

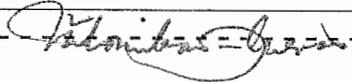
EN BANC

G.R. No. 196199 – MANILA INTERNATIONAL PORTS TERMINAL, INC.,<sup>\*</sup> *petitioner, versus* PHILIPPINE PORTS AUTHORITY, *respondent.*

G.R. No. 196252 – PHILIPPINE PORTS AUTHORITY, *petitioner, versus* MANILA INTERNATIONAL PORTS TERMINAL, INC., *respondent.*

Promulgated:

December 7, 2021

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SEPARATE CONCURRING OPINION

CAGUIOA, J.:

These consolidated petitions for review on *certiorari* assail the September 22, 2010 Decision<sup>1</sup> (assailed Decision) and March 16, 2011 Resolution<sup>2</sup> (assailed Resolution) of the Court of Appeals (CA) in CA-G.R. CV No. 80775.

The assailed Decision and Resolution affirmed with modification the April 30, 2003 Decision<sup>3</sup> of the Regional Trial Court of Manila, Branch 15 (RTC) in Civil Case No. 86-37673 which, among others, declared Executive Order No. (EO) 30<sup>4</sup> null and void.

The *ponencia* affirms the assailed Decision and Resolution in part.

Foremost, the *ponencia* holds that the CA correctly declared EO 30 null and void as it ordered the revocation of the franchise of Manila International Ports Terminal, Inc. (MIPTI) without regard to the latter's right to procedural due process.

In this connection, the *ponencia* finds that the Philippine Ports Authority (PPA) violated MIPTI's right to prior investigation which had been explicitly provided under Presidential Decree No. (PD) 634<sup>5</sup> as amended by

\* Also referred to as Manila International Port Terminals, Inc. in EO 30 and PD 634.

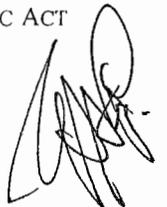
<sup>1</sup> *Rollo* (G.R. No. 196252), Vol. I, pp. 64-92. Penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Rosmari D. Carandang (now a Member of the Court) and Ramon R. Garcia.

<sup>2</sup> *Id.* at 94-95.

<sup>3</sup> *Id.* at 96-116. Penned by Presiding Mercedes Posada Lacap.

<sup>4</sup> RECALLING THE FRANCHISE GRANTED TO THE MANILA INTERNATIONAL PORT TERMINALS, INC. (MIPTI) TO OPERATE AND MANAGE THE INTERNATIONAL PORT COMPLEX AT NORTH HARBOR, MANILA, July 19, 1986.

<sup>5</sup> GRANTING THE MANILA INTERNATIONAL PORT TERMINALS, INC. A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN FLOATING BONDED WAREHOUSES AND COLD STORAGE FACILITIES IN THE MANILA BAY AND OTHER NAVIGABLE WATERS IN THE VICINITY AND REPEALING FOR THE PURPOSE REPUBLIC ACT NO. 4138, AS AMENDED, January 7, 1975.



PD 1284,<sup>6</sup> and the Memorandum of Agreement (MOA) executed between the parties. On this basis, the *ponencia* orders PPA to pay MIPTI the following amounts:

1. Nominal damages in the amount of ₱1,000,000.00;
2. Exemplary damages in the amount of ₱200,000.00;
3. Attorney's fees in the amount of ₱500,000.00; and
4. Costs of suit.

The *ponencia* further holds that in effecting the seizure of MIPTI's equipment, PPA acted beyond the scope of its authority under EO 30. The seizure of such equipment was therefore illegal. Accordingly, MIPTI is entitled to the replacement cost of said equipment as of the date of the seizure. However, since the payment of this replacement cost creates the legal fiction that ownership of the equipment in question had been transferred from MIPTI to PPA as of the date of seizure, MIPTI must return all rental payments it received for the use of such equipment in the interim. Considering that the total amount of rentals (that is, ₱34,696,643.27) exceeds the total replacement cost due MIPTI (that is, ₱19,049,710.00), the replacement cost awarded by the CA should be deleted. Further, the excess rentals amounting to ₱15,646,933.27 should be returned by MIPTI to PPA.

Finally, the *ponencia* strikes down the award for unrealized profits awarded by the CA in MIPTI's favor, as there can be no "vested right to expectation of future profits which can be gained from the possession of a franchise."<sup>7</sup> In any event, MIPTI failed to establish that it would have continued to earn profits throughout the term of its franchise were it not for the revocation of its franchise and the seizure of its equipment.

I concur with the *ponencia*. I submit this Separate Concurring Opinion to relay my own observations on the issues at hand.

***EO 30 is void for being violative of due process.***

I join the *ponencia* in declaring EO 30 void, as it caused the revocation of MIPTI's franchise without regard to its fundamental right to procedural due process.

It is true that Article II, Section 1(a) of the Freedom Constitution directed then President Corazon C. Aquino to "completely reorganize the government and eradicate unjust and oppressive structures, and all iniquitous vestiges of the previous regime", among others. Nevertheless, Article II,

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<sup>6</sup> GRANTING AUTHORITY TO THE PHILIPPINE PORTS AUTHORITY TO PLAN, CONSTRUCT, DEVELOP AND MAINTAIN IN ALL PORT TERMINAL FACILITIES IN THE INTERNATIONAL PORT NORTH HARBOR, MANILA BAY, TO SUPERVISE THE OPERATION AND MANAGEMENT OF SUCH FACILITIES, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 634, DATED 7 JANUARY 1975, REPEALING PRESIDENTIAL DECREE NO. 802 DATED 18 SEPTEMBER 1975, AND FOR OTHER PURPOSES, January 16, 1978.

<sup>7</sup> *Ponencia*, p. 28.



Section 2(a) of the Freedom Constitution must be read in conjunction with Article I, Section 1 thereof which adopted, among others, the Bill of Rights enshrined in Article IV of the 1973 Constitution. In turn, Section 1 of said Article IV sets forth the due process clause, thus:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

**Thus, it should be stressed that Article II, Section 1(a) of the Freedom Constitution cannot be interpreted to sanction the unilateral revocation of MIPTI's franchise in violation of the basic principles of due process.**

Here, PD 634, as amended by PD 1284, explicitly required PPA to conduct periodic inspections and audit during the term of MIPTI's franchise. PD 634 also states that PPA may only recommend the suspension or revocation of MIPTI's franchise if the circumstances so warrant. It states, in part:

Section 4. The Philippine Ports Authority shall in addition have the following powers, functions and responsibilities:

x x x x

**(c) Conduct periodic inspections and audit** of the operation and management of the International Port Complex by MIPTI to determine the latter's compliance with the prescribed standards, rates fixed, and guidelines promulgated, and **if warranted**, recommend to the President of suspension or revocation of MIPTI's franchise. (Emphasis supplied)

The MOA executed between MIPTI and PPA, which set forth the rules governing the operation and management of the franchise, made explicit PPA's obligation to conduct a prior investigation before any recommendation to suspend or revoke MIPTI's franchise is relayed to the President. Thus:

“ARTICLE XIV

x x x x

Section 14.01. Suspension or Revocation of Franchise. - PPA shall conduct periodic inspection and audit of the operation and management of the Port Terminal to determine MIPTI's compliance with the prescribed standards, rates fixed, and guidelines promulgated under this Agreement and existing PPA issuances, as well as those which may hereafter be made, adopted, or promulgated; and upon proper investigation or showing of any violation, if warranted, recommend the suspension or revocation of MIPTI's franchise to the President. In case of suspension or revocation of MIPTI's franchise during its effectivity, PPA shall take over the operations and management of the Port Terminal as may be necessary. MIPTI shall see to it that the operations at the Port Terminal shall not be affected or



disrupted during the period of suspension or turnover.”<sup>8</sup> (Underscoring in the original; emphasis omitted)

The prior investigation requirement gives MIPTI sufficient opportunity to contest PPA’s findings before any recommendation to suspend or revoke its franchise is relayed to the President. The conduct of a prior investigation is therefore indispensable, as it is the mechanism through which MIPTI is notified of its alleged violations and afforded the opportunity to be heard. Time and again, this Court has ruled that notice and hearing serve as the essence of procedural due process.<sup>9</sup>

As detailed in the *ponencia*, the revocation of MIPTI’s franchise was prompted by a strike staged by various trucking and brokerage firms at North Harbor. On July 18, 1986, Primitivo S. Solis, Jr. (Solis), PPA’s General Manager, served a letter to MIPTI informing it of the strike, and notifying it of the provisions of the MOA it allegedly breached. As the records bear out, Solis required MIPTI to reply not later than 9:00 A.M. of July 19, 1986, despite the fact that the letter had been served at 5:30 P.M. of July 18, 1986 which incidentally was a Friday.<sup>10</sup>

As directed, MIPTI’s President submitted a reply the following day denying all the allegations imputed against MIPTI, and enumerating all acts showing its faithful compliance with the terms of its franchise and its obligations under the MOA. However, MIPTI did not receive further communications from PPA. Later that day, EO 30 was issued revoking MIPTI’s franchise due to supposed substantial violations of the MOA.<sup>11</sup>

These facts reveal two important points.

*First*, the revocation of the franchise in question was anchored on MIPTI’s alleged breach of the MOA, and not the purported *ultra vires* nature of PD 634. Thus, the revocation was not done in the exercise of the President’s executive power under the Freedom Constitution, but rather, in the exercise of the legislative power granted in her favor under PD 634, as amended by PD 1284. Such fact is evident from the whereas clauses of EO 30, which state, in part:

WHEREAS, by virtue of [PD] 634 promulgated on 07 January 1975, as amended by [PD] 1284, [MIPTI] was granted a franchise for twenty-five (25) years, effective from 16 January 1978 to operate and manage all facilities, container terminals, warehouses, transit sheds, cargo handling equipment and other structures at [Manila International Port Complex (MIPC)] and to render cargo handling services to shipping lines and other requiring the use of said facilities;

<sup>8</sup> *Rollo* (G.R. No. 196252), Vol. I, p. 79.

<sup>9</sup> See J. Leonen, Separate Concurring Opinion in *ABS-CBN Corporation v. National Telecommunications Commission*, G.R. No. 252119, August 25, 2020, pp. 10-11.

<sup>10</sup> *Ponencia*, pp. 3, 8.

<sup>11</sup> *Id.*



WHEREAS, in implementation of its franchise, MIPTI entered into a [MOA] with [PPA] on 01 April 1980, which spelled out the terms and conditions under which MIPTI shall render efficient services and violations of which will warrant the suspension or revocation of its franchise;

**WHEREAS, under Section 4(c) of [PD] 1284 and Section 14.01 of the aforesaid [MOA], PPA can, upon investigation or showing of violation thereof by MIPTI, recommend the suspension or revocation of its franchise to the President;**

**WHEREAS, review of MIPTI's compliance to its contract shows that it has committed substantial violations thereof and its services have consequently deteriorated to the prejudice of the international shipping, other port users and the general public;**

WHEREAS, it is imperative that the operations and management of the [MIPC] and the provisions of the cargo handling and related services thereat should be improved;

WHEREAS, PPA can undertake on its own, the management, and operations of the MIPC and the cargo handling services thereat pursuant to Section 6a(v) (x) of [PD] 857 promulgated on 23 December 1975;

WHEREFORE, I, CORAZON C. AQUINO, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution and the law, do hereby order the immediate recall of the franchise granted to [MIPTI] and authorize the [PPA] to take over, manage and operate the Manila International Port Complex at North Harbor, Manila and undertake the provision of cargo handling and port related services thereat, in accordance with [PD] 857 and other applicable laws and regulations. (Emphasis supplied)

*Second*, while PPA notified MIPTI of the strike and its alleged violations of the MOA and directed it to file a written response thereto, MIPTI's franchise was nevertheless revoked the very next day. In my view, this swift notification procedure miserably fell short of the prior investigation requirement set forth in PD 634 and the MOA. To stress, PPA gave MIPTI less than twenty-four (24) hours from notice to respond to its findings. While MIPTI exerted utmost effort to meet this unreasonable deadline, these efforts proved futile as its franchise was nevertheless revoked a few hours after said deadline. These facts clearly demonstrate that the notice given to MIPTI was grossly inadequate, and that the purported opportunity given to MIPTI to address PPA's findings was far from meaningful.

**In fact, in its Answer filed before the RTC, PPA argued that "it was not required to hold an investigation before recommending the cancellation of [MIPTI's] franchise."<sup>12</sup> This is a clear admission that no proper investigation had in fact been conducted prior to the assailed revocation.**

<sup>12</sup> As narrated in the CA Decision, see *ponencia*, p. 4.



The violation of MIPTI's right to due process is further magnified by the CA's finding that "PPA failed to adduce concrete evidence that MIPTI was responsible for the alleged illegal acts committed at North Harbor[,] or that it was connected in any way to the strike being staged thereat."<sup>13</sup>

Associate Justice Amy C. Lazaro-Javier adopts a different view. She finds that MIPTI was afforded due process since the Manager of the Port of Manila sent two (2) letters informing MIPTI of its alleged violations sometime in June 1986, or a month before its franchise was revoked. Justice Lazaro-Javier explains:

The issuance of EO 30 was actually preceded by PPA's recommendation to the President to revoke MIPTI's franchise. In turn, PPA's recommendation was actually supported by PPA's investigation that the [CA] found to have been done –

**Sometime [in] June 1986, Vicente T. Suazo, Jr., Manager of the Port of Manila, sent two (2) letters to MIPTI informing it of alleged violations in the latter's port activities, and urging it to take necessary actions in improving its deteriorating performance and equipment.**

On 18 July 1986, Primitivo S. Solis, Jr., PPA's General Manger, served a letter to MIPTI notifying it about the strike being staged by various trucking and brokerage firms at North Harbor caused by its alleged poor performance and illegal practices. Solis required MIPTI to answer not later than 9:00 A.M. the next day the following illegal acts allegedly committed by it, to wit: (a) unpaid claims for short delivery, cargo losses and damages; (b) dilapidated and short supply of equipments (sic); (c) unilateral increases in arrastre rates without consultation with port users and approval of PPA; (d) refunds from advance deposits were [neither] returned nor honored; and (e) cargoes were not released unless incentives were given to the arrastre personnel. In said letter, Solis likewise informed MIPTI of its violations under the provisions of their MOA.

On 19 July 1986, in compliance with the PPA directive, Gregorio Oca – then MIPTI's President – submitted a reply denying all the allegations imputed against MIPTI and enumerating the acts showing its faithful compliance with its obligations under the franchise and the MOA.

On the same date, then President Corazon C. Aquino issued [EO] 30 revoking MIPTI's franchise due to substantial violations of the MOA, which resulted in the deterioration of port services, and authorizing PPA to undertake, on its own, the cargo-handling operation at North

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<sup>13</sup> *Rollo* (G.R. No. 196252), Vol. I, p. 84.



Harbor. Consequently, PPA sent a letter to MIPTI informing it of its plan to take over its business and properties. x x x

The procedure followed by PPA proves that an investigation was indeed conducted and there was at least a showing of MIPTI's violations of its franchise.<sup>14</sup> (Emphasis supplied; emphasis in the original omitted)

It bears noting, however, that in the June 1986 letters, the Manager of the Port of Manila merely directed MIPTI to take "necessary actions" to improve its alleged "deteriorating performance and equipment." Notably, these letters did not afford MIPTI any opportunity to contest these allegations.

It was only upon service of PPA's July 18, 1986 letter that MIPTI was first notified of the specific illegal acts it allegedly committed. This was also the first time MIPTI was given the opportunity to be heard to address PPA's allegations. However, this opportunity proved meaningless as its franchise was revoked the following day, merely hours after it filed its written response within PPA's unreasonable deadline. As aptly observed by the *ponencia*, these circumstances clearly show that revocation of MIPTI's franchise had been effected without due regard to the rudiments of fair play and the standards of freedom from arbitrariness.<sup>15</sup>

***MIPTI is entitled to nominal and exemplary damages, attorney's fees, and costs of suit resulting from the violation of its right to due process.***

I agree that PPA should be held liable for nominal damages, attorney's fees, and costs of suit arising from the arbitrary manner through which MIPTI's franchise had been revoked.

Articles 2221 and 2222 of the Civil Code, defining nominal damages, provide:

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.

ART. 2222. The court may award nominal damages in every obligation arising from any source enumerated in Article 1157, or in every case where any property right has been invaded.

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. They are recoverable in cases where the plaintiff must be vindicated against an invasion that has produced no actual present loss of any

<sup>14</sup> J. Lazaro-Javier, Concurring and Dissenting Opinion, p. 9.

<sup>15</sup> *Ponencia*, p. 20.



kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown. Stated otherwise, nominal damages are not intended to compensate or indemnify the plaintiff for loss suffered. Rather, nominal damages are awarded to vindicate or recognize the invasion or violation of the plaintiff's right.<sup>16</sup>

Here, PPA's obligation to conduct a proper investigation to determine whether there was sufficient ground to suspend and/or revoke MIPTI's franchise is set forth in PD 634, as amended by PD 1284. This obligation, on the part of PPA, is further echoed in Section 14.01 of the MOA, which served as the contract between MIPTI and PPA. To restate:

“ARTICLE XIV

X X X X

Section 14.01. Suspension or Revocation of Franchise. - PPA shall conduct periodic inspection and audit of the operation and management of the Port Terminal to determine MIPTI's compliance with the prescribed standards, rates fixed, and guidelines promulgated under this Agreement and existing PPA issuances, as well as those which may hereafter be made, adopted, or promulgated; and **upon proper investigation or showing of any violation, if warranted, recommend the suspension or revocation of MIPTI's franchise to the President.** In case of suspension or revocation of MIPTI's franchise during its effectivity, PPA shall take over the operations and management of the Port Terminal as may be necessary. MIPTI shall see to it that the operations at the Port Terminal shall not be affected or disrupted during the period of suspension or turnover.”<sup>17</sup>  
(Emphasis and underscoring in the original)

As explained, the procedure through which MIPTI's franchise had been revoked (that is, beginning from the service of the July 18, 1986 letter notifying it of its alleged violations and setting a one-day period to respond, until the issuance of EO 30 merely a few hours after receipt of MIPTI's written response) miserably fails to qualify as a “proper investigation” by any reasonable standard. Hence, while MIPTI did not present evidence to show that it sustained actual damages as a result of PPA's arbitrariness, it is nevertheless clear that PPA's actions amounted to a blatant violation of PPA's rights under both PD 634 and the MOA, thereby warranting the award of nominal damages in the amount of ₱1,000,000.00.

As to attorney's fees and costs of suit, Article 2208 of the Civil Code states:

ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

<sup>16</sup> *One Network Rural Bank, Inc. v. Baric*, G.R. No. 193684, March 5, 2014, 718 SCRA 169, 180, citing *Cathay Pacific Airways v. Reyes*, G.R. No. 185591, June 26, 2013, 699 SCRA 725, 742-743 and *Ventanilla v. Centeno*, 110 Phil. 811, 817 (1961).

<sup>17</sup> *Supra* note 8.



- (1) When exemplary damages are awarded;
- (2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
- (3) In criminal cases of malicious prosecution against the plaintiff;
- (4) In case of a clearly unfounded civil action or proceeding against the plaintiff;
- (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
- (6) In actions for legal support;
- (7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
- (8) In actions for indemnity under workmen's compensation and employer's liability laws;
- (9) In a separate civil action to recover civil liability arising from a crime;
- (10) When at least double judicial costs are awarded;
- (11) **In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.**

In all cases, the attorney's fees and expenses of litigation must be reasonable. (Emphasis supplied)

Because of the bad faith and arbitrariness exhibited by PPA, the award of attorney's fees and costs of suit in the amount of P500,000.00 is justified.

On the other hand, exemplary or corrective damages are imposed by way of example or correction for the public good, and is awarded *in addition to* moral, temperate, liquidated or compensatory damages.<sup>18</sup> The conditions for the award of exemplary damages are spelled out in Article 2234 of the Civil Code, thus:

**ART. 2234. While the amount of the exemplary damages need not be proved, the plaintiff 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.** In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages. (Emphasis and underscoring supplied)

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<sup>18</sup> CIVIL CODE, Art. 2229.



Here, the *ponencia* correctly observes that compensatory damages are awarded in MIPTI's favor, particularly in the form of the depreciated cost of its seized equipment. Thus, the award of exemplary damages is likewise justified.

***The value of rental fees received by MIPTI should be offset against the replacement cost of the seized equipment.***

I also agree that in determining the compensation due MIPTI on account of the seizure of its equipment, the sum of all rental payments received by MIPTI for the use thereof must be charged against their total replacement cost.

As aptly explained by the *ponencia*, rentals should no longer be payable because affixing the payment of fair compensation as of the date of taking creates the legal fiction that MIPTI lost ownership over the seized equipment as of such date.<sup>19</sup> MIPTI's right to receive rental fees for the use of the said equipment on the basis of ownership therefore ceased at the point of seizure.

As explained by the *ponencia*, the records show that the total amount of rentals (that is, ₱34,696,643.27) exceeds the total replacement cost of the seized equipment (that is, ₱19,049,710.00). Hence, the replacement cost awarded by the CA in the sum of ₱19,049,710.00 should be deleted. Further, the excess rentals amounting to ₱15,646,933.27 should be returned by MIPTI to PPA.<sup>20</sup>

***MIPTI is not entitled to lost profits.***

I also agree with the *ponencia* that the award for unrealized profits in favor of MIPTI should be struck down for lack of legal basis.

In *Kabisig Real Wealth Dev., Inc. v. Young Builders Corporation*,<sup>21</sup> the Court explained:

x x x Under Article 2199 of the Civil Code, actual or compensatory damages are those awarded in satisfaction of, or in recompense for, loss or injury sustained. They proceed from a sense of natural justice and are designed to repair the wrong that has been done, to compensate for the injury inflicted. They either refer to the loss of what a person already possesses (*daño emergente*), or the failure to receive as a benefit that which would have pertained to him (*lucro cesante*), as in this case.

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<sup>19</sup> *Ponencia*, p. 26.

<sup>20</sup> See *id.*

<sup>21</sup> G.R. No. 212375, January 25, 2017, 816 SCRA 30.



For an injured party to recover actual damages, however, he is required to prove the actual amount of loss with reasonable degree of certainty premised upon competent proof and on the best evidence available. The burden of proof is on the party who would be defeated if no evidence would be presented on either side. He must establish his case by a preponderance of evidence, which means that the evidence adduced by one side is superior to that of the other. In other words, damages cannot be presumed and courts, in making an award, must point out specific facts that could afford a basis for measuring compensatory damages. A court cannot merely rely on speculations, conjectures, or guesswork as to the fact and amount of damages as well as hearsay or uncorroborated testimony whose truth is suspect. A party is entitled to adequate compensation only for such pecuniary loss actually suffered and duly proved. Indeed, to recover actual damages, the amount of loss must not only be capable of proof but must actually be proven with a reasonable degree of certainty, premised upon competent proof or best evidence obtainable of its actual amount. x x x<sup>22</sup>

There are two kinds of actual or compensatory damages: (i) the loss of what a person already possesses; and (ii) the failure to receive as a benefit that which would have pertained to him. The nature of evidence necessary to claim the second kind of actual or compensatory damages, commonly referred to as unrealized profits,<sup>23</sup> was discussed by the Court in *San Miguel Foods, Inc. v. Magtuto*,<sup>24</sup> thus:

x x x [T]he familiar rule is that damages consisting of unrealized profits, frequently referred to as *ganacias frustradas* or *lucrum cessans*, are not to be granted on the basis of mere speculation, conjecture, or surmise, but rather by reference to some reasonably definite standard such as market value, established experience, or direct inference from known circumstances. It is not necessary to prove with absolute certainty the amount of *ganacias frustradas* or *lucrum cessans*. Citing *Producers Bank of the Philippines v. Court of Appeals*, the Court further ruled that:

x x x. The benefit to be derived from a contract which one of the parties has absolutely failed to perform is of necessity to some extent, a matter of speculation, but the injured party is not to be denied for that reason alone. **He must produce the best evidence of which his case is susceptible and if that evidence warrants the inference that he has been damaged by the loss of profits which he might with reasonable certainty have anticipated but for the defendant's wrongful act, he is entitled to recover.**<sup>25</sup>  
(Emphasis supplied)

The circumstances in this case preclude the award of unrealized profits in MIPTI's favor.

<sup>22</sup> Id. at 37-38. Citations omitted. See also *Coca Cola Bottlers, Phils., Inc. v. Roque*, G.R. No. 118985, June 14, 1999, 308 SCRA 215, 222-223.

<sup>23</sup> *San Miguel Foods, Inc. v. Magtuto*, G.R. No. 225007, July 24, 2019, 910 SCRA 261, 280.

<sup>24</sup> Id.

<sup>25</sup> Id. at 280-281. Citation omitted.



To recall, MIPTI presented financial statements showing its average net income from the years 1981 to 1985 as basis for its claim of unrealized profits. Nevertheless, the facts indicate that MIPTI was sequestered by the Presidential Commission on Good Government (PCGG) as early as April 2, 1986.<sup>26</sup> Moreover, as previously explained, MIPTI received two (2) letters from the Manager of the Port of Manila about its alleged deteriorating performance and equipment sometime in June 1986.<sup>27</sup> This was followed by the July 1986 letter which MIPTI received from PPA's General Manager regarding the alleged strike staged by various trucking and brokerage firms at North Harbor.<sup>28</sup>

Even prior to PPA's takeover therefore, there were already circumstances that rendered MIPTI's continued operations and potential earning capacity highly tenuous. Hence, while MIPTI presented a "reasonably definite standard"<sup>29</sup> to support its claim of unrealized profits, MIPTI failed to establish that it would have continued to earn income until the expiration of its franchise in 2003. It bears stressing that, as claimant, MIPTI bears the burden to establish not only the average amount it failed to earn on the basis of "some reasonably definite standard such as market value, established experience, or direct inference from known circumstance,"<sup>30</sup> but also, that it would have continued to earn the same until the expiration of its franchise in 2003 were it not for the revocation of its franchise.

#### *A note on interest*

The dispositive portion of the *ponencia* summarizes the monetary awards granted herein, thus:

**WHEREFORE**, the September 22, 2010 Decision of the Court of Appeals in CA-G.R. CV No. 80775 is **AFFIRMED with MODIFICATION**:

1) **DECLARING** Executive Order No. 30, issued on July 19, 1986, **UNCONSTITUTIONAL**;

2) **DECLARING** the takeover by Philippine Ports Authority of the properties of the Manila International Ports Terminal, Inc. **ILLEGAL**;

3) **ORDERING** Philippine Ports Authority and its incumbent general manager:

a. To pay Manila International Ports Terminal, Inc. nominal damages of ₱1,000,000.00; and

<sup>26</sup> *Ponencia*, p. 3.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> See *Terminal Facilities and Services Corp. v. Philippine Ports Authority*, G.R. Nos. 135639 & 135826, February 27, 2002, 378 SCRA 82, 114.

<sup>30</sup> See *id.* at 114.



- b. To pay Manila International Ports Terminal, Inc. exemplary damages of ₱200,000.00 and attorney's fees of ₱500,000.00 plus costs of suit; and

4) **ORDERING** Manila International Ports Terminal, Inc. to return the amount of ₱15,646,933.27, representing the excess rentals, to Philippine Ports Authority.

The amounts due shall be subject to a legal interest of six percent (6%) *per annum* from finality of this Decision until fully paid.

**SO ORDERED.**<sup>31</sup>

I agree with the imposition of interest.

I note that the rules set forth in *Nacar v. Gallery Frames*<sup>32</sup> (*Nacar*) have been modified by the Court's recent ruling in *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*<sup>33</sup> (*Lara's Gifts*). However, since *Lara's Gift* remains subject of a pending motion for reconsideration and has not attained finality, the application of *Nacar* remains proper in this case. Nevertheless, I take the opportunity to reiterate my position in my Concurring and Dissenting Opinion in *Lara's Gifts* with respect to the amounts awarded herein.

The compensatory interest under Article 2209 of the Civil Code is imposed to compensate the obligee for the delay incurred by the obligor. Since the obligor's delay continues for as long as the amount due is not fully paid,<sup>34</sup> the compensatory interest imposed for such delay should likewise continue to run from the time of delay until full payment.

Compensatory interest when liquidated and known begins to run in accordance with the parties' agreement, or in default thereof, upon extrajudicial demand or judicial demand. Compensatory interest continues to run until full payment for, as stated, the obligor's delay continues for as long as the amount due is not fully paid.

On the other hand, all other unliquidated and unknown monetary awards, such as the amount of damages and attorney's fees awarded in paragraph 3 of the dispositive portion, and the amount of excess rentals MIPTI is directed to return to PPA in paragraph 4 of the dispositive portion, may not earn interest at this point as the quantification of damages had not been reasonably ascertained.<sup>35</sup> It is only when this judgment becomes final and executory that all previously unliquidated and unknown claims/damages are

<sup>31</sup> *Ponencia*, pp. 31-32.

<sup>32</sup> G.R. No. 189871, August 13, 2013, 703 SCRA 439.

<sup>33</sup> G.R. No. 225433, August 28, 2019.

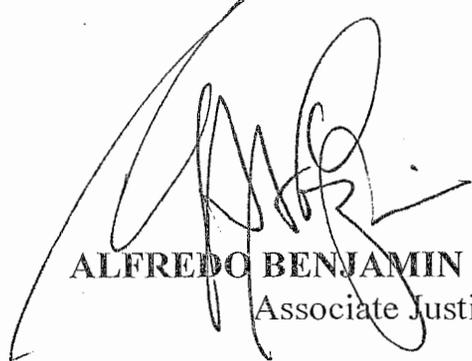
<sup>34</sup> *J. Caguioa*, Concurring and Dissenting Opinion in *Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, G.R. No. 225433, August 28, 2019, p. 46.

<sup>35</sup> CIVIL CODE, Art. 2213 states:

Article 2213. Interest cannot be recovered upon unliquidated claims or damages, except when the demand can be established with reasonable certainty.

established with reasonable certainty.<sup>36</sup> As such, said heretofore unliquidated amounts, now becoming liquidated amounts, begin to earn interest at said point, not because the interim period amounts to a forbearance of credit, but because the non-payment of a final and executory award constitutes delay under Article 2209 of the Civil Code.

In this regard, I agree that the interest imposed on the nominal and exemplary damages and attorney's fees awarded in paragraph 3, as well as the excess rentals ordered to be returned in paragraph 4 above should only begin to run from the finality of this Decision until full payment.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

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<sup>36</sup> *J. Caguioa, Concurring and Dissenting Opinion in Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.*, supra note 34.