



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 22, 2023 which reads as follows:

“G.R. No. 226286 (MBC Trade and Transport, Inc., Faustino G. Almendral, and Amancio H. Trijo v. Philippine Phosphate Fertilizer Corporation, Ramon C. Avecilla, Joseph CH. Alvarez, Bienvenido S. Santos, Noel C. Dela Paz, Godofredo Galindez, Jr., Numeriano R. Joson, Eduardo J. Soriano, Victoria R. Tamayao, Mario M. Tongson, Ken Walker, Rene Harris, Dennis L. Ignacio, and Ambrosio Esteban, Jr.). – This Petition for Review¹ on Certiorari seeks the reversal of the Decision² dated 24 February 2016 and the Resolution³ dated 02 August 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 102507. The CA dismissed the appeal filed by petitioners’ MBC Trade and Transport, Inc. (MBC), Faustino G. Almendral (Almendral), and Amancio H. Trijo (Trijo) [petitioners collectively] and affirmed the Decision⁴ dated 27 December 2013 of Branch 143, Regional Trial Court (RTC), Makati City, in Civil Case No. 04-950. The RTC dismissed petitioners’ suit for damages against respondents Philippine Phosphate Fertilizer Corporation (PHILPHOS) and the members of its Board of Directors, namely, Ramon C. Avecilla (Avecilla), Joseph CH. Alvarez (Alvarez), Bienvenido S. Santos (Santos), Noel C. Dela Paz (Dela Paz), Godofredo Galindez, Jr. (Galindez), Numeriano R. Joson (Joson), Eduardo J. Soriano (Soriano), Victoria R. Tamayao (Tamayao), Mario M. Tongson (Tongson), Ken Walker (Walker), Rene Harris (Harris), Dennis L. Ignacio (Ignacio), and Ambrosio Esteban, Jr. (Esteban) [respondents collectively] for lack of cause of action.

¹ *Rollo*, pp. 39-109.

² *Id.* at 11-32; Penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Marlene Gonzales-Sison and Henri Jean Paul I. Inting (now a Member of this Court).

³ *Id.* at 8-9; Penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Marlene Gonzales-Sison and Henri Jean Paul I. Inting (now a Member of this Court).

⁴ *Id.* at 824-836; Penned by Presiding Judge Maximo M. De Leon.

Antecedents

Petitioners filed an action for damages against respondents. The case, docketed as Civil Case No. 04-950 and raffled to Branch 143 of the Quezon City RTC, was based on alleged tortious acts, including the filing of a malicious and unfounded criminal complaint, committed by respondents against Almendral and Trijo.

The complaint states, in pertinent part:

18. **[Respondent] Avecilla, then [PHILPHOS] Chairman of the Board and President, unlawfully and maliciously authorized the filing for [sic] criminal complaint against [petitioners] Almendral and Trijo,** which was later confirmed and accepted by [respondents] Alvarez, Santos, Dela Paz, Galindez, Joson, Soriano, Tamayao, Tongson, Walker, Harris, and Ignacio, being then and possibly up to now, members of the Board of Directors of [respondent] [PHILPHOS] and who are being impleaded for their approval in bad faith, of that board resolution authorizing and confirming the prosecution of the unfounded and malicious criminal case against [petitioners] Almendral and Trijo, for which [petitioners] suffered damages; and hence are jointly and severally liable with [respondent] [PHILPHOS] under Section 31 of the Corporation Code. x x x

19. [Respondent] Esteban, on the other hand, knowingly and willfully acted, in conspiracy with the other [respondents] to bring down [petitioners] as business rivals, **going to the extent of propagating false and malicious information on the gypsum powder being imported by [petitioners], to the filing of baseless complaints and even went on to testify falsely under oath in the criminal case against [petitioners] Almendral and Trijo.** [Respondent] Esteban is therefore jointly and severally liable with the rest of the defendants for the damages inflicted upon [petitioners].

20. From October 3, 1983 up to February 15, 1995, [petitioner] Almendral was employed under the Marketing Department of PHILPHOS, the country's biggest manufacturer and distributor of fertilizer and various chemical by-products used in agriculture and cement manufacturing. [Petitioner] Almendral last held position of "Sales Officer".

21. In the production of fertilizer, there are chemical by-products called "gypsum" and "pyrite cinders," both powdery substances, which, at first, were considered "waste" without any commercial value.

22. During his stint with PHILPHOS, [petitioner] Almendral discovered the potential use of by-products such as gypsum and



pyrite cinders. Gypsum may be used in agriculture and cement manufacturing. Through intense research, perseverance and hard work, he was able to convert and develop gypsum and pyrite cinders from being useless and unwanted wastes into a profitable commodity.

23. [Petitioner] Almendral was singly and directly responsible for the business development and marketing of gypsum and pyrite cinders, among other select products to both the export and domestic markets. [Respondent] Esteban was [petitioner] Almendral's replacement when the latter resigned from PHILPHOS.

24. As gypsum became quite well known in the cement industry and banana plantations and as profits started pouring in and the long term commercial potential of the by-products became apparent, top management began to be involved and started formulating policies, which [petitioner] Almendral considered to be seriously flawed.

25. [Petitioner] Almendral's differences with PHILPHOS' top management in the aforementioned policies heightened and this compelled him to decide to terminate his employment with PHILPHOS, move on peacefully to set up his own business.

26. [Petitioners] Almendral and Trijo organized the Manila Bulk Handling Services, Inc. (now known as [MBC]" and one of the plaintiffs in this case) to engage in the business of buying, selling, distributing, marketing, at wholesale and retail", goods and commodities in bulk, to include, among others, ammonia, pyrite cinders, and gypsum. Unfortunately for the [petitioners], one of the main products ran into direct competition with that of PHILPHOS.

27. PHILPHOS proved to be a severe and unjust business competitor, as it wanted, at all cost, to maintain its monopoly in the supply of chemical gypsum in the domestic market and to eliminate any potential threat, like the [petitioners].

28. The [petitioners] ventured into the importation of gypsum and indent sales of other bulk materials to the Philippines. The [petitioners] found that the imported gypsum from Japan, although much cheaper, is of superior quality than the gypsum locally distributed by PHILPHOS at that time.

29. Sometime in January 1999, MBC imported 12,000 Metric Tons of gypsum powder in bulk from Woodward, Japan, Inc. for delivery to FR Cement Corporation (hereinafter referred to as "FR CEMENT") x x x

30. The gypsum powder arrived on or about January 24, 1999 at Anchorage No. 5, South Harbor, Manila on board M/V EVERISE GRACE for discharge in bulk to barges, then to dump trucks for delivery directly to the buyer. Under normal circumstances, the release of the cargo from the Bureau of Customs and the delivery

thereof to the intended buyer would have been completed as early as February 1999.

31. But even before the gypsum cargo could reach the pier, the [respondents] already knew of its arrival and that it was intended for delivery to FR CEMENT which is also one of the customers of PHILPHOS. At this point, the [respondents] had already plotted a sinister scheme to stop the cargo from reaching its intended market by sending “poison letters” to various government agencies.

32. Despite its obvious knowledge of the fact that the imported gypsum from Japan was at least of the same quality as the PHILPHOS gypsum, the [respondents] started sending “poison letter-complaints” to various government agencies like the Department of Environment and Natural Resources (DENR), National Development Company (NDC), and the Bureau of Customs spreading untruthful representation that the imported gypsum contained “hazardous materials” and must be banned from entering the country.

32.a. In its letter dated January 29, 1999 addressed to the Secretary of the [DENR], PHILPHOS charged that the imported shipment contains radioactive materials such as cadium; x x x

32.b. In its letter dated February 17, 1999 addressed to the [NDC], copy furnished the Secretary and Undersecretaries of the Department of Trade and Industry, PHILPHOS claimed that [MBC]’s imported gypsum will prejudice the former’s market and the possibility of a plant shutdown of PHILPHOS and Pasar, as well as the negative effect on PHILPHOS’ privatization, and thus, asked NDC’s intercession with other proper government agencies to hold in abeyance the importation and clearance of [MBC]’s import. PHILPHOS admitted further that it has asked the DENR to check the toxicity level of the imported material x x x

33. Previous to the two (2) letters mentioned above, PHILPHOS through Esteban, who disguised himself as a concerned citizen, sent DENR a memo dated January 27, 1999, calling [MBC]’s importation an “unscrupulous importation” and that it contains cadium, a hazardous chemical, and that the imported material be included amongst banned hazardous chemicals for importation. x x x

34. Eventually, through official records of the DENR, the concerned citizen was proven to be [respondent] Esteban but who claimed in the witness stand under cross-examination in Criminal Case No. 00-183613, that he does not know anything about the Memo; x x x

35. Not satisfied with their initial actions, [respondents] went on to send memos to the purchasing departments of several cement companies, falsely claiming that using imported Japanese gypsum will harm the quality and brand of their cement x x x

36. [Respondents]' attack to obliterate [MBC] as a competitor was relentless. **They also went on to file complaints with the DTI claiming illegal use of PHILPHOS logo and label in one instance when [MBC] had to pack a marginal quantity of gypsum into bags for use as barriers and protection of its cargo against nature's elements; xxx They also attempted to establish an anti-dumping suit against [MBC] but failed.**

37. **The stratagem of the [respondents] proved effective, because the DENR through the Environmental Management Bureau, relying upon such false and malicious representations, ordered the detention of the imported gypsum. The woes and downfall of [petitioners]' business started.**

38. **After tests and the submission by plaintiffs of DENR's requirements and the latter cleared the shipment but only after nearly four (4) months from vessel's arrival date, during which time, the Sales Contract with FR CEMENT was already cancelled. The cargo was stockpiled at R-2 Industrial Complex for over a year. x x x**

39. **The clearance by the DENR did not stop PHILPHOS in its intent to destroy [petitioners] as competitors. On April 8, 1999, [respondents] filed an application for a search warrant and were able to seize the warrant and were able to seize the cargo, which were transferred to their warehouse without notice to [petitioners] or a court order. x x x**

40. **Eventually, Criminal Case No. 183613 was filed against [petitioners] Almendral and Trijo. After trial, a Decision was rendered on September 9, 2003 whwch acquitted [petitioners] Almendral and Trijo. x x x**

41. On March 31, 2004, [petitioners] sent [respondents] a demand letter, seeking the return of the seized gypsum powder as ordered by the Court and the payment of damages in the total amount of P44,475,360.00 x x x

42. Obviously in bad faith, and in defiance of the Decision of the Court in Criminal Case No. 00-183613, [respondents] who seized the gypsum powder and brought them to a warehouse in Bulacan, without notice to the [petitioners] and without a formal court order, now want [petitioners] to shoulder the manpower cost and freight of retrieving the goods. This is shown in its reply letter dated April 30, 2004. In said letter, [respondents] also denied and refused to pay [petitioners] any form of compensation for the damages inflicted and suffered by the [petitioners]. x x x

43. As a result of [respondents]' sinister plot to destroy their competitors, at all cost, by foul, unfair and unlawful means, [petitioners] suffered damages, from losing their entire business in [MBC], to undergoing the rigors of trial which caused [petitioners] Almendral and Trijo to suffer serious anxieties, fright, anguish sleepless nights, humiliation and other similar damages. Consequently, [respondents] are jointly and severally liable to [petitioners] Almendral and Trijo for moral damages in the amount of P1,000,000.00 each.

44. [Petitioner] MBC suffered actual and consequential losses incurred from the cancellation of its contracts, leading to its bankruptcy as brought about by [respondents]' unlawful and malicious acts mentioned above, in the total amount of P32,580,288.00, for which [respondents] are jointly and severally liable.

45. For the malicious filing of the Criminal Case against [petitioners] Almendral and Trijo, knowing that the case is unfounded and baseless and was meant to destroy [petitioners] as business competitors, [respondents] are jointly and severally liable for exemplary damages in the amount of P500,000.00 each, as a way of an example to deter similar acts done wantonly and recklessly.

46. [Petitioners] Almendral and Trijo are also entitled to recover their actual damages in the form of litigation expenses and attorney's fees in the amount of P100,000.00 each, which amounts were incurred in their defense in the aforementioned criminal case maliciously filed by the [respondents]; and another sum of P80,000.00 as litigation expenses in filing and prosecuting this case.

47. [Petitioners] are entitled to attorney's fees in the amount of 25% of the amount due.⁵

Respondents, in their Answer,⁶ denied the material allegations of the complaint. They countered that the complaint states no cause of action because their acts were neither malicious nor meant to harass petitioners. Respondents maintained that resort to judicial process, by itself, is not evidence of ill will and that the mere act of filing a criminal complaint does not make them liable for malicious prosecution. Their actions were merely in pursuit of a lawful cause of action based on what they believed to be an act of unfair competition by petitioners, specifically, the latter's use of sacks and containers containing PHILPHOS' trademark and logo to repack the gypsum they imported from Japan.⁷ Respondents also argued that the letter dated 10 June 1999 authorizing the filing of the criminal complaint, was issued in

⁵ Id. at 193-201. Emphases supplied.

⁶ Id. at 239-249.

⁷ Id. at 243.

compliance with the request of the Office of the City Prosecutor who found probable cause against petitioners.

Furthermore, respondents explained that they complained about petitioners to the authorities only for purposes of investigation. The subsequent filing of the case against Almendral and Trijo by the Office of the City Prosecutor of Manila clearly demonstrated that they were justified in submitting their grievance to the authorities for possible redress.⁸ The transfer of the imported gypsum from Japan to PHILPHOS' warehouse in Bulacan was made pursuant to a motion filed by the Western Police District (WPD) that was approved by the trial court after considering the lack of available space then at the WPD headquarters in Ermita that can be used to store said items.⁹

Finally, respondents asserted that since the dismissal of the criminal case against Almendral and Trijo was on reasonable doubt (and not premised on a finding of innocence), there is still basis to proceed against them for damages. Thus, and by way of compulsory counterclaim, respondents sought payment for moral and exemplary damages in the amounts of ₱50,000,000.00 and ₱10,000,000.00, respectively, for the improvident and wrongful institution of the case for damages against them, as well as ₱1,000,000.00 as attorney's fees.¹⁰

Ruling of the RTC

After trial, the RTC, in its Decision dated 27 December 2013,¹¹ dismissed the case for lack of cause of action. It held:

While it is true that PHILPHOS had attempted to ban the importation of gypsum by filing a complaint with DENR alleging that the imported gypsum contained hazardous chemicals, the same cannot be said to have been filed by PHILPHOS in bad faith. To the mind of this Court, it was a valid exercise of a right not only to protect PHILPHOS but also the public as it involves the health, safety and welfare of the people. It may not be amiss to state that even without PHILPHOS' complaint, the DENR may at its own initiative conduct verification and examination of all chemicals imported to our country in the valid exercise of the government's regulatory or police power. Besides, the [petitioners] failed to adduce convincing evidence tending to show that the filing of the complaints with the DENR and other government agencies against them, [respondents] were moved by a sinister motive of harassing the [petitioners].

⁸ Id. at 245.

⁹ Id. at 246.

¹⁰ Id. at 247-248.

¹¹ Id. at 824-836. Penned by Presiding Judge Maximo M. De Leon.

As to the damages that [petitioners] claims to have suffered because of the complaints filed by PHILPHOS, the Court finds that **such damages was also due to the fault of the [petitioners]. In fact, [petitioner] Almendral testified on direct examination that they have re-packed their gypsum power using PHILPHOS' logo and trade name x x x**

X X X X

From the foregoing, it is clear from [petitioner] Almendral's admission that there was negligence on their part when they repacked the gypsum powder using PHILPHOS' logo and trade name. It was for this reason that their buyers/clients did not proceed on their contract. Otherwise stated, **it was therefore established that it was not really the delay in the release and/or delivery of the imported gypsum powder that led to the refusal of the buyer to accept the gypsum but primarily because of the legal implications should the buyer accepts (sic) the adversely marked gypsum powder.** Hence, the injury that [petitioners] sustained was not due to the complaint filed by PHILPHOS with DENR but by [petitioners]' own wrongdoing, that it, they packed the gypsum powder bearing PHILPHOS' logo and trade name.¹²

Aggrieved, petitioners filed a Notice of Appeal from the RTC's Decision, claiming that the findings of fact and circumstances of law are contrary to the evidence presented, and the law and jurisprudence on the matter.¹³

Ruling of the CA

On 24 February 2016, the CA rendered its challenged Decision dismissing petitioners' appeal and essentially affirmed the conclusions reached by the RTC.¹⁴

The CA first determined that the core issues to be resolved are: "(1) whether [respondents] are liable to [petitioners] for damages for malicious prosecution; and (2) whether [respondents] are liable to [petitioners] for damages based on the principle of abuse of rights."¹⁵ Thereafter, it concluded, based on the evidence on record, that petitioners "miserably failed to discharged [sic] their burden" of proving the material allegations of their complaint.¹⁶

¹² Id. at 834-836. Emphasis supplied.

¹³ Id. at 837-838.

¹⁴ Id. at 10-31. Penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Henri Jean Paul B. Inting (now a Member of this Court) and Marlene Gonzales-Sison.

¹⁵ Id. at 23.

¹⁶ Id. at 29.

With the denial¹⁷ of its subsequent Motion for Reconsideration, petitioners now seek recourse by filing a petition for review on certiorari¹⁸ under Rule 45 with this Court.

On 25 January 2017, this Court issued a Resolution¹⁹ requiring respondents to comment on the petition. In time, respondents filed their Comment dated 27 March 2017²⁰ essentially reiterating their arguments as set forth in their Brief filed before the CA. It, however, also argued that the petition should be dismissed on jurisdictional grounds, there being no question of law raised.²¹ Petitioners thereafter moved²² for the admission of its Reply dated 08 April 2017²³ which was noted by the Court in a Resolution²⁴ dated 28 June 2017.

Issue

The Court now resolves whether the CA erred in dismissing petitioners' appeal.

Ruling of the Court

We GRANT the petition.

The Court, in *Magbanua v. Junsay*,²⁵ gave an extensive discussion on what constitutes "malicious prosecution," thus:

In this jurisdiction, the term "malicious prosecution" has been defined as "an action for damages brought by one against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein." **While generally associated with unfounded criminal actions, the term has been expanded to include unfounded civil suits instituted just to vex and humiliate the defendant despite the absence of a cause of action or probable cause.**

This Court, in *Drilon v. Court of Appeals*, elucidated, viz:

¹⁷ Id. at 8-9.

¹⁸ Id. at 39-102.

¹⁹ Id. at 1117-1118.

²⁰ Id. at 1128-1162.

²¹ Id. at 1159-1161.

²² Id. at 1165-1167.

²³ Id. at 1168-1189.

²⁴ Id. at 1193.

²⁵ *Marsman & Company, et al. v. Ligo*, 767 Phil. 385, 402-403 (2015) citing 544 Phil. 349 (2007).

The term malicious prosecution has been defined in various ways. In American jurisdiction, it is defined as:

“One begun in malice without probable cause to believe the charges can be sustained. Instituted with intention of injuring defendant and without probable cause, and which terminates in favor of the person prosecuted. For this injury an action on the case lies, called the action of malicious prosecution.”

In Philippine jurisdiction, it has been defined as:

An action for damages brought by one against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein. The gist of the action is the putting of legal process in force, regularly, for the mere purpose of vexation or injury.

The statutory basis for a civil action for damages for malicious prosecution are found in the provisions of the New Civil Code on Human Relations and on damages particularly Articles 19, 20, 21, 26, 29, 32, 33, 35, 2217 and 2219 (8). **To constitute malicious prosecution, however, there must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person, and that it was initiated deliberately by the defendant knowing that his charges were false and groundless.** Concededly, the mere act of submitting a case to the authorities for prosecution does not make one liable for malicious prosecution.

This Court has drawn the four elements that must be shown to concur to recover damages for malicious prosecution. Therefore, **for a malicious prosecution suit to prosper, the plaintiff must prove the following: (1) the prosecution did occur, and the defendant was himself the prosecutor or that he instigated its commencement; (2) the criminal action finally ended with an acquittal; (3) in bringing the action, the prosecutor acted without probable cause; and (4) the prosecution was impelled by legal malice — an improper or a sinister motive.** The gravamen of malicious prosecution is not the filing of a complaint based on the wrong provision of law, but the deliberate initiation of an action with the knowledge that the charges were false and groundless.²⁶

In dismissing petitioners' appeal, the CA concluded that the evidence did not support a finding of malicious prosecution.²⁷ Unsatisfied, petitioners are now asking this Court to re-examine the facts of the case, on the ground,

²⁶ Citations omitted. Emphases supplied.

²⁷ *Rollo*, pp. 23-29.

among others, that both the RTC and the CA sorely misapprehended certain facts which, if properly considered, would justify a different conclusion.²⁸

Indeed, and as correctly pointed out by respondents, questions of fact are not proper in petitions for review on *certiorari* under Rule 45 of the Rules of Court, such actions being limited to pure questions of law. Findings of fact of the CA are generally final, conclusive and cannot be reviewed on appeal.²⁹ This rule, however, is not without exceptions:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a 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 the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact 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 respondents; and (10) **The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.**³⁰

Contrary to the conclusion reached by the RTC and the CA, this Court finds that **the totality of the circumstances in the case at bar shows the presence of all the elements of malicious prosecution and that respondents were in bad faith and driven by sinister motives to make sure petitioners' competing business venture will not succeed.**

First, respondents do not deny³¹ that they wrote a number of government agencies after learning of petitioners' importation of 12,000 metric tons (MT) of Japanese gypsum products: (a) letter dated January 29, 1999 to the Secretary of the DENR *regarding the alleged harmful nature of petitioners' shipment*;³² (b) letter dated February 17, 1999 to the NDC, copy furnished the Undersecretaries of the [DTI], *about the alleged deleterious effect of allowing petitioners' low-priced gypsum into the Philippine market*;³³ (c) complaint with the Fertilizer and Pesticide Authority;³⁴ and (d) complaint

²⁸ Id. at 63-64.

²⁹ *Heirs of Quilo v. Development Bank of the Philippines - Dagupan Branch*, 720 Phil. 414, 422-423 (2013).

³⁰ *Ganancial v. Cabugao*, G.R. No. 203348, 06 July 2020 citing *Medina v. Asistio, Jr.*, 269 Phil. 225 (1990). Emphasis supplied. Citations omitted.

³¹ *Rollo*, pp. 1151-1153.

³² Id. at 211.

³³ Id. at 212-213.

³⁴ Id. at 220.

with the DTI *for the alleged unauthorized use of bags containing PHILPHOS' name and logo.*³⁵

Notably, respondents did not claim to have had actual access to petitioners' gypsum shipment and, therefore, could not have had personal knowledge of its harmful quality or characteristics. Thus, despite their insistence that they were only raising "genuine issues,"³⁶ the characterization of petitioners' imported gypsum products (as "radioactive," "acidic," "harmful," "toxic," "hazardous") do not appear to have been made with any basis. In fact, testimony given by respondents' own witness confirm that their main concern was really the competition to be posed by petitioners to their business:

COURT:

Q: You are saying Mr. Witness that you objected to the importation simply because they are to be of lower prices?

A: Yes Your Honor because it is very law (sic) although we can compete but we have to loss (sic) money.

Q: So you did not question the authenticity, the genuineness of this (sic) gypsum products?

A: No, your Honor.³⁷

That respondents' claims had no basis is further confirmed by the findings of the Environmental Management Bureau (EMB) of the DENR that petitioners' imported gypsum products were not hazardous, which determination respondents did not even bother to appeal.³⁸

Second, at the time the letter to DENR was sent, petitioners' shipment was still awaiting discharge and transfer which, in turn, made respondents' allegations as to the harmful effects of its transport speculative *at best*.

Third, for all their representations to the NDC that petitioners were engaged in dumping activities, respondents were ultimately unable to substantiate their allegations and did not pursue the filing of a case with the DTI.³⁹

³⁵ Id. at 221.

³⁶ Id. at 1151.

³⁷ Id. at 88-89. Emphasis supplied.

³⁸ Id. at 1178.

³⁹ Id. at 24.

ATTY. REYES

x x x x

Q: I will show, I will refresh your memory with this letter, Mr. Esteban, in this letter dated February 17, 1999 and I state the gist for your memory, this time PHILPHOS was questioning the importing office of the low product because of a possible sale of this product at a very low price and therefore would erode the market of PHILPHOS?

A: That is one.

Q: And I would say that is also the main issue in this case?

A: No sir, the main is the shot (sic) down of the two (2) plant (sic)?

Q: This is a matter of competition the PHILPHOS is afraid that the market would be eroded with the sale of this imported gypsum?

A: **What we are questioning there, it is being sold at a very, very low price, it is unfair competition.**

Q: **Did PHILPHOS later on filed a suit as it claimed earlier of dumping against [MBC]?**

A: **Yes sir, we tried.**

Q: **When was this filed?**

A: **Also in 1999, but the requirement is very, very stringent.**

Q: **Therefore ,PHILPHOS on its own did not continue with this case because it would not comply with the case of dumping successfully?**

A: **The requirement of DTI is very stringent.**

Q: **Requirement of the case of dumping?**

A: **Yes.**

Q: **And PHILPHOS feel that it could not comply with the requirement?**

A: **Yes sir.**⁴⁰

Fourth, respondents lodged a criminal complaint which led to the filing of Criminal Case No. 00-183613 against Almendral and Trijo for Unfair Competition and False Description under Republic Act No. 8293, the *Intellectual Property Code of the Philippines*.⁴¹

⁴⁰ Id. at 79-80. Emphases supplied.

⁴¹ Id. at 845-904.

Unfair competition has been defined as the passing off (or palming off) or attempting to pass off upon the public of the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public. Passing off (or palming off) takes place where the defendant, by imitative devices on the general appearance of the goods, misleads prospective purchasers into buying his merchandise under the impression that they are buying that of his competitors.⁴²

PHILPHOS, however, knew full well (at least, as early as its letter dated 29 January 1999) that the gypsum powder imported by petitioners were intended for sale and delivery to *FR Cement*, **not** the general public. Notably, respondents never asserted that FR Cement was deceived into buying gypsum powder from petitioners on the belief that they were PHILPHOS products. Despite this knowledge, respondents still went on to claim before the Office of the City Prosecutor of Manila that petitioners, by repacking some of the gypsum using PHILPHOS bags, were attempting to deceive the public by passing the gypsum off as PHILPHOS products.⁴³ It was precisely this complaint that led to Almendral and Trijo's prosecution.

Fifth, respondents repeatedly claimed that the question of whether petitioners' acts constituted the offenses that PHILPHOS believed it to be was for the authorities to decide, and the fact that the Office of the City Prosecutor of Manila subsequently ordered the filing of an Information shows that there were justified in doing so. What respondents do not disclose, however, is the initial recommendation of the Investigating Prosecutor for the dismissal of the case. Although this recommendation was eventually reversed on review by Second Assistant City Prosecutor Norberto G. Leño, we find that the conclusions reached by the Investigating Prosecutor to be more in accord with the evidence on record:

"There is no direct and positive proof showing that [petitioners] has offered to sell or is selling or has sold the said bagged gypsum powder and passed them off as the goods of PHILPHOS and thus actually deceiving the general consuming public thereby defrauding [PHILPHOS]. [PHILPHOS] merely alleged in its complaint-affidavit that he noticed 500 to 700 bags of gypsum powder with PHILPHOS markings were intended for sale by passing it off as PHILPHOS products after smuggling them out of the stockyard complex; maybe considered as an afterthought to pin [petitioners] on an imagined violation of R.A. No. 8293, more specifically Section 68 thereof. And as to the alleged violation of Section 169 thereof, the acts complained of does not also fall within the ambit of the said provision of law as the bagging of the gypsum powder using secondhand PHILPHOS bags was for the purpose of protecting the said goods from nature's elements and segregating them from other goods dumped or stockpiled therein and not to be used in commerce and/or done in contemplation thereof."⁴⁴

⁴² *Petron Corp. v. Yao, Sr.*, G.R. No. 243328, 18 March 2021.

⁴³ *Rollo*, pp. 1129.

⁴⁴ *Id.* at 695.

Petitioners' explanation (that the repacking was for the sole purpose of protecting the gypsum powder against waste and spoilage due to exposure to the elements) is credible and more consistent with logic, if not human experience. For one, not all of the imported gypsum were repacked. As explained by petitioners, the intention merely was "to form a solid obstruction around the entire stockpile" to "prevent erosion of spreading of seepage of the powder during heavy rains" and "to define boundaries so as to avoid the possibility of the imported gypsum being mistaken as that of others."⁴⁵ Furthermore, and as pointed out by both petitioners and the Investigating Prosecutor, the PHILPHOS sacks used in the repacking were old, dirty, and in most cases, turned inside-out. If the intention really was to pass them off as PHILPHOS products for commercial sale, it makes no sense to use dirty, second-hand PHILPHOS bags and/or even stop repacking gypsum after just 700 bags.

Sixth, there is no indication that petitioners' shipment would have been stalled or delayed for any reason were it not for respondents' specious claims.

For example, respondents point out that MBC's Importation Clearance was secured only *three months after* the 12,000 MT shipment of gypsum powder reached Philippine shores on 24 January 1999.⁴⁶ The fact, however, remains that everything was found to be in order and an Importation Clearance for the gypsum shipment was *actually* issued by the EMB in favor of MBC.⁴⁷ The EMB enjoys the presumption of regularity in the performance of its official duties, especially on matters falling within its technical expertise.⁴⁸

Similarly, we disagree with the RTC's view that the DENR, on its own initiative, would have conducted a verification and examination of the imported chemicals even without the complaint filed by PHILPHOS.⁴⁹ While the DENR indeed possesses the power to undertake such investigation, it does not follow that it would have done so in this case *absent PHILPHOS' machinations*. Again, we stress that the testing conducted by the DENR (upon respondents' prodding) ultimately showed that gypsum products imported by petitioners were not hazardous.⁵⁰

Seventh, it was respondents' actions that led to the cancellation of the contract between MBC and FR Cement.

The RTC held that the cancellation of the contract was "not caused by the delay in the release and/or delivery of the imported gypsum powder xxx

⁴⁵ Id. at 697.

⁴⁶ Id. at 934-936.

⁴⁷ Id. at 364.

⁴⁸ *Villar v. Alltech Contractors, Inc.*, G.R. No. 208702, 11 May 2021.

⁴⁹ *Rollo*, p. 879.

⁵⁰ Id. at 1178.

but by [petitioners'] own wrongdoing, that is, they packed the gypsum powder bearing PHILPHOS logo and brand name."⁵¹ In so doing, it considered the following statement given by Almendral on direct examination:

Q: xxx when clearance was tendered, what did MBC do with respect to the detained cargo?

A: Of course, we tried to sell it, but unfortunately, the cargo was adversely marked within the industry so, in other words, they said, you can import another cargo, exactly the same, we will pay even at the higher rate, but not this cargo because we don't like to get involved in a legal issue.⁵²

The trial court related Almendral's description of the cargo as "adversely marked" to the repacking of the powder using PHILPHOS bags. This, however, is an overly literal and strained interpretation of the foregoing statement. The more complete (and reasonable) interpretation of Almendral's testimony is this: that FR Cement (and others in the industry) did not want to do have anything to do with cargo that was currently embroiled with legal issues. These issues, it must be stressed, only came about as a result of respondents' complaints and misrepresentations before different government agencies.

Taking all the foregoing circumstances together, we find that petitioners have sufficiently proven all the elements of malicious prosecution: (1) they *were* subjects of administrative investigation and a criminal prosecution, in both cases upon respondents' instigation; (2) they were cleared – after investigation and testing by the DENR – and acquitted in the criminal case; (3) PHILPHOS instigated the administrative investigations and criminal prosecution against petitioners without factual bases and/or probable cause; and (4) respondents were impelled by legal malice – their purpose was to sully petitioners' reputation before the public so that the latter would not be able to compete with PHILPHOS.⁵³

That respondents have a proverbial axe to grind against petitioners is clear from its Comment:

[Almendral] is not only negligent but also in bad faith since as early as May 30, 1993, or less than four months after [Almendral's] request for early retirement with pay x x x was granted by respondent PHILPHOS, he already organized **petitioner MBC Trade xxx whose business would**

⁵¹ Id. at 836.

⁵² Id. at 835.

⁵³ Id. at 886-887.

directly compete with respondent PHILPHOS, and whose customers would include the same customers that [Almendral] got acquainted with in the course of his employment with respondent PHILPHOS.⁵⁴

In fact, the trial court in Criminal Case No. 00-183613 reached a similar conclusion when it dismissed the case for unfair competition filed against petitioners:

It is all too apparent that **the complaint [for unfair competition] was aimed at destroying a competitor.** As admitted by no less than the chairman of [PHILPHOS], Ramon C. AVECILLA, a letter to the National Development Company expressed the fear that the sale of the gypsum powder imported by the accused would erode the market of PHILPHOS.

That private complainant succeeded in driving MBC Trade and Transport, Inc. to bankruptcy is already a tragedy. But to seek the conviction of the accused for using 1,000 dirty, soiled, damaged, and lacerated PHILPHOS bags is the height of injustice. And this Court will not be a party to it.⁵⁵

We agree with the CA that evident bad faith and malice cannot be deduced from the “mere submission” of the letters to the different government agencies.⁵⁶ However, respondents did not “merely” submit letters. Rather, the totality of the foregoing circumstances demonstrated a systematic attempt by respondents to ensure that petitioners’ venture as PHILPHOS’ business competitor fails.

In *Marsman & Co. v. Ligo*,⁵⁷ we held that a grant of damages is proper when all the elements of a malicious prosecution case are present, and there is proof of evident bad faith, malice, and gross disregard of rights. On this score, the rule is that the remand of the case or of an issue to the lower court for further reception of evidence is not necessary where the Court is in position to resolve the dispute based on the records before it and particularly where the ends of justice would not be subserved by the remand thereof.⁵⁸

In *Coca-Cola Bottlers Philippines, Inc. v. Spouses Bernardo*,⁵⁹ we held:

Articles 19, 20, and 21 of the Civil Code provide the legal bedrock for the award of damages to a party who suffers damage whenever another

⁵⁴ Id. at 1145. Emphasis supplied.

⁵⁵ Id. at 234-235. Emphasis supplied.

⁵⁶ Id. at 26

⁵⁷ 767 Phil. 385 (2015).

⁵⁸ *Heirs of Gabriel-Almoradie v. Court of Appeals*, 299 Phil. 14, 30-31 (1994). See also *Estampador v. City Assessor of Manila*, G.R. No. 227288 (Notice), 18 March 2021.

⁵⁹ 798 Phil. 28, 37-38 (2016).

person commits an act in violation of some legal provision; or an act which, though not constituting a transgression of positive law, nevertheless violates certain rudimentary rights of the party aggrieved. The provisions read:

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Art. 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

Art. 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

In *Albenson Enterprises Corp. v. CA*, this Court held that under any of the above provisions of law, an act that causes injury to another may be made the basis for an award of damages. As explained by this Court in *GF Equity, Inc. v. Valenzona*:

The exercise of a right ends when the right disappears, and it disappears when it is abused, especially to the prejudice of others. The mask of a right without the spirit of justice which gives it life is repugnant to the modern concept of social law. It cannot be said that a person exercises a right when he unnecessarily prejudices another or offends morals or good customs. Over and above the specific precepts of positive law are the supreme norms of justice which the law develops and which are expressed in three principles: *honeste vivere*, *alterum non laedere* and *jus suum quique tribuere*; and he who violates them violates the law. For this reason, it is not permissible to abuse our rights to prejudice others.

Meanwhile, the use of unjust, oppressive, or high-handed business methods resulting in unfair competition also gives a right of action to the injured party. Article 28 of the Civil Code provides:

Art. 28. Unfair competition in agricultural, commercial or industrial enterprises or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or highhanded method shall give rise to a right of action by the person who thereby suffers damage.

X X X X

Indeed, the law permits judges to award a different kind of damages as an alternative to actual damages:

Civil Code, Art. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary

loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty.

Compensatory damages may be awarded in the concept of temperate damages for injury to business reputation or business standing, loss of goodwill, and loss of customers who shifted their patronage to competitors.

It is not extraordinary for courts to award temperate damages in lieu of actual damages. In *Canada v. All Commodities Marketing Corporation*, this Court awarded temperate damages in recognition of the pecuniary loss suffered, after finding that actual damages could not be awarded for lack of proof. In *Public Estates Authority v. Chu*, this Court held that temperate damages should have been awarded by the trial court considering that the plaintiff therein had suffered some pecuniary loss.

In this case, both the RTC and the CA found that respondents had similarly **suffered pecuniary loss by reason of petitioner's high-handed machinations to eliminate competition in the market.**

x x x x

With regard to **moral damages**, x x x [this] finds legal basis under Article 2219 (10) of the Civil Code, which states that moral damages may be recovered in acts and actions referred to in **Articles 21 and 28.**

x x x **exemplary damages are awarded under Article 2229 of the Civil Code by way of example or correction for the public good.** The determination of the amount is left to the discretion of the judge; its proof is not incumbent upon the claimant.

There being no meritorious argument raised by petitioner, **the award of exemplary damages must be sustained to caution powerful business owners against the use of oppressive and high-handed commercial strategies to target and trample on the rights of small business owners, who are striving to make a decent living.**

Exemplary damages having been awarded, the grant of attorney's fees was therefore warranted.⁶⁰

Generally, it should only be the corporation that could properly be held liable. However, circumstances may warrant the inclusion of the personal liability of a corporate director, trustee, or officer, if the said individual is found guilty of bad faith or gross negligence in directing corporate affairs.⁶¹

Respondents, in their pleadings,⁶² have consistently claimed that Dela Paz, Soriano, Tongson, Walker, and Harris were not at the meeting of the PHILPHOS Board of Directors on 27 September 2002 and, therefore, had no

⁶⁰ Citations omitted. Emphases and underscoring supplied.

⁶¹ *Lafarge Cement Phil. Inc. v. Continental Cement Corp.*, 486 Phil. 123, 139 (2004).

⁶² *Rollo*, pp. 246.

participation in the adoption of the resolution⁶³ authorizing Esteban to represent PHILPHOS in the criminal case filed against Almendral and Trijo, as well as all other matters (judicial or administrative) that may have any connection with the aforementioned case.

While this may be true, no evidence was presented to show that the named respondents were not involved in the *other* complaints lodged by PHILPHOS against petitioners before the different government agencies. To recall, malicious prosecution in this jurisdiction is no longer limited to criminal proceedings but has been expanded to cover any other legal proceedings instituted maliciously and for the purpose of vexing a defendant.⁶⁴

In this case, it is reasonably clear that respondents' officers had knowledge of the complaints against petitioners and, at the very least, acquiesced to the same.⁶⁵ Indeed, there is no showing that any of the respondents objected to or contested the complaints made against MBC. They are thus considered joint tort-feasors who are solidarily liable for the resulting damages:

Joint tort-feasors are those who command, instigate, promote, encourage, advise, countenance, cooperate in, aid or abet the commission of a tort, or who approve of it after it is done, if done for their benefit. They are also referred to as those who act together in committing wrong or whose acts, if independent of each other, unite in causing a single injury. Under Article 2194 of the Civil Code, joint tort-feasors are solidarily liable for the resulting damage.

Joint tort-feasors are each liable as principals, to the same extent and in the same manner as if they had performed the wrongful act themselves. It is likewise not an excuse for any of the joint tort-feasors that individual participation in the tort was insignificant as compared to that of the other. To stress, joint tort-feasors are not liable *pro rata*. The damages cannot be apportioned among them, except by themselves. They cannot insist upon an apportionment, for the purpose of each paying an aliquot part. They are jointly and severally liable for the whole amount.⁶⁶

In *Marsman & Company v. Ligo*,⁶⁷ the Court sustained the award of the following amounts to an employee who was subjected to malicious prosecution by his employer: ₱3,000,000.00 as moral damages, ₱500,000.000 as exemplary damages, and 25% of the total award as attorney's fees.

⁶³ Id. at 206, 690-693, 777.

⁶⁴ *Magbanua v. Junsay*, *supra*.

⁶⁵ *Agro Food and Processing Corp. v. Vitarich Corp.*, G.R. No. 217454, 11 January 2021.

⁶⁶ *Malvar v. Kraft Food Phils., Inc.*, 717 Phil. 427, 458-459 (2013). Emphasis supplied.

⁶⁷ *Supra*.

After consideration of the particular circumstances of this case, We find the following amounts to be proper:

1. ₱5,000,000.00 by way of temperate damages;
2. ₱3,000,000.00 by way of moral damages;
3. ₱1,000,000.00 by way of exemplary damages; and
4. 25% of the total amount awarded as attorney's fees.⁶⁸

WHEREFORE, the foregoing premises considered, the petition is **GRANTED**. The Decision dated 24 February 2016 and the Resolution dated 02 August 2016 of the Court of Appeals in CA-G.R. CV No. 102507 affirming the Decision dated 27 December 2013 of the Regional Trial Court in Civil Case No. 04-950 is **REVERSED AND SET ASIDE**.


Respondents are hereby found to have maliciously prosecuted petitioners and they are directed to pay the latter the following amounts, to wit:

1. ₱5,000,000.00 by way of temperate damages;
2. ₱3,000,000.00 by way of moral damages;
3. ₱1,000,000.00 by way of exemplary damages; and
4. 25% of the total amount awarded as attorney's fees.⁶⁹

The damages awarded shall earn legal interest of 6% per *annum* from the date of finality of this Resolution until its full satisfaction.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *Feb 21 2023*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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⁶⁸ See also *Coca-Cola Bottlers Philippines, Inc. v. Spouses Bernardo*, supra and *Marsman & Company v. Ligo*, supra.

⁶⁹ See also *Marsman & Company v. Ligo*, supra.

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