Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. No. 126204 November 20, 2001

NATIONAL POWER CORPORATION, petitioner,
vs.
PHILIPP BROTHERS OCEANIC, INC., respondent.

SANDOVAL-GUTIERREZ, *J.*:

Where a person merely uses a right pertaining to him, without bad faith or intent to injure, the fact that damages are thereby suffered by another will not make him liable.[1]

This principle finds useful application to the present case.

Before us is a petition for review of the Decision[2] dated August 27, 1996 of the Court of Appeals affirming in toto the Decision[3] dated January 16, 1992 of the Regional Trial Court, Branch 57, Makati City.

The facts are:

On May 14, 1987, the National Power Corporation (NAPOCOR) issued invitations to bid for the supply and delivery of 120,000 metric tons of imported coal for its Batangas Coal-Fired Thermal Power Plant in Calaca, Batangas. The Philipp Brothers Oceanic, Inc. (PHIBRO) prequalified and was allowed to participate as one of the bidders. After the public bidding was conducted, PHIBRO's bid was accepted. NAPOCOR's acceptance was conveyed in a letter dated July 8, 1987, which was received by PHIBRO on July 15, 1987.The "Bidding Terms and Specifications"[4] provide for the manner of shipment of coals, thus:

"SECTION V

SHIPMENT

> The winning TENDERER who then becomes the SELLER shall arrange and provide gearless bulk carrier for the shipment of coal to arrive at discharging port on or before thirty (30) calendar days after receipt of the Letter of Credit by the SELLER or its nominee as per Section XIV hereof to meet the vessel arrival schedules at Calaca, Batangas, Philippines as follows:
>
> 60,000 +/ - 10 % July 20, 1987

60,000 +/ - 10% September 4, 1987"[5]

On July 10, 1987, PHIBRO sent word to NAPOCOR that industrial disputes might soon plague Australia, the shipment's point of origin, which could seriously hamper PHIBRO's ability to supply the needed coal.[6] From July 23 to July 31, 1987, PHIBRO again apprised NAPOCOR of the situation in Australia, particularly informing the latter that the ship owners therein are not willing to load cargo unless a "strike-free" clause is incorporated in the charter party or the contract of carriage.[7] In order to hasten the transfer of coal, PHIBRO proposed to NAPOCOR that they equally share the burden of a "strike-free" clause. NAPOCOR refused.

On August 6, 1987, PHIBRO received from NAPOCOR a confirmed and workable letter of credit. Instead of delivering the coal on or before the thirtieth day after receipt of the Letter of Credit, as agreed upon by the parties in the July contract, PHIBRO effected its first shipment only on November 17, 1987.

Consequently, in October 1987, NAPOCOR once more advertised for the delivery of coal to its Calaca thermal plant. PHIBRO participated anew in this subsequent bidding. On November 24, 1987, NAPOCOR disapproved PHIBRO's application for pre-qualification to bid for not meeting the minimum requirements.[8] Upon further inquiry, PHIBRO found that the real reason for the disapproval was its purported failure to satisfy NAPOCOR's demand for damages due to the delay in the delivery of the first coal shipment.

This prompted PHIBRO to file an action for damages with application for injunction against NAPOCOR with the Regional Trial Court, Branch 57, Makati City.[9] In its complaint, PHIBRO alleged that NAPOCOR's act of disqualifying it in the October 1987 bidding and in all subsequent biddings was tainted with malice and bad faith. PHIBRO prayed for actual, moral and exemplary damages and attorney's fees.

In its answer, NAPOCOR averred that the strikes in Australia could not be invoked as reason for the delay in the delivery of coal because PHIBRO itself admitted that as of July 28, 1987 those strikes had already ceased. And, even assuming that the strikes were still ongoing, PHIBRO should have shouldered the burden of a "strike-free" clause because their contract was "C and F Calaca, Batangas, Philippines," meaning, the *cost* and *freight* from the point of origin until the point of destination would be for the account of PHIBRO. Furthermore, NAPOCOR claimed that due to PHIBRO's failure to deliver the coal on time, it was compelled to purchase coal from ASEA at a higher price. NAPOCOR claimed for actual damages in the amount of P12,436,185.73, representing the increase in the price of coal, and a claim of P500,000.00 as litigation expenses.[10]

Thereafter, trial on the merits ensued.

On January 16, 1992, the trial court rendered a decision in favor of PHIBRO, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff Philipp Brothers Oceanic Inc. (PHIBRO) and against the defendant National Power Corporation (NAPOCOR) ordering the said defendant NAPOCOR:

1. To reinstate Philipp Brothers Oceanic, Inc. (PHIBRO) in the defendant National Power Corporation's list of accredited bidders and allow PHIBRO to participate in any and all future tenders of National Power Corporation for the supply and delivery of imported steam coal;

2. To pay Philipp Brothers Oceanic, Inc. (PHIBRO);

a. The peso equivalent at the time of payment of $864,000 as actual damages,

b. The peso equivalent at the time of payment of $100,000 as moral damages;

c. The peso equivalent at the time of payment of $50,000 as exemplary damages;

d. The peso equivalent at the time of payment of $73,231.91 as reimbursement for expenses, cost of litigation and attorney's fees;

3. To pay the costs of suit;

4. The counterclaims of defendant NAPOCOR are dismissed for lack of merit.

SO ORDERED."[11]

Unsatisfied, NAPOCOR, through the Solicitor General, elevated the case to the Court of Appeals. On August 27, 1996, the Court of Appeals rendered a Decision affirming in toto the Decision of the Regional Trial Court. It ratiocinated that:

"There is ample evidence to show that although PHIBRO's delivery of the shipment of coal was delayed, the delay was in fact caused by a) Napocor's own delay in opening a workable letter of credit; and b) the strikes which plaqued the Australian coal industry from the first week of July to the third week of September 1987. Strikes are included in the definition of force *majeure* in Section XVII of the Bidding Terms and Specifications, (*supra*), so Phibro is not liable for any delay caused thereby.

Phibro was informed of the acceptance of its bid on July 8, 1987. Delivery of coal was to be effected thirty (30) days from Napocor's opening of a confirmed and workable letter of credit. Napocor was only able to do so on August 6, 1987.

By that time, Australia's coal industry was in the middle of a seething controversy and unrest, occasioned by strikes, overtime bans, mine stoppages. The origin, the scope and

the effects of this industrial unrest are lucidly described in the uncontroverted testimony of James Archibald, an employee of Phibro and member of the Export Committee of the Australian Coal Association during the time these events transpired.

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The records also attest that Phibro periodically informed Napocor of these developments as early as July 1, 1987, even before the bid was approved. Yet, Napocor did not forthwith open the letter of credit in order to avoid delay which might be caused by the strikes and their after-effects.

"Strikes" are undoubtedly included in the force *majeure* clause of the Bidding Terms and Specifications (*supra*). The renowned civilist, Prof. Arturo Tolentino, defines force *majeure* as "an event which takes place by accident and could not have been foreseen." (Civil Code of the Philippines, Volume IV, Obligations and Contracts, 126, [1991]) He further states:

> "Fortuitous events may be produced by two general causes: (1) by Nature, such as earthquakes, storms, floods, epidemics, fires, etc., and (2) by the act of man, such as an armed invasion, attack by bandits, governmental prohibitions, robbery, etc."

Tolentino adds that the term generally applies, broadly speaking, to natural accidents. In order that acts of man such as a strike, may constitute fortuitous event, it is necessary that they have the force of an imposition which the debtor could not have resisted. He cites a parallel example in the case of *Philippine National Bank v. Court of Appeals*, 94 SCRA 357 (1979), wherein the Supreme Court said that the outbreak of war which prevents performance exempts a party from liability.

Hence, by law and by stipulation of the parties, the strikes which took place in Australia from the first week of July to the third week of September, 1987, exempted Phibro from the effects of delay of the delivery of the shipment of coal."[12]

Twice thwarted, NAPOCOR comes to us via a petition for review ascribing to the Court of Appeals the following errors:

I

"Respondent Court of Appeals gravely and seriously erred in concluding and so holding that PHIBRO's delay in the delivery of imported coal was due to NAPOCOR's alleged delay in opening a letter of credit and to force *majeure*, and not to PHIBRO's own deliberate acts and faults."[13]

II

"Respondent Court of Appeals gravely and seriously erred in concluding and so holding that NAPOCOR acted maliciously and unjustifiably in disqualifying PHIBRO from participating in the December 8, 1987 and future biddings for the supply of imported coal despite the existence of valid grounds therefor such as serious impairment of its track record."[14]

III

"Respondent Court of Appeals gravely and seriously erred in concluding and so holding that PHIBRO was entitled to injunctive relief, to actual or compensatory, moral and exemplary damages, attorney's fees and litigation expenses despite the clear absence of legal and factual bases for such award."[15]

IV

"Respondent Court of Appeals gravely and seriously erred in absolving PHIBRO from any liability for damages to NAPOCOR for its unjustified and deliberate refusal and/or failure to deliver the contracted imported coal within the stipulated period."[16]

V

"Respondent Court of Appeals gravely and seriously erred in dismissing NAPOCOR's counterclaims for damages and litigation expenses."[17]

It is axiomatic that only questions of law, not questions of fact, may be raised before this Court in a petition for review under Rule 45 of the Rules of Court.[18] The findings of facts of the Court of Appeals are conclusive and binding on this Court[19] and they carry even more weight when the said court affirms the factual findings of the trial court.[20] Stated differently, the findings of the Court of .Appeals, by itself, which are supported by substantial evidence, are almost beyond the power of review by this Court.[21]

With the foregoing settled jurisprudence, we find it pointless to delve lengthily on the factual issues raised by petitioner. The existence of strikes in Australia having been duly established in the lower courts, we are left only with the burden of determining whether or not NAPOCOR acted wrongfully or with bad faith in disqualifying PHIBRO from participating in the subsequent public bidding.

Let us consider the case in its proper perspective.

The Court of Appeals is justified in sustaining the Regional Trial Court's decision exonerating PHIBRO from any liability for damages to NAPOCOR as it was clearly established from the evidence, testimonial and documentary, that what prevented PHIBRO from complying with its obligation under the July 1987 contract was the industrial disputes which besieged Australia during that time. Extant in our Civil Code is the rule that no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable.[22] This

means that when an obligor is unable to fulfill his obligation because of a fortuitous event or force *majeure*, he cannot be held liable for damages for non-performance.[23]

In addition to the above legal precept, it is worthy to note that PHIBRO and NAPOCOR explicitly agreed in Section XVII of the "Bidding Terms and Specifications"[24] that "neither seller (PHIBRO) nor buyer (NAPOCOR) shall be liable for any delay in or failure of the performance of its obligations, other than the payment of money due, if any such delay or failure is due to Force *Majeure*." Specifically, they defined force *majeure* as "any disabling cause beyond the control of and without fault or negligence of the party, which causes may include but are not restricted to Acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; governmental restrictions; strikes, fires, floods, wars, typhoons, storms, epidemics and quarantine restrictions."

The law is clear and so is the contract between NAPOCOR and PHIBRO. Therefore, we have no reason to rule otherwise.

However, proceeding from the premise that PHIBRO was prevented by force *majeure* from complying with its obligation, does it necessarily follow that NAPOCOR acted unjustly, capriciously, and unfairly in disapproving PHIBRO's application for pre-qualification to bid?

First, it must be stressed that NAPOCOR was not bound under any contract to approve PHIBRO's pre-qualification requirements. In fact, NAPOCOR had expressly reserved its right to reject bids. The Instruction to Bidders found in the "Post-Qualification Documents/Specifications for the Supply and Delivery of Coal for the Batangas Coal-Fired Thermal Power Plant I at Calaca, Batangas Philippines,"[25] is explicit, thus:

> "IB-17 RESERVATION OF NAPOCOR TO REJECT BIDS
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> NAPOCOR reserves the right to reject any or all bids, to waive any minor informality in the bids received. *The right is also reserved to reject the bids of any bidder who has previously failed to properly perform or complete on time any and all contracts for delivery of coal or any supply undertaken by a bidder*."[26] (Emphasis supplied)

This Court has held that where the right to reject is so reserved, the lowest bid or any bid for that matter may be rejected on a mere technicality.[27] And where the government as advertiser, availing itself of that right, makes its choice in rejecting any or all bids, the losing bidder has no cause to complain nor right to dispute that choice unless an unfairness or injustice is shown. Accordingly, a bidder has no ground of action to compel the Government to award the contract in his favor, nor to compel it to accept his bid. Even the lowest bid or any bid may be rejected.[28] In *Celeste v. Court of Appeals*,[29] we had the occasion to rule:

> "Moreover, paragraph 15 of the Instructions to Bidders states that *'the Government hereby reserves the right to reject any or all bids submitted*.' In the case of A.C. Esguerra and Sons v. Aytona, 4 SCRA 1245, 1249 (1962), we held:

'x x x [I]n the invitation to bid, there is a condition imposed upon the bidders to the effect that the bidders shall be subject to the right of the government to reject any and all bids subject to its discretion. Here *the government has made its choice, and unless an unfairness or injustice is shown, the losing bidders have no cause to complain*, nor right to dispute that choice.'

Since there is no evidence to prove bad faith and arbitrariness on the part of the petitioners in evaluating the bids, we rule that the private respondents are not entitled to damages representing lost profits." (Emphasis supplied)

Verily, a reservation of the government of its right to reject any bid, generally vests in the authorities a wide discretion as to who is the best and most advantageous bidder. The exercise of such discretion involves inquiry, investigation, comparison, deliberation and decision, which are quasi-judicial functions, and when honestly exercised, may not be reviewed by the court.[30] In *Bureau Veritas v. Office of the President*,[31] we decreed:

"*The discretion to accept or reject a bid and award contracts is vested in the Government agencies entrusted with that function. The discretion given to the authorities on this matter is of such wide latitude that the Courts will not interfere therewith, unless it is apparent that it is used as a shield to a fraudulent award*. (*Jalandoni v. NARRA*, 108 Phil. 486 [1960]) x x x. The exercise of this discretion is a policy decision that necessitates prior inquiry, investigation, comparison, evaluation, and deliberation. This task can best be discharged by the Government agencies concerned, not by the Courts. The role of the Courts is to ascertain whether a branch or instrumentality of the Government has transgresses its constitutional boundaries. But the Courts will not interfere with executive or legislative discretion exercised within those boundaries. Otherwise, it strays into the realm of policy decision-making. x x x." (Emphasis supplied)

Owing to the discretionary character of the right involved in this case, the propriety of NAPOCOR's act should therefore be judged on the basis of the general principles regulating human relations, the forefront provision of which is Article 19 of the Civil Code which provides that "every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."[32] Accordingly, a person will be protected only when he acts in the legitimate exercise of his right, that is, when he acts with prudence and in good faith; but not when he acts with negligence or abuse.[33]

Did NAPOCOR abuse its right or act unjustly in disqualifying PHIBRO from the public bidding?

We rule in the negative.

In practice, courts, in the sound exercise of their discretion, will have to determine under all the facts and circumstances when the exercise of a right is unjust, or when there has been an abuse of right.[34]

We went over the record of the case with painstaking solicitude and we are convinced that NAPOCOR's act of disapproving PHIBRO's application for pre-qualification to bid was without any intent to injure or a purposive motive to perpetrate damage. Apparently, NAPOCOR acted on the strong conviction that PHIBRO had a "seriously-impaired" track record. NAPOCOR cannot be faulted from believing so. At this juncture, it is worth mentioning that at the time NAPOCOR issued its subsequent Invitation to Bid, i.e., October 1987, PHIBRO had not yet delivered the first shipment of coal under the July 1987 contract, which was due on or before September 5, 1987. Naturally, NAPOCOR is justified in entertaining doubts on PHIBRO's qualification or capability to assume an obligation under a new contract.

Moreover, PHIBRO's actuation in 1987 raised doubts as to the real situation of the coal industry in Australia. It appears from the records that when NAPOCOR was constrained to consider an offer from another coal supplier (ASEA) at a price of US$33.44 per metric ton, PHIBRO unexpectedly offered the immediate delivery of 60,000 metric tons of Ulan steam coal at US$31.00 per metric ton for arrival at Calaca, Batangas on September 20-21, 1987."[35] Of course, NAPOCOR had reason to ponder — *how come PHIBRO could assure the immediate delivery of 60,000 metric tons of coal from the same source to arrive at Calaca not later than September 20/21, 1987 but it could not deliver the coal it had undertaken under its contract*?

Significantly, one characteristic of a fortuitous event, in a legal sense, and consequently in relations to contracts, is that "the concurrence must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner."[36] Faced with the above circumstance, NAPOCOR is justified in assuming that, may be, there was really no fortuitous event or force *majeure* which could render it impossible for PHIBRO to effect the delivery of coal. Correspondingly, it is also justified in treating PHIBRO's failure to deliver a serious impairment of its track record. That the trial court, thereafter, found PHIBRO's unexpected offer actually a result of its desire to minimize losses on the part of NAPOCOR is inconsequential. In determining the existence of good faith, the yardstick is the frame of mind of the actor at the time he committed the act, disregarding actualities or facts outside his knowledge. We cannot fault NAPOCOR if it mistook PHIBRO's unexpected offer a mere attempt on the latter's part to undercut ASEA or an indication of PHIBRO's inconsistency. The circumstances warrant such contemplation.

That NAPOCOR believed all along that PHIBRO's failure to deliver on time was unfounded is manifest from its letters[37] reminding PHIBRO that it was bound to deliver the coal within 30 days from its (PHIBRO's) receipt of the Letter of Credit, otherwise it would be constrained to take legal action. The same honest belief can be deduced from NAPOCOR's Board Resolution, thus:

> "*On the legal aspect, Management stressed that failure of PBO to deliver under the contract makes them liable for damages, considering that the reasons invoked were not valid. The measure of the damages will be limited to actual and compensatory damages*. However, it was reported that Philipp Brothers advised they would like to have continuous business relation with NPC so they are willing to sit down or even proposed

that the case be submitted to the Department of Justice as to avoid a court action or arbitration.

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On the technical-economic aspect, Management claims that if PBO delivers in November 1987 and January 1988, there are some advantages. If PBO reacts to any legal action and fails to deliver, the options are: one, to use 100% Semirara and second, to go into urgent coal order. The first option will result in a 75 MW derating and oil will be needed as supplement. *We will stand to lose around P30 M*. On the other hand, if NPC goes into an urgent coal order, there will be an additional expense of $786,000 or P16.11 M, considering the price of the latest purchase with ASEA. *On both points, reliability is decreased*."[38]

The very purpose of requiring a bidder to furnish the awarding authority its pre-qualification documents is to ensure that only those "responsible" and "qualified" bidders could bid and be awarded with government contracts. It bears stressing that the award of a contract is measured not solely by the smallest amount of bid for its performance, but also by the "responsibility" of the bidder. Consequently, the integrity, honesty, and trustworthiness of the bidder is to be considered. An awarding official is justified in considering a bidder not qualified or not responsible if he has previously defrauded the public in such contracts or if, on the evidence before him, the official bona fide believes the bidder has committed such fraud, *despite the fact that there is yet no judicial determination to that effect*.[39] Otherwise stated, if the awarding body bona fide believes that a bidder has seriously impaired its track record because of a particular conduct, it is justified in disqualifying the bidder. This policy is necessary to protect the interest of the awarding body against irresponsible bidders.

Thus, one who acted pursuant to the sincere belief that another willfully committed an act prejudicial to the interest of the government cannot be considered to have acted in bad faith. Bad faith has always been a question of intention. It is that corrupt motive that operates in the mind. As understood in law, it contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill-will or for ulterior purpose.[40] While confined in the realm of thought, its presence may be ascertained through the party's actuation or through circumstantial evidence.[41] The circumstances under which NAPOCOR disapproved PHIBRO's pre-qualification to bid do not show an intention to cause damage to the latter. The measure it adopted was one of self-protection. Consequently, we cannot penalize NAPOCOR for the course of action it took. NAPOCOR cannot be made liable for actual, moral and exemplary damages.

Corollarily, in awarding to PHIBRO actual damages in the amount of $864,000, the Regional Trial Court computed what could have been the profits of PHIBRO had NAPOCOR allowed it to participate in the subsequent public bidding. It ruled that "PHIBRO would have won the tenders for the supply of about 960,000 metric tons out of at least 1,200,000 metric tons" from the public bidding of December 1987 to 1990. We quote the trial court's ruling, thus:

". . . PHIBRO was unjustly excluded from participating in at least five (5) tenders beginning December 1987 to 1990, for the supply and delivery of imported coal with a total volume of about 1,200,000 metric tons valued at no less than US$32 Million. (Exhs. "AA," "AA-1-1," to "AA-2"). The price of imported coal for delivery in 1988 was quoted in June 1988 by bidders at US$41.35 to US$43.95 per metric ton (Exh. "JJ"); in September 1988 at US$41.50 to US$49.50 per metric ton (Exh. "J-1"); in November 1988 at US$39.00 to US$48.50 per metric ton (Exh. "J-2") and for the 1989 deliveries, at US$44.35 to US$47.35 per metric ton (Exh. "J-3") and US$38.00 to US$48.25 per metric ton in September 1990 (Exh. "JJ-6" and "JJ-7"). PHIBRO would have won the tenders for the supply and delivery of about 960,000 metric tons of coal out of at least 1,200,000 metric tons awarded during said period based on its proven track record of 80%. *The Court, therefore finds that as a result of its disqualification, PHIBRO suffered damages equivalent to its standard 3% margin in 960,000 metric tons of coal at the most conservative price of US$30,000 per metric ton, or the total of US$864,000 which PHIBRO would have earned had it been allowed to participate in biddings in which it was disqualified and in subsequent tenders for supply and delivery of imported coal*."

We find this to be erroneous.

Basic is the rule that to recover actual damages, the amount of loss must not only be capable of proof but must actually be proven with reasonable degree of certainty, premised upon competent proof or best evidence obtainable of the actual amount thereof.[42] A court cannot merely rely on speculations, conjectures, or guesswork as to the fact and amount of damages. Thus, while indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain,[43] it is imperative that the basis of the alleged unearned profits is not too speculative and conjectural as to show the actual damages which may be suffered on a future period.

In *Pantranco North Express, Inc. v. Court of Appeals*,[44] this Court denied the plaintiff's claim for actual damages which was premised on a contract he was about to negotiate on the ground that there was still the requisite public bidding to be complied with, thus:

"As to the alleged contract he was about to negotiate with Minister Hipolito, there is no showing that the same has been awarded to him. If Tandoc was about to negotiate a contract with Minister Hipolito, there was no assurance that the former would get it or that the latter would award the contract to him since there was the requisite public bidding. *The claimed loss of profit arising out of that alleged contract which was still to be negotiated is a mere expectancy. Tandoc's claim that he could have earned P2 million in profits is highly speculative and no concrete evidence was presented to prove the same*. The only unearned income to which Tandoc is entitled to from the evidence presented is that for the one-month period, during which his business was interrupted, which is P6,125.00, considering that his annual net income was P73,500.00."

In *Lufthansa German Airlines v. Court of Appeals*,[45] this Court likewise disallowed the trial court's award of actual damages for unrealized profits in the amount of US$75,000.00 for being highly speculative. It was held that "the realization of profits by respondent . . . was not a certainty, but depended on a number of factors, foremost of which was his ability to invite investors and *to win the bid*." This Court went further saying that actual or compensatory damages cannot be presumed, but must be duly proved, and proved with reasonable degree of certainty.

And in *National Power Corporation v. Court of Appeals*,[46] the Court, in denying the bidder's claim for unrealized commissions, ruled that even if NAPOCOR does not deny its (bidder's) claims for unrealized commissions, and that these claims have been transmuted into judicial admissions, these admissions cannot prevail over the rules and regulations governing the bidding for NAPOCOR contracts, which necessarily and inherently include the reservation by the NAPOCOR of its right to reject any or all bids.

The award of moral damages is likewise improper. To reiterate, NAPOCOR did not act in bad faith. Moreover, moral damages are not, as a general rule, granted to a corporation.[47] While it is true that besmirched reputation is included in moral damages, it cannot cause mental anguish to a corporation, unlike in the case of a natural person, for a corporation has no reputation in the sense that an individual has, and besides, it is inherently impossible for a corporation to suffer mental anguish.[48] In *LBC Express, Inc. v. Court of Appeals*,[49] we ruled:

> "Moral damages are granted in recompense for physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. A corporation, being an artificial person and having existence only in legal contemplation, has no feelings, no emotions, no senses; therefore, it cannot experience physical suffering and mental anguish. Mental suffering can be experienced only by one having a nervous system and it flows from real ills, sorrows, and griefs of life — all of which cannot be suffered by respondent bank as an artificial person."

Neither can we award exemplary damages under Article 2234 of the Civil Code. Before the court may consider the question of whether or not exemplary damages should be awarded, the plaintiff must show that he is entitled to moral, temperate, or compensatory damages.

NAPOCOR, in this petition, likewise contests the judgment of the lower courts awarding PHIBRO the amount of $73,231.91 as reimbursement for expenses, cost of litigation and attorney's fees.

We agree with NAPOCOR.

This Court has laid down the rule that in the absence of stipulation, a winning party may be awarded attorney's fees only in case plaintiff's action or defendant's stand is so untenable as to amount to gross and evident bad faith.[50] This cannot be said of the case at bar. NAPOCOR is justified in resisting PHIBRO's claim for damages. As a matter of fact, we partially grant the

prayer of NAPOCOR as we find that it did not act in bad faith in disapproving PHIBRO's pre-qualification to bid.

Trial courts must be reminded that attorney's fees may not be awarded to a party simply because the judgment is favorable to him, for it may amount to imposing a premium on the right to redress grievances in court. We adopt the same policy with respect to the expenses of litigation. A winning party may be entitled to expenses of litigation only where he, by reason of plaintiff's clearly unjustifiable claims or defendant's unreasonable refusal to his demands, was compelled to incur said expenditures. Evidently, the facts of this case do not warrant the granting of such litigation expenses to PHIBRO.

At this point, we believe that, in the interest of fairness, NAPOCOR should give PHIBRO another opportunity to participate in future public bidding. As earlier mentioned, the delay on its part was due to a fortuitous event.

But before we dispose of this case, we take this occasion to remind PHIBRO of the indispensability of coal to a coal-fired thermal plant. With households and businesses being entirely dependent on the electricity supplied by NAPOCOR, the delivery of coal cannot be venturesome. Indeed, public interest demands that one who offers to deliver coal at an appointed time must give a reasonable assurance that it can carry through. With the deleterious possible consequences that may result from failure to deliver the needed coal, we believe there is greater strain of commitment in this kind of obligation.

WHEREFORE, the decision of the Court of Appeals in CA-G.R. CV No. 126204 dated August 27, 1996 is hereby MODIFIED. The award, in favor of PHIBRO, of actual, moral and exemplary damages, reimbursement for expenses, cost of litigation and attorney's fees, and costs of suit, is DELETED.

SO ORDERED.

Vitug, Panganiban and Carpio, JJ., concur.

Dissenting Opinions

MELO, *J.*, dissenting:

While I agree with the majority opinion insofar as it finds that the delay in delivery of coal by respondent Philipp Brothers Oceanic, Inc. (hereafter PHIBRO) to petitioner National Power Corporation (hereafter NAPOCOR) was not due to the former's fault, I have to dissent from the majority insofar as it denies the award of actual, moral, and exemplary damages to PHIBRO for the latter's act of excluding PHIBRO from participating in biddings conducted by NAPOCOR.

The facts are undisputed.

On July 8, 1987, private respondent PHIBRO, one of the largest trading firms in energy worldwide, was awarded by NAPOCOR the contract to supply 120,000 MT of steam coal for the Batangas Coal Fired Thermal Power Plant, the same to be delivered in two (2) equal shipments on July 20 and September 14, 1987.

However, while the contract provided for the arrival schedule of the two coal shipments, it also provided that PHIBRO had to effect delivery not later than 30 days from receipt of the letter of credit to be opened by NAPOCOR. Petitioner NAPOCOR was able to open its letter of credit only on August 6, 1987. Moreover, the contract had a clause which excused any delay occasioned by *force majeure*. This clause included strikes as one of the events to be considered as constituting *force majeure*.

From July to September 1987, a series of strikes in the collieries in New South Wales (NSW), Australia, and the coal loading facility at Newcastle Port took place, which adversely affected PHIBRO's ability to deliver the first shipment on time.

Pursuant to the contract, PHIBRO notified NAPOCOR of these *force majeure* conditions and that as a result of the strikes, vessels were not readily available and shipowners were unwilling to load cargo unless a strike-free risk was incorporated in the charter party.

PHIBRO proposed an equal sharing in the strike-free risk, but NAPOCOR refused. Instead, it demanded delivery of the first shipment not later than 30 days from the opening of its letter of credit.

In the meantime, NAPOCOR negotiated to buy from a company called ASEA 60,000MT imported steam coal at US$33.00/MT. This higher priced coal was purchased by NAPOCOR despite PHIBRO's offer for the same tonnage and delivery date at only US$31.00/MT, a price differential of US$2.00/MT. The PHIBRO offer was with the understanding that the existing 120,000MT contract would be delivered in accordance with a shipping schedule to be mutually agreed between PHIBRO and NAPOCOR, taking into account the strikes and NAPOCOR's needs. NAPOCOR ignored the offer and bought the higher priced material from ASEA.

In October 1987, NAPOCOR conducted a tender for the supply of 180,000 MT imported coal. PHIBRO, as in prior tenders, complied with all prequalification requirements of the tender. However, NAPOCOR disqualified PHIBRO allegedly for "not meeting the minimum prequalification requirements." PHIBRO was also refused the tender documents. In addition, NAPOCOR, in total disregard of the *force majeure* clause incorporated in the July 8, 1987 contract, demanded that unless its claims for damages due to the delayed delivery of the coal in said contract were first settled, PHIBRO would not be allowed to participate in any and all subsequent tenders to be conducted by NAPOCOR for the supply of imported coal. On November 25, 1987, PHIBRO protested the wrongful and unjust action taken by NAPOCOR inasmuch as PHIBRO had all the qualifications and none of the disqualifications. PHIBRO

demanded that it be provided with tender and post qualification documents but NAPOCOR withheld the release of tender documents to PHIBRO. After, inquiry, PHIBRO was told that the real reason for the disqualification was not its "failure to meet the minimum prequalification requirements," but was principally the claim of NAPOCOR for alleged damages due to the delayed delivery of the first shipment of the July 8, 1987 contract. PHIBRO, on the other hand, maintained that its delayed deliveries were due to *force majeure* and NAPOCOR's delayed opening of its letter of credit. Despite this, however, NAPOCOR continued to bar PHIBRO from participating in tenders.

Consequently, PHIBRO initiated suit before the Makati Regional Trial Court on December 4, 1987 against NAPOCOR, docketed therein as Civil Case No. 18473, complaining against the latter's alleged capricious, malevolent, iniquitous, discriminatory, oppressive and unjustified disqualification of PHIBRO, and asking for damages and that NAPOCOR be enjoined from blacklisting PHIBRO in the subsequent NAPOCOR tenders.

After trial on the merits, the Makati Regional Trial Court, Branch 57, rendered its Decision on January 16, 1992 in favor of PHIBRO and against NAPOCOR, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff Philipp Brothers Oceanic, Inc. (PHIBRO) and against the defendant National Power Corporation (NAPOCOR) ordering the said defendant NAPOCOR:
>
> 1. To reinstate Philipp Brothers Oceanic, Inc. (PHIBRO) in the defendant National Power Corporation's list of accredited bidders and allow PHIBRO to participate in any and all future tenders of National Power Corporation for the supply and delivery of imported steam coal;
>
> 2. To pay Philipp Brothers Oceanic, Inc. (PHIBRO):
>
> a) The peso equivalent at the time of payment of $864,000 actual damages;
>
> b) The peso equivalent at the time of payment of $100,000 as moral damages;
>
> c) The peso equivalent at the time of payment of $50,000 as exemplary damages;
>
> d) The peso equivalent at the time of payment of $73,231.91 as reimbursement for expenses, cost of litigation and attorney's fees;
>
> 3. To pay the costs of suit;
>
> 4. The counterclaim of defendant NAPOCOR are dismissed for lack of merit.

On January 27, 1992, the Office of the Solicitor General appealed the lower court's decision to the Court of Appeals. The appeal, docketed therein as CA-G.R. CV No. 37906, was decided on August 27, 1996 with the appellate court handing down an affirmance of the decision.

Petitioner NAPOCOR now comes to this Court by way of a petition for review by certiorari under Rule 45 of the Rules of Court seeking to review, reverse, and set aside the aforementioned decision.

Petitioner alleges that the Court of Appeals committed serious errors of law, overlooked certain substantial facts which if properly considered would affect the results of the case, drew incorrect conclusions from facts established by evidence or based on misapprehension of facts, its factual findings being incomplete and do not reflect the actual events that, transpired and the important points were left out and decided the case in a way not in accord with law or the applicable decisions of this Court, which collectively amount to grave abuse of discretion, to the damage and prejudice of petitioner's right to due process. Specifically, petitioner maintains that the Court of Appeals gravely and seriously erred:

> (1) in concluding and so holding that PHIBRO's delay in the delivery of imported coal was due to NAPOCOR's alleged delay in opening letter of credit to *force majeure*, and not to PHIBRO's own deliberate acts and faults;
>
> (2) in concluding and so holding that NAPOCOR acted maliciously and unjustifiably in disqualifying PHIBRO from participating in the December 8, 1987 and future biddings for the supply of imported coal despite the existence of valid grounds therefore such as serious impairment of its track record;
>
> (3) in concluding and so holding that PHIBRO was entitled to injunctive relief, to actual or compensatory, moral and exemplary damages, attorney's fees and litigation expenses despite the clear absence of legal and factual bases for such award;
>
> (4) in absolving PHIBRO from any liability for damages to NAPOCOR for its unjustified and deliberate refusal and/or failure to deliver the contracted imported coal within the stipulated period; and
>
> (5) in dismissing NAPOCOR's counterclaims for damages and litigation expenses.

As correctly pointed out in the majority opinion, the rules are explicit that a petition under Rule 45 of the Rules of Court can raise only questions of law (Section 1, Rule 45, 1997 Rules of Civil Procedure). PHIBRO's delay in the delivery of imported coal was found by both the trial court and the Court of Appeals to have been due to the industrial unrest, occasioned by strikes and work stoppages, that occurred in Australia from the first week of July to the third week of September, 1987. As aptly observed by the Court of Appeals:

> There is ample evidence to show that although PHIBRO's delivery of the shipment of coal was delayed, the delay was in fact caused by a) NAPOCOR's own delay in opening a workable letter of credit; and b) the strikes which plagued the Australian coal industry from the first week of July to the week of September, 1987. Strikes are included in the definition of *force majeure* in Section XVII of the Bidding Terms and Specifications, (*supra*), so PHIBRO is not liable for any delay caused thereby.
>
> PHIBRO was informed of the acceptance of its bid on July 8, 1987. Delivery of coal was to be effected thirty (30) days from NAPOCOR's opening of a confirmed and workable letter of credit. NAPOCOR was only able to do so on August 6, 1987.

By that time, Australia's coal industry was in the middle of a seething controversy and unrest, occasioned by strikes, overtime bans, and mine stoppages.

The general rule is that findings of fact of the Court of Appeals are binding and conclusive upon this Court (*DBP vs. CA*, 302 SCRA 362 [1999]). These factual findings carry even more weight when said court affirms the factual findings of the trial court (*Lagrosa vs. CA*, 312 SCRA 298 [1999]). Thus, it is beyond question that PHIBRO's delay in the delivery of coal is not attributable to its fault or negligence, these being the factual findings of both the trial court and the appellate court.

However, despite this finding, the majority would find NAPOCOR free from liability to PHIBRO for its act of excluding the PHIBRO from NAPOCOR's subsequent biddings on the ground that the exclusion is merely the legitimate exercise of a right vested in NAPOCOR. In fine, The majority opinion would characterize PHIBRO's exclusion as *damnum absque injuria*. I beg to disagree.

The majority opinion anchors its thesis on the Instruction to Bidders found in the "Post-Qualification Documents/Specifications for the Supply and Delivery of Coal for the Batangas Coal-Fired Thermal Power Plant I at Calaca, Batangas, Philippines" providing that:

> NAPOCOR reserves the right to reject any and all bids, to waive any minor informality in the bids received. The right is also reserved to reject the bids of any bidder who has previously failed to properly perform or complete on time any and all contracts for delivery of coal or any supply undertaken by a bidder.
>
> (Original Records, p. 250.)

My esteemed colleagues declare that since NAPOCOR has reserved the right to reject the bid of any bidder, the exclusion of PHIBRO was, in effect, only the use by NAPOCOR of a right pertaining to it, without bad faith or intent to injure and that the fact that PHIBRO may have suffered injuries thereby would not make NAPOCOR liable. The majority opinion goes on to state that where the government rejects any or all bids, the losing bidder has no cause to

complain and that accordingly, "a bidder has no ground of action to compel the Government to award the contract in his favor, nor to compel it to accept his bid."

I would wish to point out the following circumstances which I believe were ignored by the majority.

Firstly, the instant case does not involve the rejection of PHIBRO's bid by NAPOCOR. The fact is that PHIBRO was not even allowed to bid by NAPOCOR. While it may be true that any bid may be rejected on a mere technicality if the right to reject is reserved, there is a whale of a difference between rejecting a bid and excluding a prospective bidder from participating in tenders, more so in this case where the prospective bidder has complied with all the prequalification requirements. Indubitably, the reservation of the right to reject any and all bids does not include the right to exclude a prospective bidder, perforce a qualified one at that.

Secondly, the reservation of the right to reject bids contained in the Instruction to Bidders is of doubtful applicability in this case since PHIBRO was not even allowed to submit a bid by NAPOCOR. The right to reject a bid implies that there was a bid submitted. In this case, PHIBRO was barred from submitting bids for subsequent tenders of NAPOCOR.

Thirdly, this is not a simple case of rejecting a bid but one of barring participation in any and all subsequent bids for the supply of coal. This barring of PHIBRO caused the latter to incur damages, all because of what both the trial court and the Court of Appeals viewed to be an unfounded imputation of delay to PHIBRO in the July 8, 1987 contract for delivery of coal.

As adverted to earlier, this delay was covered by the *force majeure* clause of the contract which validly excused the non-compliance with the specified delivery date. The situation was further exacerbated to private respondent's disadvantage when NAPOCOR, instead of accepting PHIBRO's offer to shoulder half the burden of a strike free clause, used the non-delivery on time of the coal as an excuse to exclude private respondent from future bidding processes at NAPOCOR. Thus, the Court of Appeals correctly found that:

> Under the factual milieu, the. court *a quo* correctly made an award of damages to PHIBRO for Napocor's malicious and unjustified act of disqualifying it from any and all subsequent bids for the supply of coal. It was sufficiently established that Phibro was entitled to an amount of US$864,000.00 representing unrealized profits or *lucro cessante*. Article 2200 of the Civil Code provides:
>
> > "Article 2200. Indemnification for damages shall comprehend not only the value for the loss suffered, but also that of the profits when the obligee failed to obtain."
>
> Undoubtedly, PHIBRO could have earned the questioned amount if NAPOCOR did not unjustly discriminate against it during the October, 1987 bidding and all other bidding subsequent thereto. . . .

Moreover, private respondent's business reputation and credibility in the market greatly suffered because of this malicious act of petitioner. As attested to by Vicente del Castillo:

> Q. In addition to loss of earnings and opportunity loss which you quantified earlier to be in the range of 770,000.00, what other damage, if any, did Philip Brothers incur?
>
> A. Well, when we were blacklisted by the National Power Corporation, it became known to the international market, and with such an unfair reputation, we had difficulty in obtaining business, new clients since our old clients know what kind of company we are and they continued to do business with us, and our business with Ulan Coal Mines for market other than the Philippines became difficult and we could no longer do business that we used to before this problem came about.
>
> (TSN, January 31, 1989, pp. 50-51.)

Furthermore, James Archibald, an employee of PHIBRO and a member of the Export Committee of the Australia Coal Association, stated in his deposition, thus:

> NBP Can you please state what affect the banning of NPC of PHIBRO tendering a supply of coal has had on PHIBRO?
>
> JMA Well, it ended the special relationship between Phibro and Ulan for a start out now I am in the cost trading business and I can tell you that when you loss a significant portion of your throughout like that the industry is extremely incestuous and everybody known very quickly that you have not been so successful as your past years which makes it that much more difficult to gain support from supplier in bidding for other spot contracts.
>
> NBP Can you explain what you mean by incestuous?
>
> JMA It is a very tight industry. Most people have worked in it in a number of companies such as myself, with deals with some markets such as Japan, we have actually joint negotiations and we actually go in to customers, on a collective needs. It is inevitable that we get to know each other very well. Also at the port of Newcastle, ten per cent of the coal shipped is actually traded amongst the various shippers because often one shipper maybe short say ten thousand tonnes for a particular cargo and they would buy in or swap coal with other shippers. A very common port practice. So you know everybody quite well. And also I am a representative of the Coal Association so I may have had a lot more exposure to the people in the industry.
>
> (Exh. (CC-30, 30-31.)

Despite the favorable findings of the lower court and the Court of Appeals attributing no fault to PHIBRO, the harm done to PHIBRO's good standing in the market by the blacklisting of NAPOCOR, at least as far as Philippine setting is concerned, has already beer done. Thus, I believe that the court *a quo*, as sustained by the Court of Appeals, correctly made the following findings:

> PHIBRO is therefore entitled to damages for the discriminatory, oppressive and unjustified disqualification imposed upon it by NAPOCOR. PHIBRO was unjustly excluded from participating in at least five (5) tenders beginning December 1987 to 1990, for the supply and delivery of imported coal with a total volume of about 1,200,00 metric tons valued at no less than US$32 Million (Exhs. "AA", "AA-1", to "AA-2"). The price of imported coal for delivery in 1988 was quoted in June 1988 by bidders at US$41.35 to US$43.95 per metric ton (Exh. "JJ"); in September 1988 at US$41.50 to US$49.50 per metric ton (Exh. J-1); in November 1988 at US$39.00 to US$48.50 per metric ton (Exh. "J-2"); and for the 1989 deliveries, at US$44.35 to US$47.35 per metric ton (Exh. "J-3") and US$38.00 to US$48.25 per metric ton in September 1990 (Exhs. "JJ-6" and "JJ-7"). PHIBRO would have won the tenders for the supply and delivery of about 960,000 metric tons of coal out of at least 1,200,000 metric tons awarded during said period based on its proven track record of 80%. The Court, therefore, finds that as a result of its disqualification, PHIBRO suffered damages equivalent to its standard 3% margin in 960,000 metric tons of coal at the most conservative price of US$30.00 per metric ton, or the total of US$864,000 which PHIBRO would have earned had it been allowed to participate in biddings in which it was disqualified and in subsequent tenders for supply and delivery of imported coal.
>
> There is likewise uncontested or unrefuted evidence that as a result of PHIBRO's disqualification by NAPOCOR, PHIBRO suffered damages in its international reputation and lost credibility in Government and business circle, and hence an award is authorized by Art. 2205 of our Civil Code.

For the damage done to the business reputation of PHIBRO, I respectfully submit that the Court of Appeals was likewise correct in sustaining the award of US$100,000.00 as moral damages to private respondent — a corporate body — under Article 2217 of the Civil Code.

The Court, in a number of cases (*i.e. Asset Privatization Trust vs. CA, 300 SCRA 579 [1998]; Maersk Tabacalera Shipping Agency (Filipina), Inc. vs. CA*, 197 SCRA 646 [1991]), has sustained the award of moral damages to a corporation despite the general rule that moral damages cannot be awarded to an artificial person which has no feelings, emotions or senses, and which cannot experience physical suffering and mental anguish (*LBC Express Inc. vs. CA*, 236 SCRA 602 [1994]; see also *Solid Homes, Inc. vs. CA*, 275 SCRA 267 [1997]) because a corporation may have a good reputation which, if besmirched, may also be a ground for the award of moral damages (*Mambulao Lumber Co. vs. PNB*, 22 SCRA 359 [1968]). Thus, in the case of *Simex International (Manila), Inc. vs. CA* (183 SCRA 360 [1990]), the Court held:

> From every viewpoint except that of the petitioner's, its claim of moral damages in the amount of Php1,000,000.00 is nothing short of preposterous. Its business certainly is not that big, or its name that prestigious, to sustain such an extravagant pretense. Moreover, a corporation is not as a rule entitled to moral damages because, not being a natural person, it cannot experience physical suffering or such sentiments as wounded feelings, serious anxiety, mental anguish and moral shock. The only exception to this rule is where the corporation has a good reputation that is debased, resulting in its social humiliation.
>
> We shall recognize that the petitioner did suffer injury because of the private respondent's negligence that caused the dishonor of the checks issued by it. The immediate consequence was that its prestige was impaired because of the bouncing checks and confidence in it as a reliable debtor was diminished. The private respondent makes much of the one instance when the petitioner was sued in a collection case, but that did not prove that it did not have a good reputation that could not be marred, more so since that case was ultimately settled. It does not appear that, as the private respondent would portray it, the petitioner is an unsavory and disreputable entity that has no good name to protect.
>
> Considering all this, we feel that the award of nominal damages in the sum of Php20,000.00 was not the proper relief to which the petitioner was entitled. Under Article 2221 of the Civil Code, "nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him." As we have found that the petitioner has indeed incurred loss through the fault of the private respondent, the proper remedy is the award to it of moral damages, which we impose, in our discretion, in the same amount of Php20,000.00.

It must be noted that trial courts are generally given discretion to determine the amount of moral damages, the same being incapable of pecuniary estimation. The Court of Appeals can only modify or change the amount awarded when they are palpably or scandalously excessive so as to indicate that it was the result of passion, prejudice or corruption on the part of the trial court. In the case at bar, the conclusive finding of the Court of Appeals of petitioner's malice and bad faith justify the award of both moral and exemplary damages. As held in *De Guzman vs. NLRC*, (211 SCRA 723 [1992]):

> When moral damages are awarded, exemplary damages may also be decreed. Exemplary damages are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages. According to the Code Commission, "exemplary damages are required by public policy, for wanton acts must be suppressed. They are an antidote so that the poison of wickedness may not run through the body politic." These damages are legally assessible against him.

In addition, NAPOCOR's baseless and unwarranted discrimination against PHIBRO constrained the latter to seek the aid of the courts in order to obtain redress. This calls for an award of attorney's fees, which the lower court correctly made.

Consequently, I vote to dismiss the petition and to affirm the decision of the Court of Appeals.

Footnotes

[1] Tolentino, Civil Code of the Philippines, Vol. I, 1997, p. 67.

[2] Rollo, pp. 53-69.

[3] Rollo, pp. 70-80.

[4] Records, pp. 86-110.

[5] Records. p. 90.

[6] Plaintiff's Exhibits, Part I, Exhibit "C," p. 66.

[7] *Ibid*., Exhibits "D," "E," "F," "G," "H," "I," pp. 67-73.

[8] Records, p. 180.

[9] Records, pp. 6-23.

[10] Records, pp. 187-197.

[11] Rollo, p. 80.

[12] Rollo, pp. 59-63.

[13] Rollo, p. 27.

[14] Rollo, pp. 37-38.

[15] Rollo, p.42.

[16] Rollo, p.45.

[17] Rollo, p. 47.

[18] *Tinio v. Manzano*, 307 SCRA 460 (1999); *Siguan v. Lim*, 318 SCRA 725 (1999); and *National Steel Corporation v. Court of Appeals*, 283 SCRA 45 (1997).

[19] *Security Bank and Trust Company v. Triumph Lumber and Construction Corporation*, 301 SCRA 537 (1999) *American Express International, Inc. v. Court of Appeals*, 308 SCRA 65 (1999).

[20] *Borromeo v. Sun*, 317 SCRA 176 (1999); *Boneng v. People*, 304 SCRA 252 (1999).

[21] *Pimentel v. Court of Appeals*, 307 SCRA 38 (1999).

[22] Article 1174 of the Civil Code.

[23] Tolentino, Civil Code of the Philippines, Volume IV, 1997 Ed., p. 128.

[24] Records, p. 24.

[25] Records, p. 234, 279.

[26] Records, p. 250.

[27] A Treatise on Government Contracts Under Philippine Law, Fernandez, Jr., 1996 Ed. p. 28.

[28] *A.C. Esguerra & Sons v. Aytona*, 4 SCRA 1245 (1962).

[29] 209 SCRA 79 (1992).

[30] *Virata v. Bocar*, 50 SCRA 468 (1973); *Jalandoni v. NARRA*, 108 Phil. 486 (1960).

[31] 205 SCRA 705 (1992).

[32] The classical theory is that "he who uses a right inures no one." Traditionally, therefore, it has been a settled doctrine that no person can be held liable for damages occasioned to another by the exercise of a right. The modern tendency, therefore, is to depart from the classical and traditional theory, and to grant indemnity for damages in cases where there is an abuse of right, even when the act is not illicit. Law cannot be given an anti-social effect. If mere fault or negligence in one's act can make him liable for damages for injury caused thereby, with more reason should abuse or bad faith make him liable.

[33] Tolentino, Civil Code of the Philippines, Vol. I, 1997, pp. 61-62.

There is an abuse of right when it is exercised only for the purpose of prejudicing or injuring another. When the objective of the actor is illegitimate, the illicit act cannot be concealed under the guise of exercising a right.

[34] *Ibid*., p. 62.

[35] Plaintiff's Exhibit, Part I, p. 120.

[36] Tolentino, Civil Code of the Philippines, Vol. IV, 1997, p. 128.

[37] Dated August 11, 1987, August 27, 1987, September 8, 1987 and September 14, 1987, Defendant's Exhibits, p. 27.

[38] Part I, Plaintiff's Exhibit, pp. 178-179.

[39] Cobach, Lucenario, Law on Public Bidding and Government Contracts, pp. 92-93. Citing 28 Corn. L.Q. 44; *Douglas v. Commonwealth*, 108 Pa. 559 (1885); *Jacobson v. Board of Education*, 64 A. 609 (N.J. 1906).

[40] *Air France v. Carrascoso*, 18 SCRA 155 (1966).

[41] *Vda. de Laig v. Court of Appeals*, 82 SCRA 294 (1978).

[42] *PNOC Shipping and Transport Corporation v. Court of Appeals*, 297 SCRA 402 (1998).

[43] Article 2200 of the Civil Code of the Philippines.

[44] 224 SCRA 477 (1993).

[45] 243 SCRA 600 (1995).

[46] 273 SCRA 420 (1997).

[47] *Sea Commercial Company, Inc. v. Court of Appeals*; (G.R. No. 122823, November 25, 1999).

[48] Agbayani, Commentaries and Jurisprudence on the Commercial Laws of the Philippines, 1996 Edition, Vol. 3, p. 17; *Tamayo v. University of Negros Occidental*, 58 OG No. 37, p. 6023, September 10, 1962, *citing Memphis Telephone Co. v. Cumberland Telephone and Telegraph Co*., 145 Fed. 906 and other cases cited in 52 ALR 1192-3 and 90 ALR 1180-1.

[49] 236 SCRA 602 (1994); See also *Acme Shoe, Rubber & Plastic Corp. v. Court of Appeals*, 260 SCRA 714 (1996).

[50] *Jimenez v. Bucoy*, 103 Phil. 40 (1958); *Castillo v. Samonte*, 106 Phil. 1023 (1960).