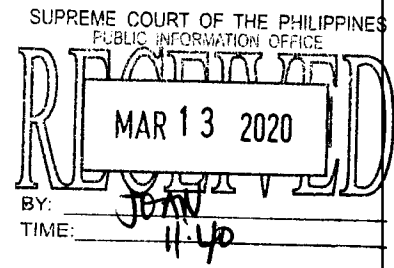




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated January 27, 2020 which reads as follows:

“G.R. No. 249330 – Ernesto Oppen, Inc. v. Darwin G. Koh

This petition for review¹ under Rule 45 assails the Court of Appeals’ Decision² dated January 11, 2019 and Resolution³ dated September 12, 2019 in CA-G.R. CV No. 107142. The appellate court modified the Decision⁴ dated November 23, 2015 of the Regional Trial Court (RTC) Branch 39, Manila awarding damages to respondent Darwin Koh in Civil Case No. 06-114259.

Antecedents

Respondent was in the business of selling general merchandise including clothing and musical instruments. On August 27, 2002, he leased a commercial stall (Stall D-1) located in Cartimar, Claro M. Recto, Manila from petitioner corporation at a monthly rate of Php5,236.00. Respondent claimed that on August 27, 2004 the stall was flooded due to a leak in Cartimar’s sewage system. As a result, respondent’s goods were damaged and he sustained losses in the amount of Php50,000.00. Respondent purportedly reported the matter to his lessor. Since poor maintenance of the sewage system of the whole establishment caused the flooding of respondent’s stall, respondent and the building administrator supposedly had a verbal agreement that respondent’s monthly rent would be reduced for several months to compensate him for the damage to his personal

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¹ *Rollo*, pp. 34-41.

² Penned by then Court of Appeals Associate Justice Samuel H. Gaerlan (now a Member of this Court) and concurred in by Court of Appeals Associate Justices Celia C. Librea-Leagogo and Pablito A. Perez; *Id.* at 9-23.

³ *Id.* at 25-26.

⁴ *Id.* at 57-71.

properties. For the period September 2004 to July 2005, respondent only paid a total of Php41,186.80, instead of the Php57,596.00 rent due for that 11-month period.

On October 26, 2005, petitioner Ernesto Oppen, Inc. (EOI) padlocked the leased premises. A couple of months later, petitioner opened the leased premises without prior notice to respondent and took out the merchandise found therein. Respondent's wife only learned of it when she received a text message that the leased stall was opened by the building administrator and the items therein were already being brought out. Respondent's wife was accompanied by a police officer to the leased stall and they found the preparation of the inventory was on-going. She refused to sign the inventory when she noted that there were numerous items missing. She was not allowed to bring their goods with her but instead they were padlocked again in the leased stall.

Respondent identified certain goods⁵ that were lost due to the petitioner's allegedly illegal actions. Respondent reported the goods as stolen to the police and the matter was recorded in the police blotter. As a result of the alleged illegal closure of the leased premises, respondent claimed he lost income of approximately Php100,000.00 per month. Hence, respondent filed a complaint, praying that petitioner be ordered to pay Php600,000.00 as actual damages, Php100,000.00 as exemplary damages, Php100,000.00 as moral damages, and Php50,000.00 as attorney's fees, and cost of suit.

By way of defense, petitioner asserted that the flooding of the leased premises was caused by the flow of foul-smelling water from the Sogo Hotel's construction site. Respondent's allegation that the flooding was petitioner's fault was belied by respondent's own letter to the Manager of the Sogo Hotel claiming compensation for damages to his store that crippled his business for five days. Petitioner also denied that it acknowledged liability for any flooding. Neither did it ever agree to a reduction of the rent. Petitioner even wrote several demand letters to respondent demanding payment of the overdue rentals and warning him that the premises would be padlocked if he

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⁵ These goods included: 953 audio CDs (worth Php238,000.00); 1 snare drum (Php5,000.00); 4 vinyl LPs (\$15 each); 4 vinyl EPs (\$5 each); 70 silkscreens with design (Php350.00 each); 4 light bulbs (P300.00 each); 6 dozen plain black shirts (Php70.00 each); 4 dozen plain white shirts (Php60.00 each); Php1,800.00 cash inside a cash box; 1 dozen plain Crispa shirts (Php250.00 each); 3 pairs of [Dr.] Martens boots (Php4,000.00 each); 1 steel box containing Php1,000.00 and TWD1,500.00 cash; 4 brand new car vacuum cleaners (Php2,500.00 each); Christmas lights (worth Php10,000.00); tattoo machine kit (\$200); 1 piece China cymbal (Php15,000.00); 1 piece trash cymbal (Php7,000.00); 1 piece pearl double pedal (Php5,000.00); and 1 small Canon digital video camera (Php30,000.00). (See *Rollo*, p. 58)

failed to pay. The closure of the leased premises for nonpayment of rentals was a valid remedy of the lessor. More, the barangay chairman and petitioner's security personnel witnessed the opening of the leased premises while respondent's representative was also a witness to the conduct of the inventory. Petitioner, too, gave respondent the chance to redeem his merchandise and equipment. As respondent was allegedly the one guilty of bad faith, petitioner believed it was respondent who should pay damages for loss of goodwill, exemplary damages, attorney's fees and costs. Petitioner also instituted a third-party complaint against the Forte Hotel, Inc., the manager and owner of the Sogo Hotel, as it was the one at fault. On petitioner's motion, this third-party complaint was later dismissed when the parties entered into a compromise agreement regarding the compensation for the damage to respondent's goods caused by the flooding of the leased stall.

During trial, respondent and his wife testified and identified their documentary evidence. On the other hand, petitioner failed to present its evidence on several hearing dates. It was subsequently deemed to have waived its right to present evidence and the case was deemed submitted for decision.

The Trial Court's Ruling

By Decision dated November 23, 2015, the trial court ruled in favor of respondent. It held that petitioner failed to rebut respondent's evidence that there was flooding that caused damage to respondent's merchandise; the unpaid rentals were less than the value of the damaged goods; and the padlocking and opening of the leased stall was without due notice to respondent. The trial court concluded that petitioner, through its personnel or representative, did not act in good faith in contravention of Article 19⁶ of the Civil Code. Applying Article 20⁷ of the same Code, the trial court ruled that petitioner should indemnify respondent although it deducted the amount of Php16,409.20 representing respondent's rent arrears from the amount of actual damages to be paid. The trial court disposed of the case, thus:

WHEREFORE, based on the foregoing considerations, judgment is hereby rendered in favor of the plaintiff [respondent] as follows, to wit:

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⁶ Article 19 of the Civil Code provides "[e]very 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."

⁷ Article 20 of the Civil Code states "[e]very person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same."

1. Ordering the defendant [petitioner] to pay plaintiff [respondent] the amount of [Php]346,510.80 plus US\$280 and 1,500 Taiwan money as actual damages;
2. Ordering the defendant [petitioner] to pay plaintiff [respondent] the amount of [Php]50,000.00 as exemplary damages;
3. Ordering the defendant [petitioner] to pay plaintiff [respondent] the amount of [Php]50,000.00 as moral damages; and
4. Ordering the defendant [petitioner] to pay plaintiff [respondent] the amount of [Php]30,000.00 as attorney's fees and cost of suit.

The defendant's [petitioner's] compulsory counterclaim is hereby denied for lack of merit.

SO ORDERED.

The Court of Appeals' Ruling

Resolving petitioner's appeal, the Court of Appeals **modified** the trial court's decision.

The appellate court held that there was no credible proof that petitioner consented to reduce respondent's rentals in supposed compensation of the damages the latter suffered during the flooding of the leased stall. Thus, respondent was not justified in paying reduced rentals and was in fact in breach of the lease contract. The Court of Appeals noted that petitioner was authorized by the lease contract to padlock the leased premises and later reopen the same for the purpose of taking out the lessee's goods. Section 27 of the lease contract provides:

27. In case of breach by the LESSEE of any of the provisions of this contract, the [LESSOR] shall have the right and by these presents the LESSEE hereby empowers and authorizes the LESSOR to padlock the premises concerned. After three (3) days that the premises had been padlocked and the LESSEE has not come up with an arrangement acceptable to the LESSOR, the latter or its duly authorized representatives shall be authorized to open the premises in the presence of the City Sheriff or his duly authorized deputies and before a peace officer, and the proper inventory of all goods and articles of value shall be made. All those inventoried goods and articles of value shall be deposited with the Office of the City Sheriff of Pasay City. If after three (3) days from the date of the deposit of the inventoried goods and articles of value the LESSEE still fails to make acceptable arrangement with the LESSOR for his breach of this contract, then

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the LESSOR or his duly authorized representative is hereby empowered to cause the auction sale of all the inventoried goods or articles of value or so much thereof as may be necessary by the City Sheriff of Pasay or his authorized deputies to pay for whatever arrears in rentals, penalties and/or damages that may be suffered by the LESSOR by reason of the breach. All expenses in the padlocking of the premises and auction sale shall be chargeable to the LESSEE.⁸

This provision in the contract notwithstanding, the Court of Appeals found petitioner liable for the loss of respondent's merchandise, considering that petitioner (a) through its own fault, failed to dispute respondent's testimonial and documentary evidence that items were missing from the leased stall and which respondent duly reported to the police and (b) did not faithfully follow the procedure laid down in Section 27 meant to protect the lessee's rights. The records were bereft of evidence that petitioner opened the leased premises and did the inventory in the presence of the City Sheriff or his authorized deputies and a peace officer. Neither was there proof that the inventoried items were deposited at the Office of the City Sheriff. Hence, the appellate court upheld the trial court's finding that articles/items were indeed lost during the padlocking and subsequent reopening of the leased premises.

The Court of Appeals, however, ruled that there was no reliable proof of the actual value of the lost merchandise. For this reason, it deleted the award of actual damages in the amounts of Php346,510.86, US\$280.00, and TWD1,500.00. In lieu thereof, it awarded temperate damages in favor of respondent in the amount of Php150,000.00 from which was deducted the Php16,409.20 unpaid rentals. It also deleted the awards of moral and exemplary damages as there was no clear showing that petitioner was guilty of bad faith in view of its ostensible authority to padlock the premises and bring out respondent's merchandise under Section 27 of the lease contract. Finally, it held that the award of attorney's fees and costs should also be set aside as such an award was only proper if a party was forced to litigate and incur expenses by reason of an unjustified act or omission on the part of the adverse party. The dispositive portion of the Court of Appeals' Decision reads:

WHEREFORE, the assailed Decision dated 23 November 2015 is hereby **MODIFIED**. The award of actual damages; moral damages; exemplary damages; and attorney's fees and costs of suit, are hereby **DELETED**. Defendant-appellant [petitioner] EOI is hereby **ORDERED** to **PAY** plaintiff-appellee [respondent]

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⁸ Rollo, p. 15,

Darwin G. Koh the amount of Php133,590.80 as temperate damages. The rest of the appealed Decision **STANDS**.

SO ORDERED.

Petitioner filed a motion for partial reconsideration but it was denied in the Resolution dated September 12, 2019.

The Present Petition

Petitioner now seeks a partial reversal of the Court of Appeals' decision. Petitioner asserts that it had the right to padlock the leased premises and later take out furniture, fixtures, and equipment therefrom in light of respondent's admitted failure to pay his rentals in full. It was respondent's own act that was the proximate cause of any perceived loss incurred by him. The award of temperate damages had no basis as respondent did not present any documentary evidence of his losses. On the contrary, it was petitioner who suffered losses when it could not "re-lease" the premises during the period that respondent was holding on to the premises but refusing to pay rentals. As petitioner simply exercised its legitimate right to secure payment of what was due to it, it cannot be liable for any resulting damages following the principle of *damnum absque injuria*. Hence, the award of temperate damages in favor of respondent should be deleted.

The Court's Ruling

The Court finds the petition unmeritorious.

To begin with, a petition for review under Rule 45 generally bars any question pertaining to factual issues.⁹ It is not this Court's function to analyze or weigh all over again evidence already considered in the proceedings below, our jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court. The resolution of factual issues is the function of the lower courts, whose findings on these matters are received with respect. A question of law which we may pass upon must not involve an examination of the probative value of the evidence presented by the litigants.¹⁰ Here, petitioner seeks precisely what this Court cannot do – to determine the sufficiency of the evidence for the award of damages in respondent's favor.

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⁹ See *Co v. Spouses Yeung*, 742 Phil. 803, 808 (2014).

¹⁰ *Heirs of Racaza v. Spouses Abay-Abay*, 687 Phil. 584, 590-591 (2012).

While there are recognized exceptions¹¹ to the foregoing rule, the petition failed to show that any of them exist in this instance.

Even if we were to overlook this procedural defect, we are still constrained to deny petitioner's appeal as the Court of Appeals did not commit any reversible error warranting the exercise of this Court's discretionary review power.

First, the Court of Appeals affirmed the trial court's ruling on the existence of preponderant evidence that some of respondent's merchandise and goods were indeed lost during petitioner's padlocking and later reopening of the leased premises to take out those goods. It is elementary that the factual findings of the trial court, especially when affirmed by the appellate court, deserve great weight and respect and will not be disturbed on appeal.¹² Hence, the fact of the loss can no longer be assailed here.

Second, with regard to the disagreement between the Court of Appeals and the trial court on the issue of valuation of the lost merchandise, we take the side of the Court of Appeals. It is well-settled that:

Actual or compensatory damages are those awarded in order to compensate a party for an injury or loss he suffered. They arise out of a sense of natural justice, aimed at repairing the wrong done. To be recoverable, they must be duly proved with a reasonable degree of certainty. A court cannot rely on speculation, conjecture, or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have suffered, and on evidence of the actual amount thereof.¹³

We agree with the appellate court that respondent's testimony and the entry in the police blotter cannot be considered firm and credible proof of the value of the lost items. It cannot be faulted in deleting the award of actual damages which requires competent proof of the amount involved and awarding temperate damages instead.

Third, petitioner's insistence that there must be documentary evidence showing the exact value of the loss demonstrates its ignorance of the nature of temperate damages. Article 2224 of the Civil Code states:

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¹¹ See *Spouses Alcazar v. Arante*, 700 Phil. 614, 625 (2012).

¹² *Mactan Rock Industries, Inc. v. Germa*, G.R. No. 228799, January 10, 2018, 850 SCRA 532, 540.

¹³ *Spouses Estrada v. Philippine Rabbit Bus Lines, Inc.*, 813 Phil. 950, 971 (2017).

Article 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.

The amount is usually left to the discretion of the courts but the same should be reasonable.¹⁴ The Court of Appeals properly took into account the nature and quantity of the goods lost and their claimed value of Php385,000.00 in setting the amount of temperate damages at Php150,000.00. The amount of the unpaid rent was likewise correctly deducted therefrom as respondent admitted his arrears in the rent.

On the monetary award, we impose six percent (6%) interest per annum from finality of this Resolution until full payment.

WHEREFORE, the petition is **DENIED**. The Court of Appeals' Decision dated January 11, 2019 and Resolution dated September 12, 2019 in CA-G.R. CV No. 107142 are **AFFIRMED with MODIFICATION** imposing six percent (6%) interest per annum on the monetary award from finality of this Resolution until full payment.

The compliance by Atty. Danilo G. Macalino of D.G. Macalino and Associates, counsel for petitioner, submitting a compact disc (CD) containing a copy of the petition for review on certiorari in PDF form; and the petitioner's motion for leave of court to admit annexes "A" and "B" of the petition for review on certiorari, are both **NOTED**.

The Court of Appeals is **DROPPED** as party respondent in this case pursuant to Sec. 4, Rule 45, 1997 Rules of Civil Procedure, as amended; and the petitioner is hereby required to **SUBMIT** within five (5) days from notice hereof, a verified declaration of the signed petition for review on certiorari pursuant to A.M. Nos. 10-3-7-SC and 11-9-4-SC.

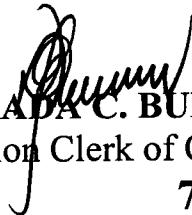
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¹⁴ *Yamauchi v. Suñiga*, G.R. No. 199513, April 18, 2018, 861 SCRA 583, 600.

SO ORDERED.”

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court
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