



Republic of the Philippines  
Supreme Court  
Manila

**THIRD DIVISION**

**SPOUSES CRISANTO ALCAZAR and  
SUSANA VILLAMAYOR,**

Petitioners,

**G.R. No. 177042**

**Present:**

BRION,<sup>\*</sup> J.,  
PERALTA, J., *Acting Chairperson*,<sup>\*\*</sup>  
ABAD,  
MENDOZA, and  
LEONEN, JJ.

- versus -

**EVELYN ARANTE,**

Respondent.

**Promulgated:**

10 December 2012

*Macapian*

X-----X

**DECISION**

**PERALTA, J.:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision<sup>1</sup> of the Court of Appeals (CA) dated November 29, 2006 in CA-G.R. SP No. 88475. The assailed Decision nullified the Decision<sup>2</sup> of the Regional Trial Court (RTC) of Pasig City, Branch 268 in LRC Case No. R-6309. The petition also

<sup>\*</sup> Designated Acting Member, in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1395 dated December 6, 2012.

<sup>\*\*</sup> Per Special Order No. 1394 dated December 6, 2012.

<sup>1</sup> Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Noel G. Tijam and Mariflor P. Punzalan Castillo, concurring; Annex "A" to Petition, *rollo*, pp. 26-38.

<sup>2</sup> Annex "I" to petition, *rollo*, pp. 49-51.

seeks to reverse and set aside the appellate court's March 14, 2007 Resolution<sup>3</sup> denying petitioner's Motion for Reconsideration.

On November 14, 2003, herein petitioner Crisanto Alcazar (hereinafter referred to as Alcazar) filed a Petition for Reconstitution of Lost Owner's Duplicate Copy of Transfer Certificate of Title with the RTC of Pasig City alleging and praying as follows:

x x x x

2. That petitioner is the sole heir of his deceased parents, Emilio Alcazar and Caridad Alcazar, who both died on 12 December 1967 and 04 March 2002, respectively. x x x

3. That said petitioner's parents left a real estate property covered by TCT No. 169526, then registered at the Register of Deeds of the Province of Rizal but was transferred to the Register of Deeds of Pasig City. x x x

4. That the owner's duplicate of said owner's certificate of title was lost on or about April 2003 and have since, the petitioner exerted diligent efforts to recover the same but failed.

5. That the facts of its los[s] are as follows:

Since the demise of the petitioner's mother[,] he has been in his desire to transfer in his name the title of the said property, he being the sole and compulsory heir.

Being unknowledgeable about the procedures, petitioner, who was living in the province, went to the Land Registration Office in Quezon City to inquire about the requirements.

Unfortunately, petitioner was approached by a group [of] individuals who identified themselves as connected with the LRA and they [offered to] help. An[d] to cut the story short, said individuals lured herein petitioner to have the said owner's duplicate of title entrusted to them for alleged transfer. Since then said group of individuals have never seen or contacted with the petitioner's copy of TCT.

6. That said certificate of title has never been pledged or otherwise delivered to any person or entity to guarantee any obligation or for any other purpose.

<sup>3</sup>

Annex "B" to Petition, *rollo*, pp. 39-40.

7. That the fact of its los[s] was reported to the Register of Deeds of Pasig on 28 April 2003 by wa[y] of Affidavit of Los[s].

WHEREFORE, the petitioner respectfully prays this Honorable Court to declare null and void the owner's duplicate of Transfer Certificate of Title No. 169526 which has been lost, and to order and direct the Registrar of Land Titles and Deeds of Pasig City, after payment to him of the fees prescribe by law, to issue in lieu thereof a new owner's duplicate certificate which shall in all respects be entitled to like faith and credit as the original duplicate, in accordance with Section 109 of Act No. 496, as amended by Presidential Decree No. 1529.

x x x x<sup>4</sup>

Acting on the petition, the RTC issued an order which set the case for hearing and directed Alcazar to comply with the statutory requirements of posting. The RTC also ordered that copies of the above order and the petition be furnished the Office of the Solicitor General (OSG), the Office of the City Prosecutor of Pasig and the Register of Deeds of Pasig.

When the case was called for initial hearing on December 9, 2003, there was no appearance from the OSG, Pasig City Registry of Deeds and the Pasig City Prosecutor's Office. Upon Alcazar's motion and there being no opposition, he was allowed to present evidence *ex parte*.

On January 6, 2004, the RTC issued a Decision<sup>5</sup> in favor of Alcazar, the dispositive portion of which reads thus:

WHEREFORE, the owner's duplicate copy of TCT No. 169526 is hereby declared null and void and of no force and effect. The Registry of Deeds for the City of Pasig is hereby directed to issue a new Owner's Duplicate of Transfer Certificate of Title No. 169526 based on the original thereof on file in his office, which shall contain a memorandum of the fact that it was issued in lieu of the lost duplicate and which shall, in all respect[s], be entitled to like faith and credit as the original, for all legal intents and purposes.

x x x x<sup>6</sup>

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<sup>4</sup> Annex "H" to Petition, *rollo*, pp. 47-48.

<sup>5</sup> Annex "I" to Petition, *rollo*, pp. 49-51.

On February 16, 2004, the RTC issued an Entry of Judgment<sup>7</sup> stating that the abovementioned Decision of the RTC became final and executory on February 5, 2004.

On February 8, 2005, herein respondent filed with the CA a Petition for Annulment of Final Decision contending that the RTC, sitting as a land registration court, had no jurisdiction to entertain Alcazar's petition because the subject owner's duplicate certificate of title which was allegedly lost was not, in fact, lost but actually exists, contrary to Alcazar's claim.<sup>8</sup>

Respondent alleged in her petition that on April 4, 2003, petitioners obtained a loan of ₱350,000.00 from her as evidenced by a promissory note; as security for the loan, petitioners executed in respondent's favor a real estate mortgage over a parcel of land located in Pasig City, covered by Transfer Certificate of Title (TCT) No. 169526; simultaneous with the execution of the mortgage contract, Alcazar personally delivered and turned over to respondent the original owner's duplicate copy of TCT No. 169526; respondent did not then see the need to immediately annotate the mortgage with the concerned Register of Deeds; when petitioners subsequently failed to pay their loan, respondent decided to register the mortgage with the Pasig City Register of Deeds; to her surprise, respondent learned that Alcazar had caused to be annotated to the copy of TCT No. 169526 on file with the Pasig Register of Deeds, an affidavit stating the owner's duplicate copy thereof was lost; respondent also learned that Alcazar filed with the RTC of Pasig City a petition for the issuance of a new owner's duplicate copy of the subject TCT in lieu of the allegedly lost one; that the RTC decision granting Alcazar's petition became final on February 5, 2004; that, as a consequence,

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<sup>6</sup> *Id.* at 50.

<sup>7</sup> Annex "J" to Petition, *rollo*, p. 52.

<sup>8</sup> CA *rollo*, pp. 2-14.

TCT No. 169526 was canceled and in lieu thereof TCT No. PT-125372 was issued.<sup>9</sup>

Petitioners filed their Answer claiming that they did not enter into a contract of real estate mortgage with respondent; that the deed evidencing such alleged contract is forged; that during the date that the alleged real estate mortgage contract was executed, they were not yet the absolute owners of the subject property and, thus, cannot mortgage the same.<sup>10</sup>

After the parties filed their Reply<sup>11</sup> and Rejoinder,<sup>12</sup> the CA set the petition for pre-trial conference.<sup>13</sup> Thereafter, the parties were directed to submit their respective memoranda.

On November 29, 2006, the CA promulgated its assailed Decision, disposing as follows:

In the light of the foregoing, the petition having merit in fact and in law is GIVEN DUE COURSE. Resultantly, and as prayed for, the decision of public respondent Regional Trial Court, Branch 268, Pasig City, LRC Case No. R-6309 is hereby ANNULLED and SET ASIDE. Consequently, the new owners['] duplicate copy of TCT No. 169526, in the name of Emilio Alcazar, married to Caridad Alcazar issued by virtue of the said decision of the Regional Trial Court as well as the replacement thereof namely, TCT No. PT-125372 in the name of Crisanto Alcazar married to Susana Villamayor, is hereby declared void and the original duplicate certificate of TCT No. 169526 in the custody and possession of the petitioner, hereby reinstated for all legal intents and purposes.

As regards the claim for damages, We find an award for moral damages justifiable in view of private respondents['] malicious concoctions and fraudulent machinations undoubtedly causing petitioner besmirched reputation, social humiliation and mental anguish. Exemplary damages should likewise be imposed by way of example for the public good and to deter others from following private respondents' wanton and irresponsible actuations against petitioner. And by reason of private respondents[']

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 39-53.

<sup>11</sup> *Id.* at 64-82.

<sup>12</sup> *Id.* at 102-107.

<sup>13</sup> See CA Resolution, *id.* at 109-110.

perjurious and malicious claim[,] petitioner was constrained to retain counsel not only to recover what is rightfully his but more so to protect his good name and reputation, thus payment of attorney's fees is also justified.

Private respondents therefore are further hereby directed to pay jointly and severally, petitioner, the following: (1) ₱30,000.00 as moral damages (2) exemplary damages in the amount of ₱20,000.00 and [(3)] ₱20,000.00 as attorney's fees and to pay the costs.

SO ORDERED.<sup>14</sup>

Herein petitioners-spouses filed a Motion for Reconsideration<sup>15</sup> but the CA denied it in its Resolution dated March 14, 2007.

Hence, the instant petition with the following Assignment of Errors:

I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GIVING CREDENCE TO THE VERSION OF THE PRIVATE RESPONDENTS HEREIN.

II. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT TCT NO. 169526 WAS NEVER LOST OR MISPLACED BY HEREIN PETITIONERS.

III. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT SECTION 109 OF PRESIDENTIAL DECREE (P.D.) NO. 1529 IS NOT APPLICABLE TO HEREIN PETITIONERS.

IV. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE HONORABLE RTC OF PASIG CITY, BRANCH 268 HAD NO JURISDICTION TO ORDER THE ISSUANCE OF TCT NO. PT-125372 IN LIEU OF THE ALLEGED LOST CERTIFICATE OF TITLE.

V. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AWARDING MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES TO THE HEREIN PRIVATE RESPONDENT.<sup>16</sup>

The petition lacks merit.

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<sup>14</sup> Annex "A" to Petition, *rollo*, pp. 36-37.

<sup>15</sup> Annex "N" to Petition, *rollo*, pp. 70-76.

<sup>16</sup> *Rollo*, p. 11.

In their first and second assigned errors, petitioners assail the factual findings of the CA. It is a time-honored principle that in a petition for review on *certiorari* under Rule 45, only questions of law may be raised.<sup>17</sup> It is not this Court's function to analyze or weigh all over again evidence already considered in the proceedings below, as this Court's jurisdiction is limited to reviewing only errors of law that may have been committed by the lower court.<sup>18</sup> The resolution of factual issues is the function of lower courts, whose findings on these matters are received with respect.<sup>19</sup> A question of law which this Court may pass upon must not involve an examination of the probative value of the evidence presented by the litigants.<sup>20</sup>

Thus, as a rule, findings of facts of the CA are conclusive, subject to certain exceptions, to wit: (1) the factual findings of the Court of Appeals and the trial court are contradictory; (2) the findings are grounded entirely on speculation, surmises or conjectures; (3) the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd or impossible; (4) there is grave abuse of discretion in the appreciation of facts; (5) the appellate court, in making its findings, goes beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee; (6) the judgment of the Court of Appeals is premised on a misapprehension of facts; (7) the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; and (8) the findings of fact of the Court of Appeals are contrary to those of the trial court or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on

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<sup>17</sup> *Heirs of Pacencia Racaza v. Spouses Abay-Abay*, G.R. No. 198402, June 13, 2012.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

record.<sup>21</sup> However, this Court finds that none of these exceptions are present in the instant case.

Moreover, the Court finds no cogent reason to depart from the assailed findings of the CA on the following grounds:

*First*, petitioners simply alleged, without any proof, that they did not mortgage the subject property and that respondent and her cohorts defrauded them in obtaining possession of the disputed TCT. However, the rule is well settled that he who alleges a fact has the burden of proving it and a mere allegation is not evidence.<sup>22</sup>

*Second*, the real estate mortgage contract between the parties was notarized. A notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and it has in its favor the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to the falsity of the certificate.<sup>23</sup> Absent such, the presumption must be upheld.<sup>24</sup> The burden of proof to overcome the presumption of due execution of a notarial document lies on the one contesting the same.<sup>25</sup> Furthermore, an allegation of forgery must be proved by clear and convincing evidence, and whoever alleges it has the burden of proving the same.<sup>26</sup> As stated above, petitioners failed to prove their allegations. They merely denied that they did not execute the REM and that the same was a forgery. Certainly, the pieces of evidence presented by respondent weigh more than petitioners' bare claims and denials.

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<sup>21</sup> *Vallacar Transit, Inc. v. Catubig*, G.R. No. 175512, May 30, 2011, 649 SCRA 281, 294.

<sup>22</sup> *Spouses Guidangen v. Wooden*, G.R. No. 174445, February 15, 2012, 666 SCRA 119.

<sup>23</sup> *Ros v. Philippine National Bank-Laoag Branch*, G.R. No. 170166, April 6, 2011, 647 SCRA 334, 343, citing *Pan Pacific Industrial Sales Co., Inc. v. CA*, G.R. No. 125283, February 10, 2006, 482 SCRA 164, 175; 517 Phil. 380, 388-389 (2006).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*



With respect to the third assignment of error, the Court does not agree with petitioners' contention that when respondent and her alleged cohorts supposedly took from them the subject owner's duplicate copy of the TCT through fraud and deceit, the said TCT was considered to have been "lost," in accordance with the provisions of Section 109<sup>27</sup> of Presidential Decree No. 1529.

In construing words and phrases used in a statute, the general rule is that, in the absence of legislative intent to the contrary, they should be given their plain, ordinary and common usage meaning.<sup>28</sup> The words should be read and considered in their natural, ordinary, commonly-accepted and most obvious signification, according to good and approved usage and without resorting to forced or subtle construction.<sup>29</sup> Words are presumed to have been employed by the lawmaker in their ordinary and common use and acceptance.<sup>30</sup> Thus, petitioners should not give a special or technical interpretation to a word which is otherwise construed in its ordinary sense by the law. In the instant case, respondent was able to prove that the subject owner's duplicate copy of the TCT is not lost and is in fact existing and in her possession. Moreover, petitioners admit that they entrusted the subject TCT to respondent. There is, thus, no dispute that the TCT in the possession of respondent is the genuine owner's duplicate copy of the TCT covering the subject property. The fact remains, then, that the owner's duplicate copy of

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<sup>27</sup> Section 109. *Notice and replacement of lost duplicate certificate.* In case of loss or theft of an owner's duplicate certificate of title, due notice under oath shall be sent by the owner or by someone in his behalf to the Register of Deeds of the province or city where the land lies as soon as the loss or theft is discovered. If a duplicate certificate is lost or destroyed, or cannot be produced by a person applying for the entry of a new certificate to him or for the registration of any instrument, a sworn statement of the fact of such loss or destruction may be filed by the registered owner or other person in interest and registered.

Upon the petition of the registered owner or other person in interest, the court may, after notice and due hearing, direct the issuance of a new duplicate certificate, which shall contain a memorandum of the fact that it is issued in place of the lost duplicate certificate, but shall in all respects be entitled to like faith and credit as the original duplicate, and shall thereafter be regarded as such for all purposes of this decree.

<sup>28</sup> *Secretary of Justice v. Koruga*, G.R. No. 166199, April 24, 2009, 586 SCRA 513, 523.

<sup>29</sup> *South African Airways v. Commissioner of Internal Revenue*, G.R. No. 180356, February 16, 2010, 612 SCRA 665, 676 citing *Espino v. Cleofe*, G.R. No. L-33410, July 13, 1973, 52 SCRA 92, 98; 152 Phil. 80, 87 (1973).

<sup>30</sup> Ruben E. Agpalo, *Statutory Construction*, p. 180 (2003).

the certificate of title has not been lost but is in fact in the possession of respondent, with the knowledge of petitioners.

As to the fourth assigned error, the Court agrees with the ruling of the CA that the RTC had no jurisdiction over the action for reconstitution filed by petitioners.

In *Manila v. Gallardo-Manzo*,<sup>31</sup> this Court held:

Lack of jurisdiction as a ground for annulment of judgment refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim. In a petition for annulment of judgment based on lack of jurisdiction, petitioner must show not merely an abuse of jurisdictional discretion but an absolute lack of jurisdiction. Lack of jurisdiction means absence of or no jurisdiction, that is, the court should not have taken cognizance of the petition because the law does not vest it with jurisdiction over the subject matter. Jurisdiction over the nature of the action or subject matter is conferred by law.<sup>32</sup>

As early as the case of *Strait Times, Inc. v. CA*,<sup>33</sup> this Court has held that when the owner's duplicate certificate of title has not been lost, but is in fact in the possession of another person, then the reconstituted certificate is void, because the court that rendered the decision had no jurisdiction.<sup>34</sup> Reconstitution can validly be made only in case of loss of the original certificate.<sup>35</sup> This rule was later reiterated in the cases of *Rexlon Realty Group, Inc. v. Court of Appeals*,<sup>36</sup> *Eastworld Motor Industries Corporation v. Skunac Corporation*,<sup>37</sup> *Rodriguez v. Lim*,<sup>38</sup> *Villanueva v. Vilorio*<sup>39</sup> and *Camitan v. Fidelity Investment Corporation*.<sup>40</sup> Thus, with proof and with the

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<sup>31</sup> G.R. No. 163602, September 7, 2011, 657 SCRA 20.

<sup>32</sup> *Id.* at 30.

<sup>33</sup> G.R. No. 126673, August 28, 1998, 294 SCRA 714; 356 Phil. 217 (1998).

<sup>34</sup> *Id.* at 724; at 227-228.

<sup>35</sup> *Feliciano v. Zaldivar*, G.R. No. 162593, September 26, 2006, 503 SCRA 182, 192; 534 Phil. 280, 293-294 (2006).

<sup>36</sup> G.R. No. 128412, March 15, 2002, 379 SCRA 306; 429 Phil. 31 (2002).

<sup>37</sup> G.R. No. 163994, December 16, 2005, 478 SCRA 420; 514 Phil. 605 (2005).

<sup>38</sup> G.R. No. 135817, November 30, 2006, 509 SCRA 113; 538 Phil. 609 (2006).

<sup>39</sup> G.R. No. 155804, March 14, 2008, 548 SCRA 401.

<sup>40</sup> G.R. No. 163684, April 16, 2008, 551 SCRA 540.

admission of petitioners that the owner's duplicate copy of the TCT was actually in the possession of respondent, the RTC Decision was properly annulled for lack of jurisdiction.

Whether or not respondent came into possession of the said TCT through fraudulent means is not an issue in determining the propriety of canceling the owner's duplicate copy of the subject TCT. Stated differently, granting that respondent obtained possession of the subject TCT through fraud or deceit, the same is not sufficient justification for the court to issue an order declaring the same to be null and void and directing the issuance of a new copy. If petitioners were indeed defrauded, then they could have filed a criminal complaint for estafa against respondent for the alleged fraud and deceit employed upon them. Moreover, petitioners' remedy to recover the title in the possession of respondent should not have been a petition for reconstitution of a lost title but some other form of action such as a suit for specific performance to compel respondent to turn over the owner's duplicate copy of the subject TCT.

Another issue is whether or not the subject lot was already owned by petitioners at the time that it was mortgaged to respondent on April 25, 2003. Petitioners admit in the instant petition that petitioner Alcazar's father died on December 12, 1967, while his mother died on March 4, 2002 and that he is their sole heir. On these bases, the Court agrees with respondent's contention that upon the death of Alcazar's mother in 2002, the latter became the absolute owner of the subject lot by operation of law, pursuant to the provisions of Articles 774<sup>41</sup> and 777<sup>42</sup> of the Civil Code.

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<sup>41</sup> Art. 774. Succession is a mode of acquisition by virtue of which the property, rights and obligations to the extent of the value of the inheritance of a person are transmitted through his death to another or others either by his will or by operation of law.

<sup>42</sup> Art. 777. The rights to the succession are transmitted from the moment of the death of the decedent.

As to the propriety of the award of damages by the CA, this Court again quotes with approval the disquisition of the CA on this matter, to wit:

x x x x

As regards the claim for damages, We find an award for moral damages justifiable in view of private respondents['] [herein petitioners] malicious concoctions and fraudulent machinations undoubtedly causing petitioner [herein respondent] besmirched reputation, social humiliation and mental anguish. Exemplary damages should likewise be imposed by way of example for the public good and to deter others from following private respondents' wanton and irresponsible actuations against petitioner. And by reason of private respondents['] perjurious and malicious claim petitioner was constrained to retain counsel not only to recover what is rightfully his but more so to protect his good name and reputation, thus payment of attorney's fees is also justified.

x x x x<sup>43</sup>

The rule is that in order that moral damages may be awarded, there must be pleading and proof of moral suffering, mental anguish, fright and the like.<sup>44</sup> In the instant case, respondent alleged that he suffered from wounded feelings, sleepless nights and mental anxiety and the CA found that respondent was able to substantiate these claims and allegations. Suffice it to reiterate that the findings of fact of the CA are final and conclusive and this Court will not review them on appeal<sup>45</sup> subject to exceptions,<sup>46</sup> which do not obtain in this case.

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<sup>43</sup> Annex "A" to Petition, *rollo*, pp. 36-37.

<sup>44</sup> *Espino v. Bulut*, G.R. No. 183811, May 30, 2011, 649 SCRA 453, 460, 461.

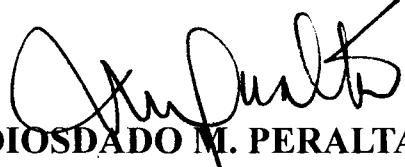
<sup>45</sup> *Co v. Vargas*, G.R. No. 195167, November 16, 2011, 660 SCRA 451, 459.

<sup>46</sup> The jurisdiction of the Court in cases brought before it from the appellate court is limited to reviewing errors of law, and findings of fact of the Court of Appeals are conclusive upon the Court since it is not the Court's function to analyze and weigh the evidence all over again. Nevertheless, in several cases, the Court enumerated the exceptions to the rule that factual findings of the Court of Appeals are binding on the Court: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings 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 petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered,

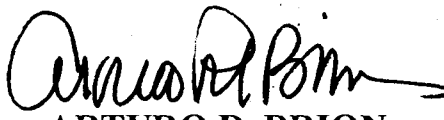
The Court also affirms the award of exemplary damages and attorney's fees. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages.<sup>47</sup> While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded.<sup>48</sup> As correctly pointed out by the CA, respondent is entitled to moral damages. Moreover, since exemplary damages are awarded, attorney's fees may also be awarded in consonance with Article 2208 (1)<sup>49</sup> of the Civil Code.

WHEREFORE, the Court **DENIES** the petition. The Court **AFFIRMS** the November 29, 2006 Decision and the March 14, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 88475.

**SO ORDERED.**

  
**DIOSDADO M. PERALTA**  
Associate Justice

**WE CONCUR:**

  
**ARTURO D. BRION**  
Associate Justice

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would justify a different conclusion. (*Development Bank of the Philippines v. Traders Royal Bank*, G.R. No. 171982, August 18, 2010, 628 SCRA 404, 413-414).

<sup>47</sup> Article 2229, Civil Code of the Philippines.

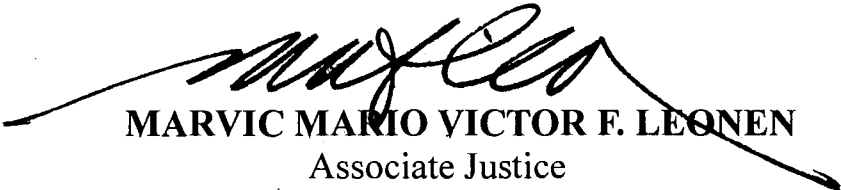
<sup>48</sup> *B.F. Metal (Corporation) v. Lomotan*, G.R. No. 170813, April 16, 2008, 551 SCRA 618, 631.

<sup>49</sup> Article 2208 (1). In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

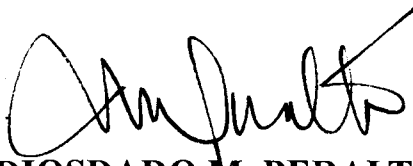
  
**ROBERTO A. ABAD**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice


### ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**DIOSDADO M. PERALTA**  
Associate Justice  
Acting Chairperson, Third Division

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice