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THIRD DIVISION

[G.R. No. 126204, November 20, 2001]

NATIONAL POWER CORPORATION, PETITIONER, VS. PHILIPP BROTHERS OCEANIC, INC., RESPONDENT.

D E C I S I O N

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:
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> 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 Constracts, 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 foreseeen, 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