Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

TECHNO DEVELOPMENT & CHEMICAL CORPORATION,
Petitioner,

- versus -

VIKING METAL INDUSTRIES, INCORPORATED,
Respondent.

G.R. No. 203179

Present:

VELASCO, JR., *J.*, *Chairperson*,
PERALTA,
PEREZ,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

July 4, 2016

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D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] dated March 16, 2012 and Resolution[2] dated August 22, 2012 of the Court of Appeals (*CA*) in CA-G.R. CV No. 84186, which modified the Decision[3] dated August 27, 2003 of the Regional Trial Court (*RTC*), National Capital Judicial Region, Branch 145, Makati City.

The factual antecedents are as follows.

On September 23, 1993, respondent Viking Metal Industries, Incorporated (*VMI*), through its President and General Manager, Brilly Bernardez, presented to the PNOC Energy Development Corporation (*PNOC-EDC*) its bid proposal to supply and deliver, within one hundred and

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1 Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison, concurring; *rollo*, pp. 31-65.

2 *Id.* at 79-80.

3 Penned by Judge Cesar D. Santamaria; *id.* at 244-258.

sixty (160) days, various fabricated items, consisting of pipe shoes and structural supports, for the PNOC-EDC First 40 MW Mindanao-Geothermal Project (*MG Project*). In a Notice of Award dated January 17, 1994, the project was awarded to VMI for having the lowest bid of ₱6,794,172.30.[4] While said document provided for January 18, 1994 as the project's starting date and June 26, 1994 as completion date, the parties agreed to move the starting date to January 31, 1994 and July 9, 1994 as the completion date.[5] On March 10, 1994, PNOC-EDC likewise awarded to VMI the Bifurcator Fabrication of the MG Project amounting to ₱200,000.00 to expire on July 18, 1994. Pending the execution of a formal contract, VMI and PNOC-EDC agreed that the bid document and the Notice of Award shall constitute as the binding contract between them.[6]

In a meeting held on April 13, 1994 among the representatives of PNOC-EDC, VMI, and herein petitioner Techno Development & Chemical Corporation, the parties agreed to paint the fabricated items with Ultrazinc Primer, an anti-rust primer manufactured by petitioner Techno.[7] Consequently, VMI began purchasing said primer from Techno, while Techno provided VMI with technical personnel to supervise the application of the primer on the fabricated items.

Thereafter, VMI made several deliveries of the fabricated items to PNOC-EDC on May 27, 1994, June 1, 1994, June 2, 1994, November 19, 1994, and finally on January 3, 1996.[8] On the third week of June 1994, however, PNOC-EDC advised VMI of the rejection of 410 pieces of the fabricated items due to the premature rusting of the coated surfaces thereof. In response, the President of VMI and the Vice-President for Technical Services of Techno conducted a joint ocular inspection on June 24, 1994 at the PNOC-EDC Stockyard in Sta. Mesa, Manila. As a result thereof, they noted that rust had manifested on the surface of the fabricated products despite being coated with the Ultrazinc primer. They likewise noted that the primer was very soft and had started to pulverize.[9]

On July 13, 1994, the VMI and Techno representatives met again and agreed that corrective measures on the defective painting would have to be done. Thus, in a follow-up letter dated July 15, 1994, VMI reminded Techno of their agreement that the pull-out of the defective fabricated items, including trucking services, electric and power supply, as well as administration costs, would be for Techno's account.[10] Thereafter, in another meeting among PNOC-EDC, VMI, and Techno, PNOC-EDC

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4 *Id.* at 32.
5 *Id.* at 33.
6 *Id.*
7 *Id.* at 34.
8 *Id.* at 35.
9 *Id.* at 36.
10 *Id.*

reminded VMI of its contractual obligations to finish the project as scheduled and that any delay by VMI's subcontractor, Techno, would be borne by it. In the same meeting, Techno agreed to rectify the balance of the fabricated items with the defective primer applications stocked at the PNOC-EDC Stockyard, while VMI agreed to the withdrawal and repair of the rejected structural supports/pipe shoes. In a later meeting held on August 19, 1994, VMI and Techno agreed on the time-sharing use of VMI's shop and that Techno would deliver the Ultracoat Paints to be used for the repairs.

While the corrosion problem on the fabricated items was being remedied, VMI incurred delays in the submission of required fabrication drawings, encountered difficulties in sourcing construction materials, and committed gross miscalculations of the tons requirements, ultimately resulting in the delay in the deliveries of the structural supports, which should have been completed on July 8 and 18, 1994 but as of August 5, 1994, were only about 60% finished.[11] In spite of said problems, however, PNOC-EDC still proceeded to formally execute the Fabrication Contract with VMI on September 28, 1994, but retained July 9, 1994 as the completion date.

In the next several months, VMI and PNOC-EDC further encountered several delays and consequent contract extensions due to deficiencies and non-conformance of the fabricated items with PNOC-EDC's specifications. In the end, PNOC-EDC advised VMI that it only had until July 30, 1995 to complete the rectification work on the rejected items and that any remaining undelivered items after said deadline would be inventoried and deleted from the contract.[12] True enough, PNOC-EDC decreased the original fabrication contract price of ₱6,794,172.30, which was adjusted to ₱6,871,605.64 in February 1996, to ₱6,578,034.99.[13]

In a letter dated April 3, 1998, VMI appealed to PNOC-EDC to reconsider its demand of ₱2,265,645.09 as the total collectible amount representing liquidated damages and deductions ratiocinating that the delay was ultimately attributable to the poor and substandard primer paint of Techno. In reply, PNOC-EDC affirmed its deduction and informed VMI that its approval of Techno as paint supplier would not relieve it of its obligation under their contract.[14] Thus, on September 30, 1999, VMI filed before the RTC of Makati City a Complaint for Sum of Money and Damages against PNOC-EDC due to its continued refusal to pay VMI for the remaining balance of the contract price allegedly amounting to

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11 *Id.* at 37-38.
12 *Id.* at 39-41.
13 *Id.* at 41.
14 *Id.* at 41-42.

₱2,265,644.23 and against Techno for the reimbursement of ₱550,000.00 for the alleged repairs done on the defective coating of the fabricated items.[15]

On the one hand, PNOC-EDC averred in its Answer With Counterclaim that VMI is not entitled to recovery of any amount since the retained amount of ₱2,230,410.10 (not ₱2,265,644.23 as VMI claims) was applied as follows: ₱1,374,321.13 as penalty for the delays; ₱293,570.65 as deletion of work from the contract; and ₱490,959.72 as repairs and rectification costs of defective pipes.[16] On the other hand, Techno averred that: it provided VMI with the manual for the proper application of its paint products and technical personnel, who actually witnessed and recorded the failure by VMI personnel to comply with the proper procedures on the application of its paint products and, thus, warned said VMI personnel that Techno would not give them any guarantee in case the fabricated items get rusty; the re-painting of the defective fabricated items were all undertaken at the sole expense of Techno, without any cost to VMI; Techno is not a party to the Fabrication Contract between VMI and PNOC-EDC; and it is actually VMI that has an unpaid obligation in favor of Techno amounting to ₱166,750.00 plus interest.[17]

During the pre-trial, the parties agreed on the following issues for resolution: (1) whether PNOC-EDC rightfully withheld the amount of ₱2,265,644.23 as penalty; (2) whether VMI was in delay in the fulfillment of its obligation with PNOC-EDC; and (3) whether Techno could be held liable to VMI and, on the other hand, *whether VMI has an outstanding unpaid obligation in favor of Techno.*[18]

On August 27, 2003, the RTC rendered its Decision the pertinent portions of which read:

> An examination of the evidence on record shows that the delay of the plaintiff in the performance of its obligation cannot be solely attributed to it. It was mainly caused by the paint failure on the fabricated materials. PNOC-EDC was cognizant of this fact as shown in its letter of July 13, 1994.
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> x x x x
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> From this aforequoted letter, it is palpably clear that PNOC-EDC acknowledged the fact that the delay was caused by defendant Techno. Thus, it cannot insist now that it was plaintiff alone who was responsible for it. x x x
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> x x x x

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15 *Id.* at 42.
16 *Id.*
17 *Id.* at 43.
18 *Id.*

It cannot be denied that plaintiff purchased from Techno the paint used in the fabrication of the subject materials. This is in accordance with the directive of defendant PNOC-EDC since Techno was a duly accredited supplier of paints as it (PNOC-EDC) was satisfied by the quality of the paint products of Techno after a test was conducted on it. Hence, there being accreditation for the purchase and use of Ultracoat 2130 from Techno, it has warranted the good quality of this paint. **Even if there was no directive from PNOC-EDC, Techno is still obligated to the plaintiff to deliver good Ultracoat 2130 paint as the contract of sale between it and the plaintiff carries with it the implied warranty of Techno against hidden defects of the products bought by the plaintiff.**

x x x x

The defense of Techno that plaintiff did not follow the manual of procedure given to it for the proper application of the subject paint is less convincing in the face of its failure to adduce evidence on the existence of this manual of procedure. What it offered in evidence to prove the fault of the plaintiff are "daily inspectors reports" and "diagrams of pipe support." x x x Again, these documentary evidence do not persuade, mainly because the alleged instructors or representatives of defendant Techno who allegedly conducted the inspection and prepared the reports were not presented as witnesses to testify on these matters. More than this, Techno did not even bother to formally communicate to either the plaintiff or defendant PNOC-EDC of the alleged faulty procedure applied by plaintiff as well the intention of Techno to withdraw the warranty of its products sold to the plaintiff.

Finally, while it is true that defendant Techno is not privy to the Fabrication Contract, its assumption of the cost of rectification is enough proof that it was aware of the fact that its product is defective. Had it been otherwise, it should not have assumed the obligation.

PREMISES CONSIDERED, judgment is rendered in favor of the plaintiff and against the defendants as follows:

1) Ordering defendant PNOC-EDC to pay the amount of ₱2,265,644.23 representing the balance of the stipulated price under the Fabrication Contract;

2) Ordering defendant Techno to pay the plaintiff the amount of ₱550,000.00 representing the cost of the rectification on the subject materials; [and]

3) Ordering both defendants to pay jointly and severally the sum of ₱100,000.00 for as attorney's fees plus cost of suit.

SO ORDERED.[19]

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19 *Id.* at 255-258. (Emphasis ours; citations omitted)

Aggrieved, petitioner Techno appealed the RTC's Decision to the CA contending, among other assertions, that the trial court erred in finding that it was liable to pay the costs of the rectification in the amount of ₱550,000.00 without any legal or factual basis on record, that it did not enter into any contract with VMI obliging it to pay ₱550,000.00 as cost of rectification, and that VMI did not adduce any sufficient evidence to support its claim thereto. In fact, when Techno saw the huge estimates made by VMI on the projected cost of rectification, it undertook the repainting at its sole expense instead without any cost to VMI. Also, Techno faulted the trial court for failing to consider its undisputed counterclaim against VMI for the unpaid purchases of paint products amounting to ₱166,750.00.[20]

In its Decision dated March 16, 2012, the CA pertinently ruled as follows:

> **VMI's claim falls squarely within the realm of actual or compensatory damages. However, its failure to prove actual expenditure consequently conduces to a failure of its claim. In determining actual damages, the Court cannot rely on mere assertions, speculations, conjectures or guesswork but must depend on competent proof and on the best evidence obtainable regarding the actual amount of loss such as receipts or other documentary proofs to support such claim.**
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> **To support its claim of Php550,000.00 against Techno, VMI presented a letter dated June 28, 1994 of VMI Bernardez addressed to Danilo Tuazon, President of Techno, containing a price quotation for the scope of work to be done on the fabricated items with defective coating in the amount of Php426,165.85. We note that said letter did not bear the conformity of Techno and worse, it was a mere photocopy.**
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> **A price quotation is not a competent proof to show that VMI solely undertook the repainting of the defective fabricated products. In a meeting held among the parties on August 19, 1994, VMI and Techno agreed on the time-sharing use of VMI's shop and for Techno to deliver the Ultracoat paints to be used for the repairs of the fabricated items. This only proves that Techno did its share. Failing to satisfy the Court that VMI certainly suffered actual damages amounting to Php550,000.00, its claim must necessarily fail.**
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> **We do not find the award of attorney's fees justified in this case. The general rule is that no premium should be placed on the right to litigate and attorney's fees as part of damages are not meant to enrich the winning party at the expense of the losing litigant. We find no evidence of bad faith by PNOC-EDC and Techno which would justify the award of attorney's fees.**

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20 *Id.* at 60-62.

> WHEREFORE, PNOC-EDC's appeal is PARTIALLY GRANTED. The appealed Decision of the RTC, Makati City, Branch 145 is MODIFIED, as follows:
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> **1) The award of actual damages in the amount of Php550,000.00 in favor of VMI and against Techno is DELETED;**
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> 2) The award of unpaid balance of the Contract Price in the amount of Php2,265,644.23 in favor of Viking Metal Industries, Inc. against PNOC-Energy Development Corporation is reduced to Php2,230,410.10 and the penalty charges in the amount of Php180,663.21 is to be deducted therefrom, for a net award of Php2,049,746.89.
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> **3) The award of Attorney's fees amounting to Php100,000.00 is also DELETED.**
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> SO ORDERED.[21]

In a Motion for Partial Reconsideration dated April 12, 2012, petitioner Techno averred that while the appellate court correctly deleted the award of actual damages in the amount of ₱550,000.00, and attorney's fees in the amount of ₱100,000.00 against Techno and in favor of VMI, the appellate court nevertheless omitted to rule on its counterclaim against VMI for the unpaid purchases of paint products amounting to ₱166,750.00. In its Resolution dated August 22, 2012, however, the CA denied petitioner Techno's Motion for Partial Reconsideration finding no cogent and persuasive reason to deviate from its previous findings and conclusions considering that the allegations in their motions are a mere rehash and had already been passed upon.[22] Hence, this petition invoking the following argument:

> I.
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> THE COURT OF APPEALS GRAVELY ERRED IN OMITTING AND FAILING TO CONSIDER THE COUNTERCLAIM OF PETITIONER TECHNO AGAINST RESPONDENT VIKING DESPITE THE FACT THAT RESPONDENT HAD ADMITTED ITS OBLIGATION AND PETITIONER HAD ESTABLISHED BY A PREPONDERANCE OF EVIDENCE THAT RESPONDENT HAS FAILED TO PAY FOR PETITIONER'S PRODUCTS IN THE TOTAL AMOUNT OF PHP166,750.00.

In the instant petition, Techno reiterates that while the appellate court correctly deleted the costs of rectification in the amount of ₱550,000.00 and the ₱100,000.00 attorney's fees awarded by the trial court, it nonetheless erred when it omitted, without any legal basis, to render a ruling on its counterclaim against respondent VMI for the unpaid products purchased by the latter. According to Techno, the CA overlooked and disregarded the

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21 *Id.* at 62-64. (Emphasis ours)

22 *Id.* at 79-80.

issue of whether it is entitled to its counterclaim despite the fact that VMI had already admitted its obligation and that it had sufficiently proven its claim. Techno points out that from the very beginning, it had already established in its Answer with Compulsory Counterclaim dated October 19, 1999 that VMI is still indebted thereto in the amount of ₱166,750.00 plus interest equivalent to one percent (1%) per month beginning January 1995 until full payment, as stipulated in the purchase invoice, exclusive of additional charges and attorney's fees. In fact, during the pre-trial, the parties even agreed on said counterclaim as one of the issues which will be submitted for resolution. Yet, while the appellate court's Decision mentioned such counterclaim in the narration of issues raised, it failed to resolve the same, offering no explanation and legal basis for such omission.

In support of its claim, Techno presented the following evidence: (1) Statement of Account[23] dated January 31, 1995 containing a list of accounts receivable from VMI for its unpaid products purchased from Techno; (2) several Invoices and Delivery Receipts[24] signed by representatives of VMI evidencing delivery by Techno of paint products and receipt thereof by VMI; (3) corroborating testimony of Techno's Chief Accountant; and (4) testimony of its President attesting to the fact that VMI still had an outstanding account with Techno in the aforestated amount. In addition, Techno asserts that VMI's witness, its President Brilly Bernardez, even admitted his knowledge of the existence of the unpaid obligation of VMI in favor of Techno as shown by the following excerpt of his testimony during trial:

> Q: **Are you aware of the fact that you may still have some unpaid obligation due to Techno Development?**
> (Brilly Bernardez) A: **Yes, there could be but subject to verification.**
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> Q: And the amount due is in connection with this project?
> A: That particular project, sir.
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> COURT
> This project?
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> WITNESS (Brilly Bernardez)
> A: Yes, Your Honor.[25]

At the same trial, moreover, Techno recounts that while VMI attempted to present rebuttal evidence, VMI ultimately withdrew said evidence thereby establishing Techno's assertion that VMI utterly failed to refute its counterclaim. In the end, Techno avers that it would be rather unfair to deem the appellate court's judgment as final for if its counterclaim

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23 *Id.* at 229.
24 *Id.* at 230-243.
25 *Id.* at 24. (Emphasis ours)

will not be considered, VMI will be unjustly enriched at the expense of Techno in view of the established fact that VMI actually received and used Techno's products without giving any corresponding consideration therefor.[26]

For its part, respondent VMI countered that when the trial court rendered its decision ruling that Techno was guilty of breach in its respective obligation towards VMI, it was clearly implied that Techno's counterclaim was without basis.[27] Thereafter, while the CA opted to cancel the trial court's award of damages in favor of Techno for lack of sufficient evidence, it did not disturb the rest of the findings of the lower court including the denial of the counterclaim. Thus, VMI claims that Techno can no longer assert its counterclaim and allege that the same was never addressed. Besides, to do so would request the Court to reopen the factual issues and to assume the role of a trial court.[28]

We rule in favor of petitioner.

At the outset, the Court notes that its jurisdiction in cases brought before it from the appellate court is limited to reviewing errors of law, and findings of fact of the Court of Appeals are conclusive upon the Court since it is not the Court's function to analyze and weigh the evidence all over again.[29] In several cases, however, it has been repeatedly held that the rule that factual findings of the Court of Appeals are binding on the Court are subject to the following exceptions: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) *when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.*

In the instant case, while the appellate court aptly ruled upon and rejected VMI's claim of ₱550,000.00 subject of VMI's Complaint for Sum

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26 *Id.* at 25-26.
27 *Id.* at 564.
28 *Id.* at 565.
29 *Development Bank of the Philippines v. Traders Royal Bank, et al.*, 642 Phil. 547, 556 (2010).

of Money against Techno, it clearly overlooked the factual issues presented by Techno in its counterclaim against VMI. In its thirty-five (35)-page Decision, the CA seemed to have preoccupied itself with the other issues presented by VMI as against PNOC-EDC and Techno, without addressing the issue of whether VMI has an outstanding unpaid obligation in favor of Techno, nor providing any reason for such failure. Had it exerted additional effort in taking Techno's claims into consideration, as well as their supporting pieces of proof, it would have warranted their meritorious and evidentiary value.

A review of the records of the case would reveal that the evidence presented by Techno preponderantly established its counterclaim. By preponderance of evidence is meant that the evidence adduced by one side is, as a whole, superior to that of the other side.[30] Essentially, preponderance of evidence refers to the comparative weight of the evidence presented by the opposing parties.[31] As such, it has been defined as "the weight, credit, and value of the aggregate evidence on either side," and is usually considered to be synonymous with the term greater weight of the evidence or greater weight of the credible evidence.[32] It is proof that is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[33]

Here, the Court finds that petitioner Techno duly proved its claims that VMI purchased paint products therefrom, that the same were delivered to VMI, and that VMI failed to fully pay the price therefor. As borne by the evidence on record, Techno not only submitted a Statement of Account containing a list of accounts receivable from VMI for its unpaid products purchased from Techno, as well as the corresponding delivery receipts and invoices signed by VMI representatives evidencing delivery by Techno of paint products and receipt thereof by VMI, it further presented corroborating testimony of Techno's Chief Accountant and also the testimony of its President attesting to the fact that VMI still had an outstanding account with Techno. It is evident, therefore, that petitioner Techno preponderantly established its counterclaim, especially in light of the fact that respondent VMI never contested the same in spite of every opportunity to do so.

A cursory reading of the records shows that VMI never bothered to refute Techno's counterclaim by contrary evidence or by any sort of denial in its pleadings filed before the RTC, the CA, or the present Court. As petitioner Techno points out, while VMI attempted to present rebuttal evidence, VMI ultimately withdrew said evidence. Note that from the very

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30 *NFF Industrial Corporation v. G & L Associated Brokerage and/or Gerardo Trinidad*, G.R. No. 178169, January 12, 2015, 745 SCRA 73, 94.

31 *Id.*

32 *Id.*

33 *Id.*

first instance when Techno raised the counterclaim in its Answer with Compulsory Counterclaim dated October 19, 1999 up until the filing of its Comment before the Court on January 28, 2013, VMI had every opportunity to refute Techno's claims of non-payment. Regrettably for VMI, however, it never denied the existence of its outstanding account with Techno, not even on rebuttal. In fact, as asserted by Techno, VMI's witness, President Brilly Bernardez, even acknowledged the possibility of the existence of an unpaid obligation in favor of Techno, albeit its susceptibility of being subject to verification. It is interesting to note, moreover, that instead of rectifying its failure to refute Techno's claims before the courts below, all VMI had to say in its Comment filed before the Court was that it was clearly implied from the trial court's ruling that Techno's counterclaim was without basis and that the same was effectively affirmed by the appellate court when it did not rule upon the same. To this Court, such reasoning barely repudiates the preponderance of Techno's evidence. Thus, taking VMI's complete and utter failure to offer any sort of opposing evidence, documentary or testimonial, in conjunction with those pieces of evidence duly adduced by Techno, the Court deems it necessary to consider Techno's claim.

At this point, it is worthy to note that a careful look at the rulings of the trial court and appellate court would reveal that neither court exerted any effort in determining the veracity of petitioner's assertions. While both courts acknowledged the counterclaim in their decisions, and even listed the same as part of the issues that needed to be resolved, nowhere in their decisions did they even remotely pass upon said claim. It can hardly be said, therefore, that the courts below definitively denied Techno's claim to the payment of the unpaid products in the sheer absence of any showing that they took into consideration Techno's allegations much less the probative value of the evidence presented to support it. Even granting VMI's argument that the trial court implicitly denied Techno's counterclaim against it, and that the appellate court affirmed said denial, the Court finds the need to reverse said implicit denials and grant Techno's counterclaim for as previously threshed out, not only did petitioner Techno present sufficient proof to substantiate its claim, VMI consistently and utterly failed to adduce any evidence to refute the same.

Ultimately, it must be noted that if Techno's claim was to be denied simply by the failure of the lower courts to pass upon the same in their decisions, without any factual or legal explanation therefor, VMI would be unjustly enriched at the expense of Techno for VMI's failure to pay for the paints it received. Such unjust enrichment due to the failure to make remuneration of or for property or benefits received cannot be countenanced and must be correspondingly corrected by the Court.[34] In view of the

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[34] *Philippine Commercial International Bank v. Balmaceda, et al.*, 674 Phil. 509, 528 (2011), citing *Philippines v. Philab Industries, Inc.*, 482 Phil. 693, 709-710 (2004).

foregoing, the Court finds Techno to be entitled to the payment of the unpaid paint products purchased by VMI therefrom.

On the matter of petitioner Techno's prayer for exemplary damages in the amount of ₱200,000.00, however, the Court resolves to deny the same. Article 2234[35] of the Civil Code of the Philippines requires a party to first prove that he is entitled to moral, temperate or compensatory damages before he can be awarded exemplary damages. Moreover, Article 2220[36] of the same Code provides that in breaches of contract, moral damages may be awarded when the party at fault acted fraudulently or in bad faith. Thus, to justify an award for exemplary damages, the wrongful act must be accompanied by bad faith, and an award of damages would be allowed only if the guilty party acted in a wanton, fraudulent, reckless or malevolent manner.[37] In the instant case, there is no showing that VMI failed to pay for its purchased paint products fraudulently or in bad faith. The Court, therefore, does not find Techno to be entitled to exemplary damages.

As to Techno's claim for the award of attorney's fees in the amount of ₱200,000.00, as well as an honorarium of ₱5,000.00 per appearance, the Court finds said amounts to be inconsistent with the stipulation on the Delivery Receipts and Invoices submitted by Techno which provides that "the buyer agrees to pay x x x in case of an action is filed in Court, an additional Twenty-Five (25%) Per Cent of the total amount of the obligation due and demandable, in the nature of attorney's fees."[38] Thus, instead of the ₱200,000.00 attorney's fees, as well as the ₱5,000.00 honorarium per appearance, the award of attorney's fees must be computed on the basis of said stipulation, which provides for a twenty-five percent (25%) charge on the total amount due to petitioner Techno.

Finally, with respect to the matter of interest, the Court notes the stipulation on the Delivery Receipts and Invoices submitted by Techno which provides that "one (1) Per Cent interest per month shall be charged on all overdue accounts."[39] Accordingly, respondent VMI is liable to pay interest at the rate of one percent (1%) per month or twelve percent (12%) *per annum* to be computed from default, *i.e.*, judicial or extrajudicial demand pursuant to the provisions of Article 1169 of the Civil Code.

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35 Art. 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. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages.

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

37 *Tankeh v. Development Bank of the Philippines, et al.*, 720 Phil. 641, 693 (2013).

38 *Rollo*, pp. 230-243.

39 *Id.*

Furthermore, in accordance with the doctrine laid down in *Nacar v. Gallery Frames*,[40] when the judgment of the court awarding the sum of money becomes final and executory, the rate of legal interest shall be six percent (6%) *per annum* from such finality until its satisfaction, taking the form of a judicial debt.

WHEREFORE, premises considered, the instant petition is **GRANTED.** The dispositive portion of the assailed Decision dated March 16, 2012 of the Court of Appeals in CA-G.R. CV No. 84186 shall now read as follows:

1) The award of actual damages in the amount of ₱550,000.00 in favor of respondent Viking Metal Industries, Incorporated and against petitioner Techno Development & Chemical Corporation is **DELETED**;

2) The award of unpaid balance of the Contract Price in the amount of ₱2,265,644.23 in favor of Viking Metal Industries, Incorporated against PNOC-Energy Development Corporation is reduced to ₱2,230,410.10 and the penalty charges in the amount of ₱180,663.21 is to be deducted therefrom, for a net award of ₱2,049,746.89;

3) The award of Attorney's fees amounting to ₱100,000.00 is also **DELETED**;

4) Respondent Viking Metal Industries, Incorporated is **ORDERED** to **PAY** petitioner Techno Development & Chemical Corporation the following: (a) the unpaid purchased paint products in the amount of ₱166,750.00; (b) attorney's fees at the rate of twenty-five percent (25%) of the total unpaid amount; (c) interest at the rate of one percent (1%) per month or twelve percent (12%) *per annum* to be computed from January 31, 1995, the date of default; and (d) from the date of promulgation of this Decision up to full payment, interest at the rate of six percent (6%) *per annum* on the sum of money plus the interest computed under paragraph (c) above.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

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40 716 Phil. 267, 483 (2013).

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division 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
Acting Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUL 20 2016