Republic of the Philippines
# Supreme Court
Manila

## THIRD DIVISION

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| **SPOUSES RICARDO and ELENA C. GOLEZ,** Petitioners, | **G.R. No. 178317** |
| | Present: |
| - versus - | VELASCO, JR., *J., Chairperson,* PERALTA, VILLARAMA, JR., PEREZ,* and JARDELEZA, *JJ.* |
| **MELITON NEMEÑO,**[1] Respondent. | Promulgated: September 23, 2015 |

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## DECISION

**VILLARAMA, JR., *J.*:**

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the January 20, 2006 Decision[2] and April 18, 2007 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 60638. The appellate court affirmed with modification the March 16, 1998 Decision[4] of the Regional Trial Court (RTC) of Molave, Zamboanga del Sur, Branch 23, ordering petitioners Spouses Ricardo and Elena C. Golez to pay respondent Meliton Nemeño the contract amount in their lease agreement of ₱143,823.00 with 12% interest per annum plus damages.

The antecedents of the case follow:

Respondent is the registered owner of a commercial lot located in Molave, Zamboanga del Sur known as Lot No. 7728 and covered by

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1 Also referred to as Meliton Nemeño, Sr., Meliton Nemeno and Meliton Nemenio in some parts of the records.

* Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2084 dated June 29, 2015.

2 *Rollo*, pp. 204-220. Penned by Associate Justice Myrna Dimaranan-Vidal, with Associate Justices Romulo V. Borja and Ricardo R. Rosario concurring.

3 Id. at 171-172. Penned by Associate Justice Romulo V. Borja, with Associate Justices Mario V. Lopez and Michael P. Elbinias concurring.

4 Id. at 118-136. Penned by Presiding Judge Camilo E. Tamin.

Original Certificate of Title No. 0-2,233[5] of the Registry of Deeds of Zamboanga del Sur.

On May 31, 1989, respondent entered into a Lease Contract[6] over a portion of Lot No. 7728 with petitioners as "lessees." The pertinent portion of the contract is quoted verbatim hereunder:

> That, the Party of the First Part/Lessor hereby leased a portion of that Commercial Lot with an area of 12 meters by 7 meters to the Party of the Second Part;
>
> That, the Party of the Second Part shall construct a Commercial Building thereon amounting to ONE HUNDRED FORTY THREE THOUSAND EIGHT HUNDRED TWENTY THREE (₱143,823.00) PESOS;
>
> That, the Party of the Second Part shall pay a monthly rental of the space occupied by the building in the amount of TWO THOUSAND (₱2,000) PESOS, of which amount, the Party of the First Part shall not collect, instead, said amount shall be used/paid to the herein Lessee as payment of the cost of building built on the aforesaid lot;
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> That, the total amount payable by the herein Lessor to the Lessee includes the following: a. Building permit fees; b. Cost of building; c. 21 pcs. tables; d. 23 pcs. chairs; e. 5 pcs[.] benches; f. 1 unit cabinet; g. 3 window trapal; h. 1 unit deepwell handpump with accessories; j. lighting facilities; and all things permanently attached to the building; of which the total amount is the one reflected above;
>
> That, the term of this contract shall be for FOUR (4) Years only, however, if the amount of (₱143,823.00) shall not be fully paid within the period, the parties hereby reserves the right to extend this contract, until such time that the above[-]mentioned amount shall have been fully paid;
>
> That, as soon as the above amount shall be fully paid, the building shall be deemed owned by the herein Party of the First Part; however, the Party of the Second Part is hereby obligated to cause the repair of the building before it shall be turned over to the Party of the First Part;
>
> That, this contract shall take effect on June 1, 1989, whereby payment of the rental shall take effect on the said date[.]

On May 23, 1992, the building subject of the lease contract was burned down.

Because of the destruction of the building, respondent, on May 29, 1992, sent a letter[7] to petitioners demanding the accumulated rentals for the leased property from March 17, 1989 to June 17, 1992 totaling ₱78,000.00. As the demand was left unheeded, respondent filed a complaint[8] for collection of rentals plus damages before the Molave RTC.

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5 Records (Vol. I), p. 10.
6 Id. at 8.
7 Id. at 9.
8 Id. at 1-6. An amended complaint was filed on December 23, 1994, id. at 188-194.

Respondent alleged that Ricardo is the proximate cause of the fire that razed the building to the ground. He also claimed that without his knowledge, petitioners insured the building with two insurance companies for face values of more than its cost. He further alleged that Ricardo was charged with arson before the Municipal Trial Court (MTC) of Molave in relation to the burning of the subject building. He prayed that petitioners be ordered to pay him ₱96,000.00 representing the unpaid rentals from March 17, 1989 until the expiration of the lease and ₱100,000.00 representing damages for violating the lease contract. Respondent also sought the issuance of a writ of attachment in his favor.

Petitioners, for their part, admitted the execution of the contract of lease but dispute their liability to pay respondent rentals. They contended that under the contract of lease, the rental payment is amortized over the cost of the subject building, thus, respondent had already become its co-owner who must suffer the loss of his property. They also denied liability for the burning of the building contending that it has been destroyed by a fortuitous event. They admitted though that they insured the building beyond their insurable interest over it. By way of counterclaim, they alleged that they extended various cash loans to respondent in the total amount of ₱11,000.00 starting April 1989 with an agreed monthly interest of 5%. Because respondent failed to pay the loan, they claimed that the total demandable amount from him is already ₱39,104.00 as of the filing of their Answer. Petitioners are also demanding ₱1,000,000.00 in damages from respondent for publicly imputing to them the burning of the subject building.

On July 9, 1992, Molave MTC Judge Diosdado C. Arriesgado, the investigating judge on the criminal complaint for arson filed by respondent against Ricardo, issued an Order[9] finding probable cause to indict the latter for arson. The findings of the investigating judge were approved by Zamboanga del Sur Provincial Prosecutor Elpidio A. Nacua on September 4, 1992.[10] However, upon motion for reconsideration filed by Ricardo, the criminal case for arson was dismissed in a Resolution[11] dated November 3, 1992 issued by Prosecutor Nacua. This prompted respondent to file a motion for reconsideration of the resolution issued by the Provincial Prosecutor.

In the meantime, the RTC issued a Pre-trial Order[12] dated November 18, 1992, which stated, among others, the following issues the parties agreed to litigate on:

> Issues submitted by [respondent]:
>
> 1. Whether or not under the contract of lease entered into by [petitioners] and [respondent], [petitioners are] liable for back rentals to [respondent];

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9 Id. at 74-78.
10 Id. at 79.
11 *Rollo*, pp. 184-193.
12 Records (Vol. I), pp. 100-101.

> **2. Whether or not [petitioners have] any responsibility to the burning of the house which is the subject matter of the lease contract.**
>
> Issues submitted by [petitioners]:
>
> 1. Whether or not [respondent] has unpaid loan in favor of [petitioners] in the amount of ₱39,000.00;
>
> 2. Whether or not [petitioners have] the right to claim moral damages for the alleged character assassination made by the [respondent] against [petitioners] for having burned the house built on the leased premises.[13] (Emphasis supplied)

During trial, respondent testified on the contract he executed in favor of petitioners; the subject building built thereon by the latter to be delivered at the end of the term of the contract; the burning of the subject building; and that after the building was burned, he demanded payment of rentals from petitioners but said demand remained unheeded. When respondent was about to present evidence to supposedly prove that Ricardo was the author of the fire that gutted down the subject building, the trial court prohibited him and his counsel on the ground that the alleged arson is not the basis of his complaint. The pertinent portion of respondent's testimony is quoted hereunder:

> ATTY. ACAIN Q: Do you know if the Office of the Chief of Police file[d] a case of Arson against defendant Ricardo Golez?
>
> COURT : If your theory is that the defendant is responsible for the burning of the building[,] why is this collection of rental not damages?
>
> x x x x
>
> ATTY. ACAIN : Our theory, Your Honor, is that recollect (sic) the rental and that there is a breach of contract.
>
> COURT : Then this evidence of the responsibility of the burning is not relevant to this case.
>
> ATTY. ACAIN : We submit, Your Honor, but we contend that the defendant is still violating the contract by burning the subject matter of the contract. Because the contract says that upon the expiration[,] this building will go to the lessor. There are two causes of action here, Your Honor, which is payment of rental and damages, Your Honor.
>
> COURT : But the claim for damages is based on the non[-] performance of the contract not on the criminal act of Arson.
>
> ATTY. ACAIN : Yes, Your Honor, but I would like to make it of record, Your Honor, that he still ha[s] a pending

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[13] Id. at 100.

> case of Arson against the defendants, Your Honor, and it is in that case that we are claiming damages for the building that [was] destroyed, Your Honor, We are claiming damages as far as this building is concerned, Your Honor.[14]

Respondent also testified on the damages he was claiming in the amount of ₱100,000.00 for petitioners' failure to comply with the agreement "that after four (4) years the building will be delivered to [him]."[15]

When it was petitioners' turn to present their evidence, the trial court likewise prohibited them from proving that Ricardo was not responsible for the burning of the subject building. The relevant portion of Ricardo's testimony reads:

| | | |
|---|---|---|
| ATTY. R. ALOOT | Q : | Now I am confronting you with a certain receipt from the [F]aith Hospital which is dated May 23, 1992, will you please examine this document which is merely a xerox copy and tell the court what is this having a relation to stay in your house? (sic) |
| ATTY. A. ACAIN | : | We beg[,] Your Honor[,] incompetent, the witness Your Honor (sic) . . . . . |
| ATTY. R. ALOOT | : | Because at the time Your Honor there was I think an incident which cause for the attention of the witness to the fact that he should stay in the house. (sic) |
| ATTY. A. ACAIN | : | Already answered[,] Your Honor. |
| COURT | : | What has this to do with the cause of action[?] [T]he cause of action is collection of the rental. It is admitted facts that there was a rented premises (sic) no payment was made and the house that was supposed to be made as payment of the rental got burned. |
| ATTY. R. ALOOT | : | Your Honor[,] please[.] [T]here was a claimed (sic) that the defendant[,] Ricardo Golez[,] was responsible [for] the fire on May 23, 1992. |
| ATTY. A. ACAIN | : | He [denied] that already. |
| ATTY. R. ALOOT | : | Yes[,] that is denied but …. |
| COURT | : | That [has] nothing to do with the cause of action[.] [T]he cause of action is not the burning of the house[.] [T]he cause of action is collection of the rental. Now, if the parties was (sic) to establish that the defendant is |

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14 TSN, September 15, 1995, pp. 31-33.
15 Id. at 42.

responsible for damages for the burning of the house[,] you can file another case.

ATTY. R. ALOOT : If the plaintiff agrees[,] Your Honor[,] that there is no claim for the burning of the house . . .

COURT : The complaint will bear that out[.] [T]here is no claim[.] You point to any claim of the alleged burning of the house, the court did not notice anything.[16]

Ricardo also testified on his counterclaim referring to an indebtedness of respondent amounting to ₱11,000.00 as evidenced by a promissory note dated January 1, 1990 signed by the latter. According to him, the loan remained unpaid and ballooned to ₱368,362.50 as of December 1995 because of the 5% monthly interest.[17] Petitioners likewise presented two handwritten letters of respondent, one dated May 8, 1991[18] and another dated January 12, 1992,[19] to supposedly prove that said loan remains outstanding.

On rebuttal, respondent took again the witness stand to refute petitioners' allegation that his debt was still unpaid. He presented the supposed original of the January 1, 1990 promissory note that was in his possession since July 26, 1990, the date when he claimed to have paid his debt. He also testified that he wrote the May 8, 1991 and January 12, 1992 letters to demand from petitioners the previous promissory notes which were consolidated in the January 1, 1990 promissory note.[20]

While the trial was ongoing, the Department of Justice (DOJ) through Undersecretary Ramon S. Esguerra, denied the motion for reconsideration filed by respondent on February 10, 1994 and upheld the dismissal of the criminal complaint for arson against Ricardo.[21]

In a Decision dated March 16, 1998, the trial court ruled in favor of respondent. The *fallo* reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants –
>
> 1. Ordering the defendants jointly and severally to pay the plaintiff the contract amount of ₱143,823.00, to bear interest at 12% a year from the filing of this action up to the time the same is fully paid.
>
> 2. Ordering the defendants jointly and severally to pay the plaintiff the following sums:

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16 TSN, April 22, 1996, pp. 8-9.
17 Id. at 10-11.
18 Records (Vol. II), pp. 353 and 408.
19 Id. at 355 and 411.
20 TSN, January 20, 1998, pp. 2-15.
21 *Rollo*, p. 195.

a) Moral damages in the sum of ₱150,000.00;

b) Temperate or compensatory damage in the sum of ₱100,000.00;

c) Exemplary damage in the sum [of] ₱50,000.00;

d) Litigation expenses in the sum of ₱15,000.00;

e) Attorney's fees in the sum of ₱25,000.00;

3. Ordering the issuance of a writ of attachment against the properties of the defendants to secure the payment of the above judgment amounts.

4. Ordering the defendants to pay triple of the cost of this action.

5. Ordering the dismissal of all counterclaims of defendants against the plaintiff.

SO ORDERED.[22]

The trial court ruled that respondent did not become the co-owner of the subject building before it was burned down. It held that ownership will only pertain to him as soon as the amount agreed upon under the contract shall have been fully paid. It further held that under the law, it would still be necessary for petitioners to deliver the building to respondent in order that acquisition of the real right of ownership can take place. It noted that not only was the amount agreed upon under the contract not yet fully paid, there was no delivery of the building at all to respondent. It ruled that the building was still wholly owned by petitioners at the time the same was gutted by fire and thus, they should be the only ones to suffer the loss.

The trial court likewise noted that petitioners have never paid respondent rent for the leased premises. Since they can no longer deliver the building which the contract obliged them to deliver, the trial court ruled that they are legally obliged to pay the rentals for their use and enjoyment of the leased premises to prevent unjust enrichment on the part of petitioners.

The trial court likewise found that Ricardo is indeed the author of the burning. It took into consideration the insurance proceeds petitioners would get from the burning of the building in question.

With regard to the respondent's debt to petitioners, the trial court ruled that since the promissory note is in the possession of respondent, the debtor, it can be presumed that it has already been paid. It also found no evidence that respondent consented to the raising of the interest rate from 3% to 5% which was handwritten on the note by Ricardo.

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[22] Id. at 136.

The trial court likewise found that petitioners have acted in wanton, fraudulent, malicious, felonious, oppressive and malevolent manner in the performance of their contractual obligations towards respondent justifying the award of damages.

Aggrieved, petitioners appealed the trial court's decision to the CA raising the following arguments:

> I
>
> THE LOWER COURT ERRED IN FINDING THAT DEFENDANTS-APPELLANTS ARE LIABLE WHEN THE TERMS OF THE CONTRACT THAT THE PARTIES ENTERED INTO CLEARLY SHOW OTHERWISE.
>
> II
>
> THIS CASE BEING PRIMARILY FOR COLLECTION AND PAYMENT OF RENTALS, THE LOWER COURT ERRED IN FINDING DEFENDANTS-APPELLANTS LIABLE FOR THE BURNING OF THE BUILDING IN QUESTION.
>
> III
>
> THE LOWER COURT ERRED IN ISSUING THE QUESTIONED WRIT OF ATTACHMENT WITHOUT COMPLYING WITH THE PROCEDURAL AS WELL AS SUBSTANTIVE REQUIREMENTS THEREFOR.
>
> IV
>
> THE LOWER COURT ERRED IN DENYING HEREIN DEFENDANTS-APPELLANTS' COUNTERCLAIM.
>
> V
>
> THE LOWER COURT ERRED IN AWARDING EXCESSIVE DAMAGES IN FAVOR OF PLAINTIFF-APPELLEE.[23]

The CA, in the assailed decision, set aside the writ of attachment and notices of garnishment issued in favor of respondent. It, however, affirmed the decision of the trial court in all other respects. It held that the ownership of the subject building still pertains to petitioners and therefore, they must solely bear the loss. The CA also ruled that the fact that the building was destroyed before it was delivered to respondent does not free petitioners from paying back rentals. It held that petitioners cannot use respondent's land and deprive him of rents due him, otherwise, it would be a case of unjust enrichment at the expense of respondent.

The CA likewise agreed with the trial court's finding that petitioner Ricardo is liable for the burning of the building. It took note of respondent's testimony that he saw Ricardo entering the subject building an hour and a half before the fire; Ricardo's alleged indifference regarding the fire; the

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[23] CA *rollo*, p. 97.

investigating judge's finding of probable cause to indict Ricardo for arson; and the fact that the latter insured the subject building for more than its actual value. The appellate court also upheld the award of damages upon this finding of liability on the part of Ricardo.

The appellate court also upheld the trial court's dismissal of petitioners' counterclaim on the ground that the possession of respondent of the promissory note evidencing his debt is *prima facie* evidence of payment. It ruled that the letters presented by Ricardo did not suffice to overturn said presumption as they do not conclusively show that the obligation of respondent remains outstanding.

Hence this petition anchored on the following grounds:

> I. THE HONORABLE COURT OF APPEALS AND THE TRIAL COURT GROSSLY VIOLATED PETITIONERS' RIGHT TO DUE PROCESS OF LAW WHEN THE CASE WAS DECIDED ON THE BASIS OF ISSUES AND EVIDENCE **EXPRESSLY** EXCLUDED BY THE COURT DURING TRIAL PROPER.
>
> II. THE HONORABLE COURT OF APPEALS AND THE TRIAL COURT FAILED TO APPLY ART. 1262 OF THE CIVIL CODE WHEN THE SAME IS CLEARLY AND SQUARELY APPLICABLE IN THE INSTANT CASE.
>
> III. THE HONORABLE COURT OF APPEALS AND THE TRIAL COURT FAILED TO CONSIDER THE FACT THAT THERE **ARE NO LEGAL AND FACTUAL BASES** FOR THE GRANT OF DAMAGES IN FAVOR OF RESPONDENT IN THAT HE HAS NOT PRESENTED A SINGLE PROOF OR EVIDENCE AND THE LOWER COURTS HAVE NOT CITED ANY LAW REMOTELY SERVING AS JURAL FOUNDATION FOR THE UNWARRANTED AWARD OF DAMAGES.
>
> IV. THE HONORABLE COURT OF APPEALS AND THE TRIAL COURT ERRED IN FAILING TO GRANT PETITIONERS' COUNTERCLAIM AND IN FAILING TO CONSIDER A GLARING EVIDENCE OF ADMISSION OF INDEBTEDNESS BY RESPONDENT CONSISTING OF TWO HANDWRITTEN LETTERS WRITTEN IN RESPONDENT'S OWN LANGUAGE ADMITTING LOAN OBLIGATION WITH PETITIONERS. INSTEAD, THE TRIAL AND APPELLATE COURTS RELIED ON MERE DISPUTABLE PRESUMPTION OF LAW WHICH DOES NOT EVEN FIND APPLICATION IN THE CASE, ALL OF WHICH COMBINED TO RESULT IN A LOPSIDED DECISION WARRANTING REVERSAL BY THE HONORABLE SUPREME COURT.[24]

Petitioners argue that the trial court itself made it clear to all concerned that the suit is not based on any alleged arson. They contend that despite said declaration by the trial court, the latter heavily relied on the result of the

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[24] *Rollo*, p. 13.

preliminary investigation finding petitioner Ricardo chargeable for arson when the same preliminary investigation was reversed with finality by the DOJ.

They also fault the trial court for its heavy reliance on the presumption of arson found in Section 6[25] of Presidential Decree No. 1613, Amending the Law on Arson, contending that it is not applicable to the case at bar since first, the issue of arson has been excluded and second, there was no admission of over-insurance on their part.

Petitioners also felt that they were intentionally misled because they were made to believe that the issue of arson will not be taken up and yet the trial court made a finding that petitioner Ricardo had a hand in the burning of the subject building. Petitioners contend that the transcript of stenographic notes will reveal that they were stopped by the trial court from presenting evidence to disprove that there was arson.

Petitioners likewise asseverate that they are not liable to pay back rentals insisting the applicability of Article 1262[26] to the case at bar. They contend that the "rentals" are supposed to be "refund" to petitioners for the cost of the subject building and thus, no "rental" is due. Petitioners also submit that based on the contract, they had an obligation to deliver a determinate thing, *i.e.*, the subject building, but applying Article 1262, the total loss thereof extinguished their obligation. They likewise point out that there was no stipulation in the contract making them liable even for fortuitous events or that the nature of the obligation requires the assumption of risk.

Petitioners further contend that there were no legal nor factual bases for the grant of damages in favor of respondent. They argue that respondent immediately took possession of the lot after the fire so at most, the trial court should have awarded back rentals from 1989 to 1992. They contend that there was no basis to award the sum of ₱143,823.00 as it was not a loan or forbearance for the use of money. They further submit that there was no explanation on the award of moral and temperate damages.

Petitioners also argue that the presumption in Section 3(h) of Rule 131 of the Rules of Court is not applicable to the instant case. They cite the letters sent by respondent to them allegedly acknowledging the obligation and offering payment. They contend that if the debt has already been paid as ruled by the trial and appellate courts, why would respondent still offer payment in said letters.

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[25] **Section 6.** *Prima Facie evidence of Arson.* Any of the following circumstances shall constitute prima facie evidence of arson:

x x x x

4. If the building or property is insured for substantially more than its actual value at the time of the issuance of the policy.

[26] ART. 1262. An obligation which consists in the delivery of a determinate thing shall be extinguished if it should be lost or destroyed without the fault of the debtor, and before he has incurred in delay.

When by law or stipulation, the obligor is liable even for fortuitous events, the loss of the thing does not extinguish the obligation, and he shall be responsible for damages. The same rule applies when the nature of the obligation requires the assumption of risk.

Thus, the main issues for this Court's resolution are: (1) Are petitioners liable to pay respondent for back rentals?; (2) Are petitioners liable for damages; and (3) Are petitioners entitled to their counterclaim?

The petition is partly granted.

This Court finds no reason to depart from the ruling of the courts *a quo* that petitioners should pay respondent for back rentals. There is no dispute that the contract entered into by the parties is one of lease. True, it had some modifications such that instead of paying the rent in the form of money, petitioners will withhold such payment and will apply the accumulated rent to the cost of the building they built on the leased property. Thereafter, at the end of the lease period or until such time the cost of the building has been fully covered by the rent accumulated, petitioners, as lessees will transfer the ownership of said building to respondent. Unfortunately, the subject building was gutted down by fire. However, the destruction of the building should not in any way be made a basis to exempt petitioners from paying rent for the period they made use of the leased property. Otherwise, this will be a clear case of unjust enrichment. As held in *P.C. Javier & Sons, Inc. v. Court of Appeals:*[27]

> x x x The fundamental doctrine of unjust enrichment is the transfer of value without just cause or consideration. The elements of this doctrine are: enrichment on the part of the defendant; impoverishment on the part of the plaintiff; and lack of cause. The main objective is to prevent one to enrich himself at the expense of another. It is commonly accepted that this doctrine simply means that a person shall not be allowed to profit or enrich himself inequitably at another's expense.

In the instant case, there is no dispute that petitioners used the property for several years for their own benefit having operated a restaurant thereon. Therefore, it would be the height of injustice to deprive respondent of compensation due him on the use of his property by petitioners. The fact that the parties agreed to a different mode of payment – in this case, a building – does not in any way exempt petitioners from paying compensation due to respondent for the use of the latter's property because the building was destroyed.

While we sustain the award of back rentals in favor of respondent, we do not agree with the amount imposed by the courts *a quo*. Petitioners should only be liable for rent during the period within which they were in possession of the leased property. Respondent himself testified that petitioner Ricardo stayed in the building on the leased premises just before it was burned down.[28] There was no evidence submitted to prove that petitioners were in possession of the leased property after the fire. Therefore, petitioners should be made to pay rent until that time only. To order petitioners to pay for back rentals equivalent to the cost of the building

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27 500 Phil. 419, 433 (2005).

28 TSN, September 15, 1995, p. 22.

is in the same way, unjust enrichment this time on the part of respondent considering that the rent due for the period petitioners occupied the leased premises is way below the cost of the building.

This Court further finds the awards for moral, "temperate/compensatory" and exemplary damages lacking in factual and legal bases. As correctly argued by petitioners, these damages were not pleaded in respondent's complaint nor proven during trial. A perusal of the complaint, as amended, reveals that respondent was praying for "₱100,000.00 as damages for the violation."[29] He did not specifically pray that it was for moral, temperate or exemplary damages. It is well-settled that in order that moral damages may be awarded, there must be pleading and proof of moral suffering, mental anguish, fright and the like.[30] And even if the moral damages were specifically pleaded in his complaint, nothing on the records would show that respondent testified on said damages.

Even the trial court's finding that petitioner Ricardo was the author of the fire will not make respondent entitled to moral damages and exemplary damages. As correctly pointed out by petitioners, both parties were prevented from presenting evidence to prove or disprove that there was arson. Thus, there cannot be a finding on petitioners' liability of willful injury as basis of moral damages as provided in Article 2220[31] and exemplary damages as provided in Article 2232[32] of the Civil Code. It is also worthy to note that the criminal complaint for arson filed against petitioner Ricardo was dismissed with finality by the DOJ thus precluding any criminal liability on his part regarding the burning of the subject building. There was no evidence presented by respondent that the dismissal of the criminal complaint was reversed.

As to the award of litigation expenses, we find the same to be justified. As provided under Article 2208 of the Civil Code, they may be recovered when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. However, we find no basis for a separate award of attorney's fees since they were not prayed for in both the original and amended complaints.[33]

As to the order of the courts *a quo* for petitioners to pay triple of the cost of the action, this Court also finds the same without basis. Nowhere in the decision can its factual or legal justification be found.

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29 Records (Vol. I), p. 193.

30 *Mahinay v. Velasquez, Jr.*, 464 Phil. 146, 149 (2004), citing *San Miguel Brewery, Inc. v. Magno*, 128 Phil. 328, 336 (1967).

31 ART. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

32 ART. 2232. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

33 See *Abrogar v. Intermediate Appellate Court*, 241 Phil. 69, 73 (1988).

This Court likewise affirms the dismissal of petitioners' counterclaims. As correctly ruled by the trial and appellate courts, the possession of respondent of the promissory note evidencing his debt to petitioners is *prima facie* evidence of the payment of the same as provided in Section 3(h) of Rule 131 of the Rules of Court which reads:

> SEC. 3. *Disputable presumptions*. – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> x x x x
>
> (h) That an obligation delivered up to the debtor has been paid;
>
> x x x x

Unfortunately for petitioners, the evidence they presented failed to contradict the above presumption as they did not conclusively show that respondent's obligation to them remains outstanding. The two letters written by respondent to petitioner Ricardo which were relied on by petitioners to refute the presumption are quoted hereunder verbatim:

> [First Letter dated May 8, 1991:]
>
> Dear Compadre,
>
> Please return to me now the three (3) receipts or promissory notes with the total amount of ₱10,900.00 because we have already consolidated my indebtedness to you by making it to ₱11,000.00. You were even the one that personally made/drafted the consolidated amount which I signed and you made me pay interest as appearing in the consolidated receipt that you made on January 1, 1990.
>
> Up to now that you still have in your possession the three (3) receipts or promissory notes which were consolidated into one and you only made [promises] to return, although you furnished me xerox copies from those originals.
>
> It is painful on my part by not returning those originals and I now entertained suspicion that you have ill design against me but please Compadre do not do it to me because I am poor as compared to you.
>
> You know there's God that is looking on to all of us.
>
> Your brother in Christ,
>
> (SGD.) MELING D. NEMENO, SR.[34]
>
> [Second letter dated January 12, 1992:]
>
> Dear Compadre,
>
> How are you together with the members of your family? It's already a long time that we have not met each other. Accordingly, you must have been occupied by your Pawnshop business at Molave and at Ipil.

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34 Records (Vol. II), p. 409.

> How's your plan to run for Vice Mayor? You seemed to be silent. Please let me know whether or not you will proceed because I might be committed for another whom we do not know its background or ability to perform the duties of the office.
>
> Compadre, how's the receipts which show an obligation of ₱11,000.00 to you? If you find them, please bring them to the house because these receipts appear having already lapsed, nonetheless, if they cannot be located, that's not hard between us.
>
> I shall be waiting.
>
> Your brother in Christ,
>
> (SGD.) COMPADRE MELING NEMENO[35]

To the Court's mind, the letters of respondent were written to demand the surrender of the three previous promissory notes he executed before they were consolidated into one promissory note with the amount of ₱11,000.00. Thus, they cannot prove that respondent acknowledges that his obligation remains outstanding. This being the case, the presumption still stands.

**WHEREFORE,** the petition is **PARTLY GRANTED**. The January 20, 2006 Decision of the Court of Appeals in CA-G.R. CV No. 60638 is **AFFIRMED with MODIFICATIONS**. As modified, petitioners Spouses Ricardo and Elena C. Golez are **ORDERED** to pay respondent Meliton Nemeño:

1) Back rentals with a monthly rate of ₱2,000.00 for the period commencing June 1, 1989 to May 23, 1992 and shall earn a corresponding interest of six percent (6%) per annum, to be computed from May 29, 1992 until full satisfaction;

2) Litigation expenses amounting to ₱15,000.00.

All other awards are **DELETED**.

No pronouncement as to costs.

**SO ORDERED.**

**MARTIN S. VILLARAMA, JR.**
Associate Justice

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[35] Id. at 413.

WE CONCUR:

**PRESBITERO J. VELASCO, JR.**
Associate Justice
Chairperson

**DIOSDADO M. PERALTA**
Associate Justice

**JOSE PORTUGAL PEREZ**
Associate Justice

**FRANCIS H. JARDELEZA**
Associate Justice

## ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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

## CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

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