



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

LA FILIPINA UY GONGCO G.R. No. 229490
CORPORATION and
PHILIPPINE FOREMOST
MILLING CORPORATION,
Petitioners,

-versus-

HARBOUR CENTRE PORT
TERMINAL, INC., ITS AGENTS,
REPRESENTATIVES, ENTITIES
ACTING IN ITS BEHALF, and the
PHILIPPINE PORTS
AUTHORITY,
Respondents,

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HARBOUR CENTRE PORT G.R. No. 230159
TERMINAL, INC.,
Petitioner,

-versus-

LA FILIPINA UY GONGCO
CORPORATION and
PHILIPPINE FOREMOST
MILLING CORPORATION,
Respondents,

X-----X X-----X

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LA FILIPINA UY GONGCO CORPORATION and **G.R. No. 245515**
PHILIPPINE FOREMOST MILLING CORPORATION, Present:

Petitioners,

LEONEN, J., *Chairperson,*
LOPEZ, M.,
LOPEZ, J.,
DIMAAMPAO*, and
KHO, JR., *JJ.*

-versus-

HARBOUR CENTRE PORT TERMINAL, INC.,
Respondent.

Promulgated:
MAR 01 2023

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DECISION

LEONEN, J.:

“A contract is the law between the parties.”¹ Unless a contract contains stipulations that are against the “law, morals, good customs, public order[,] or public policy[,]”² the contract is binding upon the parties and its stipulations must be complied with in good faith.³

This Court resolves the consolidated Petitions for Review on *Certiorari* challenging the Court of Appeals’ rulings.

The Petition⁴ in G.R. No. 229490 was filed by La Filipina Uy Gongco Corporation (La Filipina) and Philippine Foremost Milling Corporation (Philippine Foremost), collectively La Filipina et al. The Petition⁵ in G.R. No. 230159 was filed by Harbour Centre Port Terminal, Inc. (Harbour Centre). Both Petitions assail the June 15, 2016 Decision⁶ and January 23, 2017 Resolution⁷ of the Court of Appeals, which affirmed with modifications the

* Designated additional member per raffle dated February 21, 2023.

¹ *Pioneer Insurance and Surety Corp. v. APL Co. Pte. Ltd.*, 815 Phil. 439, 446 (2017) [Per J. Mendoza, Second Division].

² *Mendiola v. Commerz Trading Int’l, Inc.*, 715 Phil. 856, 862 (2013) [Per J. Carpio, Second Division]. (Citation omitted)

³ *Pioneer Insurance and Surety Corp. v. APL Co. Pte. Ltd.*, 815 Phil. 439, 446 (2017) [Per J. Mendoza, Second Division].

⁴ *Rollo* (G.R. No. 229490), pp. 12–47. Petition for Review with Urgent Motion for Issuance of a Writ of Attachment.

⁵ *Rollo* (G.R. No. 230159), pp. 12–83. Petition for Review with Prayer for TRO and Writ of Preliminary Injunction.

⁶ *Rollo* (G.R. No. 229490), pp. 54–96. The Decision in CA-G.R. CV No. 101600 was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesanando E. Villon and Rodil V. Zalameda (now a member of this Court) of the Eleventh Division, Court of Appeals, Manila.

⁷ *Id.* at 116–128. The Resolution in CA-G.R. CV No. 101600 was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesanando E. Villon and Rodil V. Zalameda (now a member of this Court) of the Eleventh Division, Court of Appeals, Manila.

Regional Trial Court's October 11, 2011 Decision⁸ directing Harbour Centre to perform its dredging obligations and pay La Filipina et al. damages, among others.

In their Petition⁹ in G.R. No. 245515, La Filipina et al. seek to set aside the Court of Appeals' October 10, 2018 Decision¹⁰ and February 26, 2019 Resolution¹¹ holding that the Regional Trial Court had no jurisdiction to rule on La Filipina et al.'s Motion for Payment.

La Filipina is a corporation engaged in several businesses, which include importing fertilizers, milk and dairy products, and soybean meal, as well as trading sugar. Its sister company, Philippine Foremost, imports wheat and animal feeds, and mills flour and animal feeds.¹²

Harbour Centre is the port operator of the Manila Harbour Centre Port Terminal (Manila Harbour Centre), while its sister company R-II Builders, Inc. is the developer.¹³

In 1997, R-II Builders, Inc., along with Harbour Centre and another sister company, Landtrade Properties and Marketing Corporation (collectively, R-II Builders et al.), invited La Filipina et al. to locate their businesses at the Manila Harbour Centre.¹⁴

Convinced, La Filipina et al. purchased a parcel of land at the Manila Harbour Centre after R-II Builders et al. had agreed to comply with their requirements of:

- (i) priority berthing for their foreign bulk carriers and coastwide vessels;
- (ii) deep water to berth big vessels with lengths of 190 to 225 meters;
- (iii) priority use of the apron;
- (iv) construction of a rail line on the apron for mobile discharging tower;
- (v) parking of mobile discharging tower on the rail line;
- (vi) construction of an underground conveyor below the apron, among others, to unload the grains at a fast rate from the vessels direct to the storage silos.¹⁵

⁸ *Id.* at 130-165. The Decision in Civil Case No. 08-119957 was penned by Judge Antonio M. Eugenio, Jr. of Branch 24, Regional Trial Court, Manila.

⁹ *Rollo* (G.R. No. 245515), pp. 11-62. Petition for Review on *Certiorari*.

¹⁰ *Id.* at 63-80. The Decision in CA-G.R. SP No. 155418 was penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Victoria Isabel A. Paredes and Geraldine C. Fiel-Macaraig of the Special Sixteenth Division, Court of Appeals, Manila.

¹¹ *Id.* at 81-86. The Resolution in CA-G.R. SP No. 155418 was penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Victoria Isabel A. Paredes and Geraldine C. Fiel-Macaraig of the Former Special Sixteenth Division, Court of Appeals, Manila.

¹² *Rollo* (G.R. No. 229490), p. 130.

¹³ *Id.* at 131.

¹⁴ *Id.*

¹⁵ *Id.*

Following this, La Filipina et al. proceeded to construct their facilities at the Manila Harbour Centre.¹⁶

In 1999, La Filipina et al. discovered that the Philippine Ports Authority (PPA) had not yet given Harbour Centre a Certificate of Registration/Permit to Operate over the Manila Harbour Centre. For their vessels to be able to berth at the Manila Harbour Centre, La Filipina et al. secured from the PPA a permit to operate a port fronting their facilities. The parties then executed a Lease Agreement¹⁷ “with the mutual understanding that no rent shall be collected as originally agreed.”¹⁸

Several years after, on June 28, 2004, Harbour Centre wrote La Filipina et al., seeking to amend their contractual arrangements.¹⁹ The following month, it sent another letter demanding that La Filipina et al. “install longer unloader rails and additional unloaders[.]”²⁰

In November 2004, the parties entered into a Memorandum of Agreement²¹ detailing the parties’ rights and obligations on port and handling charges, priority berthing, and dredging.

In August 2008, Harbour Centre wrote²² La Filipina et al., demanding PHP 362,670,820.42, which represented the rent “on the apron and back reach area, overhang charges in excess of 180 meters, additional wharfage fees, short payments, other receivables, and dockage charges on barges.”²³

On September 1, 2008, Harbour Centre sent another letter²⁴ to La Filipina et al., informing them of the increased port and cargo handling charges, based on the rates approved by the PPA.

La Filipina et al., through its president, Aileen Ongkauko (Ongkauko), replied insisting that the demands were baseless. She likewise contested the increased port and cargo handling charges for violating the Memorandum of Agreement.²⁵

¹⁶ *Id.* at 15.

¹⁷ *Rollo* (G.R. No. 230159), pp. 293-295.

¹⁸ *Rollo* (G.R. No. 229490), p. 132; *rollo* (G.R. No. 230159), p. 700.

¹⁹ *Rollo* (G.R. No. 230159), pp. 377-378.

²⁰ *Id.* at 382.

²¹ *Rollo* (G.R. No. 229490), pp. 166-170.

²² *Rollo* (G.R. No. 230159), pp. 437-439.

²³ *Rollo* (G.R. No. 229490), p. 61. (Citation omitted)

²⁴ *Rollo* (G.R. No. 230159), p. 454.

²⁵ *Id.* at 451-453, 455-456.

Harbour Centre responded by reiterating its claims and demanding that La Filipina et al. remove their structures located within the Manila Harbour Centre's premises.²⁶

On September 8, 2008, La Filipina et al. filed a Complaint for Compliance with Maritime Law, Regulation and Contract, Breach of Contract, Specific Performance, and Damages, with prayer for temporary restraining order and preliminary mandatory and prohibitory injunction against Harbour Centre and the PPA.²⁷

In their Complaint, La Filipina et al. decried Harbour Centre's violations of the Memorandum of Agreement. They alleged that as early as 1997, Harbour Centre had committed to provide them priority berthing rights and the right to construct a rail line for their mobile discharging tower. Harbour Centre had also allegedly permitted them to park their discharging tower on the rail line when not in use, and agreed not to collect rent for the space occupied by their structures.²⁸ They also stressed that their use of the apron was free of charge, as repeated by Vicente Suazo, Jr. (Suazo), former Harbour Centre president, in a January 11, 1999 letter.²⁹ They also claimed that despite Harbour Centre's commitment to maintain the depth of the navigational channel and berthing area at -11.5 meters Mean Lower Low Water (MLLW), several of their vessels touched bottom.³⁰

For Harbour Centre's breach of obligations, La Filipina et al. prayed that it be required to pay nominal and exemplary damages, litigation expenses, and attorney's fees.³¹

On the same day, a 72-hour Temporary Restraining Order was issued in La Filipina et al.'s favor.³² The Complaint was then docketed as Civil Case No. 08-119957 and raffled to the Regional Trial Court, Branch 46, Manila presided by Judge Aida Layug (Judge Layug), who later extended the Temporary Restraining Order to 20 days.³³ The case was later reassigned to Branch 24 after Judge Layug had inhibited herself from the proceedings.³⁴

Subsequently, La Filipina et al. filed a Motion for Leave to Admit Attached Amended and Supplemental Complaint (Motion for Leave), along

²⁶ *Id.* at 457-458.

²⁷ *Id.* at 148-169.

²⁸ *Id.* at 151-152.

²⁹ *Id.* at 151-152, 296-297.

³⁰ *Id.* at 160.

³¹ *Id.* at 167-168.

³² *Rollo* (G.R. No. 229490), p. 62.

³³ *Id.*

³⁴ *Id.* at 65.

with the Amended and Supplemental Complaint,³⁵ which was opposed by Harbour Centre.³⁶

They sought actual damages for the additional expenses they had incurred on account of their barges being unable to berth. According to them, they called Harbour Centre on September 8, 2008 to seek permission to berth their barges loaded with products unloaded from their M/V New Dynamic and M/V Clipper Lagoon. Harbour Centre allegedly ignored their calls, prompting them to send written requests on September 15 and 16, 2008, which Harbour Center likewise disregarded.³⁷

They also sought actual damages for the cost of diverting M/V Sanko Jupiter to Subic. They stated that due to their dispute with Harbour Centre, they diverted M/V Sanko Jupiter to avoid demurrage costs.³⁸

Further, they demanded to be compensated for the costs of the underwater surveys undertaken on the vessels that touched bottom. They likewise asked for the return of the excess port and cargo handling charges they paid due to Harbour Centre's overassessment.³⁹

Finally, they pleaded for liquidated damages on account of Harbour Centre's noncompliance with its dredging obligations.⁴⁰

In its February 1, 2010 Joint Order,⁴¹ the Regional Trial Court granted the Motion for Leave and admitted the Amended and Supplemental Complaint. Later, on October 11, 2011, it rendered a Decision⁴² ruling in La Filipina et al.'s favor:

ACCORDINGLY, judgment is hereby rendered in favor of plaintiffs and against defendant Harbour Centre Port Terminal, Inc. as follows:

1. Defendant Harbour Centre is hereby ordered to (a) undertake within fifteen (15) days from receipt hereof the dredging of the berthing area and the navigational channel to a depth of -11.5 meters MLLW; (b) to abide by the formula stated in the Memorandum of Agreement in computing the port and cargo handling charges and increases thereto; (c) to honor the provisions of the MOA relative to the priority berthing rights and use of the port granted to plaintiffs;

³⁵ *Rollo* (G.R. No. 230159), pp. 311-355.

³⁶ *Id.* at 22.

³⁷ *Id.* at 335-338, 343.

³⁸ *Id.* at 338, 343-344.

³⁹ *Id.* at 344.

⁴⁰ *Id.* at 343.

⁴¹ *Id.* at 510-513. The Joint Order was penned by Judge Antonio M. Eugenio, Jr. of Branch 24, Regional Trial Court, Manila.

⁴² *Rollo* (G.R. No. 229490), pp. 130-165. The Decision was penned by Judge Antonio M. Eugenio, Jr. of Branch 24, Regional Trial Court, Manila.

2. Defendant Harbour Centre is likewise ordered to pay plaintiffs the following damages:
 - (i) [L]iquidated damages of US\$2,000/day beginning December 6, 2004 until such time that defendant Harbour Centre shall have complied with its obligation to maintain the depth at -11.5 meters MLLW plus legal interest at 6% per annum which as of September 30, 2011 had already reached US\$4,978,000.00;
 - (ii) Actual damages in the amount of P7,333,971.90 representing the costs incurred arising from the delay in berthing the twenty (20) barges and the costs of the underwater surveys of the vessels that touched bottom plus interest at 6% per annum from the filing of the Amended and Supplemental Complaint;
 - (iii) Exemplary damages in the amount of Ten Million (P10,000,000[.00]) PESOS;
 - (iv) Attorney's fees in the amount of Ten Million (P10,000,000[.00]) PESOS;
3. Defendant Harbour Centre is further ordered to credit to plaintiffs the amount paid to the former under protest representing the excess of the sum paid for the P95 per metric ton port and cargo handling charges, plus interest at 6% per annum from the time the [A]mended and Supplemental Complaint was filed;
4. The Office of the Clerk of Court is likewise ordered to release to the plaintiffs all sums deposited with it representing the excess of the port and cargo handling charges which as of May 19, 2011 had already reached P100,578,360.86 including those deposited after the said date;
5. The preliminary injunction heretofore issues is hereby made permanent.

The cash bond of ONE HUNDRED FIFTY MILLION (P150,000,000.00) PESOS posted by the plaintiffs is likewise ordered released to the plaintiffs.

The counterclaim interposed by defendant Harbour Centre is hereby ordered dismissed for lack of merit.

With costs against defendant Harbour Centre Port Terminal, Inc.

SO ORDERED.⁴³

In ruling this, the Regional Trial Court found that Harbour Centre violated La Filipina et al.'s priority berthing rights under the Memorandum of Agreement. It noted that Harbour Centre ignored La Filipina et al.'s verbal

⁴³ *Id.* at 163-165.

notifications on the berthing of their 20 barges in September 2008. It also observed that Harbour Centre's Chief Operating Officer for Administration Edwin Jeremillo (Jeremillo) had admitted that La Filipina et al.'s vessels were refused berthing since they allegedly failed to submit the required written notices.⁴⁴

The trial court further held that Harbour Centre disregarded its dredging obligations upon showing that, from 2004 to 2008, several of La Filipina et al.'s vessels had touched bottom. It relied on the hydrographic surveys commissioned by the parties, revealing that the berthing area and navigational channel were shallower than what were in the Memorandum of Agreement.⁴⁵

Similarly, the trial court found that Harbour Centre's unilateral increase of the port and cargo handling charges was noncompliant with the formula indicated in the Memorandum of Agreement.⁴⁶ It considered unfounded Harbour Centre's demand for rentals for the space occupied by La Filipina et al.'s cargo unloading equipment. It cited PPA Memorandum Circular No. 32-96, which prohibited Harbour Centre from collecting rentals for the occupied space, along with the Contract of Lease and letter, both dated January 11, 1999, where Suazo had guaranteed the free use of the apron.⁴⁷

The trial court awarded La Filipina et al. actual damages for the expenses incurred due to the delay in berthing the barges, as well as the underwater survey. It deemed baseless their claim for damages over M/V Sanko Jupiter's diversion.⁴⁸ Finally, it awarded La Filipina et al. liquidated damages for Harbour Centre's failure to conduct regular maintenance dredging. This award was reckoned from December 6, 2004, which was when Harbour Centre was notified that La Filipina et al.'s M/V Mary H ran aground twice due to the berthing area's shallow depth.⁴⁹

Harbour Centre filed a Notice of Appeal before the Court of Appeals.⁵⁰

La Filipina et al. likewise filed a Notice of Appeal after the Regional Trial Court had denied their Motion for Partial Reconsideration.⁵¹ But while their Motion for Partial Reconsideration was pending, La Filipina et al. also filed a Motion for Execution Pending Appeal. This was granted in a February 28, 2012 Order⁵² by the Regional Trial Court, which ordered the issuance of

⁴⁴ *Id.* at 140-142.

⁴⁵ *Id.* at 142-145.

⁴⁶ *Id.* at 145-150.

⁴⁷ *Id.* at 150-153.

⁴⁸ *Id.* at 150-156.

⁴⁹ *Id.* at 156-160.

⁵⁰ *Id.* at 21.

⁵¹ *Id.*

⁵² *Rollo* (G.R. No. 245515), pp. 163-172. The Order was penned by Judge Antonio M. Eugenio, Jr. of Branch 24, Regional Trial Court, Manila.

a Writ of Execution⁵³ directing Harbour Centre to carry out its dredging obligations.⁵⁴ Thus:

ACCORDINGLY, the motion for partial execution pending appeal is hereby granted. Let writ of execution issue,

Directing

1. defendant Harbour Centre to (i) cause the dredging of the navigation channel and berthing area of the Manila Harbour Centre to -11.5 meters MLLW in accordance with the provisions of the 2004 MOA; (ii) immediately credit the amount paid to defendant HCPTI under protest representing the excess of the sum paid for the P95 per metric ton port and cargo handling charges, plus interest at 6% per annum from the time the Amended and Supplemental Complaint was filed.
2. the Office of the Clerk of Court to release to plaintiffs all sums deposited with it representing the excess of the port and cargo handling charges which as of May 19, 2011 had already reached P103,578,360.86, including those deposited after the said date.

SO ORDERED.⁵⁵

Later, La Filipina et al. filed a Motion seeking authority to enter into a dredging contract with another contractor at Harbour Centre's expense, owing to Harbour Centre's failure to comply with the February 28, 2012 Order.⁵⁶

Following this, the Regional Trial Court directed the conduct of a joint hydrographic survey to be performed by Subsea Services, Inc. (Subsea Services)⁵⁷ and AAG Land Surveying in coordination with the National Mapping and Resource Information Authority (NAMRIA).⁵⁸ The survey revealed that the depths of the Manila Harbour Centre's navigational channel and berthing area were shallower than -11.5 meters MLLW.⁵⁹

In a July 23, 2013 Order,⁶⁰ the Regional Trial Court granted La Filipina et al.'s Motion. This ruling later became final.⁶¹

⁵³ *Id.* at 174-177.

⁵⁴ *Rollo* (G.R. No. 229490), p. 21.

⁵⁵ *Rollo* (G.R. No. 245515), pp. 171-172.

⁵⁶ *Rollo* (G.R. No. 229490), p. 21.

⁵⁷ *Id.* at 68.

⁵⁸ *Id.* at 82.

⁵⁹ *Id.* at 661.

⁶⁰ *Id.* at 660-661. The Order was penned by Acting Presiding Judge Lylaha L. Abella-Aquino of Branch 24, Regional Trial Court, Manila.

⁶¹ *Rollo* (G.R. No. 229490), p. 21; *rollo* (G.R. No. 230159), p. 137.

On April 16, 2014, La Filipina et al. entered into a contract of dredging with F.F. Cruz & Co., Inc.⁶² The undertaking was completed on October 22, 2014, and cost PHP 462,334,030.29.⁶³

Subsequently, La Filipina et al. filed before the Court of Appeals a Motion for Issuance of Writ of Attachment and Levy on Execution,⁶⁴ seeking to secure the amount that the court may award them, as well as the amount they advanced for dredging. They also filed a Motion and Supplemental Motion for Reimbursement, asking that they be reimbursed for the advanced dredging costs.⁶⁵

The Court of Appeals Thirteenth Division deferred the action on these Motions.⁶⁶ In its March 31, 2015 Resolution,⁶⁷ it noted that a petition was then pending before this Court, which was assailing the Regional Trial Court's order granting partial execution pending appeal. The Court of Appeals disposed as follows:

WHEREFORE, premised considered, action on the Motion for Issuance of Writ of Attachment and Levy on Execution and Motion for Reimbursement and Supplemental Motion for Reimbursement filed by La Filipina, et al. is DEFERRED and is deemed included in the disposition of the Appeal. Consequently, the Urgent Motion for Early Resolution of Motion for Issuance of Writ of Attachment and Levy on Execution is hereby DENIED.

Further, the Manifestation with Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction filed by HCPTI is likewise DENIED for being moot and academic.

SO ORDERED.⁶⁸

With regard to the main case—involving the appeals by both parties of the Regional Trial Court Decision in favor of La Filipina et al.—the Court of Appeals Eleventh Division rendered a June 15, 2016 Decision affirming with modification the Regional Trial Court's rulings. Its dispositive portion reads:

WHEREFORE, both appeals are DENIED for lack of merit. The assailed October 11, 2011 Decision and November 28, 2011 Order of the Regional Trial Court, Branch 24, Manila in Civil Case No. 08-119957 are hereby AFFIRMED with the following MODIFICATIONS, to wit:

⁶² *Rollo* (G.R. No. 229490), pp. 665-670.

⁶³ *Id.* at 21.

⁶⁴ *Id.* at 171-187, 323.

⁶⁵ *Id.* at 325.

⁶⁶ *Id.* at 327-328.

⁶⁷ *Id.* at 323-328. The Resolution was penned by Associate Justice Rodil V. Zalameda (now a member of this Court) and concurred in by Associate Justices Sesinando E Villon and Pedro B. Corales of the Thirteenth Division, Court of Appeals, Manila.

⁶⁸ *Id.* at 327-328.

1. The liquidated damages of US\$2,000.00 per day are to be computed beginning December 6, 2004 until October 24, 2014, plus legal interest at 6% per annum; and
2. The award of attorney's fees is reduced from ₱10,000,000.00 to ₱5,000,000.00.

All other aspects of the said Decision and Order stand.

SO ORDERED.⁶⁹

Like the Regional Trial Court, the Court of Appeals did not find Harbour Centre liable for M/V Sanko Jupiter's diversion to Subic. It held that Philippine Foremost failed to show that the vessel could not have berthed at the Manila Harbour Centre, and that it tried to enforce its priority berthing rights before proceeding with the diversion.⁷⁰ But it did affirm Harbour Centre's liability for actual damages for failing to observe La Filipina et al.'s priority berthing rights for the 20 barges.⁷¹

As to the dredging obligations, the Court of Appeals found that Harbour Centre failed to maintain the depths of the channel and berthing area as per the Memorandum of Agreement, despite La Filipina et al. notifying it that the depths were as shallow as -10.5 meters MLLW. The court then calculated the liquidated damages from December 6, 2004 to October 24, 2014, when the dredging work was deemed completed.⁷²

The Court of Appeals also found improper Harbour Centre's unilateral increase of the port and handling charges, which disregarded the formula indicated in the Memorandum of Agreement. Its reliance on industry practice and PPA issuances was discarded, since to the court, these were superseded by the provisions of the agreement.⁷³

The Court of Appeals agreed with the Regional Trial Court that Harbour Centre cannot demand rent for the space occupied by La Filipina et al.'s unloading equipment, as it had been allowed to be used for free since 1997.⁷⁴

However, it reduced the amount of attorney's fees to PHP 5 million as to make it reasonable.⁷⁵

⁶⁹ *Id.* at 95-96.

⁷⁰ *Id.* at 89-90.

⁷¹ *Id.* at 90.

⁷² *Id.* at 91-93.

⁷³ *Id.* at 93-94.

⁷⁴ *Id.* at 94-95.

⁷⁵ *Id.* at 95.

Aggrieved, Harbour Centre filed Motions for Inhibition, Partial Reconsideration, and Supplemental Motion for Partial Reconsideration.⁷⁶

La Filipina et al. likewise moved for partial reconsideration on the ground that the Court of Appeals Eleventh Division failed to rule on their Motion for Issuance of Writ of Attachment and Levy on Execution and Motion for Reimbursement.⁷⁷

In a January 23, 2017 Resolution,⁷⁸ the Court of Appeals Eleventh Division denied Harbour Centre's and La Filipina et al.'s Motions.

For the attachment plea, it ruled that this would require a reception of evidence, which, under its Internal Rules, the Court of Appeals could not do for a writ of preliminary attachment.⁷⁹

As for the reimbursement plea, it noted that this was an offshoot of the partial execution pending appeal, and thus, should be addressed by the Regional Trial Court. It held:

Verily, the claim for reimbursement is merely a result of the implementation of the partial execution pending appeal as granted by the RTC and which was never modified or reversed by this Court in CA-G.R. SP No. 125660. Clearly, the right to the payment of the cost incurred for the dredging undertaken by LFUGC and PFMC is established. However, We cannot take cognizance of the issue on reimbursement of the costs for the dredging undertaken by LFU[GC] and PFMC considering that the same transpired after the decision subject of the instant appeal has been issued, not being one of the issues herein. It is merely part of the process in the partial enforcement of the decision on appeal, which has been affirmed by this Court, to be addressed before the court *a quo* as a matter of course. Without any injunctive writ and unless the Supreme Court says otherwise, the payment of cost incurred in the dredging done should be before the RTC.⁸⁰

La Filipina et al. and Harbour Centre filed before this Court their separate Petitions for Review on *Certiorari* assailing the Court of Appeals Eleventh Division's ruling. The Petitions were docketed as G.R. No. 229490 and G.R. No. 230159.

Meanwhile, La Filipina et al. filed before the Regional Trial Court a Motion for Payment⁸¹ seeking reimbursement of the dredging costs. Harbour Centre opposed,⁸² arguing that the Motion violated the rule on forum

⁷⁶ *Id.* at 118–119.

⁷⁷ *Id.* at 97–113.

⁷⁸ *Id.* at 116–128.

⁷⁹ *Id.* at 124–125.

⁸⁰ *Id.* at 126–127.

⁸¹ *Rollo* (G.R. No. 245515), pp. 114–125.

⁸² *Id.* at 402–429.

shopping. It likewise moved to suspend the proceedings on the Motion for Payment to avoid the rendition of conflicting decisions.⁸³

In its January 29, 2018 Order,⁸⁴ the Regional Trial Court denied Harbour Centre's prayer. Thus, Harbour Centre filed a Petition for *Certiorari* and Prohibition before the Court of Appeals.⁸⁵

In its October 10, 2018 Decision,⁸⁶ the Court of Appeals Special Sixteenth Division set aside the Regional Trial Court Order, saying that the trial court no longer had jurisdiction to act on the Motion for Payment since appeal had been perfected and the records elevated.⁸⁷ Contrary to La Filipina et al.'s assertion that the Motion for Payment was a continuation of the Motion for Partial Execution Pending Appeal, the Court of Appeals ruled that these Motions were asking for different reliefs.⁸⁸

While acknowledging that the Eleventh Division had earlier said that the Regional Trial Court should be the one addressing La Filipina et al.'s Motion for Reimbursement, the Special Sixteenth Division stressed that the statement was *obiter dictum*. It clarified that although it agreed that the Motion for Payment should be filed with the Regional Trial Court, it should only be instituted after this Court had rendered a decision on the main case.⁸⁹

Finally, the Special Sixteenth Division held that La Filipina et al. not only violated the rule on judicial comity, but also committed forum shopping.⁹⁰

La Filipina, et al. moved for reconsideration, but it was denied in a February 26, 2019 Resolution.⁹¹

Assailing these rulings, La Filipina et al. filed a Petition for Review on *Certiorari* before this Court, docketed as G.R. No. 245515.

On August 28, 2019, this Court resolved to consolidate the three Petitions.⁹²

⁸³ *Id.* at 88.

⁸⁴ *Id.* at 88-113. The Order was penned by Presiding Judge Maria Victoria A. Soriano-Villadolid of Branch 24, Regional Trial Court, Manila.

⁸⁵ *Id.* at 63.

⁸⁶ *Id.* at 63-80.

⁸⁷ *Id.* at 69-70.

⁸⁸ *Id.* at 70.

⁸⁹ *Id.* at 71.

⁹⁰ *Id.* at 72-77.

⁹¹ *Id.* at 81-86.

⁹² *Id.* at 781-783.

In G.R. No. 229490, La Filipina et al. assail the Court of Appeals Eleventh Division's denial of its attachment plea, despite them having complied with all the requisites⁹³ for its issuance: (1) that there was an affidavit that the case fell under Rule 57 of the Rules of Court;⁹⁴ (2) that there was a sufficient cause of action for the writ's issuance;⁹⁵ (3) that there was no sufficient security to cover their claim;⁹⁶ and (4) that their claim was "as much as the sum for which the order is granted above" Harbour Centre's counterclaims.⁹⁷

Further, they argue that the Rules of Court should prevail over the Internal Rules of the Court of Appeals.⁹⁸

In support of their prayer for a writ of attachment, La Filipina et al. notified this Court that Harbour Centre had surreptitiously sold its 10-hectare property where the Harbour Centre Port Terminal was located.⁹⁹

Harbour Centre opposes La Filipina et al., contending that they are not entitled to a writ of preliminary attachment. It maintains that they failed to show that it fraudulently contracted and performed its dredging obligations. It stresses that the existence of fraud is a factual issue that must be supported by competent evidence, which La Filipina et al. failed to adduce.¹⁰⁰ In contrast, it maintains that it has shown its willingness to perform its dredging obligations when it contracted with a dredging company named Kwan Sing Construction Corporation.¹⁰¹

Moreover, Harbour Centre claims that La Filipina et al. failed to prove that their decision to locate their operations at the Manila Harbour Centre was solely due to its commitment to dredge the navigational and access channel.¹⁰²

Harbour Centre also argues that issuing a preliminary attachment would be premature since the Decision awarding La Filipina et al. damages and dredging costs was still being appealed before this Court.¹⁰³

It likewise denies that it has been disposing its assets in fraud of its creditors.¹⁰⁴

⁹³ *Rollo* (G.R. No. 229490), p. 26.

⁹⁴ *Id.* at 26-33.

⁹⁵ *Id.* at 33-34.

⁹⁶ *Id.* at 34.

⁹⁷ *Id.*

⁹⁸ *Id.* at 34-35.

⁹⁹ *Id.* at 36-37.

¹⁰⁰ *Id.* at 462.

¹⁰¹ *Id.* at 463.

¹⁰² *Id.* at 459-461.

¹⁰³ *Id.* at 462-463.

¹⁰⁴ *Id.* at 464-465.

Finally, it stresses that while the Court of Appeals has the power to receive evidence, this power is limited to cases falling under Section 3 of its Internal Rules, which supposedly does not include motions for writ of attachment and levy on execution.¹⁰⁵

Harbour Centre likewise filed a Motion to Dismiss and a Supplemental Motion to Dismiss,¹⁰⁶ praying for the dismissal of the Petition in G.R. No. 229490. Harbour Centre claims that La Filipina et al. committed forum shopping when it instituted the Petition in G.R. No. 229490 and the Motion for Payment before the Regional Trial Court despite the pendency of a related case docketed as G.R. No. 213080.

PPA filed a Compliance,¹⁰⁷ stating that it was impleaded as a nominal party and that the issues here are between La Filipina et al. and Harbour Center, over which PPA exercises no control.¹⁰⁸

Meanwhile, in its Petition in G.R. No. 230159, Harbour Centre maintains that the Regional Trial Court's October 11, 2011 Decision is void since it had no jurisdiction over the subject matter. It insists that while La Filipina et al. made it appear that the case involves a maritime dispute, a review of their Complaint and Amended and Supplemental Complaint reveals that their cause of action is based on Harbour Centre's alleged breach of the Memorandum of Agreement. It argues that the case is purely civil in nature, and thus, beyond the jurisdiction of the Regional Trial Court sitting as a special commercial court.¹⁰⁹

Harbour Centre adds that even if the case involves a maritime dispute, it is beyond the jurisdiction of special commercial courts, which are tasked to handle only intracorporate controversies.¹¹⁰

Harbour Centre further assails the validity of the Memorandum of Agreement, saying that it is void for being *ultra vires* and for lacking cause or consideration. First, it alleged that the agreement was signed by Michael Romero (Romero), Harbour Centre's former chief executive officer, without authority from the board of directors; thus, it is not binding on Harbour Centre.¹¹¹ It adds that while La Filipina et al. are provided with numerous services and privileges, such as port and cargo handling for foreign and domestic vessels, priority berthing rights, and dredging obligations, they pay Harbour Centre only for port and cargo handling for foreign vessels.¹¹²

¹⁰⁵ *Id.* at 466-467.

¹⁰⁶ *Rollo* (G.R. No. 245515), pp. 724-737.

¹⁰⁷ *Rollo* (G.R. No. 229490), pp. 978-987.

¹⁰⁸ *Id.* at 981-984.

¹⁰⁹ *Rollo* (G.R. No. 230159), pp. 26-32.

¹¹⁰ *Id.* at 31-36.

¹¹¹ *Id.* at 36-39.

¹¹² *Id.* at 39-41.

It likewise maintains that even if the agreement were valid, the Regional Trial Court would have still erred in awarding actual damages.¹¹³ It insists that the claim was belatedly introduced in La Filipina et al.'s Amended and Supplemental Complaint, after they had formally rested their case and the issues joined. Thus, for Harbour Centre, they should not have been allowed to present evidence in support of their claim for damages.¹¹⁴

Nonetheless, Harbour Centre contends that there is no proof that La Filipina et al.'s vessels were not allowed to berth. It stresses that the supposed refusal to give berthing rights could not be inferred from a phone call received by Ongkauko from Jeremillo, this being an allegation made in the Affidavit of Ongkauko, who did not take the witness stand. Thus, Harbour Centre argues, this allegation constitutes hearsay evidence.¹¹⁵

Moreover, Harbour Centre avers that not only did La Filipina et al. ignore the conditions for the exercise of priority berthing rights, but they also only presented summaries of receipts and invoices, which do not constitute sufficient proof of costs incurred and actual damages.¹¹⁶

Harbour Centre next asserts that the award of liquidated damages was unwarranted. It claims that the award was based on the unilateral survey conducted by La Filipina et al. without complying with the dispute process under the Memorandum of Agreement to jointly appoint an independent surveyor.¹¹⁷ It further contests the alleged sea protests relied upon by the Regional Trial Court for being hearsay, not having been authenticated by the individuals with personal knowledge of their contents.¹¹⁸ In any event, it contends that the amount awarded is unconscionable and prays that it be equitably reduced.¹¹⁹

Additionally, it argues that contrary to the Regional Trial Court's finding, the Memorandum of Agreement permits it to increase the handling charges.¹²⁰

It also claims that Harbour should be allowed to collect rentals for La Filipina et al.'s use of the space occupied by their unloading equipment. It avers that the Regional Trial Court erred in relying on Suazo's testimony since he had no authority from the board of directors to execute the alleged January

¹¹³ *Id.* at 41-42.

¹¹⁴ *Id.* at 42-43.

¹¹⁵ *Id.* at 43-44.

¹¹⁶ *Id.* at 45-50.

¹¹⁷ *Id.* at 50-52.

¹¹⁸ *Id.* at 52-54.

¹¹⁹ *Id.* at 55-56.

¹²⁰ *Id.* at 56-58.

11, 1999 letter-agreement.¹²¹ In addition, Harbour Centre claims that not only did the unloaders restrict its operations, but they also occupied valuable space of Harbour Centre's property, making La Filipina et al. liable for rent.¹²²

Just the same, Harbour Centre contends that the Court of Appeals should have ordered the reformation of the Memorandum of Agreement, saying that while it is a perfected contract between the parties, it does not express their true intention given La Filipina et al.'s inequitable conduct.¹²³

According to Harbour Centre, the following unforeseen circumstances show that the Memorandum of Agreement does not express the parties' true intention: first, from its execution in 2004, the vessels Harbour Centre accommodates increased from five to 30 to 40 vessels per day, rendering it unable to honor La Filipina et al.'s priority berthing rights without causing undue delay to the other vessels;¹²⁴ second, the changes in the subsoil and water levels at the Manila Harbour Centre rendered its dredging obligation extremely difficult and costly, which circumstance was never considered in the agreement;¹²⁵ and finally, La Filipina et al.'s use of the apron for its cargo unloading equipment not only deprived Harbour Centre of rent, but also impeded its operations.¹²⁶

Harbour Centre further claims that the Memorandum of Agreement had become extremely inequitable, only benefiting La Filipina et al. as shown in the exorbitant amount of liquidated damages indicated in it. Lastly, it avers that the agreement states no termination date, which essentially binds it perpetually to its one-sided provisions.¹²⁷

La Filipina et al. counter that the issue of the Regional Trial Court's jurisdiction had been settled when the Court of Appeals had held that the Complaint's cause of action is maritime in nature, as affirmed by this Court in G.R. No. 191789.¹²⁸ Further, they claim that special commercial courts have jurisdiction over maritime and ordinary civil cases, citing as their basis A.M. Nos. 03-03-03-SC and 05-4-05-SC.¹²⁹

As to the award of actual damages, La Filipina et al. contend that it is a question of fact beyond this Court's jurisdiction. It stresses that the Court of Appeals' factual findings are binding and conclusive on this Court. In any

¹²¹ *Id.* at 58-59.

¹²² *Id.* at 59-61.

¹²³ *Id.* at 63-70.

¹²⁴ *Id.* at 64-65.

¹²⁵ *Id.* at 65-66.

¹²⁶ *Id.* at 66-68.

¹²⁷ *Id.* at 68-70.

¹²⁸ *Id.* at 723-725.

¹²⁹ *Id.* at 725-727.

case, they argue that the Court of Appeals correctly affirmed the award of actual damages.¹³⁰

With respect to the alleged claim having been belatedly made, they counter that Harbour Centre's liability for actual damages is listed as one of the issues agreed upon in the pretrial conference and was included in the Amended and Supplemental Complaint, which the trial court admitted.¹³¹

As basis of their claim for actual damages, they insist on the following: the verbal notifications they made since September 2008, which Harbour Centre had considered sufficient;¹³² the several written notifications they had sent requesting for the use of their berthing area;¹³³ an admission by Harbour Centre's former officer, James B. Lomeda (Lomeda), and its counsel that Harbour Centre received notices seeking permission to berth;¹³⁴ and the receipts, sales invoices, and billings they had submitted.¹³⁵

On the matter of dredging obligations, La Filipina et al. assert that it is also a question of fact not subject of a Rule 45 petition. In any event, they stress that other than Jeremillo's self-serving testimony, Harbour Centre submitted no evidence to prove that it performed its obligation to conduct dredging works. Meanwhile, La Filipina et al. maintain that they presented numerous surveys establishing Harbour Centre's failure to comply with the Memorandum of Agreement.¹³⁶ As to the finding that the seabed was shallower than -11.5 meters MLLW, La Filipina et al. point out that this was reaffirmed in a joint survey ordered by the Regional Trial Court.¹³⁷

Next, La Filipina et al. argue that while Harbour Centre may increase its port and cargo handling charges, any increase should be in accordance with the formula indicated in the Memorandum of Agreement.¹³⁸

They likewise maintain that no rent can be collected for the space occupying their cargo unloading equipment, as it was an incentive given to them in agreeing to locate their operations at the Manila Harbour Centre.¹³⁹

Further, they stress that Harbour Centre's assessment of rent was made without previous discussion or giving them notice. The imposition, they add, had no basis, and was not even part of the Memorandum of Agreement.¹⁴⁰

¹³⁰ *Id.* at 728-729.

¹³¹ *Id.* at 708-709, 729.

¹³² *Id.* at 730-732.

¹³³ *Id.* at 732-735.

¹³⁴ *Id.* at 735-737.

¹³⁵ *Id.* at 742-743.

¹³⁶ *Id.* at 744-750.

¹³⁷ *Id.* at 750.

¹³⁸ *Id.* at 751-754.

¹³⁹ *Id.* at 755-757, 762.

¹⁴⁰ *Id.* at 754-755, 758-762.

They also cite PPA Memorandum Circular No. 32-96, which allegedly prohibits the collection of rent for the space occupied by cargo unloading equipment.¹⁴¹

As for the liquidated damages, they disagree that its amount is unconscionable.¹⁴² They also contend that Harbour Centre is not entitled to equity, since the parties stipulated on the liquidated damages to ensure that Harbour Centre will comply with its dredging obligations.¹⁴³ Its noncompliance not only risked the maritime safety of the vessels, *La Filipina et al.* say, but also compelled them to incur additional expenses.¹⁴⁴ They add that the numerous actions they filed in court resulted from the baseless fees and charges demanded by Harbour Centre,¹⁴⁵ which allegedly employed dishonest strategies all throughout the proceedings.¹⁴⁶

La Filipina et al. also stress that Harbour Centre is estopped from questioning the Memorandum of Agreement's validity as this issue was not raised before the Regional Trial Court.¹⁴⁷ In any case, they aver that Romero had the apparent authority to enter into the agreement, which is binding on Harbour Centre, it having received the port and cargo handling charges paid by *La Filipina et al.*¹⁴⁸ They also reject the claim that the agreement lacked consideration, asserting that it provides for the payment of port and handling charges, and that they have also granted Harbour Centre numerous concessions in exchange for priority berthing rights, among others.¹⁴⁹

Lastly, *La Filipina et al.* challenge Harbour Centre's plea for reformation for being factual in nature. They aver that its assertions are assumptions not supported by any evidence.¹⁵⁰

In G.R. No. 245515, *La Filipina et al.* argue that the Court of Appeals Eleventh Division's Decision on the issue of reimbursement was not *obiter dictum*, but answered a direct question raised by them.¹⁵¹

They likewise insist that the Regional Trial Court had jurisdiction to decide on their Motion for Payment since it was an offshoot of the Motion for Partial Execution Pending Appeal.¹⁵²

¹⁴¹ *Id.* at 763.

¹⁴² *Id.* at 763.

¹⁴³ *Id.* at 766-768.

¹⁴⁴ *Id.* at 768-769.

¹⁴⁵ *Id.* at 766-771.

¹⁴⁶ *Id.* at 771-775.

¹⁴⁷ *Id.* at 775-777.

¹⁴⁸ *Id.* at 778-779.

¹⁴⁹ *Id.* at 780-782.

¹⁵⁰ *Id.* at 782-783.

¹⁵¹ *Rollo* (G.R. No. 245515), pp. 28-34.

¹⁵² *Id.* at 37-44.

They deny that they committed forum shopping. They contend that the reliefs prayed for in their Motion for Payment, which involve reimbursement for dredging costs, differ from those pleaded in their Petition in G.R. No. 229490, which prays for a lien on Harbour Centre's property or the issuance of a writ of attachment.¹⁵³

They add that they did not violate the rule on judicial comity since the issue raised in the Motion for Payment differ from that in the related cases docketed as G.R. Nos. 229490, 213080, and 230159.¹⁵⁴ On the contrary, it was the Court of Appeals Special Sixteenth Division that violated the rule on judicial comity when it rendered its Decision, which contradicted with that of the Eleventh Division.¹⁵⁵

They likewise claim that the Special Sixteenth Division erred when it denied their Motion for Inhibition.¹⁵⁶

Harbour Centre refutes La Filipina et al.'s allegations, insisting that the Special Sixteenth Division correctly characterized the Eleventh Division's ruling as *obiter dictum*. It stresses that since the reimbursement of the dredging costs was not among the issues raised in the appeal of the main Decision, the pronouncement made is not binding on the Special Sixteenth Division and not the subject of the doctrines of judicial comity and noninterference.¹⁵⁷

It also argues that the Special Sixteenth Division merely clarified the Eleventh Division's pronouncement in that, while the Motion for Payment should be filed before the Regional Trial Court, it should be instituted only after this Court has decided on the appealed main case.¹⁵⁸

Harbour Centre also asserts that the Special Sixteenth Division correctly held that the Regional Trial Court had no jurisdiction over the Motion for Payment. While this may be an offshoot of the Motion for Partial Execution Pending Appeal, the trial court allegedly had no jurisdiction over it, having lost it when the appeal was perfected.¹⁵⁹

In addition, Harbour Centre contends that the filing of a Motion for Payment, despite G.R. No. 229490's pendency, constituted forum shopping since they both pertain to La Filipina et al.'s recovery of the dredging costs.¹⁶⁰

¹⁵³ *Id.* at 44-49.

¹⁵⁴ *Id.* at 49-51.

¹⁵⁵ *Id.* at 34-37.

¹⁵⁶ *Id.* at 51-53.

¹⁵⁷ *Id.* at 821-823.

¹⁵⁸ *Id.* at 825-826.

¹⁵⁹ *Id.* at 826-829.

¹⁶⁰ *Id.* at 829-833.

Lastly, it asserts that the Court of Appeals correctly denied La Filipina et al.'s Motion for Inhibition.¹⁶¹

Based on the parties' arguments, the issues for this Court's resolution are:

First, whether the Regional Trial Court had jurisdiction over La Filipina et al.'s Complaint for Compliance with Maritime Law, Regulation and Contract, Breach of Contract, Specific Performance, and Damages;

Second, whether the Memorandum of Agreement is void for being *ultra vires*;

Third, whether the Memorandum of Agreement is void for lack of cause or consideration;

Fourth, whether the Court of Appeals erred in not ordering the reformation of the Memorandum of Agreement;

Fifth, whether La Filipina et al. are entitled to actual damages;

Sixth, whether La Filipina et al. are entitled to liquidated damages;

Seventh, whether the unilateral increase in the port and handling charges was proper;

Eighth, whether La Filipina et al. should pay rent for the space occupied by their unloading equipment;

Ninth, whether the Regional Trial Court had jurisdiction over La Filipina et al.'s Motion for Payment;

Tenth, whether the Court of Appeals erred in denying La Filipina et al.'s plea for a writ of attachment; and

Finally, whether La Filipina et al. committed forum shopping.

¹⁶¹ *Id.* at 834-839.

I

Jurisdiction is “the power or capacity given by the law to a court or tribunal to entertain, hear, and determine certain controversies.”¹⁶² It is a matter “conferred only by the Constitution or the law.”¹⁶³

It has several aspects, particularly: “(1) jurisdiction over the subject matter; (2) jurisdiction over the parties; (3) jurisdiction over the issues of the case; and (4) in cases involving property, jurisdiction over the *res* or the thing which is the subject of the litigation.”¹⁶⁴

*Hasegawa v. Kitamura*¹⁶⁵ elaborates on the import of jurisdiction over the subject matter:

Jurisdiction over the subject matter in a judicial proceeding is conferred by the sovereign authority which establishes and organizes the court. It is given only by law and in the manner prescribed by law. It is further determined by the allegations of the complaint irrespective of whether the plaintiff is entitled to all or some of the claims asserted therein. To succeed in its motion for the dismissal of an action for lack of jurisdiction over the subject matter of the claim, the movant must show that the court or tribunal cannot act on the matter submitted to it because no law grants it the power to adjudicate the claims.¹⁶⁶ (Citations omitted)

Similarly, in *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*:¹⁶⁷

Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.¹⁶⁸ (Citations omitted)

Here, Harbour Centre maintains that the Regional Trial Court, sitting as a special commercial court, had no jurisdiction over La Filipina et al.’s

¹⁶² *Guy v. Court of Appeals*, 564 Phil. 540, 560 (2007) [Per J. Sandoval-Gutierrez, First Division].

¹⁶³ *Mendez v. Shari’a District Court*, 777 Phil. 143, 160 (2016) [Per J. Mendoza, *En Banc*].

¹⁶⁴ *Boston Equity Resources, Inc. v. Court of Appeals*, 711 Phil. 451, 464 (2013) [Per J. Perez, Second Division]. (Citations omitted)

¹⁶⁵ 563 Phil. 572 (2007) [Per J. Nachura, Third Division].

¹⁶⁶ *Id.* at 586.

¹⁶⁷ 760 Phil. 954 (2015) [Per J. Perlas-Bernabe, First Division].

¹⁶⁸ *Id.* at 960.

Complaint since their cause of action is not maritime in nature but one of breach of the Memorandum of Agreement.

This Court has already settled this issue in G.R. No. 191789,¹⁶⁹ where we affirmed the Court of Appeals' ruling¹⁷⁰ that the dispute is maritime in nature. The Court of Appeals held:

Finally, a close examination of the complaint discloses that the cause of action is maritime in nature.

For a contract to be considered maritime, it must relate to the trade and business of the sea; it must be essentially and fully maritime in its character, it must provide for maritime services, maritime transactions, or maritime casualties.

In the present case, the discord seems to have originated from a memorandum of agreement between the parties, but such does not automatically make respondents' cause of action civil in nature. The stipulations of said memorandum of agreement pertain to the provisions of maritime services, i.e.,] dredging or the maintenance of the navigational/access channel, observance of priority berthing rights, maintenance of the proper depth of the berthing area and the computation of stevedoring charges. It is from the non-observance of these agreed maritime services that respondents anchored their complaint. Thus, their cause of action is essentially maritime in nature.¹⁷¹

Having settled the question, this Court need not delve on the issue of jurisdiction.

II

As a settled rule, "no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues[,] and arguments not brought to the attention of the lower court . . . need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage."¹⁷²

"A party cannot, on appeal, change fundamentally the nature of the issue in the case"¹⁷³ without offending the "[b]asic rules of fair play, justice,

¹⁶⁹ *Rollo* (G.R. No. 230159), p. 720; *rollo* (G.R. No. 245515), pp. 81- 86.

¹⁷⁰ *CA rollo*, pp. 64-74. The December 29, 2009 Decision in CA-G.R. SP No. 110455 was penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Estefa M. Perlas-Bernabe (now a retired associate justice of this Court) and Amy C. Lazaro-Javier (now a member of this Court) of the Special Thirteenth Division, Court of Appeals, Manila.

¹⁷¹ *CA rollo*, pp. 75; *rollo* (G.R. No. 230159), p. 724.

¹⁷² *Lorzano v. Tabayag, Jr.*, 681 Phil. 39, 51 (2012) [Per J. Reyes, Second Division].

¹⁷³ *Carantes v. Court of Appeals*, 167 Phil. 232, 240 (1977) [Per C.J. Castro, First Division].

and due process[.]”¹⁷⁴ *Canada v. All Commodities Marketing Corporation*¹⁷⁵ teaches:

As a rule, no question will be entertained on appeal unless it has been raised in the court below. Points of law, theories, issues and arguments not brought to the attention of the lower court ordinarily will not be considered by a reviewing court because they cannot be raised for the first time at that late stage. Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present evidence *in contra* to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. To permit petitioner at this stage to change his theory would thus be unfair to respondent, and offend the basic rules of fair play, justice and due process.¹⁷⁶ (Citations omitted)

Here, the issues concerning the Memorandum of Agreement’s validity, particularly that it was *ultra vires* and that it lacked cause or consideration, are matters that were raised for the first time in Harbour Centre’s Supplemental Motion for Partial Consideration.¹⁷⁷

Allowing Harbour Centre to adopt a theory not ventilated before the Regional Trial Court would not only be unfair to La Filipina et al., but would also violate due process.

The same goes for Harbour Centre’s plea for reformation of the Memorandum of Agreement. Harbour Centre sought this for the first time in its Petition filed before this Court.

Accordingly, we need not delve on these issues and may directly proceed to examine those which have been raised and discussed before the lower courts. However, to provide the parties with a complete resolution of these cases, this Court shall discuss the weight of Harbour Centre’s arguments.

II (A)

“A corporation is an artificial being vested by law with a personality distinct and separate from those of the persons composing it[.]”¹⁷⁸ It is a juridical entity that exercises its powers and conducts business through its board of directors.¹⁷⁹ To bind the corporation, an act must be performed by

¹⁷⁴ *Chinatrust (Phils.) Commercial Bank v. Turner*, 812 Phil. 1, 16 (2017) [Per J. Leonen, Second Division].

¹⁷⁵ 590 Phil. 342 (2008) [Per J. Nachura, Third Division].

¹⁷⁶ *Id.* at 347-348.

¹⁷⁷ *Rollo* (G.R. No. 229490), p. 127.

¹⁷⁸ *General Credit Corporation v. Alsons Development and Investment Corporation*, 542 Phil. 219, 231 (2007) [Per J. Garcia, First Division]. (Citation omitted)

¹⁷⁹ *People’s Aircargo and Warehousing Co. Inc. v. Court of Appeals*, 357 Phil. 850, 863 (1998) [Per J. Panganiban, First Division].

the board of directors as a body. When a corporate act is performed by an individual board member, the act is not binding on the corporation.¹⁸⁰

However, like a natural person, the board of directors, through a board resolution, “may validly delegate some of its functions and powers to officers, committees[,] or agents.”¹⁸¹ The law on agency shall govern their relation.¹⁸²

Under Article 1317 of the Civil Code, contracts entered into in the name of another by a person without authority shall be deemed unenforceable.

That being so, an act or a contract shall be binding on the corporation when it is executed by the board of directors or by a person authorized by the board. In contrast, when an act or contract is performed without a board authorization, it cannot be enforced against the corporation.¹⁸³

The rule admits of an exception.

In *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas*,¹⁸⁴ this Court explained that when an agent acts in excess of their delegated power, the act shall not be binding on the principal unless the latter had impliedly or expressly ratified the unauthorized act, thus:

Thus, even though a person did not give another person authority to act on his or her behalf, the action may be enforced against him or her if it is shown that he or she ratified it or allowed the other person to act as if he or she had full authority to do so. . . .

. . . .

Ratification is a voluntary and deliberate confirmation or adoption of a previous unauthorized act. It converts the unauthorized act of an agent into an act of the principal. It cures the lack of consent at the time of the execution of the contract entered into by the representative, making the contract valid and enforceable. It is, in essence, consent belatedly given through express or implied acts that are deemed a confirmation or waiver of the right to impugn the unauthorized act. Ratification has the effect of placing the principal in a position as if he or she signed the original contract. In *Board of Liquidators v. Heirs of M. Kalaw, et al.*:

¹⁸⁰ *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas*, 776 Phil. 401, 440-441 (2016) [Per J. Leonen, Second Division].

¹⁸¹ *People's Aircargo and Warehousing Co. Inc. v. Court of Appeals*, 357 Phil. 850, 863 (1998) [Per J. Panganiban, First Division].

¹⁸² *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas*, 776 Phil. 401, 441 (2016) [Per J. Leonen, Second Division].

¹⁸³ *People's Aircargo and Warehousing Co. Inc. v. Court of Appeals*, 357 Phil. 850, 863 (1998) [Per J. Panganiban, First Division]. See also *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas*, 776 Phil. 401, 440-443 (2016) [Per J. Leonen, Second Division].

¹⁸⁴ 776 Phil. 401 (2016) [Per J. Leonen, Second Division].

Authorities, great in number, are one in the idea that “ratification by a corporation of an unauthorized act or contract by its officers or others relates back to the time of the act or contract ratified, and is equivalent to original authority;” and that “[t]he corporation and the other party to the transaction are in precisely the same position as if the act or contract had been authorized at the time.” The language of one case is expressive: “The adoption or ratification of a contract by a corporation is nothing more nor less than the making of an original contract. The theory of corporate ratification is predicated on the right of a corporation to contract, and any ratification or adoption is equivalent to a grant of prior authority.”

Implied ratification may take the form of silence, acquiescence, acts consistent with approval of the act, or acceptance or retention of benefits. However, silence, acquiescence, retention of benefits, and acts that may be interpreted as approval of the act do not by themselves constitute implied ratification. For an act to constitute an implied ratification, there must be no acceptable explanation for the act other than that there is an intention to adopt the act as his or her own. “[I]t cannot be inferred from acts that a principal has a right to do independently of the unauthorized act of the agent.”¹⁸⁵ (Citations omitted)

Here, it is undisputed that Harbour Centre had received from La Filipina et al. advance payments¹⁸⁶ representing future port and handling charges based on the formula provided under the Memorandum of Agreement.¹⁸⁷ The proceeds of these loans were received by Jeremillo, who, as evidenced by the Secretary’s Certificates, was authorized by Harbour Centre’s board of directors to “sign, accomplish[,] and execute any agreement or document to secure the loan and receive the proceeds thereof.”¹⁸⁸ Harbour Centre’s act of retaining the benefits arising from the Memorandum of Agreement is deemed an implied ratification of the allegedly *ultra vires* contract. Hence, the Memorandum of Agreement is binding on Harbour Centre.

II (B)

Harbour Centre’s argument that the Memorandum of Agreement was void for lack of cause or consideration is a question of fact beyond the ambit of a petition for review on *certiorari* under Rule 45 of the Rules of Court.¹⁸⁹

The Rules of Court provides that only legal questions may be raised in a Rule 45 petition. This Court is not a trier of facts.¹⁹⁰ Generally, we are not obligated to review the factual findings of the lower courts, or to “examine,

¹⁸⁵ *Id.* at 445-447.

¹⁸⁶ *Rollo* (G.R. No. 230159), pp. 191-198.

¹⁸⁷ *Id.* at 779.

¹⁸⁸ *Id.* at 193, 196, 198.

¹⁸⁹ *Clemente v. Court of Appeals*, 771 Phil. 113, 120-121 (2015) [Per J. Jardeleza, Third Division].

¹⁹⁰ *Manotok Realty, Inc. v. CLT Realty Development Corporation*, 512 Phil. 679, 706 (2005) [Per J. Sandoval-Gutierrez, Third Division].

evaluate[,] or weigh the probative value of the evidence presented by the parties. We are not bound to analyze and weigh all over again the evidence already considered in the proceedings below.”¹⁹¹

Nonetheless, there are a few recognized exceptions:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner’s main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.¹⁹² (Citations omitted)

Here, none of the exceptions exist to warrant a review of the factual findings of the lower courts.

At any rate, even if this Court reexamines the evidence, we find no merit in Harbour Centre’s contention.

As La Filipina et al. correctly argued, the Memorandum of Agreement covers not only the port and handling charges for foreign vessels, but also the domestic or coastwise vessels.¹⁹³ Section 3 of the agreement states:

Section 3. Domestic (Coastwise) Vessels’ Port and Handling Charges. —

HCPTI shall allow the berthing of the Locators’ domestic (coastwise) vessels at the Berthing Area, provided that the Locators serve a written final advice of arrival upon HCPTI. It is understood that should the Locator’s domestic (coastwise) vessels be unable to berth at the Berthing Area due to congestion caused by the volume of other vessels being accommodated by HCPTI, or for any other reasonable causes, HCPTI shall allow the Locators’ domestic (coastwise) vessels to discharge in the nearest vacant berth other than the Berthing Area. However, should the Berthing Area be vacated, the Locators’ domestic (coastwise) vessels shall be allowed to immediately transfer to the Berthing Area at the expense of the Locators.

- a. If the Locators’ domestic (coastwise) vessels are intended to load out cargo discharged from foreign vessels, no additional port and cargo handling charges shall be charged by HCPTI;

¹⁹¹ *Id.*

¹⁹² *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990) [Per J. Bidin, Third Division].

¹⁹³ *Rollo* (G.R. No. 230159), p. 781.

- b. If the Locators' domestic (coastwise) vessels are intended to load out cargo other than those unloaded from foreign vessels, HCPTI will charge the approved PPA domestic rate for either bulk or bagged cargo.¹⁹⁴

Additionally, it has been established during trial that one of La Filipina et al.'s primordial considerations in locating their operations at Manila Harbour Centre was the guarantee that they will be given priority berthing rights.¹⁹⁵ In Suazo's Judicial Affidavit, he stated:

Q11 – How was Philippine Foremost Milling Corporation and La Filipina Uygongco [sic] Corporation enticed to locate their businesses and be one of the first locators at the Manila Harbour Centre?

A11 – Two companies of the R-II Group, namely Landtrade Properties and Marketing Corporation and Harbour Centre Port Terminal, Inc. were involved in enticing these companies to locate at the Manila Harbour Centre. I believe Landtrade offered them a property with port frontage for a good price while HCPTI agreed to their conditions of having priority berthing of the berthing [sic] facilities fronting the property they acquired, deep water berth and fairway, and to allow them to install their facilities and equipments [sic] for the handling and storage of their cargo.

Q12 – Were you involved in the negotiation?

A12 – Yes, I was requested by Landtrade to assist so that we would finally be able to convince PFMC and LFUC to purchase the property offered, so that they could locate their business in MIIC[.]¹⁹⁶

Finally, this Court finds that Harbour Centre has the obligation to dredge the navigation channel and berthing area.¹⁹⁷

II (C)

Article 1359 of the Civil Code provides for the rule regarding reformation of instruments:

Article 1359. When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed.

¹⁹⁴ *Id.* at 142.

¹⁹⁵ *Rollo* (G.R. No. 229490), p. 137.

¹⁹⁶ *Id.* at 138.

¹⁹⁷ *Rollo* (G.R. No. 230159), p. 781.

If mistake, fraud, inequitable conduct, or accident has prevented a meeting of the minds of the parties, the proper remedy is not reformation of the instrument but annulment of the contract.

*Multi-Ventures Capital and Management Corporation v. Stalwart Management Services Corporation*¹⁹⁸ discussed the concept of reformation and its requisites:

Reformation is a remedy in equity, whereby a written instrument is made or construed so as to express or conform to the real intention of the parties, where some error or mistake has been committed. In granting reformation, the remedy in equity is not making a new contract for the parties, but establishing and perpetuating the real contract between the parties which, under the technical rules of law, could not be enforced but for such reformation.

In order that an action for reformation of instrument may prosper, the following requisites must concur: (1) there must have been a meeting of the minds of the parties to the contract; (2) the instrument does not express the true intention of the parties; and (3) the failure of the instrument to express the true intention of the parties is due to mistake, fraud, inequitable conduct or accident.¹⁹⁹ (Citation omitted)

As the party requesting the reformation of the Memorandum of Agreement, Harbour Centre has the burden of proving that all the requisites are present.²⁰⁰ However, as La Filipina et al. correctly argued, the allegations on which Harbour Centre base its plea are assumptions unsupported by any evidence. Therefore, we find Harbour Centre's plea for reformation unmeritorious.

III

The issues on damages being interrelated, this Court shall discuss them simultaneously.

The determination of whether La Filipina et al. is entitled to damages is a factual issue which we cannot pass upon in a Rule 45 Petition.

*Century Iron Works, Inc. v. Bañas*²⁰¹ distinguished a question of law from a question of fact:

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law,

¹⁹⁸ 553 Phil. 385 (2007) [Per J. Austria-Martinez, Third Division].

¹⁹⁹ *Id.* at 391.

²⁰⁰ *Id.* at 392.

²⁰¹ 711 Phil. 576 (2013) [Per J. Brion, Second Division].

the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.

Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.²⁰² (Citations omitted)

Here, Harbour Centre insists that La Filipina et al. failed to adduce sufficient evidence to prove their entitlement to actual damages. It claims that the Court of Appeals erred in relying on Ongkauko's Affidavit since it is considered hearsay evidence, and thus, lacks probative value.²⁰³

These allegations are questions of fact, which need this Court to reexamine the evidence presented by the parties. To reiterate, only legal questions may be raised in a Rule 45 petition. While there are exceptions to this rule, none of these circumstances exist.

In any case, this Court finds the award of actual damages well founded.

*Guy v. Tulfo*²⁰⁴ expounded on the concept of actual damages:

Actual damages are "compensation for an injury that will put the injured party in the position where it was before the injury. They pertain to such injuries or losses that are actually sustained and susceptible of measurement." Actual damages constitute compensation for sustained pecuniary loss. Nevertheless, a party may only be awarded actual damages when the pecuniary loss he or she had suffered was duly proven. Thus:

Except as provided by law or by stipulation, a party is entitled to adequate compensation only for such pecuniary loss as is duly proven. Basic is the rule that to recover actual damages, not only must the amount of loss be capable of proof; it must also be actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable[.]

.....

This Court has, time and again, emphasized that actual damages cannot be presumed and courts, in making an award, must point out specific facts which could afford a basis for measuring whatever compensatory or actual damages are borne. An award of actual damages is

²⁰² *Id.* at 585-586.

²⁰³ *Rollo* (G.R. No. 230159), pp. 724-726.

²⁰⁴ 851 Phil. 748 (2019) [Per J. Leonen, Third Division].

“dependent upon competent proof of the damages suffered and the actual amount thereof. The award must be based on the evidence presented, not on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and unsubstantial proof.”²⁰⁵ (Citations omitted.)

In awarding actual damages, the Regional Trial Court found that Harbour Centre violated La Filipina et al.’s priority berthing rights under the Memorandum of Agreement.²⁰⁶

The Memorandum of Agreement defines priority berthing as “the preferred use by [l]ocators of the berth fronting their facility as further described in Section 4 of this Agreement.”²⁰⁷ Section 4, in turn, states:

Section 4. Priority Berthing.

The Locators shall continue to have the right to priority berthing at the Harbour Centre Port Terminal as defined in Section 1(a) of this Agreement and shall be strictly implemented, as follows:

a. Foreign bulk carrier vessels chartered by Locators.

1. Foreign bulk carrier vessels chartered by the Locators shall have priority berthing in the Berthing Area over any other vessels being served by HCPTI upon submission of the Locators’ final advice of arrival; Locators to provide HCPTI with standard applicable written twelve (12) days, ten (10) days, seven (7) days, five (5) days, three (3) days, two (2) days, and one (1) day advance notices of arrival in line with standard international maritime practice;
2. Should a Third Party vessel be at the Berthing Area upon the arrival of the foreign bulk carrier vessel chartered by the Locators, it shall immediately vacate the same unless its operations are already in progress, in which case the Locators shall allow the Third Party vessel to complete one twelve (12) hour shift operation counted from the time the Locators’ chartered foreign bulk carrier vessel tenders a Notice of Readiness (NOR), thereafter, the Third Party vessel shall immediately vacate the Berthing Area[.]

.....

b. Domestic (Coastwise) Vessels of Locators.

1. Domestic (coastwise) vessels owned or chartered by the Locators shall likewise enjoy priority berthing when the Berthing Area is vacant. But should the Berthing Area be occupied by a Third Party vessel whose operation is already in progress upon arrival of the Locators’ vessel, the Third Party vessel shall be allowed to complete its operation at the Berthing

²⁰⁵ *Id.* at 764-765.

²⁰⁶ *Rollo* (G.R. No. 229490) pp. 141-154.

²⁰⁷ *Id.* at 166.

Area or shall be shifted to another available berth to give was to the Locators' vessel, at the option of HCPTI;

For every breach of Priority Berthing Rights as stipulated above, HCPTI shall be liable for actual damages such as but not limited to demurrage penalties incurred by the Locators.²⁰⁸

In this case, it was proven during trial that in September 2008, 20 of La Filipina et al.'s barges were refused berthing despite verbal and written notifications to Harbour Centre:²⁰⁹

As early as September 8, 2008, verbal representations were made with defendant Harbour Centre for the berthing of twenty (20) of plaintiffs' barges loaded with cargo from M/V Clipper and M/V New Dynamic but these were ignored. Thus, written requests dated September 15, 16, and 17, 2008 were sent to defendant[.]

This Court can still vividly recall that upon an "Urgent Manifestation Regarding Strict Enforcement of Temporary Restraining Order and Motion for Issuance of Writ of Preliminary Injunction dated September 16, 2009, an ocular inspection was conducted at the port facility on September 18, 2008 and which confirmed the non-compliance by defendant with the twenty (20)-day TRO, that an Omnibus Order for compliance had to be issued. But even this Order was defied until the intervention of the PPA, as testified to by Erwin Que . . . and corroborated by Gerald Uygongco, Manager of plaintiffs.

It bears emphasis to state that even Mr. Jeremillo in his Judicial Affidavit, wittingly or unwittingly, revealed defendant's refusal to respect plaintiffs' priority berthing rights.

"39Q: Mr. Jeremillo, the plaintiffs claim in paragraph 2.29 of their Amended and Supplemental Complaint that on August 28, 2008 you allegedly called Ms. Aileen U. Ongkauko, the President of plaintiffs and said "pinapasabi po ng amo ko na hindi nila ipapa-berth ang mga barko ng Foremost" allegedly in violation of HCPTI's commitments to plaintiffs. What can you say to this?

A: This is not true, sir. I told Ms. Aileen Ongkauko of the new policy of management that vessels cannot berth if the client has outstanding billings or unpaid charges. At that time, HCPTI has determined that plaintiffs should be paying rent for the occupancy of the apron. As a matter of fact, on 29 August 2008, HCPTI sent a letter to plaintiffs demanding payment of rent, among others, for the occupancy.

The aforesaid reply is likewise a revelation as it was only in August 2008 that defendant Harbour Centre finally determined that plaintiffs should pay rent for the occupancy of the apron by their pneumatic unloaders.

On the basis of the foregoing, we find that defendant Harbour Centre breached plaintiffs' priority berthing rights.²¹⁰

²⁰⁸ *Id.* at 167- 168

²⁰⁹ *Id.* at 154.

²¹⁰ *Id.* at 141- 142.

Additionally, notwithstanding the issuance of a Temporary Restraining Order, Harbour Centre refused to receive the letters sent by La Filipina et al. requesting berthing permit. It was only when the PPA intervened that the permit was issued.²¹¹

However, Harbour Centre argues that the damages incurred by La Filipina et al. were caused by their failure to comply with the required written notices under the Memorandum of Agreement.

La Filipina et al. counter that Harbour Centre had allowed them to use their berthing area even if the notification was only made verbally and that this has been the parties' practice. In any case, they insist that Harbour Centre was aware that La Filipina et al.'s barges were seeking permission to berth.²¹²

This Court agrees with La Filipina et al. that Harbour Centre was aware of their barges' existence.

On September 15, 2008, La Filipina et al. wrote to Harbour Centre Vice President for Operations Henry Rophen V. Virola, requesting that their barges be authorized to berth at Manila Harbour Centre. Harbour Centre received the letter on the same day. However, La Filipina et al.'s subsequent letters similarly requesting permission to berth were no longer accepted by Harbour Centre and included a note stating "refused to receive" or "refused entry[.]"²¹³

Harbour Centre's former planning manager, Lomeda, likewise admitted that Harbour Centre knew that La Filipina et al. were seeking berthing permission for their barges.²¹⁴

For Harbour Centre's violation of La Filipina et al.'s priority berthing rights, they then incurred unnecessary expenses worth PHP 6,477,265.23 as evidenced by the summary of expenses, sales invoices, official receipts, billings, and statements of account.²¹⁵

Accordingly, this Court affirms the award of actual damages.

We likewise sustain the award of liquidated damages.

"Liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof."²¹⁶ *Philippine Charter Insurance*

²¹¹ *Rollo* (G.R. No. 230159), p. 259.

²¹² *Id.* at 730-731.

²¹³ *Id.* at 733-735.

²¹⁴ *Id.* at 736.

²¹⁵ *Id.* at 743; *rollo* (G.R. No. 229490), pp. 154-155.

²¹⁶ CIVIL CODE, art. 2226.

*Corporation v. Petroleum Distributors & Services Corporation*²¹⁷ teaches that the award of liquidated damages has a dual function:

Article 2226 of the Civil Code allows the parties to a contract to stipulate on liquidated damages to be paid in case of breach. It is attached to an obligation in order to insure performance and has a double function: (1) to provide for liquidated damages, and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in the event of breach. As a general rule, contracts constitute the law between the parties, and they are bound by its stipulations. For as long as they are not contrary to law, morals, good customs, public order, or public policy, the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient.²¹⁸ (Citations omitted)

Section 6 of the Memorandum of Agreement provides that Harbour Centre shall be liable to pay liquidated damages if it fails “to maintain the depth of navigational/access channel and Berthing Area to -11.5 meters MLLW at all times,”²¹⁹ thus:

Section 6. Dredging.

HCPTI as the Port Operator of the Harbour Centre Port Terminal hereby guarantees to conduct regular maintenance dredging to maintain the depth of navigational/access channel and Berthing Area to -11.5 meters MLLW at all times, as indicated in the diagram hereto attached as Annex C and made an integral part of this Agreement, subject to the terms and conditions of this Section.

1. If, as determined by either Locators or HCPTI, the depth of the navigational/access channel to the Berthing Area and Berthing Area has reached -11.2 meters MLLW, and regular maintenance dredging is not initiated by HCPTI within seven (7) working days (Monday to Friday) from the date that such depth of -11.2 meters MLLW was determined, HCPTI shall pay the Locators a penalty in the amount of US\$2,000.00 per day until such regular maintenance dredging is initiated. In case of dispute between the Locators and HCPTI, an independent survey shall be jointly appointed and equally paid by the parties;
2. If, for any cause of reason, HCPTI is unable to enter into a contract with a dredging contractor within sixty (60) days from the date that such depth of -11.2 meters of MLLW was determined, HCPTI commits to pay Locators a penalty in the amount of USD2,000.00 per day until HCPTI enters into such a contract;
3. If, the regular maintenance dredging is not completed within contract period of forty five (45) days from execution of the dredging contract, HCPTI commits to pay the Locators a penalty in the amount of USD2,000.00 per day until such work is completed. The completion of the regular maintenance dredging within forty-five (45) days from the initiation of the same shall not exempt

²¹⁷ 686 Phil. 154 (2012) [Per J. Mendoza, Third Division].

²¹⁸ *Id.* at 164–165.

²¹⁹ *Rollo* (G.R. No. 229490), p. 168.

HCPTI from any applicable penalties as described under this Section[.]²²⁰

This Court agrees with both the Regional Trial Court and the Court of Appeals that Harbour Centre violated its dredging obligations and is, therefore, liable for liquidated damages. Their findings are supported by the evidence on record.

On December 6, 2004, La Filipina et al. wrote to Harbour Centre saying that one of their vessels touched bottom due to shallow depths and reminded it of its dredging obligations. La Filipina et al. apprised Harbour Centre that while their vessel M/V Mary H had “arrival drafts of F-11.04 meters, M-11.11 meters, A-11.08 meters[.]”²²¹ the vessel touched bottom and ran aground twice since it arrived at the Manila Harbour Centre.²²²

Harbour Centre, however, counters that notwithstanding the December 4, 2004 notice, La Filipina et al. still failed to comply with the procedure under the Memorandum of Agreement. It stresses that in case of dispute as to the depths of the navigational channel and berthing area, the Memorandum of Agreement requires that the parties jointly appoint an independent survey, which requirement La Filipina et al. ignored.²²³

Notably, Harbour Centre only contested La Filipina et al.’s claim on January 27, 2007.²²⁴

As the Court of Appeals correctly emphasized, the dispute clause under the Memorandum of Agreement cannot be understood to give Harbour Centre an indefinite period to contest La Filipina et al.’s claim. Such interpretation not only violates the principle of mutuality of contracts under Article 1308 of the Civil Code but also negates the parties’ intention.²²⁵

Further, this Court notes that the hydrographic surveys of Manila Harbour Centre’s navigational channel show that the required depth under the Memorandum of Agreement had not been complied with.

In March 2005, Harbour Centre commissioned Geotech Mercantile Corporation (Geotech) to conduct a hydrographic survey of Manila Harbour Centre’s navigational channel.²²⁶ The survey revealed “the depths of wide areas thereof to be shallower than -11.2m MLLW.”²²⁷

²²⁰ *Id.* at 168-169.

²²¹ *Rollo* (G.R. No. 230159), p. 401.

²²² *Id.*

²²³ *Id.* at 51-52.

²²⁴ *Rollo* (G.R. No. 229490), p. 158.

²²⁵ *Id.* at 92-93.

²²⁶ *Id.* at 159.

²²⁷ *Rollo* (G.R. No. 230159), p. 326.

Subsea Services likewise conducted hydrographic surveys of the area fronting La Filipina et al.'s rail lines, the results of which were explained by its field/site engineer during trial, thus:

Artemio V. Belandres (Belandres), a Field/Site Engineer for class certified surveyor Subsea Services, Inc. (SSI), testified on MHC's hydrographic survey maps prepared by SSI for its client Jomar Marine and Allied Services (JMAS). Said survey maps were based on the survey data collected under Belandres' supervision on March 16, 2005, February 4 and 10, 2006, January 11, 2007, and August 1, 2008, with only a sub-meter tolerance of error in location. He reported that in the 2005 survey of the area fronting PFMC's rail lines, depths at a distance of 5 meters alongside the wharf ranged from -9.24 to -12.42 meters MLLW, with 10 meters between each point; in the 2006 survey of the same area, depths at a distance of six (6) meters alongside the wharf edge ranged from -10.34 to -11.81 meters MLLW, with five (5) meters between each point; in the 2007 survey of a portion of the navigation channel, depths ranged from -6.80 to -10.80 meters MLLW; and in the 2008 survey again of the area fronting PFMC's rail lines, depths at a distance of six (6) meters alongside the wharf ranged from -9.40 to -9.90 meters MLLW. Belandres explained that the seabed was uneven due to its composition mostly of silty mud from the river mouth near the berthing area.²²⁸

Additionally, based on the court-ordered joint hydrographic survey conducted by Subsea Services and AAG Land Surveying, the depth of the navigational channel was within a range of -8.07 meters to -1.87 meters MLLW, while the berthing was -4.5 meters to -10.2 meters MLLW.²²⁹

Nonetheless, Harbour Centre asks this Court to reduce the award of liquidated damages for being exorbitant and unconscionable.²³⁰

Article 1229 of the Civil Code states:

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

Likewise, Article 2227 of the same law provides:

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

²²⁸ *Rollo* (G.R. No. 229490), pp. 68-69.

²²⁹ *Rollo* (G.R. No. 245515), p. 184.

²³⁰ *Rollo* (G.R. No. 230159), pp. 54-56.

*Ligutan v. Court of Appeals*²³¹ enumerated the factors which this Court may consider in reducing liquidated damages:

The question of whether a penalty is reasonable or iniquitous can be partly subjective and partly objective. Its resolution would depend on such factors as, but not necessarily confined to, the type, extent and purpose of the penalty, the nature of the obligation, the mode of breach and its consequences, the supervening realities, the standing and relationship of the parties, and the like, the application of which, by and large, is addressed to the sound discretion of the court. In *Rizal Commercial Banking Corp. vs. Court of Appeals*, just an example, the Court has tempered the penalty charges after taking into account the debtor's pitiful situation and its offer to settle the entire obligation with the creditor bank. The stipulated penalty might likewise be reduced when a partial or irregular performance is made by the debtor. The stipulated penalty might even be deleted such as when there has been substantial performance in good faith by the obligor, when the penalty clause itself suffers from fatal infirmity, or when exceptional circumstances so exist as to warrant it.²³² (Citations omitted)

In several cases, this Court has reduced the liquidated damages awarded for being unconscionable.²³³

Given the facts of this case, we find that USD 2,000.00 per day of liquidated damages computed from December 6, 2004 until October 24, 2014 as excessive and unconscionable. While some of La Filipina et al.'s vessels ran aground, there is no showing that Harbour Centre's noncompliance with its dredging obligations rendered the Manila Harbour Centre's navigational channel and berthing area inoperative. Therefore, it is but just and reasonable to reduce the award of liquidated damages from USD 2,000.00 to USD 1,000.00 per day.

IV

"It is elementary that a contract is the law between the parties and the obligations it carries must be complied with in good faith."²³⁴ Unless the contract is "contrary to law, morals, good customs, public order[,] or public policy[,]'" all contractual stipulations that the parties agree upon are binding on them.²³⁵

Being the law between the parties, "its provisions should not be read in isolation but in relation to each other and in their entirety so as to render them

²³¹ 427 Phil. 42 (2002) [Per J. Vitug, Third Division].

²³² *Id.* at 52.

²³³ See *Cov. Admiral United Savings Bank*, 574 Phil. 609, 618-619 (2008) [Per J. Nachura, Third Division]; *Urban Consolidated Constructors Philippines, Inc. v. Insular Life Assurance Co. Inc.*, 614 Phil. 95, 107 (2009) [Per J. Ynares-Santiago, Third Division].

²³⁴ *Pioneer Insurance and Surety Corporation v. APL Co. Pte. Ltd.*, 815 Phil. 439, 446 (2017) [Per J. Mendoza, Second Division]. (Citation omitted)

²³⁵ *Atendiola v. Commerz Trading Int'l, Inc.*, 715 Phil. 856, 862 (2013) [Per J. Carpio, Second Division].

effective[.]”²³⁶ As this Court explained in *Oil and Natural Gas Commission v. Court of Appeals*:²³⁷

Thus, this Court has held that as in statutes, the provisions of a contract should not be read in isolation from the rest of the instrument but, on the contrary, interpreted in the light of the other related provisions. The whole and every part of a contract must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. Equally applicable is the canon of construction that in interpreting a statute (or a contract as in this case), care should be taken that every part thereof be given effect, on the theory that it was enacted as an integrated measure and not as a hodge-podge of conflicting provisions. The rule is that a construction that would render a provision inoperative should be avoided; instead, apparently inconsistent provisions should be reconciled whenever possible as parts of a coordinated and harmonious whole.²³⁸ (Citations omitted)

Sections 2 and 3 of the Memorandum of Agreement provide for the parties’ agreement on port and cargo handling charges:

Section 2. Foreign Vessels’ Port and Cargo Handling Charges.

- a. The current rate of PhP39.12 per metric ton shall be increased by Fifty Pesos (PhP50.00), thus, making it PhP89.12 per metric ton;
- b. The agreed increase of PhP50.00 shall be implemented in two (2) stages of Twenty Five Pesos (PhP25.00) each. The first stage shall be implemented from July 2004 up to December 2004; while the second stage shall be implemented from January 2005 up to July 2006;
- c. After July 2006, the port and cargo handling charges for foreign vessels chartered by the Locators, shall be based on the following, which shall in no case be less than PhP89.12 per metric ton, to wit:

Port and Handling Charges (bulk cargo) Vessel/	=	PPA* approved Stevedoring Fees for Bulk Cargo for Foreign Vessel/ Cargo	+	50 percent of PPA* Approved Rate for Wharfage Tariff For foreign Cargo
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*Philippine Ports Authority

- d. No increase in fees based on the PPA Port and Cargo Handling Charges for Foreign Vessel/Bulk Cargo shall be imposed without prior written notice to the Locators served not less than fifteen (15) days before the date of its effectivity.

Section 3. Domestic (Coastwise) Vessels’ Port and Handling Charges. —

²³⁶ *Spouses Juico v. China Banking Corporation*, 708 Phil. 495, 514 (2013) [Per J. Villarama, Jr., First Division].

²³⁷ 354 Phil. 830 (1998) [Per J. Martinez, Second Division].

²³⁸ *Id.* at 843-844

HCPTI shall allow the berthing of the Locators' domestic (coastwise) vessels at the Berthing Area, provided that the Locators serve a written final advice of arrival upon HCPTI. It is understood that should the Locator's domestic (coastwise) vessels be unable to berth at the Berthing Area due to congestion caused by the volume of other vessels being accommodated by HCPTI, or for any other reasonable causes, HCPTI shall allow the Locators' domestic (coastwise) vessels to discharge in the nearest vacant berth other than the Berthing Area. However, should the Berthing Area be vacated, the Locators' domestic (coastwise) vessels shall be allowed to immediately transfer to the Berthing Area at the expense of the Locators.

- a. If the Locators' domestic (coastwise) vessels are intended to load out cargo discharged from foreign vessels, no additional port and cargo handling charges shall be charged by HCPTI;
- b. If the Locators' domestic (coastwise) vessels are intended to load out cargo other than those unloaded from foreign vessels, HCPTI will charge the approved PPA domestic rate for either bulk or bagged cargo.²³⁹

In this case, it is undisputed that the new rate imposed by Harbour Centre was not in accordance with the formula provided in the Memorandum of Agreement. Harbour Centre, however, maintains that the imposition of a new rate was valid and that the increase was authorized by Section 2(d).

Harbour Centre's argument is bereft of merit.

To reiterate, contractual stipulations should not be read "in isolation, but must be harmonized with each other so as to give effect and meaning to the entire contract."²⁴⁰ Thus, Section 2(d) should be construed with the rest of Section 2.

Section 2(a) and (b) provide for the initial increase to be implemented from July 2004 to July 2006. After this initial increase, Harbour Centre may impose a new rate based on the formula provided in Section 2(c), which new rate shall be binding on La Filipina et al. only after they have been notified in writing at least 15 days prior to the new rate's effectivity.

Thus, Harbour Centre's unilateral increase of the port and handling charges is violative of the Memorandum of Agreement and is, thus, invalid.

V

Harbour Centre's claim that its operations are hampered by La Filipina et al.'s unloaders is a question of fact which cannot be raised in a Rule 45 petition. Further, as the Regional Trial Court correctly noted, Harbour

²³⁹ *Rollo* (G.R. No. 230159), pp. 141-142.

²⁴⁰ *Mendoza v. Court of Appeals*, 340 Phil. 634, 636-637 (1997) [Per J. Panganiban, Third Division].

Centre's assertion is contradicted by its July 14, 2004 letter where Harbour Centre demanded for La Filipina et al. "to install longer unloader rails and additional unloaders":²⁴¹

As regards defendant's claim that plaintiffs' cargo unloading obstructs port and cargo operations, we cannot reconcile this submission with its letter of July 14, 2007 demanding the installation of longer rail lines and a second unloader . . . signed by Edwin Jeremillo for Michael Romero. If indeed port and cargo operations were hampered by plaintiffs' cargo unloaders, why the demand for longer rail lines and an additional unloader?

Defendant's contention of obstruction is further belied by its own witnesses Jeremillo who admitted on cross-examination that plaintiffs' unloaders enabled defendant to earn more income from its other clients without any additional expense.

"Q And since you would then have clients who would be able to use the berthing area, it would then be more profitable for Harbour Centre Port Terminal, Inc., isn't that correct?

"A Yes, sir."²⁴²

Additionally, PPA Memorandum Circular No. 32-96, or the Clarificatory Guidelines on the Treatment of Areas Utilized for Storage and Parking of Cargo Handling Equipment and Gear, prohibits the imposition of rent on spaces occupied by cargo handling equipment. It states:

II. Clarifications

2.1 All areas in the port which are officially designated as parking spaces for cargo handling equipment and stacking or storage areas for cargo handling gears shall be treated as part of the operational areas and, therefore, not subject to rental fees.

Accordingly, there is no basis for Harbour Centre's claim for rental charges.

VI

The Regional Trial Court correctly denied Harbour Centre's Motion to suspend hearing of La Filipina et al.'s Motion for Payment.

Rule 39, Section 10(a) of the Rules of Court states that if the party directed to perform a specific act fails to accomplish what is required, the court may direct another person to perform the act to be done at the expense of the disobedient party:

²⁴¹ *Rollo* (G.R. No. 230159), p. 382.

²⁴² *Rollo* (G.R. No. 229490), pp. 152-153.

Section 10. Execution of judgments for specific act. —

- (a) Conveyance, delivery of deeds, or other specific acts; vesting title. — If a judgment directs a party to execute a conveyance of land or personal property, or to deliver deeds or other documents, or to perform, any other specific act in connection therewith, and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have like effect as if done by the party. If real or personal property is situated within the Philippines, the court in lieu of directing a conveyance thereof may by an order divest the title of any party and vest it in others, which shall have the force and effect of a conveyance executed in due form of law.

In its October 11, 2011 Decision, the Regional Trial Court directed Harbour Centre to undertake the dredging of Manila Harbour Centre's berthing area and navigational channel.

Thereafter, the Regional Trial Court, upon motion of La Filipina et al., ordered the issuance of a Writ of Execution directing Harbour Centre to carry out its dredging obligations. When Harbour Centre failed to comply, the Regional Trial Court issued its July 23, 2013 Order authorizing La Filipina et al. to find another contractor for the dredging of the berthing area and navigational channel.

Thus, La Filipina et al.'s Motion for Payment is an offshoot of the partial execution pending appeal, which should be addressed by the Regional Trial Court. As the Court of Appeals Eleventh Division correctly found, La Filipina et al.'s claim is part of the process of the partial execution pending appeal, which shall be decided by the Regional Trial Court.

Further, this Court notes that when La Filipina et al. filed their Motion for Payment before the Regional Trial Court, a case docketed as G.R. No. 213080 was pending before this Court questioning the propriety of the execution pending appeal.

The case was resolved in the May 3, 2021 Decision of this Court where it sustained the validity of the motion for partial execution pending appeal as to the immediate dredging of the berthing area and navigational channel:²⁴³

However, this Court finds that the immediate execution of the order to dredge is justified.

First, the issue of whether petitioner should conduct dredging is not an issue in this case or in the Main Appeal. Petitioner has acknowledged that it is obliged to dredge the berthing area in accordance with the required

²⁴³ *Harbour Centre Port Terminal, Inc. v. Abella-Aquino*, G.R. No. 213080, May 3, 2021 [Per J. Leonen, Third Division].

depth under the Memorandum of Agreement. Thus, its undertaking to dredge still holds whether it was compliant at the time of filing the case.

Second, in granting execution pending appeal, the Regional Trial Court considered the hydrographic surveys showing that the depth of the berthing area and navigational channel were shallower than -11.5 meters MLLW. It also relied on evidence showing that several of respondent's vessels have touched bottom or are unable to proceed to the berthing area.

Thus, this Court sees the good reason behind immediately ordering the dredging. Respondent would incur serious costs if dredging is delayed further. It cannot be denied that the insufficient depth of the berthing area can place vessels at risk of considerable damage, which in turn can put at risk the value of the cargo. It may also cause additional charges if respondent is constrained to lighten its vessels before proceeding to the berthing area.

The serious risk of damage to the vessels and the cargo demands urgency and outweighs the potential damage that will be caused to petitioner if it is immediately required to dredge. At most, petitioner will incur costs for the conduct of the dredging. Further, there is no need to dredge if the pre-dredge hydrographic survey reveals that the depth of the berthing area and navigational channel is in -11.5 meters MLLW. Thus, the Regional Trial Court did not gravely abuse its discretion in allowing the immediate dredging.

In any case, the joint hydrographic survey was already conducted and it was shown that there was indeed a need to dredge. Thus, respondent had entered into a Contract of Dredging with FFC Cruz, and FFC Cruz completed the dredging on October 22, 2014.²⁴⁴ (Citations omitted)

Considering that there is no dispute on the obligation of Harbour Centre to conduct dredging, which undertaking was performed by La Filipina et al., and in the absence of a restraining order from this, the Regional Trial Court is permitted to hear the Motion for Payment filed by La Filipina et al.

VII

Rule 57 of the Rules of Court governs the issuance of a writ of attachment. Sections 1, 2, and 3 state:

Section 1. Grounds upon which attachment may issue. — At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

- (a) In an action for the recovery of a specified amount of money or damages, other than moral and exemplary, on a cause of action arising from law, contract, quasi-contract, delict or quasi-delict against a party who is about to depart from the Philippines with intent to defraud his creditors;

²⁴⁴ *Id.*

- (b) In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;
- (c) In an action to recover the possession of property unjustly or fraudulently taken, detained or converted, when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an authorized person;
- (d) In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;
- (e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; or
- (f) In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication.

Section 2. Issuance and contents of order. — An order of attachment may be issued either *ex parte* or upon motion with notice and hearing by the court in which the action is pending, or by the Court of Appeals or the Supreme Court, and must require the sheriff of the court to attach so much of the property in the Philippines of the party against whom it is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand, unless such party makes deposit or gives a bond as hereinafter provided in an amount equal to that fixed in the order, which may be the amount sufficient to satisfy the applicant's demand or the value of the property to be attached as stated by the applicant, exclusive of costs. Several writs may be issued at the same time to the sheriffs of the courts of different judicial regions.

Section 3. Affidavit and bond required. — An order of attachment shall be granted only when it appears by the affidavit of the applicant, or of some other person who personally knows the facts, that a sufficient cause of action exists, that the case is one of those mentioned in Section 1 hereof, that there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to the applicant, or the value of the property the possession of which he is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims. The affidavit, and the bond required by the next succeeding section, must be duly filed with the court before the order issues.

One of the requisites for the issuance of a writ of attachment is an "affidavit of the applicant, or of some other person who personally knows the facts" stating the following: first, there exists a sufficient cause of action; second, the case is among the instances mentioned in Section 1 of Rule 57; third, "there is no other sufficient security for the claim sought to be enforced by the action"; and finally, "the amount due to the applicant, or the value of



the property the possession of which he is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims.”²⁴⁵

In support of La Filipina ‘et al.’s plea for the issuance of a writ of attachment, they submitted the Affidavit²⁴⁶ of their manager, Gerald Jone Uygongco (Uygongco) declaring the following:

5. LFUGC/PFMC was subsequently able to obtain an Order granting its motion for partial execution pending appeal, whereby Defendant-Appellant HCPTI was directed to cause the dredging of the navigation channel and berthing area of the Manila Harbour Centre to -11.5 meters MLLW in accordance with the provisions of the November 19, 2004 Memorandum of Agreement.

6. However, due to the fact that Defendant-Appellant refused to comply with the writ of execution, Plaintiffs-Appellees were constrained to move for and did obtain an Order dated July 23, 2013:

....

7. As a consequence thereof, Plaintiffs-Appellees has entered into a Contract for Dredging on April 16, 2014 with FF Cruz & Co., Inc. and had made an initial payment of Php70,594,251.45 pursuant to the Dredging Contract. Based on the volume to be dredged to bring the depth to the required -11.5 meters MLLW as measured by pre-dredge hydrographic surveys, the estimated dredging cost to be advanced amounts to Php475,000,000.00. This amount is to be paid by way of progress billing.

8. One of the reasons Plaintiffs-Appellees brought the instant action against Defendant-Appellant HCPTI was because of its failure to abide by its obligation to dredge and maintain the depth of the navigation/access channel and the Berthing Area of the Harbour Center Port Terminal at -11.5 meters MLLW. As a result, several of its foreign chartered vessels “touched bottom” beginning July 2004.

9. Even hydrographic surveys presented during the trial undertaken by Subsea Services, Inc. . . . and Defendant-Appellant HCPTI’s own commissioned survey undertaken by Geotech Mercantile Corporation . . . show the depth to be shallower than -11.2 meters MLLW.

10. On the other hand, during the trial, Defendant-Appellant continued to claim that it conducted the required maintenance dredging to keep the depths at [sic] -11.5 meters MLLW, but failed to present and documentary evidence to prove the same. All that was presented was the testimonial evidence of then Chief Operating Officer Edwin L. Jeremillo, who could not even name to whom the alleged dredging work was contracted, nor the number of times dredging was supposedly undertaken.

11. Defendant-Appellant HCPTI actually had previously made the same commitment to dredge the Navigation Channel and Berthing Area to convince Plaintiffs-Appellants to locate their operations at the Manila Harbour Centre. It was only when Plaintiffs-Appellants’ facilities were

²⁴⁵ RULES OF COURT, Rule 57, sec. 3.

²⁴⁶ *Rollo* (G.R. No. 229490), pp. 188 -194.

nearing completion were they suddenly informed that Defendant-Appellant HCPTI did not have the financial capability to abide by the stated commitment. To be able to fund the required dredging, Defendant-Appellant HCPTI suggested for Plaintiffs-Appellants to acquire another parcel of land within the Manila Harbour Centre with the proceeds of the sale to be used exclusively to pay the dredging contractor. Plaintiffs-Appellants had no alternative but to acquire a second property for Php262.5 Million since a deep water Navigation Channel and Berthing Area was vital to the success of its business.

12. What is appalling is that Defendant-Appellant had the temerity to submit a falsified Memorandum of Agreement (MOA) it purportedly entered with Platinum Dredging, Inc., supposedly notarized on February 2, 2012, as proof that it has been dredging the Navigation Channel and Berthing Area to the required depths. It was discovered that the subject MOA was never notarized by Atty. Constantino Reyes, a notary public for the City of Manila, who categorically denied doing so, even stating that the signature appearing above his name was different from his.

13. Moreover, Plaintiffs-Appellees have come to learn that Defendant-Appellant HCPTI, acting through its Chief Executive Officer, Chief Operating Officer and Vice President for Administration, and Chief Financial Officer, have been systematically siphoning funds from their company with the intent to defraud its creditors. This is based on several criminal charges for qualified theft or qualified theft through falsification of commercial documents filed between January to April of this year by Defendant-Appellant HCPTI itself against its officers, upon the apparent prompting of Reghis Romero II, its Chairman and who appears to have recently taken over the reins of the corporation from his son, Michael L. Romero, then President and Chief Executive Officer, . . .

. . . .

14. The aforesaid six (6) cases charge the former CEO Michael Romero, the former COO and Vice President Edwin Jeremillo, the former CFO Edwin Galvez and other employees with siphoning approximately P68,400,000.00. But this seems to be only the tip of the iceberg, so to speak.

15. In another criminal charge docketed as NPS Docket No. XV-INV-14D-02566 filed on April 29, 2014 at the City of Manila, this time for *robbery* against Michael L. Romero and others, it was alleged that the top corporate officers issued falsified corporate checks in their favor and named themselves as payee with an estimated amount of HUNDREDS OF MILLIONS OF PESOS or more.

16. In another case entitled *Harbour Centre Port Holdings, Inc., represented herein by Edwin Joseph Galvez, Michael L. Romero and Edwin Jeremillo, vs. R-II Builders, et al.*, (Civil Case No. 14-131588) for control over Defendant-Appellant HCPTI, an Order was issued narrating how the counsel for R-II Builders accused the top corporate officers of stealing ONE BILLION FIVE HUNDRED MILLION PESOS (P1.5Billion).²⁴⁷

Based on the allegations in Uygongco's Affidavit and La Filipina et al.'s Motion, the plea for the issuance of a writ of attachment was based on two

²⁴⁷ *Id.* at 189-193.

grounds: first, that Harbour Centre is guilty of fraud in “incurring the obligation upon which the action is brought, or in the performance thereof”; and second, Harbour Centre “removed or disposed of its property, with intent to defraud its creditors.”²⁴⁸

In its general sense, fraud refers to “the voluntary execution of a wrongful act or a wil[l]ful omission, while knowing and intending the effects that naturally and necessarily arise from that act or omission.”²⁴⁹ It pertains to conduct calculated to deceive and have the effect of harming or gaining undue advantage over another.²⁵⁰

In *Liberty Insurance Corporation v. Court of Appeals*,²⁵¹ this Court held that as a ground for the issuance of a writ of attachment, “[t]he fraud must relate to the execution of the agreement and must have been the reason which induced the other party into giving consent which [they] would not have otherwise given”:²⁵²

To constitute a ground for attachment in Section 1(d), Rule 57 of the Rules of Court, fraud should be committed upon contracting the obligation sued upon. A debt is fraudulently contracted if at the time of contracting it the debtor has a preconceived plan or intention not to pay, as it is in this case. Fraud is a state of mind and need not be proved by direct evidence but may be inferred from the circumstances attendant in each case[.]²⁵³

The Court of Appeals denied the prayer for the issuance of a writ of attachment, ruling that it has no power to receive evidence in an application for a writ of preliminary attachment:

Fraudulent intent, being a state of mind, the facts establishing it have to be proven by evidence. However, this Court’s power to receive evidence on appeal is limited. Under Section 3, Rule VI of the Internal Rules of the Court of Appeals, the Court may receive evidence only in certain instances and the application for a writ of preliminary attachment is not among them.²⁵⁴

Contrary to its findings, the Court of Appeals has the power to receive evidence in relation to the application for a writ of attachment.

Rule VI, Section 3(a) of the 2009 Internal Rules of the Court of Appeals (Internal Rules) provides:

²⁴⁸ *Rollo* (G.R. No. 229490), pp. 173–174.

²⁴⁹ *Republic v. Mega Pacific eSolutions, Inc.*, 788 Phil. 160, 187 (2016) [Per C.J. Sereno, First Division].

²⁵⁰ *Id.* (Citation omitted)

²⁵¹ 294 Phil. 41 (1993) [Per J. Bidin, Third Division].

²⁵² *Id.* at 49.

²⁵³ *Id.* at 49–50.

²⁵⁴ *Rollo* (G.R. No. 229490), p. 125.

Section 3. Power of the Court to Receive Evidence. — The Court may receive evidence in the following cases:

- (a) In actions falling within its original jurisdiction, such as: (1) *certiorari*, prohibition and *mandamus*; (2) annulment of judgment or final order; (3) *quo warranto*; (4) *habeas corpus*; (5) *amparo*; (6) *habeas data*; (7) anti-money laundering; and (8) application for judicial authorization under the Human Security Act of 2007.

In relation, Section 9(1) of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902, states that the Court of Appeals shall have “[o]riginal jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction[.]”

A perusal of these provisions reveals that the Court of Appeals’ power to receive evidence is not limited to those cases specifically mentioned in Section 3 of its Internal Rules. The Court of Appeals may also receive evidence in all actions falling within its original jurisdiction, including the issuance of auxiliary writs or processes. This interpretation is reinforced by the Internal Rules’ use of the term “such as” which is a phrase “commonly known, understood, and used to introduce an example or a series of examples.”²⁵⁵

A writ of preliminary attachment has been characterized as “a provisional remedy by which the property of an adverse party is taken into legal custody as a security for the satisfaction of any judgment that may be recovered by the plaintiff or any proper party.”²⁵⁶ It “is an ancillary remedy applied for not for its own sake but to enable the attaching party to realize . . . the relief sought and expected to be granted in the main or principal action; it is a measure auxiliary or incidental to the main action.”²⁵⁷

Accordingly, the Court of Appeals should have proceeded to determine the merits of La Filipina et al.’s plea for a writ of attachment.

The determination of whether fraud was committed is a factual matter, which requires the presentation of evidence.²⁵⁸ Since this Court is not a trier

²⁵⁵ *Philippine Mining Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 250748, October 6, 2021 [Notice, First Division].

²⁵⁶ *Uy v. Court of Appeals*, 290 Phil. 368, 373 (1992) [Per J. Nocon, Second Division].

²⁵⁷ *Lim, Jr. v. Spouses Lazaro*, 713 Phil. 356, 361 (2013) [Per J. Perlas-Bernabe, Second Division].

²⁵⁸ *Heirs of Pasag v. Spouses Parocha*, 550 Phil. 571, 585 (2007) [Per J. Velasco, Jr., Second Division]. See also *Alonso v. Cebu Country Club, Inc.*, 426 Phil. 61, 80 (2002) [Per J. Pardo, *En Banc*]; *Sampaco v. Lantud*, 669 Phil. 304, 318 (2011) [Per J. Peralta, Third Division], and *Quinsay v. Intermediate Appellate Court*, 272-A Phil. 235, 249–250 (1991) [Per J. Regalado, Second Division].

of facts, the prudent recourse is to remand the application for the writ of attachment to the Court of Appeals for the reception of evidence.²⁵⁹

VIII

*Asia United Bank v. Goodland Co., Inc.*²⁶⁰ discussed the definition and different modes of committing forum shopping:

There is forum shopping “when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court.” The different ways by which forum shopping may be committed were explained in *Chua v. Metropolitan Bank & Trust Company*:

Forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).²⁶¹ (Citations omitted)

In *Yap v. Chua*,²⁶² this Court discussed *litis pendentia*, which pertains to a “situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious.”²⁶³ In determining whether a party committed forum shopping through *litis pendentia*, the existence of the following requisites must first be established:

(a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.²⁶⁴

A perusal of the pleadings in G.R. Nos. 213080 and 229490, as well as the Motion for Payment filed before the Regional Trial Court, reveals that they

²⁵⁹ *Aquino v. Aquino*, G.R. No. 208912, December 7, 2021 [Per J. Leonen, *En Banc*].

²⁶⁰ 660 Phil. 504 (2011) [Per J. Del Castillo, First Division].

²⁶¹ *Id.* at 514.

²⁶² 687 Phil. 392 (2012) [Per J. Reyes, Second Division].

²⁶³ *Id.* at 400.

²⁶⁴ *Id.*

seek different reliefs. Thus, the judgment in one would not amount to *res judicata* in the other.

First, the rulings sought to be annulled in G.R. No. 213080 pertain to the Resolutions of the Court of Appeals in CA-G.R. SP No. 125660, which in turn relate to the validity of the Regional Trial Court's grant of the Motion for Partial Execution Pending Appeal.

Meanwhile, the relief prayed for in G.R. No. 229490 is the issuance of the provisional remedy of a writ of attachment to secure the satisfaction of any judgment that may be issued in La Filipina et al.'s favor.

The Motion for Payment, on the other hand, seeks for the reimbursement of the costs spent by La Filipina et al. in dredging the Manila Harbour Centre's berthing area and navigational channel on behalf of Harbour Centre. In view of the dissimilarities in the issues involved and reliefs prayed for, we find that La Filipina et al. did not commit forum shopping.

ACCORDINGLY, the Petition in G.R. No. 229490 is **GRANTED**. The June 15, 2016 Decision and January 23, 2017 Resolution of the Court of Appeals Eleventh Division in CA-G.R. CV No. 101600, which denied La Filipina Uy Gongco Corporation and Philippine Foremost Milling Corporation's Motion for Issuance of Writ of Attachment and Levy on Execution, are **REVERSED** and **SET ASIDE**. This case is **REMANDED** to the Court of Appeals Eleventh Division for the resolution of the issue of La Filipina Uy Gongco Corporation and Philippine Foremost Milling Corporation's entitlement to the issuance of a writ of attachment.

The Petition in G.R. No. 230159 is **PARTIALLY GRANTED**. The June 15, 2016 Decision and January 23, 2017 Resolution of the Court of Appeals Eleventh Division in CA-G.R. CV No. 101600, which affirmed with modifications the October 11, 2011 Decision and November 28, 2011 Order of the Regional Trial Court, are **AFFIRMED** with **MODIFICATION** in that the award of liquidated damages is reduced from USD 2,000.00 to USD 1,000.00 per day computed beginning December 6, 2004 until October 24, 2014.

The Petition in G.R. No. 245515 is **GRANTED**. The October 10, 2018 Decision and February 26, 2019 Resolution of the Court of Appeals Special Sixteenth Division in CA-G.R. SP No. 155418 are **REVERSED** and **SET ASIDE**. The January 29, 2018 Order of the Regional Trial Court denying Harbour Centre's Motion to suspend hearing on the Motion for Payment is **REINSTATED**.



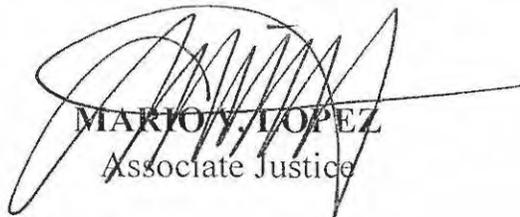
The total monetary award shall be subject to interest at the rate of 6% per annum from the finality of this Decision until full satisfaction.

SO ORDERED.



MARVIC M.V.F. LEONEN
Senior Associate Justice

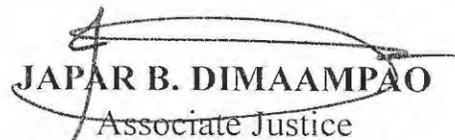
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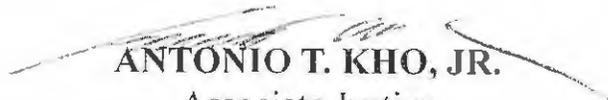
MARIO Y. LOPEZ
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

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



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice