Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

INTERPORT RESOURCES CORPORATION, Petitioner,	**G.R. No. 154069**
	Present:
	*SERENO, *C.J.*,
	**LEONARDO-DE CASTRO, *Acting Chairperson,*
- versus -	BERSAMIN,
	PERLAS-BERNABE, and
	CAGUIOA, *JJ.*
SECURITIES SPECIALIST, INC., and R.C. LEE SECURITIES INC., Respondents.	Promulgated:
	JUN 06 2016

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D E C I S I O N

BERSAMIN, *J.*:

This appeal assails the decision promulgated on February 11, 2002,[1] whereby the Court of Appeals (CA), in C.A.-G.R. SP No. 66600, affirmed the decision the Securities and Exchange Commission (SEC) rendered in SEC AC No. 501-502[2] ordering Interport Resources Corporation (Interport) to deliver 25% of the shares of stocks under Subscription Agreements Nos. 1805 and 1808-1811, or the value thereof, and to pay to respondent Securities Specialist, Inc. (SSI), jointly and severally with R.C. Lee Securities, Inc. (R.C. Lee), exemplary damages and litigation expenses.

Antecedents

In January 1977, Oceanic Oil & Mineral Resources, Inc. (Oceanic) entered into a subscription agreement with R.C. Lee, a domestic corporation

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* On leave.

** Acting Chairperson per Special Order No. 2355 dated June 2, 2016.

1 *Rollo*, pp. 37-48; penned by Associate Justice Jose L. Sabio, Jr. (retired/deceased), with Associate Justice Oswaldo D. Agcaoili (retired) and Associate Justice Sergio L. Pestaño (retired/deceased) concurring.

2 Id. at 78-80.

engaged in the trading of stocks and other securities, covering 5,000,000 of its shares with par value of ₱0.01 per share, for a total of ₱50,000.00. Thereupon, R.C. Lee paid 25% of the subscription, leaving 75% unpaid. Consequently, Oceanic issued Subscription Agreements Nos. 1805, 1808, 1809, 1810, and 1811 to R.C. Lee.[3]

On July 28, 1978, Oceanic merged with Interport, with the latter as the surviving corporation. Interport was a publicly-listed domestic corporation whose shares of stocks were traded in the stock exchange. Under the terms of the merger, each share of Oceanic was exchanged for a share of Interport.[4]

On April 16, 1979 and April 18, 1979, SSI, a domestic corporation registered as a dealer in securities, received in the ordinary course of business Oceanic Subscription Agreements Nos. 1805, 1808 to 1811, all outstanding in the name of R.C. Lee, and Oceanic official receipts showing that 25% of the subscriptions had been paid.[5] The Oceanic subscription agreements were duly delivered to SSI through stock assignments indorsed in blank by R.C. Lee.[6]

Later on, R.C. Lee requested Interport for a list of subscription agreements and stock certificates issued in the name of R.C. Lee and other individuals named in the request. In response, Atty. Rhodora B. Morales, Interport's Corporate Secretary, provided the requested list of all subscription agreements of Interport and Oceanic, as well as the requested stock certificates of Interport.[7] Upon finding no record showing any transfer or assignment of the Oceanic subscription agreements and stock certificates of Interport as contained in the list, R.C. Lee paid its unpaid subscriptions and was accordingly issued stock certificates corresponding thereto.[8]

On February 8, 1989, Interport issued a call for the full payment of subscription receivables, setting March 15, 1989 as the deadline. SSI tendered payment prior to the deadline through two stockbrokers of the Manila Stock Exchange. However, the stockbrokers reported to SSI that Interport refused to honor the Oceanic subscriptions.[9]

Still on the date of the deadline, SSI directly tendered payment to Interport for the balance of the 5,000,000 shares covered by the Oceanic

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3 Id. at 12.
4 Id. at 38.
5 Id. at 38.
6 Id. at 64.
7 Id. at 12-13.
8 Id. at 13
9 Id. at 38.

subscription agreements, some of which were in the name of R.C. Lee and indorsed in blank. Interport originally rejected the tender of payment for all unpaid subscriptions on the ground that the Oceanic subscription agreements should have been previously converted to shares in Interport.[10]

SSI then required Interport to furnish it with a copy of any notice requiring the conversion of Oceanic shares to Interport shares. However, Interport failed to show any proof of the notice. Thus, through a letter dated March 30, 1989, SSI asked the SEC for a copy of Interport's board resolution requiring said conversion. The SEC, through Atty. Fe Eloisa C. Gloria, Director of Brokers and Exchange Department, informed SSI that the SEC had no record of any such resolution.[11]

Having confirmed the non-existence of the resolution, Francisco Villaroman, President of SSI, met with Pablo Roman, President and Chairman of the Board of Interport, and Atty. Pineda, Interport's Corporate Secretary, at which meeting Villaroman formally requested a copy of the resolution. However, Interport did not produce a copy of the resolution.[12]

Despite that meeting, Interport still rejected SSI's tender of payment for the 5,000,000 shares covered by the Oceanic Subscription Agreements Nos. 1805, and 1808 to 1811.[13]

On March 31, 1989, or 16 days after its tender of payment, SSI learned that Interport had issued the 5,000,000 shares to R.C. Lee, relying on the latter's registration as the owner of the subscription agreements in the books of the former, and on the affidavit executed by the President of R.C. Lee stating that no transfers or encumbrances of the shares had ever been made.[14]

Thus, on April 27, 1989, SSI wrote R.C. Lee demanding the delivery of the 5,000,000 Interport shares on the basis of a purported assignment of the subscription agreements covering the shares made in 1979. R.C. Lee failed to return the subject shares inasmuch as it had already sold the same to other parties. SSI thus demanded that R.C. Lee pay not only the equivalent of the 25% it had paid on the subscription but the whole 5,000,000 shares at current market value.[15]

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[10] Id. at 56.
[11] Id. at 56–57.
[12] Id. at 57.
[13] Id.
[14] Id. at 57-58.
[15] Id. at 15.

SSI also made demands upon Interport and R.C. Lee for the cancellation of the shares issued to R.C. Lee and for the delivery of the shares to SSI.[16]

On October 6, 1989, after its demands were not met, SSI commenced this case in the SEC to compel the respondents to deliver the 5,000,000 shares and to pay damages.[17] It alleged fraud and collusion between Interport and R.C. Lee in rejecting the tendered payment and the transfer of the shares covered by the subscription agreements.

On October 25, 1994, after due hearing, the Hearing Officer of the SEC's Securities Investigation and Clearing Department (SICD) rendered a decision,[18] disposing thusly:

> WHEREFORE, judgment is hereby rendered ordering respondent Interport to deliver the five (5) million shares covered by Oceanic Oil and Mineral Resources, Inc. subscription agreement Nos. 1805, 1808-1811 to petitioner SSI; and if the same not be possible to deliver the value thereof, at the market price as of the date of this judgment; and ordering both respondents, jointly and severally, to indemnify the complainant in the sum of FIVE HUNDRED THOUSAND PESOS (₱500,000.00) by way of temperate or moderate damages, to indemnify complainant in the sum of FIVE HUNDRED THOUSAND PESOS (₱500,000.00) by way of exemplary damages; to pay for complainant's litigation expenses, including attorney's fees, reasonably in the sum of THREE HUNDRED THOUSAND pesos (₱300,000.00) and to pay the costs of suit.[19]

Both Interport and R.C. Lee appealed to the SEC *En Banc*, which ultimately ruled as follows:

> After a careful review of the records of this case, we find basis in partially reversing the decision dated October 25, 1994.
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> It is undisputed from the facts presented and evidence adduced that the subject matter of this case pertains to the subscription agreements for which complainant paid only twenty five percent and the remaining balance of seventy five percent paid for by respondent RCL. Accordingly, to order the return of the five million shares or the payment of the entire value thereof to the complainant, without requiring the latter to pay the balance of seventy five percent will be inequitable. Accordingly, the pertinent portion of the decision is hereby revised to reflect this.
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> As regards the portion awarding temperate damages, the same may not be awarded. All evidence presented by Securities Specialist, Inc. pertaining to its "lost opportunity" seeking for damages for its supposed

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16 Id.
17 Id. at 40.
18 Id. at 54-77.
19 Id. at 77.

> failure to sell Interport's shares, when the market was allegedly good, is merely speculative. Moreover, even if the alleged pecuniary loss of SSI would be considered, the same is again purely speculative and deserves scant consideration by the Commission. Hence, temperate damages may not be justly awarded along with the other damages prayed for.
>
> WHEREFORE, premises considered, judgment is hereby rendered, ordering respondent Interport to deliver the corresponding shares previously covered by Oceanic Oil Mineral Resources Inc. subscription agreements Nos. 1805-1811 to petitioner SSI, to the extent only of 25% thereof, as duly paid by petitioner SSI; and if the same will not be possible, to deliver the value thereof at the market price as of the date of this judgment and ordering both respondents jointly and severally, to indemnify the complainant in the sum of five hundred thousand pesos (₱500,000.00) by way of exemplary damages, to pay for complainant's litigation expenses, including attorney's fees, reasonably in the sum of three hundred thousand pesos (₱300,000.00) and to pay the costs of the suit.[20]

Interport appealed to the CA,[21] which on February 11, 2002 affirmed the SEC's decision,[22] *viz.*:

> WHEREFORE, premises considered the Petition is hereby DENIED DUE COURSE and ordered DISMISSED and the challenged decision of the Securities and Exchange Commission AFFIRMED, with costs to Petitioner.
>
> SO ORDERED.

On June 25, 2002, the CA denied Interport's motion for reconsideration.[23]

Issues

Interport assigns the following errors to the CA, namely:

> I
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> THE COURT OF APPEALS ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN THE APPRECIATION OF THE FACTS IN HOLDING PETITIONER LIABLE TO DELIVER THE 25% OF THE SUBJECT 5 MILLION SHARES OR IF THE SAME NOT BE POSSIBLE TO DELIVER THE VALUE THEREOF DESPITE THE EVIDENCE TO THE CONTRARY.

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20 Id. at 79-80.
21 Id. at 37.
22 Supra note 1.
23 *Rollo*, pp. 50-51.

II

THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER IS LIABLE FOR EXEMPLARY DAMAGES IN THE AMOUNT OF ₱500,000.00 WITHOUT LEGAL BASIS, WHICH IS NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT.

III

THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER IS LIABLE FOR ATTORNEY'S FEES IN THE AMOUNT OF ₱300,000.00 AND COSTS THERE BEING NO FACTUAL AND LEGAL BASIS, WHICH IS NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT.[24]

The issues are: (a) whether or not Interport was liable to deliver to SSI the Oceanic shares of stock, or the value thereof, under Subscriptions Agreement No. 1805, and Nos. 1808 to 1811 to SSI; and (b) whether or not SSI was entitled to exemplary damages and attorney's fees.

Ruling

The appeal is partly meritorious.

1.
Interport was liable to deliver the Oceanic shares of stock, or the value thereof, under Subscription Agreements Nos. 1805, and 1808 to 1811 to SSI

Interport argues that R.C. Lee should be held liable for the delivery of 25% of the shares under the subject subscription agreements inasmuch as R.C. Lee had already received all the 5,000,000 shares upon its payment of the 75% balance on the subscription price to Interport; that it was only proper for R.C. Lee to deliver 25% of the shares under the Oceanic subscription agreements because it had already received the corresponding payment therefor from SSI for the assignment of the shares; that R.C. Lee would be unjustly enriched if it retained the 5,000,000 shares and the 25% payment of the subscription price made by SSI in favor of R.C. Lee as a result of the assignment; and that it merely relied on its records, in accordance with Section 74 of the *Corporation Code,* when it issued the stock certificates to R.C. Lee upon its full payment of the subscription price.

Interport's arguments must fail.

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[24] Id. at 19.

In holding Interport liable for the delivery of the Oceanic shares, the SEC explained:

> x x x [T]he Oceanic subscriptions agreements were duly delivered to the Complainant SSI supported by stock assignments of respondent R.C. Lee (Exhibits "B" to "B-4" of the petitioner) and by official receipts of Oceanic showing that twenty five percent of the subscription had been paid (Exhibits "C" to "C-4"). **To this date, respondent R.C. Lee does not deny having subscribed and delivered such stock assignments to the Oceanic subscription agreements. Therefore, having negotiated them by allowing to be in street certificates, respondent R.C. Lee, as a broker, cannot now legally and morally claim any further interests over such subscriptions or the shares of stock they represent.**
>
> x x x x
>
> Both respondents seek to be absolved of liability for their machinations by invoking both the rule on novation of the debtor without the creditor's consent; as well as the Corporation Code rule of non-registration of transfers in the corporation's stock and transfer book. Neither will avail in the case at bar. Art. 1293 of the New Civil Code states:
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> "Art. 1293. Novation which consists in substituting a new debtor in the place of the original one may be made even without the knowledge or against the will of the latter but not without the consent of the creditor" x x x.
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> More importantly, the allusion by the respondents likening the subscription contracts to the situation of debtor-creditor finds no basis in law. Indeed, as held by the Supreme Court, shareholders are not creditors of the corporation with respect to the shareholdings (Garcia vs. Lim Chu Sing, 59 Phil. 562).
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> The Memorandum of R.C. Lee, likewise cites the Opinion of the SEC dated November 12, 1976, which states "that since an assignment will involve a substitution of debtor or novation of contract, as such the consent of the creditor must be obtained" has the same effect. The opinion, however, merely restated the general rule already embodied in the Codal provision quoted above; it does not preclude previously authorized transfers. According to Tolentino –
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> > "When the original contract authorizes the debtor to transfer his obligations to a third person, the novation by substitution of debtor is effected when the creditor is notified that such transfer has been made" (IV Tolentino 392, 1991 ed, emphasis supplied)
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> **But even following the argument of the respondents, when complainant SSI tendered the balance of the unpaid subscription on the subject five (5) million shares on the basis of the existing subscription agreements covering the same, respondents Interport**

> **was bound to accept payment even as the same were being tendered in the name of the registered subscriber, respondent R.C. Lee and once the payment is fully accepted in the name of respondent R.C. Lee, respondent Interport was then bound to recognize the stock assignment also tendered duly executed by respondent R.C. Lee in favor of complainant SSI.**[25] (bold emphasis supplied.)

The SEC correctly categorized the assignment of the subscription agreements as a form of novation by substitution of a new debtor and which required the consent of or notice to the creditor. We agree. Under the *Civil Code*, obligations may be modified by: (1) changing their object or principal conditions; or (2) substituting the person of the debtor; or (3) subrogating a third person in the rights of the creditor.[26] Novation, which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor.[27] In this case, the change of debtor took place when R.C. Lee assigned the Oceanic shares under Subscription Agreement Nos. 1805, and 1808 to 1811 to SSI so that the latter became obliged to settle the 75% unpaid balance on the subscription.

The SEC likewise did not err in appreciating the fact that Interport was duly notified of the assignment when SSI tendered its payment for the 75% unpaid balance, and that it could not anymore refuse to recognize the transfer of the subscription that SSI sufficiently established by documentary evidence.

Yet, Interport claims that SSI waived its rights over the 5,000,000 shares due to its failure to register the assignment in the books of Interport; and that SSI was estopped from claiming the assigned shares, inasmuch as the assignor, R.C. Lee, had already transferred the same to third parties.

Interport's claim cannot be upheld. It should be stressed that novation extinguished an obligation between two parties.[28] We have stated in that respect that:

> x x x Novation may:
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> [E]ither be extinctive or modificatory, much being dependent on the nature of the change and the intention of the parties. Extinctive novation is never presumed; there must be an express intention to novate; in cases where it is implied, the acts of the parties must clearly demonstrate their intent to dissolve the old obligation as the moving

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[25] Id. at 64-72.
[26] Article 1291, *Civil Code*.
[27] Article 1293, *Civil Code*.
[28] See *Arco Pulp and Paper Co., Inc. v. Lim*, G.R. No. 206806, June 25, 2014, 727 SCRA 275, 287.

> consideration for the emergence of the new one. Implied novation necessitates that the incompatibility between the old and new obligation be total on every point such that the old obligation is completely superseded by the new one. The test of incompatibility is whether they can stand together, each one having an independent existence; if they cannot and are irreconcilable, the subsequent obligation would also extinguish the first.
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> An extinctive novation would thus have the twin effects of, *first*, extinguishing an existing obligation and, *second*, creating a new one in its stead. This kind of novation presupposes a confluence of four essential requisites: (1) a previous valid obligation, (2) an agreement of all parties concerned to a new contract, (3) the extinguishment of the old obligation, and (4) the birth of a valid new obligation. Novation is merely modificatory where the change brought about by any subsequent agreement is merely incidental to the main obligation (*e.g.*, a change in interest rates or an extension of time to pay; in this instance, the new agreement will not have the effect of extinguishing the first but would merely supplement it or supplant some but not all of its provisions.[29]

Clearly, the effect of the assignment of the subscription agreements to SSI was to extinguish the obligation of R.C. Lee to Oceanic, now Interport, to settle the unpaid balance on the subscription. As a result of the assignment, Interport was no longer obliged to accept any payment from R.C. Lee because the latter had ceased to be privy to Subscription Agreements Nos. 1805, and 1808 to 1811 for having been extinguished insofar as it was concerned. On the other hand, Interport was legally bound to accept SSI's tender of payment for the 75% balance on the subscription price because SSI had become the new debtor under Subscription Agreements Nos. 1805, and 1808 to 1811. As such, the issuance of the stock certificates in the name of R.C. Lee had no legal basis in the absence of a contractual agreement between R.C. Lee and Interport.

Under Section 63 of the *Corporation Code*, no transfer of shares of stock shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred. Hence:

> [A] transfer of shares of stock not recorded in the stock and transfer book of the corporation is non-existent as far as the corporation is concerned. As between the corporation on the one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are. It is only when the transfer has been recorded in the stock and transfer book that a corporation may rightfully regard the transferee as one of its stockholders. From this time, the consequent obligation on the part of the

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[29] *Foundation Specialists, Inc. v. Betonval Ready Concrete, Inc.*, G.R. No. 170674, August 24, 2009, 596 SCRA 697, 707.

corporation to recognize such rights as it is mandated by law to recognize arises.[30]

This statutory rule cannot be strictly applied herein, however, because Interport had unduly refused to recognize the assignment of the shares between R.C. Lee and SSI. Accordingly, we adopt with approval the SEC's following conclusion that –

> x x x To say that the ten years since the assignment had been made are a sufficient lapse of time in order for respondent SSI to be considered to have abandoned its rights under the subscription agreements, is to ignore the rule –
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> > "The right to have the transfer registered exists from the time of the transfers and it is to the transferee's benefit that the right be exercised early. However, since the law does not prescribed (sic) any period within which the registration should be effected the action to be enforced the right does not accrue until here has been a demand and a refusal to record the transfer." (11 Campus 310, 1990 ed., citing Won v. Wack Wack Golf, 104 Phil. 466, Emphasis Supplied).
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> Petitioner SSI was denied recognition of its subscription agreement on March 15, 1989; the complaint against the respondents was filed before the SEC on October 6 of that same year. This is the period of time that is to be taken into account, not the period between 1979 and 1989. The Commission thus finds that petitioner acted with sufficient dispatch in seeking to enforce its rights under the subscription agreements, and sought the intervention of this Commission within a reasonable period.
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> In the affidavit of respondent R.C. Lee's president, Ramon C. Lee, dated February 22, 1989, there are several averments that need to be examined, in the light of respondent R.C. Lee's claim of having acted in good faith.
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> The first is the statement made in paragraph 3 thereof:
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> > "That R.C. Lee Securities, Inc. has delivered to Interport its subscription Agreements for Twenty Five Million (25,000,000) shares of Oceanic for conversion into Interport shares however, as of date, only twenty million (20,000,000) shares have been duly covered by Interport Subscription Agreements and the Five million (5,000,000) shares still remains without Subscription Agreements".
>
> No explanation is given for the failure of respondent Interport to convert the five (5) million shares. As can be seen from the letter of Interport to counsel of R.C. Lee, dated January 27, 1989, already mentioned above, these five (5) million shares purportedly belonging to respondent R.C. Lee do not seem to be covered by any properly identified

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[30] *Ponce v. Alsons Cement Corporation*, G.R. No. 139802, December 10, 2002, 393 SCRA 602, 612.

> subscription agreements. Yet respondent Interport issued the shares without respondent R.C. Lee having anything to show for the same. On the other hand, respondent Interport refused to recognize complainant SSI's claim to five (5) millions (sic) shares inspite of the fact that its claim was fully supported by duly issued subscription agreements, stock assignment and receipts of payment of the initial subscription. x x x[31]

Subscription Agreements Nos. 1805, and 1808 to 1811 were now binding between Interport and SSI only, and only such parties were expected to comply with the terms thereof. Hence, the CA did not err in relying on the findings of the SEC, which was in a better position to pass judgment on whether or not Interport was liable to deliver to SSI the Oceanic shares under Subscription Agreements Nos. 1805, and 1808 to 1811.

2.
Interport and R.C. Lee were not liable to pay exemplary damages and attorney's fees

Article 2229 of the *Civil Code* provides that exemplary damages may be imposed by way of example or correction for the public good. While exemplary damages cannot be recovered as a matter of right, they need not be proved, although 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. Exemplary damages are imposed not to enrich one party or impoverish another, but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.[32]

SSI was not able to show that it was entitled to moral, temperate, or compensatory damages. In fact, the SEC pointed out that the award of temperate damages was not proper because SSI's alleged pecuniary loss was merely speculative in nature. Neither could SSI recover exemplary damages considering that there was no award of moral damages. Indeed, exemplary damages are to be allowed only in addition to moral damages, and should not be awarded unless the claimant first establishes a clear right to moral damages.[33]

Nonetheless, the Court observes that exemplary damages were awarded in the past despite the award of moral damages being deleted

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[31] *Rollo*, pp. 67-69.
[32] *Queensland-Tokyo Commodities, Inc. v. George*, G.R. No. 172727, September 8, 2010, 630 SCRA 304, 317-318.
[33] *Delos Santos v. Papa*, G.R. No. 154427, May 8, 2009, 587 SCRA 385, 396-397.

because the defendant party to a contract acted in a wanton, fraudulent, oppressive or malevolent manner.[34]

In this case, the Court finds that Interport's act of refusing to accept SSI's tender of payment for the 75% balance of the subscription price was not performed in a wanton, fraudulent, oppressive or malevolent manner. In doing so, Interport merely relied on its records which did not show that an assignment of the shares had already been made between R.C. Lee and SSI as early as 1979. R.C. Lee, on the other hand, persisted in paying the 75% balance on the subscription price simply on the basis of Interport's representation that no transfer has yet been made in connection with Subscription Agreement Nos. 1805, and 1808 to 1811. Although Interport and R.C. Lee might have acted in bad faith[35] in refusing to recognize the assignment of the subscription agreements in favor of SSI, their acts certainly did not fall within the ambit of being performed in a wanton, fraudulent, oppressive or malevolent manner as to entitle SSI to an award for exemplary damages.

We delete the attorney's fees for lack of legal basis.[36]

WHEREFORE, the Court **PARTIALLY GRANTS** the petition for review on *certiorari*; and **AFFIRMS** the decision promulgated on February 11, 2002 subject to the following **MODIFICATIONS**, namely:

1. **ORDERING** Interport Resources Corporation: (*a*) To accept the tender of payment of Securities Specialist, Inc. corresponding to the 75% unpaid balance of the total subscription price under Subscription Agreements Nos. 1805, 1808, 1809, 1810 and 1811; (b) To deliver 5,000,000 shares of stock and to issue the corresponding stock certificates to Securities Specialist, Inc. upon receipt of the payment of the latter under Item No. (a); (c) To cancel the stock certificates issued to R.C. Lee Securities, Inc. corresponding to the 5,000,000 shares of stock covered by Subscription Agreements Nos. 1805, 1808, 1809, 1810 and 1811; (d) To reimburse R.C. Lee Securities, Inc. the amounts it paid representing the 75% unpaid balance of the total subscription price of Subscription Agreements Nos. 1805, 1808, 1809, 1810 and 1811; and (e) In the alternative, if the foregoing is no longer possible, Interport Resources Corporation shall pay Securities Specialist, Inc. the market value of the 5,000,000 shares of stock

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[34] See *Crystal v. Bank of the Philippine Islands*, G.R. No. 172428, November 28, 2008, 572 SCRA 697, 706-707.

[35] Bad faith is defined in jurisprudence as a state of mind affirmatively operating with furtive design or with some motive of self interest or ill will or for ulterior purpose; see *Balbuena v. Sabay*, G.R. No. 154720, September 4, 2009, 598 SCRA 215, 227.

[36] See *Espino v. Bulut*, G.R. No. 183811, May 30, 2011, 649 SCRA 453, 461-462.

covered by Subscription Agreements Nos. 1805, 1808, 1809, 1810 and 1811 at the time of the promulgation of this decision; and

2. **DELETING** the award for exemplary damages and attorney's fees for lack of merit.

No pronouncement on costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

(On Leave)
MARIA LOURDES P. A. SERENO
Chief Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
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.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

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

ANTONIO T. CARPIO
Acting Chief Justice