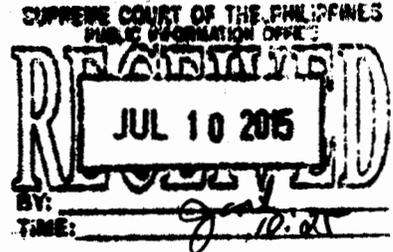




Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated June 15, 2015 which reads as follows:*

**“G.R. No. 163090 – TERESITA C. ESMERALDA, DOING BUSINESS UNDER THE NAME AND STYLE SUPREME INVESTIGATION SECURITY SERVICE, Petitioner, v. NATIONAL AGRIBUSINESS CORPORATION, Respondent.-**

The issue is whether or not the respondent could set off the value of the lost personal properties against the claim for payment of the petitioner.

On December 1, 1990, the petitioner and respondent National Agribusiness Corporation (NABCOR) entered into a contract for security services for the deployment of the former’s security guards to secure and protect NABCOR’s properties and installations at its Central Office initially for a period of one year (from December 1, 1990 to November 30, 1991), with provision for automatic renewal for a like period under the same terms unless one party gave to the other written notice of termination at least 30 days in advance.<sup>1</sup> Under similar terms, NABCOR requested the petitioner to provide security services in its other places of business, specifically, in the Alabang Stockfarm; Floridablanca National Agricultural School (FNAS) in Floridablanca, Pampanga; PAC in Magalang, Pampanga; and the Caliraya Farm in Laguna. Such arrangements were renewed several times until August 17, 1995. To collect payment of the service fees under the contract, the petitioner occasionally sent statements of account to

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<sup>1</sup> Records, pp. 7-12 (Annex A).

NABCOR. On August 10, 1995, the petitioner demanded payment of the amount of ₱422,133.84 representing NABCOR's outstanding balance as of July 1995.<sup>2</sup> On August 28, 1995, the petitioner sent another demand to NABCOR for the payment of unpaid security service fees from March 16, 1994 until August 17, 1995 totaling ₱431,933.84.<sup>3</sup>

Terminating the contract in August 1995 because of the non-payment of the security services, the petitioner sued NABCOR in the RTC.<sup>4</sup>

In its answer with compulsory counterclaim,<sup>5</sup> NABCOR countered that it had withheld payment pursuant to Paragraph 8 of the contract in view of the loss on January 19, 1995 of the farm tractor (described as Agri-Tractor, Massey Ferguson, 70 HP Perkins SN 210054, MF 275 2 WD) valued at ₱750,000.00 in the Caliraya Farm in Laguna; and the loss of furniture and equipment valued at ₱13,850.00 (*i.e.*, five clerical tables; three typing tables; three jr. executive tables; ten narra chairs; two choco brown executive chairs; four brown clerical revolving chairs; one big palo china revolving tray; one 2-layer coffee tray; one Kinyo wall clock; five long dining tables; two short dining tables; one square 4-seater folding table; and nine defective Knapsack sprayers) at FNAS in Floridablanca, Pampanga while the premises were being secured by the petitioner's security guards.

NABCOR proved the loss of the properties through witnesses (specifically: Eduardo Male, Allan A. Javellana, and Pacita I. Santos) and the following documentary evidence, namely: (a) the petitioner's letter dated February 2, 1995 addressed to NABCOR on the loss of the tractor;<sup>6</sup> (b) the spot report of the petitioner's security guard Baguio;<sup>7</sup> (c) the 1993 year-end inventory dated October 29, 1993 of the furniture and equipment located at FNAS, in Floridablanca, Pampanga;<sup>8</sup> and (d) the FNAS inventory report for 1994.<sup>9</sup>

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<sup>2</sup> Id. at 61-62 (Annex F).

<sup>3</sup> Id. at 45 (Annex D).

<sup>4</sup> Id. at 1-5.

<sup>5</sup> Id. at 69-73.

<sup>6</sup> Id. at 220 (Exhibits 7).

<sup>7</sup> Id. at 221 (Exhibits 7-a).

<sup>8</sup> Id. at 222 to 227 (Exhibits 8 to 8-F).

<sup>9</sup> Id. at 228 to 229 (Exhibits 9 to 9-a).

On August 31, 1998, the RTC rendered judgment,<sup>10</sup> holding the petitioner liable for the loss of the furniture and equipment valued at ₱13,850.00 upon its finding that the petitioner's security guard assigned at FNAS in Floridablanca, Pampanga had been negligent in the performance of his duties, but exonerating her for the loss of the tractor at the Caliraya Farm because of an insuperable cause consisting in the forcible abduction of her security guard by four armed men that had prevented him from performing his duties.<sup>11</sup> It ruled that the value of ₱13,850.00 for the lost furniture and equipment should be deducted from NABCOR's collectible obligations of ₱431,933.83, decreeing thusly:

WHEREFORE, decision is hereby rendered ordering defendant to pay plaintiff the sum of ₱418,083.84 with legal interest from the filing of the complaint until fully paid; ₱50,000.00 as and for attorney's fees; and costs.

SO ORDERED.<sup>12</sup>

On appeal, NABCOR ascribed to the RTC the following errors, namely:

1. THE COURT A QUO ERRED IN NOT FINDING THE GUARDS OF PLAINTIFF-APPELLEE TERESITA C. ESMERALDA NEGLIGENT.

2. THE COURT A QUO ERRED IN NOT UPHOLDING DEFENDANT-APPELLANT NABCOR'S RIGHT TO OFF-SET ALL THE LOSSES IT SUSTAINED DUE TO THE NEGLIGENCE OF PLAINTIFF'S GUARDS.

3. THE COURT A QUO ERRED IN NOT FINDING PLAINTIFF-APPELLEE NOT LIABLE TO DEFENDANT-APPELLANT UNDER ITS COUNTERCLAIM.<sup>13</sup>

On March 25, 2004, the CA modified the judgment of the RTC by declaring that the negligence of the petitioner's security guard assigned at the Caliraya Farm had also caused the loss of the tractor; hence, NABCOR's counterclaim for the value of all the properties lost or missing should be set off against its liabilities in her favor.<sup>14</sup> The CA disposed thusly:

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<sup>10</sup> CA rollo, pp. 49-54.

<sup>11</sup> Id. at 53.

<sup>12</sup> Id. at 54.

<sup>13</sup> Rollo, p. 43.

<sup>14</sup> Id. at 41-48; penned by Associate Justice Mariano C. Del Castillo (now a Member of the Court), with the concurrence of Associate Justice Rodrigo V. Cosico and Associate Justice Vicente Q. Roxas.

WHEREFORE, the assailed Decision is SET ASIDE. The Complaint filed by Teresita C. Esmeralda, doing business under the name and style Supreme Investigation and Security Services is DISMISSED. She is ordered to pay National Agribusiness Corporation the amount of Php331,961.16 representing the balance of the value of its missing property.

SO ORDERED.<sup>15</sup>

In this appeal, the petitioner contends that: (1) there was no valid and clear evidence of actual property loss; (2) the lost properties were not owned by NABCOR but by its subsidiaries; hence, the losses could not be the liability of the petitioner; and (3) the losses, if any, were not attributable to the negligence of the petitioner's security guards.

In its comment,<sup>16</sup> NABCOR counters that the petition for review did not comply with Rule 45 of the *Rules of Court* because it did not set forth a question of law.

In its reply,<sup>17</sup> the petitioner posits that the Court has the power to review the acts of the CA because it unjustifiably went beyond its authority for not according due respect to the RTC's conclusions and findings of facts.

### **Ruling of the Court**

The appeal lacks merit.

#### **1.**

#### **The Court may review the judgment of the CA because this case came under an exception**

NABCOR argues that this appeal, which raises the issues of the sufficiency of the evidence proving the loss and of whether the loss of the tractor had been due to the negligence of the petitioner's security guard, deserves outright denial for raising questions of fact not reviewable in a petition for *certiorari*.

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<sup>15</sup> Id. at 47.

<sup>16</sup> Id. at 85-92.

<sup>17</sup> Id. at 99-103.

We cannot sustain NABCOR's argument.

Under Section 1, Rule 45 of the *Rules of Court*, an appeal by petition for review on *certiorari* is confined only to questions of law. This is because the Court is not a trier of facts. The Court has 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, the same must not involve an examination of the probative value of the evidence presented by the litigants or by any of them. The resolution of the issue must rest solely on what the law is on the given set of circumstances.

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.<sup>18</sup> Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.

In view of the foregoing, the findings of fact of the CA, when supported by substantial evidence, are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions, namely: (1) when the conclusion is a finding grounded entirely on speculation, surmises and 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) when the findings 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 petitioners' main and reply briefs are not disputed by the respondents; and (10) when the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.<sup>19</sup>

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<sup>18</sup> *Republic v. Malabanan*, G.R. No. 169067, October 6, 2010, 632 SCRA 338, 345.

<sup>19</sup> *Vda. De Daya v. Heirs of Gavino Robles*, G. R. No. 174830, July 31, 2009, 594 SCRA 621, 627; citing *Ontimare, Jr. v. Elep*, G.R. No. 159224, January 20, 2006, 479 SCRA 257, 265.

This appeal falls under one of the foregoing exceptions, considering that the findings of the CA on negligence were contrary to those of the RTC.

2.

**The losses of property during the term of the contract  
were the personal liability of the petitioner;  
the counterclaim for set-off was warranted**

There being no dispute about NABCOR's liability for unpaid service fees and their amounts, this appeal turns on the counterclaim of NABCOR for set-off. The petitioner has denied her liability for the value of the lost properties on three grounds, to wit: (1) there was no valid and clear evidence of actual loss; (2) the lost properties were not owned by NABCOR; and (3) the loss was not attributable to the negligence or dereliction of duty of her security guards.

We affirm the assailed decision of the CA.

The foundation for NABCOR's counterclaim is paragraph 8 of the contract of security services, which states:

AGENCY assumes full responsibilities for all losses and/or damages that may be incurred and/or suffered by the CLIENT, provided that such loss or losses occurred or was sustained while the assigned security guard(s) was/were on duty or on tour of duty, and provided further that such loss and or losses could have been attributed to the negligence or dereliction of duty of the assigned security guards. CLIENT is hereby authorized to apply in payment for any such loss incurred and/or sustained, any and all amounts due the AGENCY under and by virtue of this Contract.<sup>20</sup>

This provision, which is clear and unambiguous on its terms, rendered the petitioner liable for every loss of personal property under the care and watch of her security guards if the loss occurred from or due to the negligence of the security guards.

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<sup>20</sup> Records, p. 9 (Annex A-2).

On the sufficiency of evidence on the actual loss of the properties, both the RTC and the CA found in favor of NABCOR. We sustain their findings because they were supported by the testimonial and documentary evidence of NABCOR, including the incident report on the loss prepared by the petitioner's own employees.<sup>21</sup> To find otherwise would grossly disrespect the appreciation by the trial and the appellate courts of the evidence adduced during the trial.

Both the RTC and the CA passed upon and unanimously resolved in favor of NABCOR whether or not the lost properties were owned by NABCOR. Assailing their factual findings, the petitioner argues that the CA had "seriously erred by considering the alleged lost properties as under the responsibility of petitioner despite the clear admission of respondent's own officers that they are owned by other entities." She thereby refers to NABCOR's subsidiaries, Philippine Genetic, Inc. (PGI) and Agro Livestock Commercial Development Corporation (ALCDC), the former being the owner of the tractor in question, and the latter being the owner of the lost personal properties in FNAS in Floridablanca, Pampanga.

The fact that NABCOR and its subsidiaries, PGI and ALCDC, had separate and distinct personalities did not make the petitioner any less liable for the loss of the personal properties. The FNAS in Floridablanca, Pampanga and the Stock Farm in Caliraya, Laguna were sites of NABCOR's projects. The personal properties lost in the sites were used in furtherance of NABCOR's projects. NABCOR, the holding company, and PGI and ALCDC, the subsidiaries, were really engaged in joint projects in NABCOR's project sites. Their institutional relationship included all the internal arrangements whereby NABCOR managed the projects by providing the needed administrative and finance services, and, in turn, the subsidiaries paid for such services. Although PGI and ALCDC held the legal title over the lost properties, NABCOR possessed the properties pursuant to its internal arrangements with the subsidiaries. Hence, the Court will not now review and reopen the findings there being sufficient factual and legal bases for the lower courts to make them.

Moreover, the findings of liability for the loss of properties were also based on the admission in the petitioner's complaint and on her documentary evidence to the effect that her security guards had provided security services in the NABCOR central office, and other places of

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<sup>21</sup> Id. at 220-221 (Exhibits 7 and 7-A).

business, including the project sites in FNAS in Floridablanca, Pampanga, and in the Caliraya Farm in Laguna. The ownership of the properties was not raised as an issue. What was submitted was instead whether or not properties were lost from the premises covered by the contract of security services between the parties.

Anent whether or not the loss of the tractor was attributable to the negligence or dereliction of duty of the petitioner's security guard was contrary to the findings of the RTC, a review of the findings of fact thereon is proper in this appeal.

To the CA, the "evidence is sufficient to hold [the petitioner] negligent and liable for the loss of subject pieces of property".<sup>22</sup> In contrast, the RTC resolved the issue in favor of the petitioner by relying solely on the report that the "security guard assigned to the Caliraya Farm, a certain Lito Baguio, was in the evening of 18 January 1995 kidnapped by four armed men and was rescued only on the following day."<sup>23</sup> Appreciating the reported kidnapping as a fact, the RTC concluded that the security guard had been "prevented by insuperable cause from performing his duties."<sup>24</sup>

The testimony of Eduardo Male detailing the incident at the Caliraya Stock Farm in the morning of January 19, 1995 validated the fact that the assigned guard on duty was not at his post when the incident happened, and that the tractor was no longer in the premises when Male arrived. The incident report the petitioner had submitted to NABCOR through the letter dated February 2, 1995 confirmed the fact that the loss of the farm tractor happened at the time the security guard was deployed by the petitioner in the premises subject of its contract for security services with NABCOR, viz.:

Noong Petsa Jan. 18, 1995, may nangyari oras alas 6:30 ng gabi. Sa ating pwesto sa PGI na kinuha ako ng apat na lalaking armado na may hawak na baril Cal. 45 at M-14 at dinala ako sa malayong lugar. At ginapos nila ang dalawang kamay ko at paa. Sa isang puno ng kahoy at magdamag akong nakagapos doon at kina umagahan po may napadaan po na matandang lalaki at yong po ang sumaklolo sa akin. Na nag alis sa

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<sup>22</sup> Supra note 14, at 43.

<sup>23</sup> Rollo, p. 66.

<sup>24</sup> Id.

akin ng tali sa kamay ko at paa. Pagdating ko sa pwesto wala na po yong tractor at yero at mga iba pa pati po yong mga damit ko po. Ito po ang mga pangyayari doon sa aking pwesto. Kaya po umuwi na dahil ako pinagbantahan na kapag nakita pa ako doon sa pwesto papatayin nila ako kaya po ako natakot dahil madami sila. Halos isang barrio sila.<sup>25</sup>

NABCOR's evidence thereby convincingly established the failure of the petitioner to secure the Caliraya Stock Farm considering that the incident report partook of the nature of an admission against the petitioner's interest.<sup>26</sup> An admission against interest is made by a party to a litigation or by one in privity with or identified in legal interest with such party, and is admissible whether or not the declarant is available as a witness.<sup>27</sup> On the other hand, a declaration against interest is made by a person who is neither a party nor in privity with a party to the suit. Although such declaration is in the nature of secondary evidence, it constitutes an exception to the hearsay rule, and is admissible only when the declarant is unavailable as a witness.<sup>28</sup>

The incident report was a written admission to the effect that Lito Baguio had been the assigned security guard on duty on the night of January 18, 1995, and that he had not been at his post from 6:30 p.m. until the following morning. Such admission substantiated the dereliction of duty of the security guard because it indicated his abandonment of his post at the time of the incident that Male had witnessed.

The credence accorded to NABCOR's evidence became the basis for the CA to add that-

xxx assuming, without admitting, that Mr. Baguio was indeed abducted and thus, prevented from guarding the tractor, he should have immediately reported the commission of the crime to the police authorities. An official investigation would have been conducted and the arrest of the perpetrators could have been effected. This is the standard procedure in such a case and it is justified to presume that Mr. Baguio knew of such fact since he is a person employed in providing security services. Thus, his failure to act in this manner still constitutes negligence.<sup>29</sup>

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<sup>25</sup> Records, p. 221.

<sup>26</sup> Section 38, Rule 130 of the *Rules of Court*.

<sup>27</sup> *Lazaro v. Agustin*, G.R. No. 152364, April 15, 2010, 618 SCRA 298, 308; citing *Unchuan v. Lozada*, G.R. No. 172671, April 16, 2009, 585 SCRA 421, 435.

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

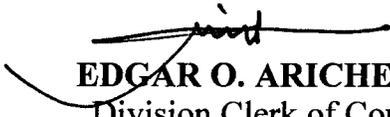
<sup>29</sup> *Supra* note 14, at 45.

Accordingly, the counterclaim of NABCOR to set off the value of the properties lost against the petitioner's claim for unpaid security services was warranted. Although NABCOR did not directly own the lost properties, it nonetheless had the right to recover the value of the losses and to set such value off against the petitioner's claim because NABCOR would ultimately be liable to PGI for ₱13,850.00 as the value of its lost furniture and equipment stored at FNAS; and to ALCDC for ₱750,000.00 as the value of the lost farm tractor stored at the Caliraya Property.

**WHEREFORE**, the Court **AFFIRMS** the decision promulgated on March 25, 2004, subject to the **MODIFICATION** that the respondent shall hold the value of the lost properties in trust for its subsidiaries Philippine Genetic, Inc. and Agro Livestock Genetic, Inc. and Agro Livestock Commercial Development Corporation; and **ORDERS** the petitioner to pay the costs of suit.

**SO ORDERED."**

Very truly yours,

  
**EDGAR O. ARICHETA**  
Division Clerk of Court

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