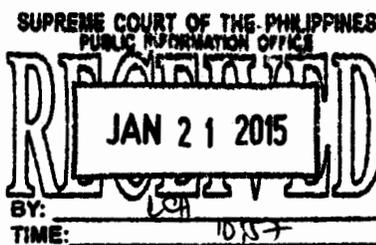




Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **December 10, 2014**, which reads as follows:*

**“G.R. No. 210108 (McFish International Corporation vs. Moreno V. Lim).** – This is a Petition for Review on Certiorari seeking the reversal of the Decision of the Court of Appeals (CA), Fourteenth Division, dated March 7, 2013, and its subsequent Resolution dated November 14, 2013, both in CA-G.R. CV No. 93153. The assailed Decision affirmed the Decision of the Regional Trial Court (RTC), Branch 95, Puerto Princesa City, dated September 30, 2008.

The present petition stemmed from an allision that occurred between F/V Sta. Monica II, owned by respondent Moreno V. Lim (Lim) and his brother Emelino, and F/V Mely Mia I., owned by petitioner McFish International Corporation (McFish). As a result of the allision, F/V Sta. Monica II sustained heavy damage, and eventually sank.

Subsequently, Lim filed a complaint against McFish before the RTC of Puerto Princesa City, demanding the repair of the damaged vessel, or otherwise pay the value of the vessel, along with its accessories and equipment. In its Answer, McFish denied any liability. It claimed that its oral promise to refloat the vessel of Lim was made only out of humanitarian considerations, and should not be considered an admission of liability on its part. It also disclaimed any obligation arising from the draft Agreement, saying that its representative did not sign the same, and thus the draft could not be the source of any obligation. It could not be enforced, because it was not duly signed by the parties. As to its promise to repair the vessel, it claimed that it can no longer do so, because the vessel is already beyond repair. It then cited the Report of the Philippine Coast Guard of Manila, declaring that it was not at fault, because the accident was due primarily to the negligence of the captain of F/V Sta. Monica II, for mooring the boat at night in a very uptight and busy sealane, without turning on its lights to guard other vessels to safely pass the area.

In its Decision dated September 30, 2008, the RTC of Puerto Princesa City found McFish liable to Lim for the loss of the vessel F/V Sta. Monica II, by virtue of the Agreement. The RTC held:

WHEREFORE, premises considered and by preponderance of evidence, judgment is hereby rendered ordering defendant McFish International Corporation:

1. To pay plaintiff Moreno V. Lim the amount of Two Hundred Thousand (P200,000) Pesos by way of actual damages, and the six (6%) Percent annual interest thereof computed from the date this case was filed up to the finality of this decision, and the Twelve (12%) Percent annual interest thereof to be computed from the date of finality until fully paid;
2. To pay plaintiff Moreno V. Lim the amount of Three Hundred Thousand (P300,000) Pesos representing the value of the vessel, FB Sta. Monica II, and the equipment attached thereto, and the amount of One Million (P1,000,000.00) Pesos representing plaintiff's lost income all by way of temperate damages, and the Twelve (12%) Percent annual interest thereof to be computed from the finality of this decision until fully paid;
3. To specifically perform by replacing all the items mentioned in Condition No. 2 of the Agreement (Exhibit "C") such as Radio, Fish Finder, GPS, Radar and VMF Radio, Barometer, Banyeras and the 5,000 liters of fuel, and promptly deliver the same to plaintiff.

No costs.

McFish appealed to the CA.

In its assailed Decision dated March 7, 2013, the CA affirmed with modification the judgment of the RTC. However, it found no basis to award temperate damages to compensate for lost income, because lost income falls under the concept of actual damages, and there was never any evidence presented on the matter, other than the testimony of Lim. Thus, the CA concluded:

WHEREFORE, the appeal is DENIED. The Decision dated September 30, 2008 of the Regional Trial Court, Branch 95, Puerto Princesa City, Palawan, in Civil Case No. 3853; is AFFIRMED with MODIFICATION by deleting the award of One Million Pesos (P1,000,000.00) as temperate damages representing lost income of appellee.

Thus, the present Petition, where petitioner argues that the CA erred in affirming the award for P200,000 by way of actual damages, as well as P300,000 by way of temperate damages.

We find no reversible error in the ruling of the RTC, as affirmed by the CA, that petitioner is liable to respondent for the sinking of the latter's vessel. Moreover, the ruling of the lower court as to whether or not the

petitioner is liable to respondent was not raised in the present petition. Thus, We find no need to review the same. The sole issue in the present petition is the propriety and the amount of damages awarded. The RTC based its award on the provisions of the draft Agreement, which, as argued by the petitioner, is not binding as it was not duly signed by its representative.

In *Oceaneering Contractors (Phils.), Inc. v. Nestor Barretto*,<sup>1</sup> the Court summarized the rule on the award of actual damages as follows:

[T]he rule is long and well settled that there must be pleading and proof of actual damages suffered for the same to be recovered. In addition to the fact that the amount of loss must 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. The burden of proof of the damage suffered is, consequently, imposed on the party claiming the same who should adduce the best evidence available in support thereof, like sales and delivery receipts, cash and check vouchers and other pieces of documentary evidence of the same nature. In the absence of corroborative evidence, it has been held that self-serving statements of account are not sufficient basis for an award of actual damages. Corollary to the principle that a claim for actual damages cannot be predicated on flimsy, remote, speculative, and insubstantial proof, courts are, likewise, required to state the factual bases of the award.

In the case here, the RTC awarded ₱200,000 by way of actual damages, representing the unused provisions and fish catch lost, even if the respondent did not present receipts or any other evidence to support such claim for actual damages. We find this not to be in accord with law and jurisprudence.

However, while the actual values of the unused provisions and catch fish were not substantiated, it was nevertheless established that petitioner suffered the loss of such provisions and catch fish. We reiterate the long-standing rule that whenever the court finds some pecuniary loss but the amount cannot be proved with certainty, temperate damages, which is more than nominal but less than compensatory damages, may be awarded.<sup>2</sup> Under the circumstances of this case, We find the amount of One Hundred Thousand Pesos to be just and reasonable.

**WHEREFORE**, in view of the foregoing, the Decision of the Court of Appeals, Fourteenth Division, dated March 7, 2013, and its subsequent Resolution dated November 14, 2013, both in CA-G.R. CV No. 93153 are hereby **AFFIRMED** with **MODIFICATION**. As modified, the *fallo* of the RTC Decision dated September 30, 2008, as modified by the CA, should read as follows:

<sup>1</sup> G.R. No. 184215, February 9, 2011.

<sup>2</sup> *Heirs of Redentor Completo v. Albayda Jr.*, G.R. No. 172200, July 6, 2010, 624 SCRA 97, 115.

WHEREFORE, premises considered and by preponderance of evidence, judgment is hereby rendered ordering defendant McFish International Corporation:

1. To pay plaintiff Moreno V. Lim the amount of One Hundred Thousand (P100,000.00) Pesos by way of temperate damages, for the value of the unused provisions and catch fish, and Six Percent (6%) annual interest thereon computed from the date this case was filed until fully paid;
2. To pay plaintiff Moreno V. Lim the amount of Three Hundred Thousand (P300,000.00) Pesos representing the value of the vessel, FB Sta. Monica II, and the equipment attached thereto, and the Six Percent (6%) annual interest thereof to be computed from the finality of this Decision until fully paid;
3. To specifically perform by replacing all the items mentioned in Condition No. 2 of the Agreement (Exhibit "C") such as Radio, Fish Finder, GPS, Radar and VMF Radio, Barometer, Banyeras and the 5,000 liters of fuel, and promptly deliver the same to plaintiff.

(Mendoza, J., Acting Member in lieu of Jardeleza, J. per Special Order No. 1896 dated November 28, 2014)

**SO ORDERED."**

Very truly yours,

  
WILFREDO V. LAPITAN  
Division Clerk of Court *W/LK*

Atty. Ernesto V. Cabrera  
Counsel for Petitioner  
ALBANO & ASSOCIATES  
555 Barcelona Street  
Binondo, 1006 Manila

COURT OF APPEALS  
CA G.R. CV No. 93153  
1000 Manila

Atty. Leonido B. Arriola  
Counsel for Respondent  
Unit 12, 2/F Capitol Commercial Complex  
Fernandez St., Puerto Princesa City  
5300 Palawan

The Presiding Judge  
REGIONAL TRIAL COURT  
Branch 95, Puerto Princesa City  
5300 Palawan  
(Civil Case No. 3853)

Mr. Moreno V. Lim  
Poblacion, Taytay  
5312 Palawan

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