

SPECIAL FIRST DIVISION

**[G.R. No. 137147 AND G.R. No. 137148,
November 18, 2003]**

**BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. CARLOS
LEOBRERA AND COURT OF APPEALS, RESPONDENTS.**

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R E S O L U T I O N

YNARES-SANTIAGO, J.:

This resolves the respective motions for reconsideration of the parties in the above-captioned consolidated cases.

G.R. No. 137147 -

In G.R. No. 137147, we rendered a Decision on January 29, 2002, the dispositive portion of which reads:

In view whereof, the Court denies the petition and affirms the decisions of the Court of Appeals (in CA-G.R. CV No. 40988) and the trial court, with the modification that the award of actual damages is reduced to P200,000.00, and P50,000.00 as attorney's fees.

SO ORDERED.^[1]

Both petitioner Bank of the Philippine Islands and respondent Carlos Leobrera filed motions for reconsideration of the aforesaid Decision. In its Motion for Partial Reconsideration/Clarification, petitioner bank raises the following grounds:

- I. THE LOWER COURTS' EXORBITANT AWARD OF ONE MILLION PESOS (P1,000,000.00) MORAL DAMAGES, WHICH WAS NOT CONSIDERED IN THE DECISION OF THIS HONORABLE COURT, SHOULD LIKEWISE BE DELETED IN LINE WITH THE RULING IN G.R. NO. 137148 INVOLVING THE SAME PARTIES.
- II. THE LOWER COURTS' ORDER TO RECONVEY THE FORECLOSED PROPERTIES TO RESPONDENT LEOBRERA SHOULD BE CLARIFIED THAT THEY ARE STILL SUBJECT TO THE REAL ESTATE MORTGAGE EXECUTED BY RESPONDENT LEOBRERA.^[2]

On the other hand, respondent Leobrera relies on the following arguments in his Motion for Reconsideration:

1. THE HONORABLE COURT ERRED IN REDUCING THE AWARD OF ACTUAL DAMAGES FROM ONE MILLION PESOS (P1,000,000.00) AS DECIDED BY THE

COURT OF APPEALS TO TWO HUNDRED THOUSAND PESOS (P200,000.00);
AND

2. THE HONORABLE COURT ERRED IN REDUCING THE AMOUNT OF ATTORNEY'S FEES FROM ONE HUNDRED THOUSAND PESOS (P100,000.00) AS DECIDED BY THE COURT OF APPEALS TO FIFTY THOUSAND PESOS (P50,000.00).^[3]

Petitioner's motion for reconsideration is without merit. The factual bases of the awards of moral damages in this case and in G.R. No. 137148 are different. As the Court of Appeals held in this case, moral damages may be awarded because petitioner bank was guilty of gross negligence and bad faith in dealing with respondent. This was a finding of fact of the trial court and the Court of Appeals which we chose not to disturb.

Indeed, it is axiomatic that in petitions for review on *certiorari*, only questions of law may be raised by the parties and passed upon by this Court. Factual findings of the Court of Appeals are binding and conclusive on the parties and upon this Court and will not be reviewed or disturbed on appeal. The rule admits of certain exceptions, such as: (a) when the findings of fact of the appellate court are at variance with those of the trial court; (b) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties which, if properly considered, would justify a different conclusion; and (c) when the judgment itself is based on a misapprehension of facts.^[4] As we held in the assailed Decision, petitioner failed to prove that the case at bar falls within the exceptions.

Anent the second ground, we agree with respondent's contention that this issue is being raised for the first time. Indeed, the records show that the ruling of the Court of Appeals nullifying the foreclosure of respondent's real estate mortgage and ordering petitioner to reconvey the mortgaged properties to him was not pleaded as an error in the instant petition for review.

As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. To permit petitioner in this case to change its theory on appeal would thus be unfair to respondent, and offend the basic rules of fair play, justice and due process.^[5]

On the other hand, we find merit in respondent's motion for reconsideration.

In order that actual damages may be recovered, the amount actually expended must be substantiated with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party.^[6] As we found in the assailed Decision, the award of P1,000,000.00 as actual damages was not fully supported by evidence; and the loss that respondent was able show was the \$1,763.50 letter of credit and the remittance of \$8,350.94, or a total of

\$10,114.44.

In *C.F. Sharp & Co. v. Northwest Airlines, Inc.*,^[7] it was held:

The repeal of R.A. 529 by R.A. 8183 has the effect of removing the prohibition on the stipulation of currency other than Philippine currency, such that obligations or transactions may now be paid in the currency agreed upon by the parties. Just like R.A. 529, however, the new law does not provide for the applicable rate of exchange for the conversion of foreign currency-incurred obligations in their peso equivalent. It follows, therefore, that the jurisprudence established in R.A. No. 529 regarding the rate of conversion remains applicable. Thus, in *Asia World Recruitment, Inc. v. National Labor Relations Commission* (313 SCRA 1, 17 [1999]), the Court, applying R.A. No. 8183, sustained the ruling of the NLRC that obligations in foreign currency may be discharged in Philippines currency based on the prevailing rate at the time of payment. The wisdom on which the jurisprudence interpreting R.A. No. 529 is based equally holds true with R.A. No. 8183. Verily, it is just and fair to preserve the real value of the foreign exchange-incurred obligation to the date of its payment.^[8]

Hence, the award of actual damages in the assailed Decision needs to be modified. There being no agreement between the parties that obligations shall be paid in United States currency, the amount of actual damages which petitioner should pay to respondent should be the peso equivalent of \$10,114.44 computed at the prevailing exchange rate at the time of payment.

In the matter of attorney's fees, it is well-settled that the award of damages, including attorney's fees, lies upon the discretion of the court in the context of the facts and circumstances of each case.^[9] Considering that this case has been litigated for more than fifteen years, we find that the amount of P100,000.00 as award of attorney's fees and expenses of litigation to respondent is not unreasonable.

G.R. No. 137148 -

In G.R. No. 137148, we rendered a Decision on January 30, 2002 disposing of the case thus:

WHEREFORE, the Court AFFIRMS the decision of the Court of Appeals and the trial court with modifications as follows:

1. Ordering defendant to pay plaintiff the amount of P98,975.00 as actual damages;
2. Ordering defendant to pay plaintiff P30,000.00 as attorney's fees, and costs of suit.

All awards for moral and exemplary damages are deleted.

SO ORDERED.^[10]

Only respondent Leobrera filed a Motion for Reconsideration, contending that: