



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**SEVEN BROTHERS SHIPPING G.R. No. 193914**  
**CORPORATION,**

Petitioner, Present:

- versus -

SERENO, *CJ*, Chairperson,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
\*VILLARAMA, JR., and  
PEREZ, *JJ*.

Promulgated:

**DMC-CONSTRUCTION**  
**RESOURCES, INC.,**

**NOV 26 2014**

Respondent.

X ----- X

**DECISION**

**SERENO, *CJ*:**

This is a Rule 45 appeal<sup>1</sup> dated 18 November 2010 assailing the Decision<sup>2</sup> and Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 69819, which affirmed with modifications the Decision<sup>4</sup> of the Regional Trial Court (RTC), Branch 132, Makati City in Civil Case No. 98-699, finding petitioner liable to respondent for damages.

Petitioner Seven Brothers Shipping Corporation is the owner of the cargo ship M/V “*Diamond Rabbit*,” (vessel), while respondent DMC-Construction Resource, Inc. is the owner of coal-conveyor facility, which

\* Designated additional member in lieu of Associate Justice Estela M. Perlas-Bernabe per S.O. No. 1885 dated 24 November 2014.

<sup>1</sup> *Rollo*, pp. 9-31.

<sup>2</sup> Id. at 34-44; CA Decision dated 30 April 2010, penned by Associate Justice Ricardo D. Rosario, and concurred in by Associate Justices Hakim S. Abdulwahid and Michael P. Elbinias.

<sup>3</sup> Id. at 62-63; CA Resolution dated 24 September 2010.

<sup>4</sup> Id. at 64-70; RTC Order dated 18 January 2001, penned by Judge Herminio I. Benito.

was destroyed when the vessel became uncontrollable and unmaneuverable during a storm.<sup>5</sup>

We reproduce the narration of facts culled by the CA,<sup>6</sup> as follows:

On 23 February 1996, the cargo ship M/V “Diamond Rabbit” (**the Vessel**) owned and operated by defendant Seven Brothers Shipping Corporation (**Seven Brothers**), was at the PICOP Pier in Mangagoy, Bislig, Surigao del Sur to dock there. According to the record, the weather that day was windy with a wind force of 10 to 20 knots, and the sea condition was rough, with waves 6 to 8 feet high. However, the parties also stipulated during pre-trial that prior to the occurrence of the incident, the vessel was anchored at the causeway of the port of Bislig, where it was safe from inclement weather.

According to the report of the Master, it heaved its anchor and left the causeway in order to dock at the PICOP Pier. A lifeboat pulled the vessel towards the Pier with a heaving line attached to the vessel’s astern mooring rope, when suddenly, the heaving line broke loose, causing the astern mooring rope to drift freely. The mooring rope got entangled in the vessel’s propeller, thereby choking and disabling it, and preventing the further use of its main engine for maneuvering.

In order to stop the vessel from further drifting and swinging, its Master dropped her starboard anchor. To help secure the vessel, its forward mooring rope was sent ashore and secured at the mooring fender. However, because of the strong winds and rough seas, the vessel’s anchor and the mooring rope could not hold the vessel.

Under the influence of the wind and current, the dead weight of the vessel caused it to swung from side to side until the fender, where the mooring rope was attached, collapsed. The uncontrollable and unmaneuverable vessel drifted and dragged its anchor until it hit several structures at the Pier, including the coal conveyor facility owned by DMC Construction Equipment Resources, Inc. (**DMC**). (Emphasis in the original)

On 5 March 1996, respondent sent a formal demand letter to petitioner, claiming the amount above-stated for the damages sustained by their vessel.<sup>7</sup>

When petitioner failed to pay, respondent filed with the RTC a Complaint for damages against respondent on 23 March 1998. Based on the pieces of evidence presented by both parties, the RTC ruled that as a result of the incident, the loading conveyor and related structures of respondent were indeed damaged.<sup>8</sup> In the course of the destruction, the RTC found that no *force majeure* existed, considering that petitioner’s captain was well aware of the bad weather, and yet proceeded against the strong wind and rough seas, instead of staying at the causeway and waiting out the passage of

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<sup>5</sup> Id. at 36; CA Decision, p. 3.

<sup>6</sup> Id. at 35-36; CA Decision, pp. 2-3.

<sup>7</sup> Id. at 36; Id. at 3.

<sup>8</sup> Id. at 68; RTC Decision, p. 5.

the typhoon.<sup>9</sup> It further concluded that “there was negligence on the part of the captain; hence, defendant [petitioner] as his employer and owner of the vessel shall be liable for damages caused thereby.”<sup>10</sup>

Regarding liability, the RTC awarded respondent **actual damages** in the amount of ₱3,523,175.92 plus legal interest of 6%, based on the testimony of respondent’s engineer, Loreto Dalangin (Engr. Dalangin). The value represented 50% of the ₱7,046,351.84 claimed by the respondent as the fair and reasonable valuation of the structure at the time of the loss,<sup>11</sup> because as manifested by Engr. Dalangin at the time of the incident, the loading conveyor and related structures were almost five years old, with a normal useful life of 10 years.<sup>12</sup>

Thus, on 18 January 2001, the RTC issued a Decision<sup>13</sup> to wit:

WHEREFORE, judgment is hereby rendered ordering defendant to pay plaintiff:

- (a) Actual damages in the amount of ₱3,523,175.92 plus legal interest of 6% per annum from the date of the filing of this complaint until the same is fully paid; and
- (b) Costs of suit.

Aggrieved, petitioner appealed via a Notice of Appeal on 5 February 2001.<sup>14</sup> The appeal was dismissed by the CA in a Decision dated 30 April 2010,<sup>15</sup> the dispositive portion of which is quoted herein:

**WHEREFORE**, the appeal is **DISMISSED**, and the *Decision* dated 18 January 2001 of the Regional Trial Court, Branch 132, Makati City in Civil Case No. 98-699, is **AFFIRMED** with modification in that Seven Brothers Shipping Corporation is found liable to DMC Construction Equipment Resources, Inc. for **nominal damages** in the amount of ₱3,523,175.92 due to the destruction of the latter’s coal conveyor post and terminal by the cargo ship M/V “Diamond Rabbit.” (Emphasis in the original)

The CA affirmed the RTC’s Decision with respect to the finding of negligence on the part of the vessel’s captain. However, the appellate court modified the nature of damages awarded (from actual to nominal), on the premise that actual damages had not been proved. Respondent merely relied on estimates to prove the cost of replacing the structures destroyed by the vessel, as no actual receipt was presented.<sup>16</sup>

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<sup>9</sup> Id. at 69; Id. at 6.

<sup>10</sup> Id.

<sup>11</sup> Id. at 68-69; RTC Decision, p. 5-6.

<sup>12</sup> Id. at 66; Id. at 3.

<sup>13</sup> Id. at 69-70; Id. at 6-7.

<sup>14</sup> Id. at 14; Petition for Review on Certiorari, p. 6.

<sup>15</sup> Id. at 43; CA Decision, p. 10.

<sup>16</sup> Id. at 41; Id. at 8.

On 19 May 2010, petitioner filed a Motion for Partial Reconsideration.<sup>17</sup> Respondent filed a Comment on the Motion on 22 June 2010,<sup>18</sup> and the former, a Reply on 29 June 2010.<sup>19</sup> In a Resolution promulgated on 24 September 2010,<sup>20</sup> the CA denied petitioner's Motion.

Hence, the instant Petition.

This Court noted respondent's Comment dated 27 April 2011;<sup>21</sup> respondent's Manifestation dated 4 May 2011;<sup>22</sup> and petitioner's Reply dated 2 June 2011.<sup>23</sup>

### ISSUE

From the foregoing, the sole issue proffered to us by petitioner is whether or not the CA erred in awarding nominal damages to respondent after having ruled that the actual damages awarded by the RTC was unfounded.

### THE COURT'S RULING

Petitioner argues that under Articles 2221 and 2223 of the Civil Code,<sup>24</sup> nominal damages are only awarded to vindicate or recognize a right that has been violated, and not to indemnify a party for any loss suffered by the latter. They are not awarded as a simple replacement for actual damages that were not duly proven during trial.<sup>25</sup> Assuming further that nominal damages were properly awarded by the CA, petitioner is of the belief that the amount thereof must be equal or at least commensurate to the injury sustained by the claimant, as ruled in *PNOC Shipping and Transportation Corp. v. Court of Appeals (PNOC)*.<sup>26</sup> Considering that respondent allegedly failed to substantiate its actual loss, it was therefore improper for the CA to award nominal damages of ₱3,523,175.92, which was based on respondent's "highly speculative claims."<sup>27</sup>

Respondent, on the other hand, alleges that nominal damages were rightly assessed, since there was a categorical finding that its "property right was indubitably invaded and violated when damage to its conveyor and port

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<sup>17</sup> Id. at 45-50.

<sup>18</sup> Id. at 51-55.

<sup>19</sup> Id. at 56-60.

<sup>20</sup> Id. at 62-63.

<sup>21</sup> Id. at 75-84.

<sup>22</sup> Id. at 85-91.

<sup>23</sup> Id. at 82-91.

<sup>24</sup> CIVIL CODE, Art. 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

CIVIL CODE, Art. 2223. The adjudication of nominal damages shall preclude further contest upon the right involved and all accessory questions, as between the parties to the suit, or their respective heirs and assigns.

<sup>25</sup> *Rollo*, p. 26; Petition for Review on Certiorari, p. 18.

<sup>26</sup> 358 Phil. 38 (1998).

<sup>27</sup> *Rollo*, p. 22; Petition for Review on Certiorari, p. 14.

equipment due to petitioner's negligence,"<sup>28</sup> was inflicted. Nominal damages are recoverable where some injury has been done, but the evidence fails to show the corresponding amount thereof. Accordingly, the assessment of damages is left to the discretion of the court.<sup>29</sup> Respondent asserts that the CA's award of ₱3,523,175.92 is not unreasonable, following the amounts awarded in *PNOC*.

**We rule that temperate, and not nominal, damages should be awarded to respondent in the amount of ₱3,523,175.92.**

***Factual findings of appellate and trial courts are entitled to great weight and respect on appeal, especially when established by un rebutted testimonial and documentary evidence.***

To resolve the issue at hand, we must first determine whether there was indeed a violation of petitioner's right. In this light, we are inclined to adopt the factual findings of the RTC and the CA as "[t]his Court has repeatedly held that petitions for review under Rule 45 of the Rules of Court may be brought only on questions of law, not on questions of fact. Moreover, the factual findings of trial courts are entitled to great weight and respect on appeal, especially when established by un rebutted testimonial and documentary evidence. And the findings of facts of the Court of Appeals are conclusive and binding on the Supreme Court except when they conflict with the findings of the trial court."<sup>30</sup>

In this case, two facts have been established by the appellate and trial courts: that respondent suffered a loss caused by petitioner; and that respondent failed to sufficiently establish the amount due to him, as no actual receipt was presented.

***Temperate or moderate 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.***

Under the Civil Code, when an injury has been sustained, actual damages may be awarded under the following condition:

Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered

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<sup>28</sup> Id. at 77; Comment, p. 3.

<sup>29</sup> Id. at 78; Id. at 4.

<sup>30</sup> *Liberty Construction & Development Corp. v. Court of Appeals*, 327 Phil. 490, 495 (1996).

by him as he has **duly proved**. Such compensation is referred to as actual or compensatory damages. (Emphasis ours)

As we have stated in *Dee Hua Liong Electrical Equipment Corp., v. Reyes*,<sup>31</sup> “[a]ctual or compensatory damages cannot be presumed, but must be duly proved, and 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. If the proof is flimsy and unsubstantial, no damages will be awarded.”

Jurisprudence has consistently held that “[t]o justify an award of actual damages x x x credence can be given only to claims which are duly supported by receipts.”<sup>32</sup> We take this to mean by credible evidence. Otherwise, the law mandates that other forms of damages must be awarded, to wit:

Art. 2216. No proof of pecuniary loss is necessary in order that moral, nominal, temperate, liquidated or exemplary damages, may be adjudicated. The assessment of such damages, except liquidated ones, is left to the discretion of the court, according to the circumstances of each case.

Under Article 2221 of the Civil Code, nominal damages may be awarded in order that the plaintiff’s right, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered. We have laid down the concept of nominal damages in the following wise:

Nominal damages are ‘recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown.’<sup>33</sup>

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<sup>31</sup> *Dee Hua Liong Electrical Equipment Corp., v. Reyes, et. al.*, 230 Phil. 101, 106 (1986), citing CIVIL CODE, Art. 2199; *Sanz v. Lavin Bros.*, 6 Phil. 299 (1906); *Hieredia v. Salinas*, 10 Phil.157 (1908); *Chua Teck Hee v. Philippine Publishing Co.*, 324 Phil. 447 (1916); *Rubiso v. Rivera*, 41 Phil. 39 (1917); *Jesswani v. Hassaram Daldas*, 91 Phil. 915 (1952); *Suntay v. Jovellanos*, 108 Phil. 713 (1960); *Malonzo v. Galang*, 109 Phil.16 (1960); *Lim Giok v. Bataan Cigar and Cigarette Factory*, 111 Phil. 595 (1961); *Abubakar Tan v. Tan Ho*, 116 Phil. 1331 (1962); *Delfin v. Court of Agrarian Relations*, 125 Phil. 989 (1967); *Raagas v. Traya*, 130 Phil. 846 (1968); *De los Santos vs. De la Cruz*, 147 Phil. 509 (1971); *National Power Corporation v. Court of Appeals*, 199 Phil. 34 (1982); *Siasat v. Intermediate Appellate Court*, 223 Phil. 450 (1985).

<sup>32</sup> *Tan v. OMC Carriers, Inc.*, G.R. No. 190521, 12 January 2011, 639 SCRA 471, 481, citing *Viron Transportation Co., Inc. v. Delos Santos*, 399 Phil. 243 (2000). See also *Marina Properties Corporation v. Court of Appeals*, 355 Phil. 705 (1998); *OMC Carriers, Inc. V. Sps. Nabua*, G.R. No. 148974, 2 July 2010, 622 SCRA 624; *B.F Metal Corporation v. Sps. Lomotan*, 574 Phil. 740, 749; *People v. Olermo*, 454 Phil. 147, 167 (2003).

<sup>33</sup> *Francisco v. Ferrer*, 405 Phil. 741, 751 (2001), citing *Areola v. Court of Appeals*, 236 SCRA 643, 654 (1994).

Thus, in *Saludo v. Court of Appeals*,<sup>34</sup> nominal damages were granted because while petitioner suffered no substantial injury, his right to be treated with due courtesy was violated by the respondent, Transworld Airlines, Inc. Nominal damages were likewise awarded in *Northwestern Airlines v. Cuenca*,<sup>35</sup> *Francisco v. Ferrer*,<sup>36</sup> and *Areola v. Court of Appeals*,<sup>37</sup> where a right was violated, but produced no injury or loss to the aggrieved party.

In contrast, under Article 2224, temperate or moderate 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. This principle was thoroughly explained in *Araneta v. Bank of America*,<sup>38</sup> which cited the Code Commission, to wit:

The Code Commission, in explaining the concept of temperate damages under Article 2224, makes the following comment:

In some States of the American Union, temperate damages are allowed. **There are cases where from the nature of the case, definite proof of pecuniary loss cannot be offered, although the court is convinced that there has been such loss.** For instance, injury to one's commercial credit or to the goodwill of a business firm is often hard to show with certainty in terms of money. Should damages be denied for that reason? The judge should be empowered to calculate moderate damages in such cases, rather than that the plaintiff should suffer, without redress from the defendant's wrongful act. (Emphasis ours)

Thus, in *Tan v. OMC Carriers, Inc.*,<sup>39</sup> temperate damages were rightly awarded because plaintiff suffered a loss, although definitive proof of its amount cannot be presented as the photographs produced as evidence were deemed insufficient. Established in that case, however, was the fact that respondent's truck was responsible for the damage to petitioner's property and that petitioner suffered some form of pecuniary loss. In *Canada v. All Commodities Marketing Corporation*,<sup>40</sup> temperate damages were also awarded wherein respondent's goods did not reach the Pepsi Cola Plant at Muntinlupa City as a result of the negligence of petitioner in conducting its trucking and hauling services, even if the amount of the pecuniary loss had not been proven. In *Philtranco Services Enterprises, Inc. v. Paras*,<sup>41</sup> the respondent was likewise awarded temperate damages in an action for breach of contract of carriage, even if his medical expenses had not been established with certainty. In *People v. Briones*,<sup>42</sup> in which the accused was found guilty

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<sup>34</sup> G.R. No. 95536, 23 March 1992, 207 SCRA 498.

<sup>35</sup> G.R. No. L-22425, 31 August 1965.

<sup>36</sup> *Supra* note 33.

<sup>37</sup> G.R. No. 95641, 22 September 1994, 236 SCRA 643, 654.

<sup>38</sup> 148-B Phil. 124, (block quote) (1971).

<sup>39</sup> G.R. No. 190521, 12 January 2011, 639 SCRA 471.

<sup>40</sup> G.R. No. 146141, 17 October 2008, 569 SCRA 321.

<sup>41</sup> G.R. No. 161909, 25 April 2012, 671 SCRA 24.

<sup>42</sup> 398 Phil. 31 (2000).

of murder, temperate damages were given even if the funeral expenses for the victim had not been sufficiently proven.

Given these findings, we are of the belief that temperate and not nominal damages should have been awarded, considering that it has been established that respondent herein suffered a loss, even if the amount thereof cannot be proven with certainty.

*The amount of temperate damages to be awarded is usually left to the discretion of the courts, but such amount must be reasonable.*

Consequently, in computing the amount of temperate or moderate damages, it is usually left to the discretion of the courts, but the amount must be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory.<sup>43</sup>

Here, we are convinced that respondent sustained damages to its conveyor facility due to petitioner's negligence. Nonetheless, for failure of respondent to establish by competent evidence the exact amount of damages it suffered, we are constrained to award temperate damages. Considering that the lower courts have factually established that the conveyor facility had a remaining life of only five of its estimated total life of ten years during the time of the collision, then the replacement cost of ₱7,046,351.84 should rightly be reduced to 50% or ₱3,523,175.92. This is a fair and reasonable valuation, having taking into account the remaining useful life of the facility.

**WHEREFORE**, the Petition for Review on Certiorari is hereby **DISMISSED**. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 69819, are hereby **MODIFIED**, in that temperate damages in the amount of ₱3,523,175.92 are awarded, in lieu of nominal damages.

**SO ORDERED.**



**MARIA LOURDES P. A. SERENO**  
Chief Justice, Chairperson

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<sup>43</sup> *Asilo v. People*, G.R. Nos. 159017-18, 9 March 2011, 645 SCRA 41, 64, citing *College Assurance Plan v. Belfranlt Development, Inc.*, G.R. No. 155604, 22 November 2007, 538 SCRA 27, 40-41. See also CIVIL CODE, Art. 2216; *Simex International v. Court of Appeals*, 262 Phil. 387, 393-395 (1990).

WE CONCUR:

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

*Lucas P. Bersamin*  
**LUCAS P. BERSAMIN**  
Associate Justice

*Martin S. Villarama, Jr.*  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

*Jose Portugal Perez*  
**JOSE PORTUGAL PEREZ**  
Associate Justice

### 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*  
**MARIA LOURDES P. A. SERENO**  
Chief Justice