

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT  
THIRD DIVISION**

**BARONS MARKETING CORP.,  
*Petitioner,***

***-versus-***

**G.R. No. 126486  
February 9, 1998**

**COURT OF APPEALS and PHELPS  
DODGE PHILS., INC.,  
*Respondents.***

X-----X

**DECISION**

**KAPUNAN, J.:**

The instant petition raises two issues: (1) whether or not private respondent is guilty of abuse of right; and (2) whether or not private respondent is entitled to interest and attorney's fees.

The facts are undisputed:

On August 31, 1973, plaintiff [Phelps Dodge, Philippines, Inc. private respondent herein] appointed defendant [petitioner Barons Marketing, Corporation] as one of its dealers of electrical wires and cables effective September 1, 1973 (Exh. A). As such dealer, defendant was given by plaintiff 60 days credit for its purchases of plaintiff's

electrical products. This credit term was to be reckoned from the date of delivery by plaintiff of its products to defendant (Exh. 1).

During the period covering December 1986 to August 17, 1987, defendant purchased, on credit, from plaintiff various electrical wires and cables in the total amount of P4,102,438.30 (Exh. B to K). These wires and cables were in turn sold, pursuant to previous arrangements, by defendant to MERALCO, the former being the accredited supplier of the electrical requirements of the latter. Under the sales invoices issued by plaintiff to defendant for the subject purchases, it is stipulated that interest at 12% on the amount due for attorney's fees and collection (Exh. BB).<sup>[1]</sup> On September 7, 1987, defendant paid plaintiff the amount of P300,000.00 out of its total purchases as above-stated (Exh. S), thereby leaving an unpaid account on the aforesaid deliveries of P3,802,478.20. On several occasions, plaintiff wrote defendant demanding payment of its outstanding obligations due plaintiff (Exhs. L, M, N, and P). In response, defendant wrote plaintiff on October 5, 1987 requesting the latter if it could pay its outstanding account in monthly installments of P500,000.00 plus 1% interest per month commencing on October 15, 1987 until full payment (Exh. O and O-4). Plaintiff, however, rejected defendant's offer and accordingly reiterated its demand for the full payment of defendant's account (Exh. P).<sup>[2]</sup>

On 29 October 1987, private respondent Phelps Dodge Phils., Inc. filed a complaint before the Pasig Regional Trial Court against petitioner Barons Marketing Corporation for the recovery of P3,802,478.20 representing the value of the wires and cables the former had delivered to the latter, including interest. Phelps Dodge likewise prayed that it be awarded attorney's fees at the rate of 25% of the amount demanded, exemplary damages amounting to at least P100,000.00, the expenses of litigation and the costs of suit.

Petitioner, in its answer, admitted purchasing the wires and cables from private respondent but disputed the amount claimed by the latter. Petitioner likewise interposed a counterclaim against private respondent, alleging that it suffered injury to its reputation due to Phelps Dodge's acts. Such acts were purportedly calculated to humiliate petitioner and constituted an abuse of rights.

After hearing, the trial court on 17 June 1991 rendered its decision, the dispositive portion of which reads:

WHEREFORE, from all the foregoing considerations, the Court finds Phelps Dodge Phils., Inc. to have preponderantly proven its case and hereby orders Barons Marketing, Inc. to pay Phelps Dodge the following:

1. P3,108,000.00 constituting the unpaid balance of defendant's purchases from plaintiff and interest thereon at 12% per annum computed from the respective expiration of the 60 day credit term, *vis-a-vis* the various sales invoices and/or delivery receipts;
2. 25% of the preceding obligation for and as attorney's fees;
3. P10,000.00 as exemplary damages;
4. Costs of suit.<sup>[3]</sup>

Both parties appealed to respondent court. Private respondent claimed that the trial court should have awarded it the sum of P3,802,478.20, the amount which appeared in the body of the complaint and proven during the trial rather than P3,108,000.00. The latter amount appears in petitioner's prayer supposedly as a result of a typographical error.

On the other hand, petitioner reiterated its claims for damages as a result of "creditor's abuse." It also alleged that private respondent failed to prove its cause of action against it.

On 25 June 1996, the Court of Appeals rendered a decision modifying the decision of the trial court, thus:

WHEREFORE, from all the foregoing considerations, the Court finds Phelps Dodge Phils., Inc. to have preponderantly proven its case and hereby orders Barons Marketing, Inc. to pay Phelps Dodge the following:

1. P3,802,478.20 constituting the unpaid balance of defendant's purchases from plaintiff and interest thereon at 12% per annum computed from the respective expiration of the 60 day credit term, *vis-a-vis* the various sales invoices and/or delivery receipts; and
2. 5% of the preceding obligation for and as attorney's fees.

No costs.<sup>[4]</sup>

Petitioner Barons Marketing is now before this Court alleging that respondent court erred when it held (1) private respondent Phelps Dodge not guilty of "creditor's abuse," and (2) petitioner liable to private respondent for interest and attorney's fees.

## I

Petitioner does not deny private respondent's rights to institute an action for collection and to claim full payment. Indeed, petitioner's right to file an action for collection is beyond cavil.<sup>[5]</sup> Likewise, private respondent's right to reject petitioner's offer to pay in installments is guaranteed by Article 1248 of the Civil Code which states:

ART. 1248. Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists. Neither may the debtor be required to make partial payments.

However, when the debt is in part liquidated and in part unliquidated, the creditor may demand and the debtor may effect the payment of the former without waiting for the liquidation of the latter.

Under this provision, the prestation, i.e., the object of the obligation, must be performed in one act, not in parts.

Tolentino concedes that the right has its limitations:

Partial Prestations. — Since the creditor cannot be compelled to accept partial performance, unless otherwise stipulated, the creditor who refuses to accept partial prestations does not incur in delay or *mora accipiendi*, except when there is abuse of right or if good faith requires acceptance.<sup>[6]</sup>

Indeed, the law, as set forth in Article 19 of the Civil Code, prescribes a “primordial limitation on all rights” by setting certain standards that must be observed in the exercise thereof.<sup>[7]</sup> Thus:

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.

Petitioner now invokes Article 19 and Article 21<sup>[8]</sup> of the Civil Code, claiming that private respondent abused its rights when it rejected petitioner’s offer of settlement and subsequently filed the action for collection considering:

that the relationship between the parties started in 1973 spanning more than 13 years before the complaint was filed, that the petitioner had been a good and reliable dealer enjoying a good credit standing during the period before it became delinquent in 1987, that the relationship between the parties had been a fruitful one especially for the private respondent, that the petitioner exerted its outmost efforts to settle its obligations and avoid a suit, that the petitioner did not evade in the payment of its obligation to the private respondent, and that the petitioner was just asking a small concession that it be allowed to liquidate its obligation to eight (8) monthly installments of P500,000.00 plus 1% interest per month on the balance which proposal was supported by post-dated checks.<sup>[9]</sup>

Expounding on its theory, petitioner states:

In the ordinary course of events, a suit for collection of a sum of money filed in court is done for the primary purpose of collecting a debt or obligation. If there is an offer by the debtor to pay its debt or obligation supported by post-dated checks and with provision for interests, the normal response of a creditor

would be to accept the offer of compromise and not file the suit for collection. It is of common knowledge that proceedings in our courts would normally take years before an action is finally settled. It is always wiser and more prudent to accept an offer of payment in installment rather than file an action in court to compel the debtor to settle his obligation in full in a single payment.

X X X

Why then did private respondent elect to file a suit for collection rather than accept petitioner's offer of settlement, supported by post-dated checks, by paying monthly installments of P500,000.00 plus 1% per month commencing on October 15, 1987 until full payment? The answer is obvious. The action of private respondent in filling a suit for collection was an abuse of right and exercised for the sole purpose of prejudicing and injuring the petitioner.<sup>[10]</sup>

Petitioner prays that the Court order private respondent to pay petitioner moral and exemplary damages, attorney's fees, as well as the costs of suit. It likewise asks that it be allowed to liquidate its obligation to private respondent, without interests, in eight equal monthly installments.

Petitioner's theory is untenable.

Both parties agree that to constitute an abuse of rights under Article 19 the defendant must act with bad faith or intent to prejudice the plaintiff. They cite the following comments of Tolentino as their authority:

Test of Abuse of Right. — Modern jurisprudence does not permit acts which, although not unlawful, are anti-social. There is undoubtedly an abuse of right when it is exercised for the only purpose of prejudicing or injuring another. When the objective of the actor is illegitimate, the illicit act cannot be concealed under the guise of exercising a right. The principle does not permit acts which, without utility or legitimate purpose cause damage to another, because they violate the

concept of social solidarity which considers law as rational and just. Hence, every abnormal exercise of a right, contrary to its socio-economic purpose, is an abuse that will give rise to liability. The exercise of a right must be in accordance with the purpose for which it was established, and must not be excessive or unduly harsh; there must be no intention to injure another. Ultimately, however, and in practice, courts, in the sound exercise of their discretion, will have to determine all the facts and circumstances when the exercise of a right is unjust, or when there has been an abuse of right.<sup>[11]</sup>

The question, therefore, is whether private respondent intended to prejudice or injure petitioner when it rejected petitioner's offer and filed the action for collection.

We hold in the negative. It is an elementary rule in this jurisdiction that good faith is presumed and that the burden of proving bad faith rests upon the party alleging the same.<sup>[12]</sup> In the case at bar, petitioner has failed to prove bad faith on the part of private respondent. Petitioner's allegation that private respondent was motivated by a desire to terminate its agency relationship with petitioner so that private respondent itself may deal directly with Meralco is simply not supported by the evidence. At most, such supposition is merely speculative.

Moreover, we find that private respondent was driven by very legitimate reasons for rejecting petitioner's offer and instituting the action for collection before the trial court. As pointed out by private respondent, the corporation had its own "cash position to protect in order for it to pay its own obligations." This is not such "a lame and poor rationalization" as petitioner purports it to be. For if private respondent were to be required to accept petitioner's offer, there would be no reason for the latter to reject similar offers from its other debtors. Clearly, this would be inimical to the interests of any enterprise, especially a profit-oriented one like private respondent. It is plain to see that what we have here is a mere exercise of rights, not an abuse thereof. Under these circumstances, we do not deem private respondent to have acted in a manner contrary to morals, good customs or public policy as to violate the provisions of Article 21 of the Civil Code.

Consequently, petitioner's prayer for moral and exemplary damages must thus be rejected. Petitioner's claim for moral damages is anchored on Article 2219 (10) of the Civil Code which states:

ART. 2219. Moral damages may be recovered in the following and analogous cases:

X X X

(10) Acts and actions referred to in articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

X X X

Having ruled that private respondent's acts did not transgress the provisions of Article 21, petitioner cannot be entitled to moral damages or, for that matter, exemplary damages. While the amount of exemplary damages need not be proved, petitioner must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded.<sup>[13]</sup> As we have observed above, petitioner has failed to discharge this burden.

It may not be amiss to state that petitioner's contract with private respondent has the force of law between them.<sup>[14]</sup> Petitioner is thus bound to fulfill what has been expressly stipulated therein.<sup>[15]</sup> In the absence of any abuse of right, private respondent cannot be allowed to perform its obligation under such contract in parts. Otherwise, private respondent's right under Article 1248 will be negated, the sanctity of its contract with petitioner defiled. The principle of autonomy of contracts<sup>[16]</sup> must be respected.

## II

Under said contract, petitioner is liable to private respondent for the unpaid balance of its purchases from private respondent plus 12% interest. Private respondent's sales invoices expressly provide that:

Interest at 12% per annum will be charged on all overdue account plus 25% on said amount for attorney's fees and collection.<sup>[17]</sup>

It may also be noted that the above stipulation, insofar as it provides for the payment of "25% on said amount for attorney's fees and collection (sic)," constitutes what is known as a penal clause.<sup>[18]</sup> Petitioner is thus obliged to pay such penalty in addition to the 12% annual interest, there being an express stipulation to that effect.

Petitioner nevertheless urges this Court to reduce the attorney's fees for being "grossly excessive," "considering the nature of the case which is a mere action for collection of a sum of money." It may be pointed out however that the above penalty is supposed to answer not only for attorney's fees but for collection fees as well. Moreover:

the attorneys' fees here provided is not, strictly speaking, the attorneys' fees recoverable as between attorney and client spoken of and regulated by the Rules of Court. Rather, the attorneys' fees here are in the nature of liquidated damages and the stipulation therefor is aptly called a penal clause. It has been said that so long as such stipulation does not contravene law, morals, or public order, it is strictly binding upon defendant. The attorneys' fees so provided are awarded in favor of the litigant, not his counsel. It is the litigant, not counsel, who is the judgment creditor entitled to enforce the judgment by execution.<sup>[19]</sup>

Nonetheless, courts are empowered to reduce such penalty if the same is "iniquitous or unconscionable." Article 1229 of the Civil Code states thus:

ART. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable. (Emphasis supplied.)

The sentiments of the law are echoed in Article 2227 of the same Code:

ART. 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

It is true that we have upheld the reasonableness of penalties in the form of attorney's fees consisting of twenty-five percent (25%) of the principal debt plus interest.<sup>[20]</sup> In the case at bar, however, the interest alone runs to some four and a half million pesos (P4.5M), even exceeding the principal debt amounting to almost four million pesos (P4.0M). Twenty five percent (25%) of the principal and interest amounts to roughly two million pesos (P2M). In real terms, therefore, the attorney's fees and collection fees are manifestly exorbitant. Accordingly, we reduce the same to ten percent (10%) of the principal.

Private respondent, however, argues that petitioner failed to question the award of attorney's fees on appeal before respondent court and raised the issue only in its motion for reconsideration. Consequently, petitioner should be deemed to have waived its right to question such award.

Private respondent's attempts to dissuade us from reducing the penalty are futile. The Court is clothed with ample authority to review matters, even if they are not assigned as errors in their appeal, if it finds that their consideration is necessary in arriving at a just decision of the case.<sup>[21]</sup>

**WHEREFORE**, the decision of the Court of Appeals is hereby **MODIFIED** in that the attorney's and collection fees are reduced to ten percent (10%) of the principal but is **AFFIRMED** in all other respects.

**SO ORDERED.**

**Narvasa, C.J., Romero, Francisco and Purisima, JJ., concur.**

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[1] More accurately, the invoices state:

Interest at 12% per annum will be charged on all overdue account plus 25% on said amount for attorney's fees and collection. . . .

- [2] Rollo, p. 51.
- [3] Id., at 54.
- [4] Id., at 43; underscoring in the original.
- [5] See *Melendez vs. Lavarias*, 9 SCRA 548 (1963).
- [6] IV Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, 1990 ed., p. 298; emphasis supplied.
- [7] *Globe Mackay Cable and Radio Corp. vs. Court of Appeals*, 176 SCRA 778 (1989).
- [8] ART. 21. Any person who willfully 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.
- [9] Rollo, p. 137.
- [10] Id., at 18-20.
- [11] I Tolentino, pp. 61-62; emphasis supplied.
- [12] *Ford Philippines vs. Court of Appeals*, G.R. No. 99039, February 3, 1997.
- [13] ART. 2234, Civil Code.
- [14] ART. 1158, Civil Code.
- [15] ART. 1315, Civil Code.
- [16] ART. 1306, Civil Code.
- [17] Exhibit "BB;" emphasis supplied.
- [18] See *Luneta Motor Co. vs. Mora*, 73 Phil. 80 (1941).
- [19] *Polytrade Corporation vs. Blanco*, 30 SCRA 187 (1969).
- [20] See *Polytrade vs. Blanco*, supra, note 1.
- [21] *Korean Airlines Co., Ltd. vs. Court of Appeals*, 234 SCRA 717 (1994); see also: *Asset Privatization Trust vs. CA*, 214 SCRA 400 (1994).