conclusive on this Court. Nevertheless, jurisprudence has recognized several exceptions. One of which is when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[66] This exception justifies this Court's consideration of the instant petition.

At issue is the determination of whether Milestone had insurable interest over Asgard's corrugating machines at the time of the loss or damage. The resolution of which will determine if UCPB Insurance is liable to Asgard for its insurance claim in the amount of ₱147,000,000.00.

It is established that Milestone is a named insured under the Policy. That is settled. A perusal of the Industrial All Risk Policy No. HOF09FD-FAR087915 (Policy) shows that it was issued to Milestone and/or Market Link and/or Nova Bai and/or Asgard to insure, among others, Asgard's machinery and equipment of every kind and description in Novaliches, Quezon City for ₱500,000,000.00, covering the period August 1, 2009 to August 1, 2010. Pertinent portions of the Policy provide:

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64 Id. at 335.

65 Id. at 351-353.

66 *Gaisano Cagayan, Inc. v. Insurance Company of North America*, 523 Phil. 677, 690-691 (2006); *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, 472 Phil. 11 (2004).

Location of Risk: No. 80 P. Dela Cruz Street, Novaliches, Quezon City

INTEREST INSURED SUM INSURED

SECTION I – MATERIAL DAMAGE 900,000,000.00
(REFER TO MEMO FOR BREAKDOWN OF ITEMS)

SECTION II – MACHINERY BREAKDOWN 20,000,000.00

SECTION III – BUSINESS INTERRUPTION 10,000,000.00

INSURANCE PROPERTY BREAKDOWN AND DESCRIPTION

ITEM 1

Ps – 35,000,00

ON THE BUILDING ONLY OF ONE LOFTY STOREY IN HEIGHT (2-SPAN) CONSTRUCTED OF CONCRETE FOOTINGS, METAL FRAMED POST ON STEEL TRUSSES FRAMED UNDER LONG SPAN ROOF OCCUPIED AS PAPER MILL PLANT BUILDING.

Ps – 300,000.00

ON VARIOUS MACHINERY AND EQUIPMENT OF EVERY KIND AND DESCRIPTION WHILST CONTAINED IN THE BUILDING DESCRIBE ABOVE.

Ps – 50,000,000.00

ON STOCKS USUAL TO THE INSURED'S BUSINESS WHILST CONTAINED IN THE BUILDING DESCRIBED ABOVE.

ITEM 2

Ps 30,000,000.00

ON THE BUILDING ONLY OF ONE STOREY IN HEIGHT (2-SPAN0 CONSTRUCTED OF REINFORCED CONCRETE ON STEEL TRUSSES FRAMED UNDER LONG SPAN ROOF OCCUPIED AS OFFICE, PAPER CORRUGATING, PRINTING, PACKAGING, MANUFACTURING & MILL WAREHOUSE BUILDING.

Ps -155,000,000.00

ON VARIOUS MACHINERY & EQUIPMENT OF EVERY KIND & DESCRIPTION WHILST CONTAINED IN THE BUILDING DESCRIBED UNDER ITEM 2 ABOVE.

Ps – 100,000,000.00

ON STOCKS USUAL TO THE INSURED'S BUSINESS WHILST CONTAINED IN THE BUILDING DESCRIBED UNDER ITEM 2 ABOVE.

ITEM 3

Ps – 10,000,000.00

ON THE BUILDING ONLY OF ONE LOFTY STOREY IN HEIGHT (2-SPAN) CONSTRUCTED ON REINFORCED CONCRETE ON STEEL TRUSSES FRAMED UNDER LONG SPAN ROOF OCCUPIED AS WAREHOUSE OF PAPER PRODUCTS (IN ROLLS/BOTH LOCALE & IMPORTED) MILLED ROLLED WAREHOUSE PLANT BUILDING
ITEM 3-A

Ps – 150,000,000.00

ON VARIOUS STOCKS USUAL TO THE INSURED'S BUSINESS WHILST CONTAINED IN BUILDING NUMBER 3 – MILL ROLLED WAREHOUSE PLANT BUILDING DESCRIBED AS ONE LOFTY STOREY IN HEIGHT (TWO-SPAN) CONSTRUCTED OF REINFORCED CONCRETE ON STEEL TRUSSES FRAMED UNDER LONG SPAN ROOF OCCUPIED AS WAREHOUSE OF PAPER PRODUCTS.

PS – 10,000,000.00

ON THE BUILDING ONLY OF ONE LOFTY STOREY IN HEIGHT CONSTRUCTED OF CONCRETE FOOTINGS UNDER LONG SPAN COLOR ROOF ON STEEL, FRAMED OCCUPIED AS NOVABALE PLANT BUILDING

Ps – 20,000,000.00

ON VARIOUS MACHINERY & EQUIPMENT OF EVERY KIND & DESCRIPTIONWHILST CONTAINED IN THE BUILDING DESCRIBED UNDER ITEM 4 ABOVE

ITEM 5

Ps – 10,000,000.00

ON THE BUILDING ONLY OF ONE STOREY IN HEIGHT WITH MEZZANINE FLOOR CONSTRUCTED

ON REINFORCED CONCRETE UNDER G.I. ROOF OCCUPIED AS MICREX PLANT BUILDING

Ps – 24,000,000.00

ON VARIOUS MACHINERY & EQUIPMENT OF EVERYKIND & DESCRIPTION WHILST CONTAINED IN THE BUILSING DESCRIBED UNDER ITEM 5 ABOVE.

ITEM 6

Ps – 5,000,000.00

ON THREE (3) BUILDINGS ONY OF ONE STOREY IN HEIGHT CONSTRUCTED OF CONCRETE AND TIMBER UNDER G.I. ROOF OCCUPIED AS WAREHOUSE/BODEGA BUILDING & PARTLY TWO STOREY IN HEIGHT CONSTRUCTED OF CONCRETE AND/OR CONCRETE HOLLOW BLOCKS UNDER G.I. ROOF OCCUPIED AS GUARDHOUSE BUILDING

Ps – 1,000,000.00

ON VARIOUS MACHINERY & EQUIPMENT OF EVERY KIND & DESCRIPTION WHILST CONTAINED IN THE BUILDING DESCRIBED UNDER ITEM 6 ABOVE.

DESCRIPTION OF COVER

FIRE AND LIGHTNING
EXTENDED COVERAGE ENDORSEMENT
EATHQUAKE FIRE AND SHOCK ENDORSEMENT
FLOOD ENDORSEMENT
RIOT AND STRIKE-ENDORSEMENT
TYPHOON ENDORSEMENT[67]

x x x x

INDUSTRIAL ALL RISK COVER

In consideration of the Insured paying the premium to UCPB General Insurance Co., Inc. (hereinafter called "the Company"), the Company agrees, subject to the conditions, provisions and exclusions contained herein or endorsed or otherwise expressed hereon which shall all be deemed to be conditions precedent to the right of the insured to recover hereunder, to Indemnify the insured respect of

ACCIDENTAL PHYSICAL LOSS OF OR DAMAGE TO THE PROPERTY MORE FULLY DESCRIBED IN THE SCHEDULE HERETO DIRECTLY AND WHOLLY ATTRIBUTABLE TO ANY CAUSE,

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67 Records, pp. 151-153.

EXCEPT AS HEREINAFTER EXCLUDED, OCCURING DURING THE CURRENCY OF THE POLICY.

In no case shall the liability of the Company in respect of the property or any item thereof exceed the Limits of Liability expressed in the Schedule.

Basis of Indemnification

In the event of the Property Insured under this Policy, other than stocks, being destroyed or damaged by a contingency insured against, the basis upon which the amount payable under the Policy is to be calculated on the cost of replacing or reinstating on the same site with the same kind or type but not superior to or more extensive than the Property Insured when new, subject also to the terms and conditions of the Policy except insofar as the same may be varied hereby.

Reinstatement or Replacement shall mean:

1) Where property is destroyed, the rebuilding of any buildings or the replacement by similar property or any other property, in either case in a condition equal to but not better or more extensive than its condition when new.

2) Where property is damaged, there repair of the damaged and the restoration of the damaged portion of the property to a condition substantially the same as but not better or more extensive than its condition when new.

Special Provisions

a. The work of reinstatement (which may be carried out in another site and in any manner suitable to the requirements of the Insured subject to the liability of the Company not being thereby increased) must be carried out within twelve (12) months of the date of the damage, or within such further time as the Company may (during the said twelve months) in writing allow and may be carried out wholly or partially upon another site subject to the liability of the Company under this extension not being thereby increased.

b. Where any property is damaged or destroyed in part only the liability of the Company shall not exceed the sum representing the cost which the Company could have been called upon to pay for reinstatement if such property had been wholly destroyed.

c. No payment beyond the amount which would have been payable under this Policy if this clause had not been incorporated therein shall be made if at the time of any destruction or damage such property shall be covered by any other insurance affected by or on behalf of the Insured which is not upon the identical basis of reinstatement as stated in this Policy. If as a result of the application of any of these special provisions no payment is to be made beyond the amount which would have been payable under the Policy if this clause had not been incorporated therein, the rights and liabilities of the Insured and the Company in respect of the destruction of same shall be subject to the terms and conditions of the policy including any Condition of Average as if this memorandum had not been incorporated therein.

Average/Co-Insurance Clause

If the property hereby insured shall, on the happening of any loss or damage be collectively or greater value than the total values declared hereon, then the Insured shall be considered as being their own Company for the difference, and shall bear a ratable proportion of the loss accordingly. Every item. If more than one, of the policy shall be separately subject to this condition.

MACHINERY BREAKDOWN COVER

THE INSURERS HEREBY AGREE with the Insured (subject to the terms and conditions contained herein or endorsed herein) that if at any time during the period of insurance stated in the schedule, or during any subsequent period for which the insured pays the premium for the renewal of this policy, there shall occur to the machinery insured (or any part thereof) specified in the said Schedule, whilst on the premises mentioned therein, any unforeseen and sudden physical loss or damage necessitating its repair of replacement due to causes such as defects in casting and material, faulty design, faults at workshop or in erection, bad workmanship, lack of skill, carelessness, sabotage, shortage of water in boiler, physical explosion, tearing a part on account of centrifugal force, short-circuit, or any other cause not specifically excluded herein after.

THE INSURERS WILL INDEMNIFY the Insured in respect of such loss or damage in payment in cash. Replacement or repair (at their own option) as herein after provided, up to an amount not exceeding in any one year of insurance in respect of each of machines specified in the schedule the sum set opposite thereto and not exceeding the whole the total sum insured thereby.

This insurance applies whether the insured machines are at work or at rest, or being dismantled for the purpose of cleaning, overhauling or of being shifted within the said premises, or in the course of the aforesaid operations themselves, or in the course of subsequent re-erection, but in any case only after successful commissioning.

THE INSURER SHALL NOT BE LIABLE FOR:

(a) The deductible stated in the schedule to be borne by the insured in any one occurrence; if more than one machine is lost or damaged in one occurrence, the Insured shall not, however, be called upon to bear more than the highest single deductible.

(b) Loss of or damage to belts, ropes, wires, chains, rubber, tyres, dies or exchangeable tool, engraved cylinders, objects made of glass, porcelain, ceramics, felts, sieve or fabrics, all operating media (e.g. lubricating oil, fuel, catalysts);

(c) Loss of or damage arising directly from lightning, directly

> from fire, the extinguishment of a fire, or clearance of debris and dismantling necessitated thereby, chemical explosion (except fuel gas explosion in boilers), smoke, soot, aggressive substance, theft, subsidence, landslide, rockslide, cyclone, storm, typhoon, flood, inundation, earthquake, volcanic eruption, tsunami, impact of landborne, waterborne or airborne
>
> (d) Loss or damage directly or indirectly caused by or arising out of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, mutiny, riot, strike, lock-out, civil commotion, military or usurped power, a group of malicious persons or persons acting on behalf of or in connection with any political organization, conspiracy, confiscation, commandeering requisition or destruction of or damage by order of any government de facto or by any public authority, nuclear reaction, nuclear radiation or radioactive contamination;
>
> (e) Loss or damage caused by any faults or defects existing at the time of commencement of the present insurance within the knowledge of the Insured, or his representative, whether such faults or defects were known to the insurer or not;
>
> **(f) Loss or damage arising out of the willful act or gross negligence of the insured or of his representatives;**
>
> (g) Loss or damages for which the supplier or manufacturer is responsible either by law or under contract;
>
> (h) Loss or damage as a direct consequence of the continual influence of operation (e.g. wear and tear, cavitation, erosion, corrosion, rust, boiler scale);
>
> (i) Consequential loss or liability of any kind or description, any payments over and above the indemnity for material damage as provided herein.
>
> In any action, suit or other proceedings where the insurers allege that by reason of the provisions of exclusions (d) –(g) above any loss, destruction, damage or liability is not covered by this insurance the burden proving that such loss, destruction, damage or liability is covered shall be upon the insured.[68] (Emphasis supplied)

The business relationship of Milestone and Asgard arose pursuant to the TMA. On February 1, 2006, Asgard and Milestone executed the TMA whereby Asgard undertook to perform for Milestone toll-manufacturing of paper products in accordance with the volume and specifications as Milestone may define from time to time.[69] Milestone shall advise Asgard of its requirements for the products to be toll-manufactured via a purchase order submitted monthly at least 15 days in advance of Milestone's desired delivery or withdrawal date stated therein to enable Asgard to timely complete production thereof. The toll-manufacturing requirements of Milestone shall be performed at Asgard's premises at the Plant with the use of the facilities

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68 Id. at 179-182.

69 *Rollo*, pp. 54-55.

therein. Milestone shall source materials and supplies and cause the same to be delivered to the Plant.[70]

Stated earlier, in 2007, Asgard and Milestone further agreed that the latter would convert the paper products into corrugated carton boxes using the corrugating machines owned by Asgard. The agreement likewise included the modification of the corrugating machines by replacing the parts with the ones owned by Milestone. As a result, all vital parts of the corrugating machines of Asgard were detached and replaced with parts owned by Milestone.[71] However, on July 15, 2010, Milestone pulled out its stocks, machinery, and equipment from Asgard's plant in Novaliches, Quezon City for relocation to its own premises in Laguna. In the course thereof, it maliciously caused damage to Asgard's complete line of Isowa corrugating machine and other accessories and its printer slotter-stacker. Asgard notified UCPB Insurance about the loss and filed an insurance claim under the Policy. This was denied by UCPB Insurance stating that the malicious damage was committed by Milestone, one of the named insured. As such, UCPB Insurance is not liable for a loss caused by the willful act of the insured.[72]

In the detailed report[73] of Universal Adjusters-Appraisers Co., Inc., one of the nominated adjusters under the Policy, it made the following recommendation, *viz.*:

> x x x x
>
> POLICY LIABILITY
>
> In 2007, Asgard agreed with MPPI (Milestone) to replace the parts of its machine with the parts owned by MPPI. All vital parts of the corrugating machine of Asgard were removed and replaced with new parts by MPPI. In July 2010, MPPI left the premises but allegedly failed to restore the original parts that were previously attached to the machined.
>
> In our opinion, the failure of MPPI to restore the original parts of Asgard's machine before it left the latter's premises on July 2010 may not be maliciously done. Milestone merely removed the parts that it owned. There was no contract to the effect that Milestone had to put back the replaced parts.
>
> Moreover, MPPI which allegedly committed malicious mischief is one of the named insured in the policy. As such an insured cannot claim against itself.[74]

The Court notes that in the Order dated October 9, 2002,[75] which initially dismissed Asgard's complaint on summary judgment, the RTC ruled

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70 Id. at 65.
71 Records, pp. 408-409.
72 *Rollo*, p. 37.
73 Records, Vol. II, pp. 377-379.
74 Id.
75 Records, pp. 408-422.

that Milestone had insurable interest over the machine and equipment at the time of procurement of the Policy and at the time of the loss. It held that Asgard admitted Milestone's insurable interest when it stated that Milestone is a named insured in the Policy. It "impliedly" admitted Milestone's insurable interest when Asgard interposed the application of the Malicious Damage Endorsement Clause. The RTC stated that Milestone had insurable interest over the property as it would be benefited from the use and preservation of the modified machine. "Milestone had actual and real interest in the preservation of the corrugating machines not only because its maintenance was necessary for Asgard to be able to comply with its prestation to Milestone but also because it owns the parts which was (*sic*) incorporated into Asgard's corrugating machines."[76]

Further, the RTC held that the TMA was not terminated on January 31, 2008. After January 31, 2008, activities in the plant continued and it was only in July 2010 when Milestone decided to leave the premises. The court applied the automatic renewal clause, on a month-to-month basis, under paragraph 19 of the TMA. Thus, when the Policy was procured on August 7, 2009, the TMA was still effective.[77]

The RTC completely overturned the above ruling when it rendered the Decision[78] dated February 17, 2017 granting the complaint of Asgard. The RTC held that Milestone cannot be considered as an insured with respect to the damaged machine as it has no insurable interest both at the time the policy took effect on August 1, 2009 and at the time of the loss on July 2010 considering that the TMA was valid only until January 31, 2008. Also, the corporate rehabilitation plan was disapproved by the rehabilitation court, and any business relationship with Asgard was effectively terminated when Milestone removed its own equipment and left Asgard's premises.[79]

In effect, the RTC concluded that since Milestone had no insurable interest over the machinery and equipment, it cannot be considered an insured under the Policy. And since Milestone caused the loss or damage, Asgard can claim from UCPB under the insurance policy. Hence, Section 87 (now Section 89) of the Insurance Code does not apply.[80]

In affirming the RTC Decision dated February 17, 2017, the CA declared that Milestone lacked insurable interest and could not be properly insured under the Policy. Milestone had insurable interest in the parts of the machine at the time the Policy took effect by virtue of ownership and the TMA with Asgard. However, Milestone terminated any existing relationship with Asgard and any remaining insurable interest in Asgard's machine was negated

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76 Id. at 417.
77 Id. at 418-419.
78 *Rollo*, pp. 216-224.
79 Id. at 221.
80 Id. at 223.

when it removed from the Novaliches plant, its parts and pulled out its other properties on July 15, 2010.[81]

In this petition, UCPB Insurance underscores the fact that Milestone had insurable interest over the corrugating machines at the time of the loss since the TMA remained effective. It is clear under the TMA that unless there is notice of termination in writing, the TMA would continue to subsist and govern the relationship of the parties on a month-to-month basis.[82]

Paragraph 19 and 20 of the TMA provide:

> 19. EFFECTIVITY AND DURATION
>
> This Agreement shall become effective upon signing hereof and shall be in full force and effect until 31st of January 2008, unless earlier terminated by either Party upon sixty (60) days prior written notice to the other if without cause, or in accordance with the following Clause. In the event the parties fail to execute a new toll manufacturing agreement upon the lapse of time indicated in this paragraph, the term of this Agreement shall be deemed automatically extended on a month to month basis only.
>
> Termination or expiration of this Agreement will not abrogate, impair, release or extinguish any debt, obligation, or liability of either party incurred or arising prior to the date of termination and all undertakings, obligations, releases or indemnities which by their terms or by reasonable implication are to survive, or are to be performed in whole or in part after the termination of this Agreement, will survive such terminations or expiration.
>
> Any renewal of this Agreement, under terms and conditions to be mutually agreed upon, may at the option of the parties be done by a letter-agreement signed by both Parties. Should this Agreement expire without a written renewal thereof, the Parties shall continue their relationship herein and the provisions of this Agreement shall continue to govern them except for the term of the Agreement, which shall henceforth be from month to month.
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> 20. TERMINATION FOR CAUSE
>
> **Notwithstanding the provisions in Clause 19, this Agreement may, by notice in writing, be terminated with immediate effect at the option of either Party (for purposes of this and the succeeding Clause, the "Terminating Party") in any of the following events:**
>
> (a) If the other Party (for purposes of this and the succeeding Clause, the "Defaulting Party") shall go into liquidation other than a voluntary liquidation for the purpose of

81 Id. at 43-44.
82 Id. at 14-15.

> reconstruction or amalgamation, or shall commit an act of bankruptcy or shall compound with its creditors generally, or if a receiver or juridical manager shall be appointed over the whole or a substantial part of the assets of the Defaulting Party;
>
> (b) If the Defaulting Party shall commit any material or substantial breach of its obligations hereunder and/or suffer any default to occur on any of the provisions of this Agreement and shall fail within thirty (30) days from being notified thereof in writing to remedy such breach or default;
>
> (c) If the Defaulting Party or all or substantially all of its assets shall pass under the control of any authority, or of a competitor of the Terminating Party (as determined by the latter), or other person or corporation which the Terminating Party shall have reasonable cause to disapprove.[83] (Emphasis supplied)

To restate, the TMA shall be effective until January 31, 2008, unless earlier terminated by either Party upon sixty (60) days prior written notice to the other. In the event the parties fail to execute a new toll manufacturing agreement after its expiry date on January 31, 2008, the term of the Agreement shall be deemed automatically extended on a month-to-month basis only. If the termination is for cause, the Agreement may, by notice in writing, be terminated with immediate effect at the option of the Terminating Party. Thus, the termination of the TMA, for any reason whatsoever, should be by notice in writing. It is well-settled that when the words of a contract are plain and readily understood, there is no room for construction.[84]

There is nothing on record to show that the TMA was earlier terminated by either Milestone or Asgard prior to January 31, 2008. Neither was the TMA terminated for cause under any of the events enumerated in paragraph 20 thereof.

Contrary to the ruling of the RTC, paragraph 20(a) (*i.e.*, liquidation as a valid cause for termination) will not apply because the insurance Policy was obtained on August 7, 2009 after the rehabilitation court denied Asgard's amended petition for corporate rehabilitation in its Order dated June 9, 2009. This means that despite the denial of Asgard's petition for corporate rehabilitation, the business relationship between Asgard and Milestone pursuant to the TMA continued. After January 31, 2008, activities in the plant persisted for two years until Milestone left the premises in July 2010. Verily, the parties could not have obtained an insurance Policy if the TMA between Asgard and Milestone had been terminated upon the denial of the petition for rehabilitation.

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83 Id. at 71-72.

84 *Alpha Insurance and Surety Co. v. Castor*, 717 Phil. 132 (2013).

Paragraph 20(b) on material or substantial breach will likewise not apply considering that the breach alluded to relate to the performance and fulfillment of their respective obligations under the TMA. As explained earlier, Asgard undertook to perform for Milestone toll-manufacturing of paper products in accordance with the volume and specifications as Milestone may define from time to time. On the other hand, Milestone shall source materials and supplies and cause the same to be delivered to Asgard's Plant in Novaliches. The default shall be remedied within 30 days from notice. Thus, the removal of the stocks, machinery, and equipment by Milestone is not a substantial breach of obligation contemplated that will justify the termination of the TMA for a cause, effective after notice in writing.

Paragraph 20(c) does not apply either. No assets have passed under the control of any authority, or of a competitor of the terminating party.

When Milestone pulled out its stocks, machinery, and equipment on July 15, 2010 from Asgard's premises in Novaliches, Quezon City, the TMA remained in force and effect between Milestone and Asgard on a month- to-month basis after January 31, 2008. The TMA continued to govern the business relationship of Asgard and Milestone. While the TMA ends each month, there is no showing that there was notice in writing served 60 days in advance to terminate under paragraph 19 of the TMA or mere notice in writing for termination with cause under paragraph 20 thereof.

The Court does not agree with the CA's ratiocination that the mere removal by Milestone of its machine and equipment from Asgard's premises resulted in the termination of any existing relationship it had with Asgard. As argued by UCPB Insurance, the withdrawal by Milestone of the parts installed on the corrugating machines was unauthorized and the termination of the TMA cannot be left to the sole will of one of the parties.

The TMA is the contract between Milestone and Asgard. The TMA has the force of law between the parties and should be complied with in good faith. Milestone cannot unilaterally terminate the TMA other than for causes of termination, but always with notice in writing, under paragraphs 19 and 20 of the TMA. A contract binds both contracting parties; its validity cannot be left to the will of one of them.[85] To hold otherwise would offend the principle of mutuality of contracts.[86]

When Milestone pulled out the parts installed and caused damage to Asgard's corrugating machines, Milestone remained insured under the insurance policy since the TMA was not effectively and properly terminated.

The Court disagrees with the finding of the RTC that Milestone lacked insurable interest over the machine and equipment both at the time the Policy took effect on August 1, 2009 and at the time of the loss in July 2010. Asgard

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85 CIVIL CODE OF THE PHILIPPINES, Article 1308.

86 *Quesada v. Bonanza Restaurants, Inc.*, 799 Phil. 498, 509 (2016).

cannot take an inconsistent position that Milestone had no more insurable interest under the Policy when in the Appellant's Brief, it admitted that both Asgard and Milestone took out the insurance policy on August 1, 2009 effective until August 1, 2010. Under the condition We cited above, it is very clear that Milestone has insurable interest on the property at the time of the loss and damage on July 15, 2010.

Section 13 of the Insurance Code defines insurable interest as "every interest in property, whether real or personal, or any relation thereto, or liability in respect thereof, of such nature that a contemplated peril might directly damnify the insured." Parenthetically, under Section 14 of the same Code, an insurable interest in property may consist in: (a) an existing interest, like that of an owner or lienholder; (b) an inchoate interest founded on existing interest, like that of a stockholder in corporate property; or (c) an expectancy, coupled with an existing interest in that out of which the expectancy arises, like that of a shipper of goods in the profits he expects to make from the sale thereof.[87]

Therefore, an insurable interest in property does not necessarily imply a property interest in, or a lien upon, or possession of, the subject matter of the insurance, and neither the title nor a beneficial interest is requisite to the existence of such an interest. It is sufficient that the insured is so situated with reference to the property that he would be liable to loss should it be injured or destroyed by the peril against which it is insured. Anyone has an insurable interest in property who derives a benefit from its existence or would suffer loss from its destruction.[88]

Insurable interest in property is not limited to property ownership in the subject matter of the insurance. Where the interest of the insured in, or his relation to, the property is such that he will be benefitted by its continued existence, or will suffer a direct pecuniary loss by its destruction, his contract of insurance will be upheld, although he has no legal or equitable title.[89] A husband would thus have an insurable interest in the paraphernal property of his wife since the fruits thereof belong the conjugal partnership and may be used for the support of the family.[90]

As in this case, when Milestone removed its parts and machines, Milestone still had an actual and real interest in the preservation of the corrugating machines while the TMA is not effectively terminated and non-preservation will render Milestone liable for breach of contract as no corrugated carton boxes would be manufactured under the TMA.

Section 89 of the Insurance Code (Republic Act No. 10607) is clear - an insurer is not liable for a loss caused by the willful act of the insured, *viz.*:

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87 Campos, Maria Clara L., *Insurance*, 1983, p. 58.

88 *Gaisano Cagayan, Inc. v. Insurance Company of North America*, 523 Phil. 677, 690-691 (2006).

89 Supra note 87.

90 Id.

> Section 89. An insurer is not liable for a loss caused by the willful act or through the connivance of the insured; but he is not exonerated by the negligence of the insured, or of the insurance agents or others.

The insurer is not liable for a loss caused by the intentional act of the insured or through his connivance. Such damage/loss is not an insurable risk because the occurrence of the loss was subject to the control of one of the parties and not merely caused by the negligence of the insured.[91]

However, the insurer is not relieved from liability by the mere fact that the loss was caused by the negligence of the insured, or of his agents or others.[92] Accordingly, it is no defense to an action on the policy that the negligence of the insured caused or contributed to the injury.[93] However, when the insured's negligence is so gross that it is tantamount to misconduct, or willful or wrongful act, the insurer is not liable.[94]

It is basic that the law is deemed written into every contract.[95]Although a contract is the law between the parties, the provisions of positive law which regulate contracts are deemed written therein and shall limit and govern the relations between the parties.[96] As such, Section 89 of the Insurance Code is deemed incorporated in every insurance contract.

More so, under the heading "The Insurer Shall Not Be Liable For" or the exception clause written in the policy, the Insurer (UCPB Insurance) shall not be liable for:

> (f) Loss or damage arising out of **the willful act or gross negligence of the insured** or of his representatives; (Emphasis supplied)[97]

Since the damage or loss caused by Milestone to Asgard's corrugating machines was willful or intentional, UCPB Insurance is not liable under the Policy. To permit Asgard to recover from the Policy for a loss caused by the willful act of the insured is contrary to public policy, *i.e.*, denying liability for willful wrongs.

It is also stated in the Policy under the heading "Industrial All Risk Cover" that the insured shall be indemnified in respect of accidental physical loss or damage to the property. To re-state, the provision reads:

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91 De Leon, Hector S., *The Law on Insurance (with Allied Laws)*, 11th edition, 2017, p. 139.

92 Perez, Hernando B., *The Insurance Code and Insolvency Law with Comment and Annotations*, Fifth Edition, 2006, pp. 168-169.

93 Id.

94 Id. at 169.

95 *Heirs of San Miguel v. Court of Appeals*, 416 Phil. 943 (2001).

96 Id.

97 Records, p. 181.

> INDUSTRIAL ALL RISK COVER
>
> In consideration of the Insured paying the premium to UCPB General Insurance Co., Inc. (hereinafter called "the Company"), the Company agrees, subject to the conditions, provisions and exclusions contained herein or endorsed or otherwise expressed hereon which shall all be deemed to be conditions precedent to the right of the insured to recover hereunder, to Indemnify the insured in respect of
>
> ACCIDENTAL PHYSICAL LOSS OF OR DAMAGE TO THE PROPERTY MORE FULLY DESCRIBED IN THE SCHEDULE HERETO DIRECTLY AND WHOLLY ATTRIBUTABLE TO ANY CAUSE, EXCEPT AS HEREINAFTER EXCLUDED, OCCURING DURING THE CURRENCY OF THE POLICY.
>
> In no case shall the liability of the Company in respect of the property or any item thereof exceed the Limits of Liability expressed in the Schedule.[98]

Even Asgard described the act done by Milestone as malicious; therefore, it is intentional and not accidental. Consequently, the paragraph on Industrial All Risk which covers *accidental* physical loss or damage to the property will likewise not apply.

The California Insurance Code, Section 553 thereof, likewise states a general exclusion for losses caused by the willful acts of the insured. The statute is based on the stated public policy objectives of (1) prohibiting indemnification for intentional misconduct," and (2) preventing the encouragement of willful tortious acts."[99] The "no indemnification" policy is predicated on the desire to deny any economic benefit to the insured whose intentional misconduct causes a loss.[100] The same public policy obtains in this case.

The cause of the loss or damage to the corrugating machines is not a covered risk under the Policy

The insurance policy will specify what risks the insurer has agreed to grant coverage for, and beyond these it may not be held liable.[101] And unless

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98 Id. at 179.

99 James A. Fischer, *The Exclusion from Insurance Coverage of Losses Caused by the Intentional Acts of the Insured: A Policy in Search of a Justification*, 30 SANTA CLARA LAW REVIEW 95 (1990), pp. 110-111.

100 Id.

101 Section 51. A policy of insurance must specify:
(a) The parties between whom the contract is made;
(b) The amount to be insured except in the cases of open or running policies;
(c) The premium, or if the insurance is of a character where the exact premium is only determinable upon the termination of the contract, a statement of the basis and rates upon which the final premium is to be determined;
(d) The property or life insured;

the insured can establish that the cause of the loss was covered by the policy, his claim cannot prosper.[102]

Again, We restate the Machinery Breakdown Cover provision in the Policy pertains to loss or damage to the machines insured, as in the case of the corrugating machines. It states:

> MACHINERY BREAKDOWN COVER
>
> THE INSURERS HEREBY AGREE with the Insured (subject to the terms and conditions contained herein or endorsed herein) that if at any time during the period of insurance stated in the schedule, or during any subsequent period for which the insured pays the premium for the renewal of this policy, there shall occur to the machinery insured (or any part thereof) specified in the said Schedule, whilst on the premises mentioned therein, *any unforeseen and sudden physical loss or damage necessitating its repair of replacement* due to causes such as **defects in casting and material, faulty design, faults at workshop or in erection, bad workmanship, lack of skill, carelessness, sabotage, shortage of water in boiler, physical explosion, tearing a part (sic) on account of centrifugal force, short-circuit, or any other cause not specifically excluded herein after.**
>
> THE INSURERS WILL INDEMNIFY the Insured in respect of such loss or damage in payment in cash replacement or repair (at their own option) as herein after provided, up to an amount not exceeding in any one year of insurance in respect of each of machines specified in the schedule the sum set opposite thereto and not exceeding the whole the total sum insured thereby.
>
> This insurance applies whether the insured machines are at work or at rest, or being dismantled for the purpose of cleaning, overhauling or of being shifted within the said premises, or in the course of the aforesaid operations themselves, or in the course of subsequent re-erection, but in any case only after successful commissioning.[103] (Emphasis supplied)

If at any time during the period of insurance stated in the schedule, or during any subsequent period for which the insured pays the premium for the renewal of the Policy, there shall occur to the machinery insured any unforeseen and sudden physical loss or damage necessitating its repair of replacement due to causes such as defects in casting and material, faulty design, faults at workshop or in erection, bad workmanship, lack of skill, carelessness, sabotage, shortage of water in boiler, physical explosion, tearing apart on account of centrifugal force, short-circuit, or any other cause not

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(e) The interest of the insured in property insured, if he is not the absolute owner thereof;
(f) The risks insured against; and
(g) The period during which the insurance is to continue.

102 Supra note 87 at 154.

103 Id. at 180.

specifically excluded herein after, the insurer will indemnify the insured in respect of such loss or damage by paying in cash, by replacing or repairing the machinery. The insurance applies whether the insured machines are at work or at rest, or being dismantled for cleaning purposes, overhauling or being shifted within the premises, or in the course of aforesaid operations themselves, or in the course of subsequent re-erection but only after successful commissioning.

The Malicious Damage Endorsement under the Policy does not apply to the loss of or damage caused herein.

The Policy provides a Malicious Damage Endorsement, *viz:*

> x x x x
>
> It is hereby declared and agreed that the insurance under the said Riot and Strike endorsement shall extend to include MALICIOUS DAMAGE, which for the purpose of this extension shall mean:
>
> LOSS OF OR DAMAGE TO THE PROPERTY INSURED DIRECTLY CAUSED BY THE MALICIOUS ACT OF ANY PERSON (WHETHER OR NOT SUCH ACT IS COMMITTED IN THE COURSE OF DISTURBANCE OF THE PUBLIC PEACE) NOT BEING AN ACT AMOUNTING TO OR COMMITTED IN CONNECTION WITH AN OCCURRENCE MENTIONED IN SPECIAL CONDITION NO. 6 OF THE SAID RIOT AND STRIKE ENDORSEMENT.
>
> but the Company shall not be liable under this extension for any loss or damage by fire or explosion nor for any loss or damage arising out of or in the course of burglary, housebreaking, theft or larceny or any attempt thereat or caused by any person taking part therein.
>
> Provided always that all the conditions and provisions of said Riot and Strike Endorsement shall apply to this extension as if they had been incorporated therein.[104]
>
> x x x x
>
> CONDITION 6
>
> This insurance does not cover any loss or damage occasioned by or through or in consequence, directly or indirectly, of any of the following occurrences namely: -
>
> (a) War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war.

104 Records, pp. 165-166.

> (b) Mutiny, civil commotion, assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, or any act of any person acting on behalf of or in connection with any organization with activities directed towards the overthrow by force of the government "de jure" or "de facto" or to the influencing of it by terrorism or violence.
>
> In any action, suit or other proceeding, where the Company alleges that by reason of the provisions of this Condition, any loss or damage is not covered by this insurance, the burden of proving that such loss or damage is covered shall be upon the insured.[105]

In filing its insurance claim with UCPB Insurance, Asgard relied upon the above quoted provision in the Policy.

UCPB Insurance strongly argues that the Malicious Damage Endorsement is a mere extension of the Riot and Strike Endorsement such that the former cannot exists independently of the latter. The wordings of the Malicious Damage Endorsement show that it is merely subordinate to and independent on the conditions and provisions set forth in the Riot and Strike Endorsement. What the Malicious Damage Endorsement seeks to cover is malicious damage caused by any person during a strike or lock-out because the probability of occurrence of malicious damage is higher during a strike or lock-out. To do away with the strike or lock-out requirement would allow the insured to recover from the insurer in any event to include a situation that its property is maliciously damaged by the insured.

The above argument by UCPB Insurance was not considered by the CA stating that it was only raised for the first time on appeal.

It is not true that it was raised for the first time on appeal because the RTC, even during the pre-trial hearing[106] on June 15, 2012, already noted the Malicious Damage Endorsement clause under the Policy. However, what is left to be determined is its application to the loss incurred by Asgard in this case - whether it is a mere extension of the Riot and Strike Endorsement or an independent risk covered under the Policy.

The Court agrees with UCPB Insurance that the Malicious Damage Endorsement is a mere extension of the Riot and Strike Endorsement. The beginning of the paragraph made reference to the Riot and Strike Endorsement, providing that the said Riot and Strike Endorsement shall extend to include Malicious Damage directly caused by the malicious act of any person, whether or not such act is committed in the course of disturbance of public peace. The application of the Malicious Damage Endorsement requires the existence of a strike and riot resulting to a loss of or damage to

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105 Id. at 173.

106 See RTC Decision, p. 4, *rollo*, p. 219.

the property insured. Be it stressed that the risks covered under the policy are: (1) Fire and Lightning; (2) Extended Coverage Endorsement (to include perils of explosion in aircraft and vehicle and smoke); (3) Earthquake, Fire and Shock Endorsement; (4) Flood Endorsement; (5) Riot and Strike Endorsement; and (6) Typhoon Endorsement.[107] Malicious damage is not an independent risk covered under the Policy.

Since the malicious damage to Asgard's corrugating machines was not committed during a strike or riot which is the risk covered, the said Malicious Damage Endorsement provision finds no application herein. More so, Milestones does not fall within the term "any party" as stated therein considering the established fact that it is an insured under the Policy.

Asgard failed to discharge its burden as to the proof of loss/ damage to justify the grant of its insurance claim.

In granting the insurance claim of Asgard amounting to ₱147,000,000.00, the RTC relied on the quotation (Exh. "K" and series) submitted by Taiphil Machinery and Equipment Sales Services showing that that the damaged parts of the insured machine will be replaced at the cost of ₱147,000,000.00, and the 98 Philippine Business Bank checks (Exhs. "R" to "KKKKK")[108] issued as payment to Taiphil and which Taiphil deposited to its account. The basis of indemnity under the Policy is the replacement cost of the property insured. To put its damaged corrugating machines back in operation, Asgard claimed that the damaged parts had to be replaced.

In affirming the RTC, the CA made no further discussion as to the proof of loss in granting Asgard's insurance claim.

The party who alleges a fact has the burden of proving it.

Section 1, Rule 131 of the Rules of Court defines "burden of proof" as "the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence.[109]

Since it is Asgard claiming for actual damages or insurance claim against UCPB Insurance, it bears the burden of proof to substantiate its claim. Testimony or evidence must be given to sustain the correctness of the claim.[110] As held by this Court, "[a]ctual damages are not presumed. The claimant must prove the actual amount of loss with a reasonable degree of certainty premised upon competent proof and on the best evidence obtainable. Specific facts that

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107 Records, pp. 166.
108 Records, Volume II, pp. 164-261.
109 *Sps. De Leon v. Bank of the Philippines*, 721 Phil. 839, 848 (2013).
110 Guevara, Sulpicio, *The Philippine Insurance Law*, Fourth Edition (Revised), 1961, p. 126.

could afford a basis for measuring whatever compensatory or actual damages are borne must be pointed out. Actual damages cannot be anchored on mere surmises, speculations or conjectures."[111]

Records show that it was Claire U. Ong, the Corporate Treasurer of Asgard, who testified as regards the malicious damage caused to Asgard's complete line of Isowa corrugating machines when Milestone pulled out its stocks, machinery, and equipment in July 2010.

In one of the letters sent by Asgard to UCPB Insurance, it averred that as per the physical inventory of machinery and equipment conducted by the staff of Paul Uy Ong, the following were damaged:

> 1. "Isowa" corrugating machines such as Single Facer "A" and "B" Flutes, "Lechida" Single Facer "A" Flute, "Ishikawa" Single facer "E" Flute and other accessories, originally installed at ground level were dismantled and were dumped at the rear portion of the warehouse.
>
> 2. "Isowa" dual backer conveyor heater, Slitter station, Cut-Off Station, Akebono Tsusho Printer Slotter Machine were welded to steel pole which appear to be unstable.
>
> 3. Other machine parts were unaccounted.[112]

Aside from the foregoing, Asgard did not explain the extent of the damage of its corrugating machines. It failed to show whether the damaged machines are integral part of the stocks, machinery and equipment pulled out by Milestone; whether these damaged machines are independent machinery, *i.e.,* it can operate on its own without the parts installed by Milestone; and whether the stocks, machinery and equipment installed by Milestone are detachable, or it will not cause any damage when detached.

The Court cannot just rely on the Taiphil quotation to determine the amount of actual loss, the PNB checks issued and deposited to Taiphil's account as proof of payment, or the pictures[113] of the damaged machines. These pieces of evidence do not convincingly and substantially prove the exact damage or actual loss sustained by Asgard's corrugating machines caused maliciously by Milestone.More so, what was presented was a mere "quotation" not a reliable and competent evidence.

IN VIEW OF ALL THE FOREGOING, the instant petition is **GRANTED**. The Decision dated August 31, 2018 and the Resolution dated January 8, 2019 of the Court of Appeals in CA-G.R.CV No. 109543 are **PARTIALLY SET ASIDE**. The Complaint for Sum of Money with Application for Writ of Preliminary Attachment in Civil Case No. 11-531 is hereby **DISMISSED**.

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111 *Loadstar Shipping Co. v. Malayan Insurance Co. Inc.*, 748 Phil. 569, 586 (2014).
112 See Complaint; *rollo*, p. 56.
113 Exhs. "OOOOO" to "OOOOO-11", Records, Volume 1, pp. 116-121.

SO ORDERED.

ROSMARI D. CARANDANG
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

DIOSDADO M. PERALTA
Chief Justice