Republic of the Philippines
Supreme Court
Manila

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUL 18 2016

THIRD DIVISION

REPUBLIC OF THE PHILIPPINES, Represented by the DEPARTMENT OF AGRICULTURE	**G.R. No. 170966**
Petitioner,	**Present:**
-versus-	VELASCO, JR., *J.*, *Chairperson*, PEREZ, REYES, JARDELEZA, and CAGUIOA,* *JJ.*
ALBERTO LOOYUKO, doing business under the name and style of NOAH'S ARK SUGAR HOLDINGS and WILSON T. GO,	Promulgated:
Respondents.	**June 22, 2016**

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D E C I S I O N

PEREZ, *J.*:

The Case

Before this Court is a Petition for Review under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[1] dated 23 December 2005, of the Court of Appeals (CA) in CA-G.R. CV No. 66052. In that case, the CA affirmed the Decision,[2] dated 26 November 1999, of the Regional Trial Court, Branch 57, Makati City, dismissing the complaint of petitioner for

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* Additional Member per Raffle date 13 June 2016.

1 *Rollo*, pp. 44-60; Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Josefina Guevara-Salonga and Sesinando E. Villon concurring.

2 Records, pp. 778-815.

Recovery of Possession of Personal Property and Damages with Prayer for Replevin.

The Facts

The antecedent facts of this case, as found by the trial court and adopted by the CA, are as follows:

> Due to the sugar crisis in 1985, former President Fidel V. Ramos authorized the emergency importation of 100,000 metric tons of raw sugar from Thailand and Guatemala. National Sugar Refineries Corporation (NASUREFCO) was tasked by the government, thru [petitioner] Department of Agriculture (DA), to handle the importation. Three refineries were given allocations to process and refine raw sugar, namely:
>
> 1) Central Azucarera de Tarlac (CAT) – 8,300 metric tons
> 2) Central Azucarera de Don Pedro (CADP) – 8,300 metric tons
> 3) Noah's Ark – 5,400 metric tons
>
> NASUREFCO contracted the services of MARUBENI to source the raw sugar and handle the shipment and delivery thereof to each of the above-named refineries on a door-to-door arrangement with the stipulation that in case of non-delivery, short delivery or loss of the raw sugar, the latter would be held liable therefor. x x x
>
> On September 18, 1995, NASUREFCO and NOAH'S ARK HOLDING, represented by [respondent] Wilson T. Go, executed a **Refining Contract** x x x:[3]
>
> x x x x
>
> On September 20,[4] 1995, the vessel MV "Evemeria", carrying a cargo of 21,500 metric tons of raw sugar arrived [at] Poro Point, La Union. [After] MARUBENI completed the discharge of the raw sugar[,] [it] commenced the delivery thereof to the refineries, x x x.
>
> The allocation of CAT was completely delivered in 16 days, from October 5 to 21, 1995, while the delivery of the allocation of CADP was completed in 13 days, from November 9 to 22, 1995.
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> Admittedly, the delivery of Noah's Ark's allocation of 5,400 metric tons [MT] of raw sugar was never completed.
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> The parties offer contrasting reason/reasons therefor.

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3 Id. at 796-797.

4 Id. at 574; Should be 29 September 1995 based on the Certificate of Weight and Quality issued by OMIC.

> On the one hand, [petitioner] blames the [respondents]. [Petitioner] adduced evidence to the effect that on October 28, 1995, Marubeni started the delivery of raw sugar to Noah's Ark. However, because of the 1.8 [% weight] discrepancy between the registered weight at Poro Point and at the weighing scale of Noah's Ark, Marubeni suspended the delivery of sugar x x x. NASUREFCO allegedly notified Noah's Ark immediately to recalibrate its weighing scale. It was only during the last week of December, 1995 that Noah's Ark's weighing scale was calibrated. Noah's Ark, however, questioned the accuracy of the December [re-]calibration. After another calibration was effected on January 5, 1996, Marubeni resumed its delivery of raw sugar to Noah's Ark x x x. After the discharge of the cargo on January 14, 1996, Marubeni immediately delivered the raw sugar to Noah's Ark Refinery in Mandaluyong City. But, [respondents] refused to accept [the same].
>
> x x x. [Petitioner] demands delivery of the refined sugar withheld by [respondents] or payment of the peso value thereof plus damages.
>
> [Respondents], upon the other hand x x x take exception to any blame for the delay in the calibration of the weighing scale. They contend [that] it took only one day to recalibrate the same and [petitioner] had no justification to delay the delivery of the raw sugar allocated to Noah's Ark. [Respondents] claim to have made repeated requests and follow-ups for a faster delivery to no avail until they threatened the [petitioner] with legal action. [Petitioner] resumed deliveries not only in a slow-pace but of inferior quality raw sugar x x x.
>
> Noah's Ark rejected x x x three (3) truckloads of raw sugar from Marubeni for being of high color x x x. Some were dripping wet and could no longer be processed. Marubeni finally ended on February 14, 1996, or 4 months late, its delivery of 4,897.56 MT to Noah's Ark, which is 503 MT short of the allocated 5,400 MT under the contract x x x.
>
> [Respondents] accuse [petitioner] of undue diversion to CADP of its allocation and switching the deteriorated raw sugar stock of CADP with the good quality imported raw sugar allocated to Noah's Ark, which thus resulted in a much lesser volume yield of refined sugar. [Respondents] demanded payment of damages, [retention of] the processed refined sugar for unpaid fees due thereon and [offsetting of] the value [of the retained sugar] with [the] damages [respondents] sustained.[5]

The Ruling of the Trial Court

The trial court dismissed the complaint of petitioner and denied its prayer for the issuance of a writ of attachment. It found that:

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5 Id. at 801-803.

1. Although the Refining Contract between petitioner and respondents did not provide for a period within which petitioner should deliver the raw sugar to respondents, the records categorically show that time was of the essence, as shown by the following circumstances:

> First. The allocations of CAT and CADP were completely delivered in a fast pace x x x from the arrival thereof on September 2[0], 1995.
>
> Second. [Petitioner] advised x x x Noah's Ark to prepare its refinery facilities and informed [respondents] of the expected date of arrival of the imported raw sugar.
>
> Third. [Petitioner] **gave Noah's Ark a timetable or schedule of drawdown within which to withdraw the refined sugar** that would fall on the 5th week of selling schedule (1st week of December 1995) and end on the 11th week.
>
> Fourth. **There was an acute shortage of refined sugar in the country** which compelled the government to import raw sugar and thus fastrack [sic] delivery to designated refineries and prompt distribution of refined sugar to outlets/consumers.[6] (Emphases supplied)

Clearly, the parties actually intended a period in the implementation of their contract. Thus, there was undue delay in delivering the sugar allocation of respondents when it took petitioner four (4) months[7] to deliver the raw sugar to respondents, which delivery was, nonetheless, never completed.[8] Such delay is highlighted when one notes that the deliveries to Central Azucarera de Tarlac (CAT) of 8,964.375 metric tons – which is in excess by 600.375 metric tons of its 8,364 metric tons allocation – took only 16 days while that of Central Azucarera de Don Pedro (CADP) consisting of 8,900 metric tons, which is 536 metric tons in excess of its 8,360 metric tons allocation, took only 13 days. Petitioner's delivery to respondent Noah's Ark of a much lesser volume of 4,897.56 metric tons – which is even 502.46 metric tons short of its allocated 5,400 metric tons – took several months.[9]

The lower court expressed doubt on the reason proffered by Marubeni as to why it stopped delivery to Noah's Ark: the latter's alleged defective weighing scale. According to the trial court, "no explanation was given as to how the 1.8% discrepancy came about except the say-so of Marubeni, which say-so is not the proper basis for determining the weight of the raw sugar."

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6 Id. at 804.
7 Id. at 803
8 Id. at 801.
9 Id. at 811.

Under paragraph 3 of the Refining Contract, all raw sugar deliveries shall be weighed at Noah's Ark's plant site truck scale and shall be final and conclusive on all parties;[10]

2. The raw sugar delivered to respondents had a polarity[11] rate of only 95 degrees and not 98 degrees, as claimed by petitioner. This finding was based on the result of the test conducted by respondents' laboratory technician at the refinery, which result was recorded in Noah's Ark's Raw Sugar Control Book. The trial court accepted and gave credence to the data recorded in respondents' Raw Sugar Control Book since they "appear to be part of a group of regular entries of other clients of" respondents and is thus considered an exception to the hearsay rule, being entries in the ordinary course of business;[12]

3. The total raw sugar actually delivered by petitioner to respondents was only 4,897 metric tons, instead of the 5,400 metric tons stipulated in the Refining Contract.[13] With a polarity rate of 95 degrees, only 77,830 bags of sugar were produced out of the 4,897 metric tons of raw sugar.[14] From this, petitioner was able to withdraw a total of 35,150 bags of refined sugar from respondents through various Authorities to Release Raw Sugars (ARSS) issued by respondents and as confirmed by Mr. Rolleo Ignacio (Mr. Ignacio), then Acting Administrator of the Sugar Regulatory Administration (SRA) and President of the NASUREFCO. The 25 April 1996 letter of Mr. Ignacio clearly and categorically showed that 35,150 bags were deducted from the total bags of refined sugar due petitioner;[15]

4. The storage of Noah's Ark's raw sugar allocation in the far away warehouse of CADP in Batangas while awaiting the recalibration of Noah's Ark's allegedly defective weighing scale is an unwarranted diversion, especially considering that Noah's Ark has its own warehouse at its plant site where the raw sugar could be stored. In fact, the storage of the sugar in the warehouse of Noah's Ark, and not elsewhere, appears to be obligatory because before the raw sugar arrived at Poro Point in La Union, or as early as 11 September 1995, then NASUREFCO President and SRA Administrator, Rodolfo A. Gamboa requested Noah's Ark to make available its warehouse space during the period of delivery. This was followed, on 17

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10 Id. at 805.

11 Id. at 56; Polarity refers to the direct sugar content of raw sugar. Id. at 29; The amount of refined sugar that can be derived from the raw sugar is based on the polarity of the raw sugar. Id. at 56; Low polarity means that the sugar content of raw sugar was of less value or quality.

12 Records, p. 808.

13 Id. at 807.

14 Id. at 809.

15 Id. at 810.

October 1995, by another letter from petitioner's AVP for Finance, Mr. Angelito Dizon, informing respondents of the arrival of the raw sugar. As a result, respondents made its facilities available to NASUREFCO. In addition, petitioner's delay of four months in the delivery of the raw sugar to Noah's Ark lends credence to respondents' accusation that Noah's Ark's imported raw sugar allocation was switched with deteriorated raw sugar from the warehouse of CADP. [16]

6. Respondents reserved and upgraded their facilities and rejected other sugar processing contracts while they waited for the completion of the delivery of their contracted raw sugar allocation, as a result of which, they suffered business opportunity losses. Respondents are, therefore, entitled to damages. There is a causal connection between the breach by petitioner of its contractual obligation through its delay, diversion and switching of the raw sugar allocation of respondents and the damages suffered by the latter. Further, respondents are entitled to offset, pursuant to Article 1283 of the New Civil Code, the amount of the damages they are entitled to against the 42,680 bags of refined sugar in their possession valued at approximately ₱38,412,000.00 or ₱900.00 per bag.

Petitioner appealed the foregoing adverse judgment to the CA.

The Ruling of the Court of Appeals

In affirming the ruling of the trial court, the CA held that:

> Jurisprudence teaches that an obligor incurs in delay even if the contract does not categorically state the period for its performance, if it can be inferred from its terms that time is of the essence. x x x
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> x x x x
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> Records bear that the main purpose of the importation of raw sugar was to address the severe shortage in its domestic production. In a letter dated November 2, 1995, NASUREFCO came out with a schedule of drawdown wherein the release by [respondents] of the refined sugar shall start in the fifth week of the selling schedule (first week of December 1995), until the eleventh week of the selling schedule (third week of January 1996). Unfortunately, the delivery to [respondents] by Marubeni Corporation, the supplier of raw sugar, was only completed sometime February 1996. [Respondents] even sent several letters demanding the immediate delivery of the raw sugar. [Petitioner's] failure to deliver the

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16 Id. at 806-807.

raw sugar to [respondents] despite the latter's demands is eloquent proof that it incurred in delay in the performance of its obligation x x x.

x x x x

[The claim of petitioner] that the suspension of the delivery of the raw materials to [respondent] Noah's Ark was caused by a defective weighing scale x x x is readily controverted by the certification issued by GCH International Mercantile, Inc., an engineering firm accredited by [petitioner], stating that the discrepancy in the weighing scale is within the tolerable and acceptable fluctuation level. Also, Tsuyoshi Morita, former Manager of the Food Department of Marubeni Corporation, categorically testified that although they discovered during the first delivery that there was a defect in the weighing scale, they still [continued their delivery of] raw sugar x x x.

x x x x

[Petitioner's] claim that the trial court erred in finding that there was diversion and substitution of the raw sugar by Marubeni Corporation, is unfounded.

Tsuyoshi Morita of Marubeni Corporation admitted [during the trial of the case] that the raw sugar intended for [respondent] Noah's Ark was kept at the warehouse of Central Azucarera de Don Pedro until January 1996, despite the availability of the warehouse of [respondents] and the perishable nature of the commodity. The only reason given by Tsuyoshi Morita for the use of the Central Azucarera de [Don Pedro] warehouse instead of the warehouse of Noah's Ark was the defective weighing scale. Tsuyoshi Morita also admitted having delivered to Central Azucarera de Tarlac and Central Azucarera de Don Pedro a bigger allocation of raw sugar than what was stipulated in their refining contracts, and a lesser amount of raw sugar to [respondent] Noah's Ark [than that] stipulated in its refining contract. Obviously, there was a diversion of deliveries of raw sugar, as the raw sugar intended for [respondent] Noah's Ark was delivered to the two other refineries.

Also, contrary to [petitioner's] claim, the trial court was correct in basing the polarity of the raw sugar on the Raw Sugar Control Book and not on the certification issued by the Overseas Merchandise Inspection, Co., Ltd. (OMIC) dated May 9, 1996. x x x The certification issued by OMIC provided for the polarity of the raw sugar when discharged from the vessels at Poro Point, La Union and PNOC, Batangas ports. However, since there was a delay in the delivery to [respondent] Noah's Ark, the raw sugar deteriorated, and hence the polarity decreased. The Raw Sugar Control Book recorded the polarity of the deteriorated raw sugar delivered to [respondents] four months after the arrival of the raw sugar at the abovementioned ports. Hence it reflected the correct polarity of the raw sugar. Moreover, with the low polarity level of the raw sugar and a lesser allocation of raw sugar than that stipulated in the refining contract, [respondents] cannot be expected to come up with the projected yield of 90,155 kg. bags of refined sugar.

> [Petitioner's] claim that it was only able to withdraw 9,037 bags of refined sugar and not 35,150 bags, is readily negated by the letter of Rolleo L. Ignacio, Acting Administrator and President of NASUREFCO dated April 25, 1996 stating that 35,150 bags had been withdrawn through various "Authority to Release NASUREFCO Refined Sugar" (ARSS). [Petitioner] did not at all contest the genuineness and due execution of said letter during the formal offer of evidence. x x x
>
> x x x x
>
> Verily, the delay incurred by [petitioner] in the delivery of the raw sugar to [respondents], the diversion of the raw sugar allocation intended for [respondent] Noah's Ark to the other refineries, and the failure to deliver fresh imported raw sugar to [respondent] Noah's Ark, entitle [respondents] to damages. However, as determined by the trial court, the damages may be offset by the undelivered bags of refined sugar in possession of [respondents]. x x x
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> x x x x
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> Then again, settled is the rule that factual findings of the trial court are accorded great weight, even finality on appeal, except when it has failed to appreciate certain facts and circumstances which, if taken into account, would materially affect the result of the case. This exception does not obtain in the present case.
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> [Petitioner], however, should not be held liable for attorney's fees and costs of suit. NASUREFCO, an attached corporation of the Department of Agriculture, was performing governmental function when it imported raw sugar to meet the domestic needs of the country. Hence, it should be exempt from payment of attorney's fees and costs of suit.[17] x x x

On account of the above ruling, petitioner filed the instant petition before this Court.

The Issues

Petitioner presents the following assignment of errors:

I

THE COURT OF APPEALS ERRED IN AWARDING DAMAGES TO RESPONDENTS AND IN ALLOWING SAID DAMAGES TO BE OFFSET AGAINST THE VALUE

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17 *Rollo*, pp. 52-59.

OF THE BAGS OF SUGAR WHICH RESPONDENTS FAILED TO DELIVER TO PETITIONER.

II

THE FINDING THAT THERE WAS UNDUE DELAY IN THE DELIVERY OF RAW SUGAR TO NOAH'S ARK WAS NOT SUPPORTED BY EVIDENCE.

III

THE COURT OF APPEALS ERRED IN AFFIRMING THE FINDING OF THE TRIAL COURT GIVING CREDENCE TO RESPONDENT NOAH'S ARK'S RAW SUGAR CONTROL BOOK TO DETERMINE THE POLARITY OF THE RAW SUGAR DELIVERED TO NOAH'S ARK.

IV

THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S FINDING THAT PETITIONER WAS ABLE TO WITHDRAW 35,150 LKG BAGS OF REFINED SUGAR INSTEAD OF ONLY 9,307 LKG BAGS.

Our Ruling

The petition is partly meritorious.

At the outset, however, it must be stated that, based on petitioner's assignment of errors, the issues herein are questions of fact, the resolution of which would require this Court to inquire into the evidence presented during the trial of this case in the lower court. They entail the determination, yet again, of the weight, credence, and probative value of the said evidence. This is not allowed in a petition for review on *certiorari* under Rule 45 of the Rules of Court where only questions of law may be raised by the parties and may be passed upon by us.[18] The Court, in the case of *Century Iron Works, Inc. v. Bañas*, [19] identified the distinction between a question of law and a question of fact as follows:

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18 *Dueñas v. Guce-Africa*, 618 Phil. 10, 18-19 (2009).

19 G.R. No. 184116, 19 June 2013, 699 SCRA 157, 166-167 citing *Leoncio, et al. v. De Vera, et al.*, 569 Phil. 512, 516 (2008) further citing *Binay v. Odeña*, 551 Phil. 681, 689 (2007).

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.
>
> x x x [T]he test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.

Thus, whether or not respondents are entitled to damages under the circumstances of this case; whether or not there was delay on the part of petitioner in the fulfillment of its obligation towards respondents; whether the polarity of the raw sugar delivered to respondents should be based on the raw sugar control book of respondents or on the certification, dated 9 May 1996, issued by the Overseas Merchandise Inspection Company, Ltd. (OMIC); as well as how many bags of refined sugar were withdrawn by petitioners from respondents – all these involve questions of fact which cannot be taken cognizance of by this Court. The Supreme Court is not a trier of facts that undertakes the re-examination and re-assessment of the evidence presented by the contending parties during the trial.[20] It is not its function to analyze or weigh evidence all over again.[21] The appreciation and resolution of factual issues are the functions of the lower courts, whose resulting findings are then received with respect and are binding on the Supreme Court,[22] especially when such findings are affirmed by the CA, as in this case.

Although jurisprudence has recognized several exceptions to the rule that the findings of fact of the CA affirming those of the trial court are generally not subject to review by the Supreme Court, including: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when there is grave abuse of discretion; (3) when the judgment is based on a misapprehension of facts; (4) when the findings are contrary to those of the trial court; (5) when the findings of facts are conflicting; and (6) when the findings are conclusions without citation of specific evidence on which

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20 *Maglana Rice and Corn Mill, Inc., et al. v. Sps. Tan*, 673 Phil. 532, 539 (2011).

21 *Heirs of Margarito Pabaus v. Heirs of Amanda Yutiamco*, 670 Phil. 151, 162 (2011) citing *Heirs of Marcelino Cabal v. Sps. Cabal*, 529 Phil. 294, 304 (2006) further citing *Go v. CA*, 474 Phil. 404, 410 (2004); *Spouses Hanopol v. Shoemart, Incorporated*, 439 Phil. 266, 277 (2002).

22 *Maglana Rice and Corn Mill, Inc. v. Sps. Tan,* supra note 20 citing *FNCB Finance v. Estavillo*, 270 Phil. 630, 633 (2001).

they are based,[23] none of these are present in this appeal. The findings of both the trial court and the CA are undeniably supported by the evidence on record.

Hence, petitioner obviously incurred delay in the performance of its obligation under the Refining Contract when it failed to complete its delivery of raw sugar to respondents in time for the scheduled withdrawal by petitioner of the refined sugar. It must be emphasized that it was petitioner who gave respondents a timetable within which the processed sugar was to be withdrawn, which was to start around the first week of December 1995. Evidently, petitioner should have completed its delivery of raw sugar to respondents before this date. The records of this case clearly show, however, that the delivery of raw sugar to respondents ended on 14 February 1996 without petitioner having delivered the entire sugar allocation due respondents under the Refining Contract.

Likewise, the trial court and the CA fully explained and justified the pronouncement to base the polarity of the raw sugar delivered by petitioner on the raw sugar control book of respondents. According to the trial court:

> The Court wonders why [petitioner's] Exhibit "D" (page 535, Rollo) is only half a document and is offered merely to prove delivery of sugar to [respondents] (See page 524, Rollo). Exh. "D" is a "Certificate of Weight and Quality" dated May 9, 1996 issued by OMIC. It declares at the right lower end thereof "Continued..." but is not accompanied by the continuing or next page.
>
> x x x Why [petitioner] offered the **OMIC certification** to prove delivery instead of polarity is not clear. What is clear is that the OMIC Certificate does not show the polarity at Noah's Ark. Thus, the Court can not rely thereon as proof of the raw sugar polarity at **Noah's Ark**.[24]

The CA, on the other hand, rationalized that "since there was a delay in the delivery [of the raw sugar to Noah's Ark], the raw sugar deteriorated, and hence the polarity decreased. [Noah's Ark's] Raw Sugar Control Book recorded the polarity of the deteriorated raw sugar delivered to [respondents] four months after [its] arrival at the x x x ports. Hence it reflected the correct polarity of the raw sugar."[25]

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23 *Rep. of the Phils. v. De Guzman*, 667 Phil. 229, 244-245 (2011) citing *Go v. CA*, 403 Phil. 883, 890 (2001).

24 Records, p. 809; RTC Decision.

25 *Rollo*, pp. 56-57.

With respect to the number of bags of refined sugar which petitioner was able to withdraw from respondents, both the trial court and the CA concluded, based on the records, that 35,150 bags had been withdrawn pursuant to the letter[26] of Mr. Ignacio, then Acting Administrator of the Sugar Regulatory Administration and President of NASUREFCO. As pointed out by the CA: "[petitioner] did not at all contest the genuineness and due execution of said letter during the formal offer of evidence."[27]

The foregoing clearly demonstrate that contrary to the contention of petitioner, the findings and conclusions of the CA, affirming those of the trial court, were all supported by the evidence on record. There is thus no merit in petitioner's contention that the CA erred in affirming the judgment of the trial court.

Finally, on the issue of damages, there is no doubt that both the petitioner and the respondents are entitled to damages – the petitioner, for failure of respondents to deliver the bags of sugar it refined pursuant to the Refining Contract, and respondents, for the clear breach by petitioner of the Refining Contract.

Petitioner correctly claimed that, for actual or compensatory damages to be recovered, the best evidence obtainable by the injured party must be presented since actual damages cannot be presumed, but must be duly proved with a reasonable degree of certainty. Thus, both the trial court and the CA erred when they granted damages to both petitioner and respondents in the amount of ₱38,412,000.00 each. The trial court arrived at this amount after it determined that only 42,680 bags of refined sugar, valued at ₱900.00 per bag, remained with respondents. The latter figure, in turn, was based on the allegation of petitioner in its complaint before the trial court that 89,115 bags of refined sugar, "with an estimated market value of ₱80,203,500.00,"[28] were in the possession of respondent.

Time and again, this Court has declared that actual damages cannot be 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 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.**"[29]

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26 Records, p. 657, Exhibit "6" for the respondents.

27 *Rollo*, p. 57.

28 Records, p. 7.

29 *Marikina Auto Line Transit Corp. v. People*, 520 Phil. 809, 825 (2006). (Emphasis supplied.)

In *Dueñas v. Guce-Africa*,[30] the Supreme Court held that:

> Article 2199 of the Civil Code provides that "one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved." In *Ong v. Court of Appeals*, we held that "(a)ctual damages are such compensation or damages for an injury that will put the injured party in the position in which he had been before he was injured. They pertain to such injuries or losses that are actually sustained and susceptible of measurement." To be recoverable, actual damages must not only be capable of proof, but must actually be proved with reasonable degree of certainty. We cannot simply rely on speculation, conjecture or guesswork in determining the amount of damages. Thus, it was held that before actual damages can be awarded, there must be competent proof of the actual amount of loss, and credence can be given only to claims which are duly supported by receipts.

Respondents herein prayed in their Answer with Counterclaim that they be awarded the sum of ₱52,000,000.00 as damages for lost and unrealized income and business opportunities from other clients and customers which they did not accommodate on account of their Refining Contract with petitioner.[31] They, however, failed to present any proof – whether testimonial or documentary – of their alleged losses. In the same way, petitioner merely gave an estimate of the value of the bags of refined sugar in the possession of respondents but likewise did not offer any testimonial or documentary evidence in support of the alleged value.

Both parties, therefore, failed to present any persuasive proof that they are entitled to the damages awarded by the trial court. Their claim for damages remained unsubstantiated and unproven. Well-settled it is that actual or compensatory damages must be duly proved with a reasonable degree of certainty. It is a fundamental principle of the law on damages that, while one injured by a breach of contract shall be awarded fair and just compensation commensurate with the loss sustained as a consequence of the defendant's acts or omission, a party is entitled only to such compensation for the pecuniary loss that he has duly proven. Actual damages cannot be presumed and cannot be based on flimsy, remote, speculative and non-substantial proof.[32] Neither petitioner nor respondent is thus entitled to actual or compensatory damages in this case. It is significant to note that the Refining Contract between petitioner and respondent did not state the amount of the contract which may be a basis for an award of actual damages.

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30 Supra note 18 at 20-21 citing *Sps. Ong v. CA*, 361 Phil. 338, 352-353 (1999).

31 Records, p. 110.

32 *Spouses Sabio v. The International Corporate Bank, Inc.*, 416 Phil. 785, 826 (2001) citing *Lufthansa German Airlines v. CA*, 313 Phil. 503, 526 (1995) and *Ong v. CA*, 361 Phil. 338, 353 (1999); *Luxuria Homes, Inc. v. Court of Appeals*, 361 Phil. 989, 1002 (1999).

Nevertheless, under Article 2224 of the New Civil Code, temperate damages may be recovered when pecuniary loss has been suffered but the amount cannot, from the nature of the case, be proven with certainty. In such cases, the amount of the award is left to the discretion of the courts, according to the circumstances of each case, but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory.[33]

In the case of *Pacific Basin Securities Co., Inc. v. Oriental Petroleum and Minerals Corp.*,[34] the Supreme Court awarded temperate damages to petitioner in the amount of ₱1,000;000.00 for respondents' refusal to record the transfer of stocks in the stock and transfer book and to issue new certificates of stock in the name of petitioner Pacific Basin, which refusal prevented petitioner from re-selling its shares in the market. The Court held: "By this non-performance of a ministerial function, the Court is convinced that Pacific Basin suffered pecuniary loss, the amount of which cannot be proved with certainty."[35]

In *Newsounds Broadcasting Network, Inc., et al. v. Dy, et al.*,[36] petitioners were corporations authorized by law to operate radio stations in Cauayan City. Respondents, in their respective capacities as local elected officials, took actions that impeded the ability of petitioners to freely broadcast. These actions ranged from withholding permits to operate to the physical closure of the stations. According to the Supreme Court, "[t]he lost potential income during that one and a half year of closure can only be presumed as substantial enough" warranting the award of ₱4 Million as temperate damages.

Considering the incomes estimated to have been lost in the case at bar (₱80,000,000.00 for petitioner and ₱52,000,000.00 in the case of respondents), this Court deems the amount of ₱4,000,000.00 as temperate damages for each party reasonable under the circumstances.

The ruling of the trial court and the CA to offset the amount of damages awarded to respondent against that claimed by petitioner is supported by law pursuant to Article 1283 of the New Civil Code which states that: "If one of the parties to a suit over an obligation has a claim for damages against the other, the former may set it off by proving his right to

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33 New Civil Code, Articles 2224 and 2216. See also *Dueñas v. Guce-Africa*, supra note 18 at 22 citing *College Assurance Plan v. Belfranlt Development, Inc.*, 563 Phil. 355, 367 (2007).

34 558 Phil. 425, 449 (2007).

35 Id. at 447.

36 602 Phil. 255, 292 (2009).

said damages and the amount thereof." This provision has been applied in the cases of *Chung v. Ulanday Construction, Inc.*[37] and *Ortiz v. Kayanan*[38] where the Court allowed the amount due one party to be offset against that claimed by and due the other party.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision of the Court of Appeals in CA-G.R. CV No. 66052 dated 23 December 2005 is hereby **AFFIRMED WITH THE MODIFICATION** that the amount of ₱38,412,000.00 as damages against each other is deleted and, in lieu thereof, petitioner and respondents are found liable unto each other in the amount of ₱4,000,000.00 each as temperate damages.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

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37 647 Phil. 1 (2010).
38 180 Phil. 579 (1979).

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.

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

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.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUL 18 2016