Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ALEJANDRO V. TANKEH,
Petitioner,

-versus-

DEVELOPMENT BANK OF THE PHILIPPINES, STERLING SHIPPING LINES, INC., RUPERTO V. TANKEH, VICENTE ARENAS, and ASSET PRIVATIZATION TRUST,
Respondents.

G.R. No. 171428

Present:

VELASCO, JR., *J., Chairperson,*
ABAD,
*VILLARAMA, JR.,
MENDOZA, and
LEONEN, *JJ.*

Promulgated:
November 11, 2013

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DECISION

LEONEN, *J.*:

This is a Petition for Review on *Certiorari*, praying that the assailed October 25, 2005 Decision and the February 9, 2006 Resolution of the Court of Appeals[1] be reversed, and that the January 4, 1996 Decision of the Regional Trial Court of Manila, Branch 32 be affirmed. Petitioner prays that

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* Designated Member per Raffle dated February 4, 2013.
1 C.A. G.R. CV No. 52643.

this Court grant his claims for moral damages and attorney's fees, as proven by the evidence.

Respondent Ruperto V. Tankeh is the president of Sterling Shipping Lines, Inc. It was incorporated on April 23, 1979 to operate ocean-going vessels engaged primarily in foreign trade.[2] Ruperto V. Tankeh applied for a $3.5 million loan from public respondent Development Bank of the Philippines for the partial financing of an ocean-going vessel named the M/V Golden Lilac. To authorize the loan, Development Bank of the Philippines required that the following conditions be met:

1) A first mortgage must be obtained over the vessel, which by then had been renamed the M/V Sterling Ace;
2) Ruperto V. Tankeh, petitioner Dr. Alejandro V. Tankeh, Jose Marie Vargas, as well as respondents Sterling Shipping Lines, Inc. and Vicente Arenas should become liable jointly and severally for the amount of the loan;
3) The future earnings of the mortgaged vessel, including proceeds of Charter and Shipping Contracts, should be assigned to Development Bank of the Philippines; and
4) Development Bank of the Philippines should be assigned no less than 67% of the total subscribed and outstanding voting shares of the company. The percentage of shares assigned should be maintained at all times, and the assignment was to subsist as long as the assignee, Development Bank of the Philippines, deemed it necessary during the existence of the loan.[3]

According to petitioner Dr. Alejandro V. Tankeh, Ruperto V. Tankeh approached him sometime in 1980.[4] Ruperto informed petitioner that he was operating a new shipping line business. Petitioner claimed that respondent, who is also petitioner's younger brother, had told him that petitioner would be given one thousand (1,000) shares to be a director of the business. The shares were worth ₱1,000,000.00.[5]

On May 12, 1981, petitioner signed the Assignment of Shares of Stock with Voting Rights.[6] Petitioner then signed the May 12, 1981 promissory note in December 1981. He was the last to sign this note as far as the other signatories were concerned.[7] The loan was approved by respondent Development Bank of the Philippines on March 18, 1981. The vessel was

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2 *Rollo,* p. 206.
3 Id. at 14.
4 Id, at 14.
5 Id. at 205.
6 Id. at 206.
7 Id. at 206.

acquired on September 29, 1981 for $5.3 million.[8] On December 3, 1981, respondent corporation Sterling Shipping Lines, Inc. through respondent Ruperto V. Tankeh executed a Deed of Assignment in favor of Development Bank of the Philippines. The deed stated that the assignor, Sterling Shipping Lines, Inc.:

> x x x does hereby transfer and assign in favor of the ASSIGNEE (DBP), its successors and assigns, future earnings of the mortgaged M/V "Sterling Ace," including proceeds of charter and shipping contracts, it being understood that this assignment shall continue to subsist for as long as the ASSIGNOR'S obligation with the herein ASSIGNEE remains unpaid.[9]

On June 16, 1983, petitioner wrote a letter to respondent Ruperto V. Tankeh saying that he was severing all ties and terminating his involvement with Sterling Shipping Lines, Inc.[10] He required that its board of directors pass a resolution releasing him from all liabilities, particularly the loan contract with Development Bank of the Philippines. In addition, petitioner asked that the private respondents notify Development Bank of the Philippines that he had severed his ties with Sterling Shipping Lines, Inc.[11]

The accounts of respondent Sterling Shipping Lines, Inc. in the Development Bank of the Philippines were transferred to public respondent Asset Privatization Trust on June 30, 1986.[12]

Presently, respondent Asset Privatization Trust is known as the Privatization and Management Office. Asset Privatization Trust was a government agency created through Presidential Proclamation No. 50, issued in 1986. Through Administrative Order No. 14, issued by former President Corazon Aquino dated February 3, 1987, assets including loans in favor of Development Bank of the Philippines were ordered to be transferred to the national government. In turn, the management and facilitation of these assets were delegated to Asset Privatization Trust, pursuant to Presidential Proclamation No. 50. In 1999, Republic Act No. 8758 was signed into law, and it provided that the corporate term of Asset Privatization Trust would end on December 31, 2000. The same law empowered the President of the Philippines to determine which office would facilitate the management of assets held by Asset Privatization Trust. Thus, on December 6, 2000, former President Joseph E. Estrada signed Executive Order No. 323, creating the Privatization Management Office. Its present function is to identify disposable assets, monitor the progress of privatization activities, and

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8 Id. at 207.
9 Id. at 124.
10 Id. at 207.
11 Id. at 65-66.
12 Id. at 45.

approve the sale or divestment of assets with respect to price and buyer.[13]

On January 29, 1987, the M/V Sterling Ace was sold in Singapore for $350,000.00 by Development Bank of the Philippines' legal counsel Atty. Prospero N. Nograles. When petitioner came to know of the sale, he wrote respondent Development Bank of the Philippines to express that the final price was inadequate, and therefore, the transaction was irregular. At this time, petitioner was still bound as a debtor because of the promissory note dated May 12, 1981, which petitioner signed in December of 1981. The promissory note subsisted despite Sterling Shipping Lines, Inc.'s assignment of all future earnings of the mortgaged M/V Sterling Ace to Development Bank of the Philippines. The loan also continued to bind petitioner despite Sterling Shipping Lines, Inc.'s cash equity contribution of ₱13,663,200.00 which was used to cover part of the acquisition cost of the vessel, pre-operating expenses, and initial working capital.[14]

Petitioner filed several Complaints[15] against respondents, praying that the promissory note be declared null and void and that he be absolved from any liability from the mortgage of the vessel and the note in question.

In the Complaints, petitioner alleged that respondent Ruperto V. Tankeh, together with Vicente L. Arenas, Jr. and Jose Maria Vargas, had exercised deceit and fraud in causing petitioner to bind himself jointly and severally to pay respondent Development Bank of the Philippines the amount of the mortgage loan.[16] Although he had been made a stockholder and director of the respondent corporation Sterling Shipping Lines, Inc., petitioner alleged that he had never invested any amount in the corporation and that he had never been an actual member of the board of directors.[17] He alleged that all the money he had supposedly invested was provided by respondent Ruperto V. Tankeh.[18] He claimed that he only attended one meeting of the board. In that meeting, he was introduced to two directors representing Development Bank of the Philippines, namely, Mr. Jesus Macalinag and Mr. Gil Corpus. Other than that, he had never been notified of another meeting of the board of directors.

Petitioner further claimed that he had been excluded deliberately from participating in the affairs of the corporation and had never been compensated by Sterling Shipping Lines, Inc. as a director and stockholder.[19] According to petitioner, when Sterling Shipping Lines, Inc. was organized,

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13 <http://www.pmo.gov.ph/about.htm>, (last visited August 15, 2013).
14 *Rollo,* pp. 105-106.
15 Complaint dated July 22, 1987, *Rollo*, pp. 63-69; Amended Complaint dated September 14, 1987, *Rollo*, pp. 76-82; Second Amended Complaint dated October 30, 1987, *Rollo*, pp. 84-91; Amended Complaint dated April 16, 1991, *Rollo*, pp. 102-109.
16 Id. at 85.
17 Id. at 64-65.
18 Id. at 65.
19 Id. at 124.

respondent Ruperto V. Tankeh had promised him that he would become part of the administration staff and oversee company operations. Respondent Ruperto V. Tankeh had also promised petitioner that the latter's son would be given a position in the company.[20] However, after being designated as vice president, petitioner had not been made an officer and had been alienated from taking part in the respondent corporation.[21]

Petitioner also alleged that respondent Development Bank of the Philippines had been inexcusably negligent in the performance of its duties.[22] He alleged that Development Bank of the Philippines must have been fully aware of Sterling Shipping Lines, Inc.'s financial situation. Petitioner claimed that Sterling Shipping Lines, Inc. was controlled by the Development Bank of the Philippines because 67% of voting shares had been assigned to the latter.[23] Furthermore, the mortgage contracts had mandated that Sterling Shipping Lines, Inc. "shall furnish the DBP with copies of the minutes of each meeting of the Board of Directors within one week after the meeting. [Sterling Shipping Lines Inc.] shall likewise furnish DBP its annual audited financial statements and other information or data that may be needed by DBP as its accomondations [sic] with DBP are outstanding."[24] Petitioner further alleged that the Development Bank of the Philippines had allowed "highly questionable acts"[25] to take place, including the gross undervaluing of the M/V Sterling Aces.[26] Petitioner alleged that one day after Development Bank of the Philippines' Atty. Nograles sold the vessel, the ship was re-sold by its buyer for double the amount that the ship had been bought.[27]

As for respondent Vicente L. Arenas, Jr., petitioner alleged that since Arenas had been the treasurer of Sterling Shipping Lines, Inc. and later on had served as its vice president, he was also responsible for the financial situation of Sterling Shipping Lines, Inc.

Lastly, in the Amended Complaint dated April 16, 1991, petitioner impleaded respondent Asset Privatization Trust for being the agent and assignee of the M/V Sterling Ace.

In their Answers[28] to the Complaints, respondents raised the following defenses against petitioner: Respondent Development Bank of the Philippines categorically denied receiving any amount from Sterling Shipping Lines, Inc.'s future earnings and from the proceeds of the shipping

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20 Id. at 125.
21 Id. at 207.
22 Id. at 90.
23 Id. at 89.
24 Id. at 89.
25 Id at 89.
26 Id. at 89.
27 Id. at 89.
28 Id. at 70-75, 92-98, 99-101, 111-118.

contracts. It maintained that equity contributions could not be deducted from the outstanding loan obligation that stood at ₱245.86 million as of December 31, 1986. Development Bank of the Philippines also maintained that it is immaterial to the case whether the petitioner is a "real stockholder" or merely a "pseudo-stockholder" of the corporation.[29] By affixing his signature to the loan agreement, he was liable for the obligation. According to Development Bank of the Philippines, he was *in pari delicto* and could not be discharged from his obligation. Furthermore, petitioner had no cause of action against Development Bank of the Philippines since this was a case between family members, and earnest efforts toward compromise should have been complied with in accordance with Article 222 of the Civil Code of the Philippines.[30]

Respondent Ruperto V. Tankeh stated that petitioner had voluntarily signed the promissory note in favor of Development Bank of the Philippines and with full knowledge of the consequences. Respondent Tankeh also alleged that he did not employ any fraud or deceit to secure petitioner's involvement in the company, and petitioner had been fully aware of company operations. Also, all that petitioner had to do to avoid liability had been to sell his shareholdings in the company.[31]

Respondent Asset Privatization Trust raised that petitioner had no cause of action against them since Asset Privatization Trust had been mandated under Proclamation No. 50 to take title to and provisionally manage and dispose the assets identified for privatization or deposition within the shortest possible period. Development Bank of the Philippines had transferred and conveyed all its rights, titles, and interests in favor of the national government in accordance with Administrative Order No. 14. In line with that, Asset Privatization Trust was constituted as trustee of the assets transferred to the national government to effect privatization of these assets, including respondent Sterling Shipping Lines, Inc.[32] Respondent Asset Privatization Trust also filed a compulsory counterclaim against petitioner and its co-respondents Sterling Shipping Lines, Inc., Ruperto V. Tankeh, and Vicente L. Arenas, Jr. for the amount of ₱264,386,713.84.

Respondent Arenas did not file an Answer to any of the Complaints of petitioner but filed a Motion to Dismiss that the Regional Trial Court denied. Respondent Asset Privatization Trust filed a Cross Claim against Arenas. In his Answer[33] to Asset Privatization Trust's Cross Claim, Arenas claimed that he had been released from any further obligation to Development Bank of the Philippines and its successor Asset Privatization Trust because an extension had been granted by the Development Bank of the Philippines to

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29 Id. at 73-74.
30 Id. at 70-75.
31 Id. at 99-101.
32 Id. at 113-114.
33 Id. at 121-122.

the debtors of Sterling Shipping Lines, Inc. and/or Ruperto V. Tankeh, which had been secured without Arenas' consent.

The trial proceeded with the petitioner serving as a sole witness for his case. In a January 4, 1996 Decision,[34] the Regional Trial Court ruled:

> Here, we find –
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> 1. Plaintiff being promised by his younger brother, Ruperto V. Tankeh, 1,000 shares with par value of ₱1 Million with all the perks and privileges of being stockholder and director of SSLI, a new international shipping line;
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> 2. That plaintiff will be part of the administration and operation of the business, so with his son who is with the law firm Romulo Ozaeta Law Offices;
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> 3. But this was merely the come-on or appetizer for the Real McCoy or the primordial end of congregating the incorporators proposed - - that he sign the promissory note (Exhibit "C"), the mortgage contract (Exhibit "A"), and deed of assignment so SSLI could get the US $3.5 M loan from DBP to partially finance the importation of vessel M.V. "Golden Lilac" renamed M.V. "Sterling ACE";
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> 4. True it is, plaintiff was made a stockholder and director and Vice-President in 1979 but he was never notified of any meeting of the Board except only once, and only to be introduced to the two (2) directors representing no less than 67% of the total subscribed and outstanding voting shares of the company. Thereafter, he was excluded from any board meeting, shorn of his powers and duties as director or Vice-President, and was altogether deliberately demeaned as an outsider.
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> 5. What kind of a company is SSLI who treated one of their incorporators, one of their Directors and their paper Vice-President in 1979 by preventing him access to corporate books, to corporate earnings, or losses, and to any compensation or remuneration whatsoever? Whose President and Treasurer did not submit the required SEC yearly report? Who did not remit to DBP the proceeds on charter mortgage contracts on M/V Sterling Ace?
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> 6. The M/V Sterling Ace was already in the Davao Port when it was then diverted to Singapore to be disposed on negotiated sale, and not by public bidding contrary to COA Circular No. 86-264 and without COA's approval. Sterling Ace was seaworthy but was sold as scrap in Singapore. No foreclosure with public bidding was made in contravention of the Promissory Note to recover any deficiency should DBP seeks [sic] to recover it on the outstanding mortgage loan. Moreover

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[34] Id. at 123-197.

the sale was done after the account and asset (nay, now only a liability) were transferred to APT. No approval of SSLI Board of Directors to the negotiated sale was given.

7. Plaintiff's letter to his brother President, Ruperto V. Tankeh, dated June 15, 1983 (Exhibit "D") his letter thru his lawyer to DBP (Exhibit "J") and another letter to it (Exhibit "K") show no estoppel on his part as he consistently and continuously assailed the several injurious acts of defendants while assailing the Promissory Note itself x x x (Citations omitted) applying the maxim: Rencintiatio non praesumitur. By this Dr. Tankeh never waived the right to question the Promissory Note contract terms. He did not ratify, by concurring acts, express or tacit, after the reasons had surfaced entitling him to render the contract voidable, defendants' acts in implementing or not the conditions of the mortgage, the promissory note, the deed of assignment, the lack of audit and accounting, and the negotiated sale of MV Sterling Ace. He did not ratify defendants [sic] defective acts (Art. 1396, New Civil Code (NCC).

The foregoing and the following essays, supported by evidence, the fraud committed by plaintiff's brother before the several documents were signed (SEC documents, Promissory Note, Mortgage (MC) Contract, assignment (DA)), namely:

1. Ruperto V. Tankeh approaches his brother Alejandro to tell the latter of his new shipping business. The project was good business proposal [sic].
2. Ruperto tells Alejandro he's giving him shares worth ₱1 Million and he's going to be a Director.
3. He tells his brother that he will be part of the company's Administration and Operations and his eldest son will be in it, too.
4. Ruperto tells his brother they need a ship, they need to buy one for the business, and they therefore need a loan, and they could secure a loan from DBP with the vessel brought to have a first mortgage with DBP but anyway the other two directors and comptroller will be from DBP with a 67% SSLI shares voting rights.

Without these insidious, devastating and alluring words, without the machinations used by defendant Ruperto V. Tankeh upon the doctor, without the inducement and promise of ownership of shares and the exercise of administrative and operating functions, and the partial financing by one of the best financial institutions, the DBP, plaintiff would not have agreed to join his brother; and the safeguarding of the Bank's interest by its nominated two (2) directors in the Board added to his agreeing to the new shipping business. His consent was vitiated by the fraud before the several contracts were consummated.

This alone convenes [sic] this Court to annul the Promissory Note as it relates to plaintiff himself.

Plaintiff also pleads annulment on ground of equity. Article 19, NCC, provides him the way as it requires every person, in the exercise of his rights and performance of his duties, to act with justice, give everyone his due, and observe honesty and good faith (Velayo vs. Shell Co. of the Phils., G.R. L-7817, October 31, 1956). Not to release him from the clutch of the Promissory Note when he was never made a part of the operation of the SSLI, when he was not notified of the Board Meetings, when the corporation nary remitted earnings of M/V Sterling Ace from charter or shipping contracts to DBP, when the SSLI did not comply with the deed of assignment and mortgage contract, and when the vessel was sold in Singapore (he, learning of the sale only from the newspapers) in contravention of the Promissory Note, and which he questioned, will be an injustice, inequitable, and even iniquitous to plaintiff. SSLI and the private defendants did not observe honesty and good faith to one of their incorporators and directors. As to DBP, the Court cannot put demerits on what plaintiff's memorandum has pointed out:

> While defendant DBP did not exercise the caution and prudence in the discharge of their functions to protect its interest as expected of them and worst, allowed the perpetuation of the illegal acts committed in contrast to the virtues they publicly profess, namely: "palabra de honor, delicadeza, katapatan, kaayusan, pagkamasinop at kagalingan" Where is the vision banking they have for our country?

Had DBP listened to a cry in the wilderness – that of the voice of the doctor – the doctor would not have allowed the officers and board members to defraud DBP and he would demand of them to hew and align themselves to the deed of assignment.

Prescinding from the above, plaintiff's consent to be with SSLI was vitiated by fraud. The fact that defendant Ruperto Tankeh has not questioned his liability to DBP or that Jose Maria Vargas has been declared in default do not detract from the fact that there was attendant fraud and that there was continuing fraud insofar as plaintiff is concerned. **Ipinaglaban lang ni Doctor ang karapatan niya. Kung wala siyang sense of righteous indignation and fairness, tatahimik na lang siya, sira naman ang pinangangalagaan niyang pangalan, honor and family prestige [sic] (Emphasis provided).**[35]

x x x x

All of the defendants' counterclaims and cross-claims x x x including plaintiff's and the other defendants' prayer for damages are not, for the moment, sourced and proven by substantial

[35] Id. at 192-195.

> evidence, and must perforce be denied and dismissed.
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> WHEREFORE, this Court, finding and declaring the Promissory Note (Exhibit "C") and the Mortgage Contract (Exhibit "A") null and void insofar as plaintiff DR. ALEJANDRO V. TANKEH is concerned, hereby ANNULS and VOIDS those documents as to plaintiff, and it is hereby further ordered that he be released from any obligation or liability arising therefrom.
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> All the defendants' counterclaims and cross-claims and plaintiff's and defendants' prayer for damages are hereby denied and dismissed, without prejudice.
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> SO ORDERED.[36]

Respondents Ruperto V. Tankeh, Asset Privatization Trust, and Arenas immediately filed their respective Notices of Appeal with the Regional Trial Court. The petitioner filed a Motion for Reconsideration with regard to the denial of his prayer for damages. After this Motion had been denied, he then filed his own Notice of Appeal.

In a Decision[37] promulgated on October 25, 2005, the Third Division of the Court of Appeals reversed the trial court's findings. The Court of Appeals held that petitioner had no cause of action against public respondent Asset Privatization Trust. This was based on the Court of Appeals' assessment of the case records and its findings that Asset Privatization Trust did not commit any act violative of the right of petitioner or constituting a breach of Asset Privatization Trust's obligations to petitioner. The Court of Appeals found that petitioner's claim for damages against Asset Privatization Trust was based merely on his own self-serving allegations.[38]

As to the finding of fraud, the Court of Appeals held that:

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> In all the complaints from the original through the first, second and third amendments, the plaintiff imputes fraud only to defendant Ruperto, to wit:
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> 4. That on May 12, 1981, due to the **deceit and fraud** exercised by Ruperto V. Tankeh, plaintiff, together with Vicente L. Arenas, Jr. and Jose Maria Vargas signed a promissory note in favor of the defendant, DBP, wherein plaintiff bound himself to jointly and severally pay the DBP the amount of the mortgage

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36 Id. at 195-196.
37 Id. at 39-60.
38 Id. at 49-51.

loan. This document insofar as plaintiff is concerned is a simulated document considering that plaintiff was never a real stockholder of Sterling Shipping Lines, Inc. (Emphasis provided)

More allegations of deceit were added in the Second Amended Complaint, but they are also attributed against Ruperto:

6. That THE DECEIT OF DEFENDANT RUPERTO V. TANKEH IS SHOWN BY THE FACT THAT when the Sterling Shipping Lines, Inc. was organized in 1980, Ruperto V. Tankeh promised plaintiff that he would be a part of the administration staff so that he could oversee the operation of the company. He was also promised that his son, a lawyer, would be given a position in the company. None of these promsies [sic] was complied with. In fact he was not even allowed to find out the data about the income and expenses of the company.

7. THAT THE DECEIT OF RUPERTO V. TANKEH IS ALSO SHOWN BY THE FACT THAT PLAINTIFF WAS INVITED TO ATTEND THE BOARD MEETING OF THE STERLING SHIPPING LINES INC. ONLY ONCE, WHICH WAS FOR THE SOLE PURPOSE OF INTRODUCING HIM TO THE TWO DIRECTORS OF THE DBP IN THE BOARD OF THE STERLING SHIPPING LINES, INC., NAMELY, MR. JESUS MACALINAG AND MR. GIL CORPUS. THEREAFTER HE WAS NEVER INVITED AGAIN. PLAINTIFF WAS NEVER COMPENSATED BY THE STERLING SHIPPING LINES, INC. FOR HIS BEING A SO-CALLED DIRECTOR AND STOCKHOLDER.

x x x x

8-A THAT A WEEK AFTER SENDING THE ABOVE LETTER PLAINTIFF MADE EARNEST EFFORTS TOWARDS A COMPROMISE BETWEEN HIM AND HIS BROTHER RUPERTO V. TANKEH, WHICH EFFORTS WERE SPURNED BY RUPERTO V. TANKEH, AND ALSO AFTER THE NEWS OF THE SALE OF THE 'STERLING ACE' WAS PUBLISHED AT THE NEWSPAPER, PLAINTIFF TRIED ALL EFFORTS TO CONTACT RUPERTO V. TANKEH FOR THE PURPOSE OF ARRIVING AT SOME COMPROMISE, BUT DEFENDANT RUPERTO V. TANKEH AVOIDED ALL CONTACTS WITH THE PLAINTIFF UNTIL HE WAS FORCED TO SEEK LEGAL ASSISTANCE FROM HIS LAWYER.

In the absence of any allegations of fraud and/or deceit against the other defendants, namely, the DBP, Vicente Arenas, Sterling Shipping Lines, Inc., and the Asset Privatization Trust, the plaintiff's evidence thereon should only be against Ruperto, since a plaintiff is bound to prove only the allegations of his complaint. In any case, no evidence of fraud or deceit was ever presented against defendants DBP, Arenas, SSLI and APT.

As to the evidence against Ruperto, the same consists only of the

> testimony of the plaintiff. None of his documentary evidence would prove that Ruperto was guilty of fraud or deceit in causing him to sign the subject promissory note.[39]
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> x x x x
>
> Analyzing closely the foregoing statements, we find no evidence of fraud or deceit. The mention of a new shipping lines business and the promise of a free 1,000-share and directorship in the corporation do not amount to insidious words or machinations. In any case, the shipping business was indeed established, with the plaintiff himself as one of the incorporators and stockholders with a share of 4,000, worth ₱4,000,000.00 of which ₱1,000,000.00 was reportedly paid up. As such, he signed the Articles of Incorporation and the corporation's By-Laws which were registered with the Securities and Exchange Commission in April 1979. It was not until May 12, 1981 that he signed the questioned promissory note. From his own declaration at the witness stand, the plaintiff signed the promissory note voluntarily. No pressure, force or intimidation was made to bear upon him. In fact, according to him, only a messenger brought the paper to him for signature. The promised shares of stock were given and recorded in the plaintiff's name. He was made a director and Vice-President of SSLI. Apparently, only the promise that his son would be given a position in the company remained unfulfilled. However, the same should have been threshed out between the plaintiff and his brother, defendant Ruperto, and its non-fulfillment did not amount to fraud or deceit, but was only an unfulfilled promise.
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> It should be pointed out that the plaintiff is a doctor of medicine and a seasoned businessman. It cannot be said that he did not understand the import of the documents he signed. Certainly he knew what he was signing. He should have known that being an officer of SSLI, his signing of the promissory note together with the other officers of the corporation was expected, as the other officers also did. It cannot therefore be said that the promissory note was simulated. The same is a contract validly entered into, which the parties are obliged to comply with.[40](Citations omitted)

The Court of Appeals ruled that in the absence of any competent proof, Ruperto V. Tankeh did not commit any fraud. Petitioner Alejandro V. Tankeh was unable to prove by a preponderance of evidence that fraud or deceit had been employed by Ruperto to make him sign the promissory note. The Court of Appeals reasoned that:

> Fraud is never presumed but must be proved by clear and convincing evidence, mere preponderance of evidence not even being adequate. Contentions must be proved by competent evidence and reliance must be had on the strength of the party's evidence and not upon the weakness of the opponent's defense.

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39 Id. at 53-54.
40 Id. at 56-57.

> The plaintiff clearly failed to discharge such burden.[41] (Citations omitted)

With that, the Court of Appeals reversed and set aside the judgment and ordered that plaintiff's Complaint be dismissed. Petitioner filed a Motion for Reconsideration dated October 25, 2005 that was denied in a Resolution[42] promulgated on February 9, 2006.

Hence, this Petition was filed.

In this Petition, Alejandro V. Tankeh stated that the Court of Appeals seriously erred and gravely abused its discretion in acting and deciding as if the evidence stated in the Decision of the Regional Trial Court did not exist. He averred that the ruling of lack of cause of action had no leg to stand on, and the Court of Appeals had unreasonably, whimsically, and capriciously ignored the ample evidence on record proving the fraud and deceit perpetrated on the petitioner by the respondent. He stated that the appellate court failed to appreciate the findings of fact of the lower court, which are generally binding on appellate courts. He also maintained that he is entitled to damages and attorney's fees due to the deceit and machinations committed by the respondent.

In his Memorandum, respondent Ruperto V. Tankeh averred that petitioner had chosen the wrong remedy. He ought to have filed a special civil action of *certiorari* and not a Petition for Review. Petitioner raised questions of fact, and not questions of law, and this required the review or evaluation of evidence. However, this is not the function of this Court, as it is not a trier of facts. He also contended that petitioner had voluntarily entered into the loan agreement and the position with Sterling Shipping Lines, Inc. and that he did not fraudulently induce the petitioner to enter into the contract.

Respondents Development Bank of the Philippines and Asset Privatization Trust also contended that petitioner's mode of appeal had been wrong, and he had actually sought a special civil action of *certiorari*. This alone merited its dismissal.

The main issue in this case is whether the Court of Appeals erred in finding that respondent Rupert V. Tankeh did not commit fraud against the petitioner.

The Petition is partly granted.

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41 Id. at 58.
42 Id. at 61.

Before disposing of the main issue in this case, this Court needs to address a procedural issue raised by respondents. Collectively, respondents argue that the Petition is actually one of *certiorari* under Rule 65 of the Rules of Court[43] and not a Petition for Review on *Certiorari* under Rule 45.[44] Thus, petitioner's failure to show that there was neither appeal nor any other plain, speedy or adequate remedy merited the dismissal of the Complaint.

Contrary to respondent's imputation, the remedy contemplated by petitioner is clearly that of a Rule 45 Petition for Review. In *Tagle v. Equitable PCI Bank*,[45] this Court made the distinction between a Rule 45 Petition for Review on *Certiorari* and a Rule 65 Petition for *Certiorari*:

> Certiorari is a remedy designed for the correction of errors of jurisdiction, not errors of judgment. In *Pure Foods Corporation v. NLRC*, we explained the simple reason for the rule in this light: When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed x x x. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correct[a]ble through the original civil action of certiorari.
>
> x x x x
>
> Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of certiorari. Where the error is not one of jurisdiction, but of an error of law or fact a mistake of judgment, appeal is the remedy.

In this case, what petitioner seeks to rectify may be construed as errors of judgment of the Court of Appeals. These errors pertain to the petitioner's allegation that the appellate court failed to uphold the findings of facts of the lower court. He does not impute any error with respect to the Court of Appeals' exercise of jurisdiction. As such, this Petition is simply a

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43 RULES OF COURT, Rule 65, Sec. 1:
Section 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

44 RULES OF COURT, Rule 45, Sec. 1:
Section 1. *Filing of petition with Supreme Court*. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

45 G.R. No. 172299, April 22, 2008, 552 SCRA 424, 440-441.

continuation of the appellate process where a case is elevated from the trial court of origin, to the Court of Appeals, and to this Court via Rule 45.

Contrary to respondents' arguments, the allegations of petitioner that the Court of Appeals "committed grave abuse of discretion"[46] did not *ipso facto* render the intended remedy that of *certiorari* under Rule 65 of the Rules of Court.[47]

In any case, even if the Petition is one for the special civil action of *certiorari*, this Court has the discretion to treat a Rule 65 Petition for *Certiorari* as a Rule 45 Petition for Review on *Certiorari*. This is allowed if (1) the Petition is filed within the reglementary period for filing a Petition for review; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of the rules.[48] When this Court exercises this discretion, there is no need to comply with the requirements provided for in Rule 65.

In this case, petitioner filed his Petition within the reglementary period of filing a Petition for Review.[49] His Petition assigns errors of judgment and appreciation of facts and law on the part of the Court of Appeals. Thus, even if the Petition was designated as one that sought the remedy of *certiorari*, this Court may exercise its discretion to treat it as a Petition for Review in the interest of substantial justice.

We now proceed to the substantive issue, that of petitioner's imputation of fraud on the part of respondents. We are required by the circumstances of this case to review our doctrines of fraud that are alleged to be present in contractual relations.

Types of Fraud in Contracts

Fraud is defined in Article 1338 of the Civil Code as:

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46 *Rollo*, p. 18.

47 RULES OF COURT, Rule 65, Section 1:
Section 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

48 *China Banking Corporation v. Cebu Printing and Packaging Corporation,* G.R. No. 172880, August 11, 2010, 628 SCRA 154, 168 *citing Tagle v. Equitable PCI Bank* , G.R. No. 172299, April 22, 2008, 552 SCRA 424.

49 The petitioner received the denial of his Motion for Reconsideration on February 15, 2006. Petitioner had until March 2, 2006 within which to file the Petition. Petitioner filed a Motion for Extension of Time to File Petition for a period of thirty (30) days, which was granted by the Court. Petitioner had until April 2, 2006 to file his Petition. The Court received the Petition on March 20, 2006.

> x x x fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to.

This is followed by the articles which provide legal examples and illustrations of fraud.

> Art. 1339. Failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud. (n)
>
> Art. 1340. The usual exaggerations in trade, when the other party had an opportunity to know the facts, are not in themselves fraudulent. (n)
>
> Art. 1341. A mere expression of an opinion does not signify fraud, unless made by an expert and the other party has relied on the former's special knowledge. (n)
>
> Art. 1342. Misrepresentation by a third person does not vitiate consent, unless such misrepresentation has created substantial mistake and the same is mutual. (n)
>
> Art. 1343. Misrepresentation made in good faith is not fraudulent but may constitute error. (n)

The distinction between fraud as a ground for rendering a contract voidable or as basis for an award of damages is provided in Article 1344:

> In order that fraud may make a contract voidable, it should be serious and should not have been employed by both contracting parties.
>
> Incidental fraud only obliges the person employing it to pay damages. (1270)

There are two types of fraud contemplated in the performance of contracts: *dolo incidente* or incidental fraud and *dolo causante* or fraud serious enough to render a contract voidable.

In *Geraldez v. Court of Appeals*,[50] this Court held that:

> This fraud or *dolo* which is present or employed at the time of birth or perfection of a contract may either be *dolo causante* or *dolo incidente*. The first, or causal fraud referred to in Article 1338, are those deceptions or misrepresentations of a serious character

[50] G.R. No. 108253, February 23, 1994, 230 SCRA 320.

> employed by one party and without which the other party would not have entered into the contract. *Dolo incidente*, or incidental fraud which is referred to in Article 1344, are those which are not serious in character and without which the other party would still have entered into the contract. *Dolo causante* determines or is the essential cause of the consent, while *dolo incidente* refers only to some particular or accident of the obligation. The effects of *dolo causante* are the nullity of the contract and the indemnification of damages, and *dolo incidente* also obliges the person employing it to pay damages.[51]

In *Solidbank Corporation v. Mindanao Ferroalloy Corporation, et al.,*[52] this Court elaborated on the distinction between *dolo causante* and *dolo incidente*:

> Fraud refers to all kinds of deception -- whether through insidious machination, manipulation, concealment or misrepresentation -- that would lead an ordinarily prudent person into error after taking the circumstances into account. In contracts, a fraud known as *dolo causante* or causal fraud is basically a deception used by one party prior to or simultaneous with the contract, in order to secure the consent of the other. Needless to say, the deceit employed must be serious. In contradistinction, only some particular or accident of the obligation is referred to by incidental fraud or *dolo incidente,* or that which is not serious in character and without which the other party would have entered into the contract anyway.[53]

Under Article 1344, the fraud must be serious to annul or avoid a contract and render it voidable. This fraud or deception must be so material that had it not been present, the defrauded party would not have entered into the contract. In the recent case of *Spouses Carmen S. Tongson and Jose C. Tongson, et al., v. Emergency Pawnshop Bula, Inc.*,[54] this Court provided some examples of what constituted *dolo causante* or causal fraud:

> Some of the instances where this Court found the existence of causal fraud include: (1) when the seller, who had no intention to part with her property, was "tricked into believing" that what she signed were papers pertinent to her application for the reconstitution of her burned certificate of title, not a deed of sale; (2) when the signature of the authorized corporate officer was forged; or (3) when the seller was seriously ill, and died a week after signing the deed of sale raising doubts on whether the seller could have read, or fully understood, the contents of the documents he signed or of the consequences of his act.[55] (Citations omitted)

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51 Id. at 336 *citing* A.M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 509 (Vol. IV, 1986) and JURADO, COMMENTS AND JURISPRUDENCE ON OBLIGATIONS AND CONTRACTS, 438 (1987 Ed.).

52 502 Phil. 651, 669 (2005).

53 Id. at 669.

54 G.R. No. 167874, January 15, 2010, 610 SCRA 150.

55 Id. at 160.

However, Article 1344 also provides that if fraud is incidental, it follows that this type of fraud is *not serious enough so as to render the original contract voidable*.

A classic example of *dolo incidente* is *Woodhouse v. Halili.*[56] In this case, the plaintiff Charles Woodhouse entered into a written agreement with the defendant Fortunato Halili to organize a partnership for the bottling and distribution of soft drinks. However, the partnership did not come into fruition, and the plaintiff filed a Complaint in order to execute the partnership. The defendant filed a Counterclaim, alleging that the plaintiff had defrauded him because the latter was not actually the owner of the franchise of a soft drink bottling operation. Thus, defendant sought the nullification of the contract to enter into the partnership. This Court concluded that:

> x x x from all the foregoing x x x plaintiff did actually represent to defendant that he was the holder of the exclusive franchise. The defendant was made to believe, and he actually believed, that plaintiff had the exclusive franchise. x x x The record abounds with circumstances indicative that the fact that the principal consideration, the main cause that induced defendant to enter into the partnership agreement with plaintiff, was the ability of plaintiff to get the exclusive franchise to bottle and distribute for the defendant or for the partnership. x x x The defendant was, therefore, led to the belief that plaintiff had the exclusive franchise, but that the same was to be secured for or transferred to the partnership. The plaintiff no longer had the exclusive franchise, or the option thereto, at the time the contract was perfected. But while he had already lost his option thereto (when the contract was entered into), the principal obligation that he assumed or undertook was to secure said franchise for the partnership, as the bottler and distributor for the Mission Dry Corporation. We declare, therefore, that if he was guilty of a false representation, this was not the *causal* consideration, or the principal inducement, that led plaintiff to enter into the partnership agreement.
>
> But, on the other hand, this supposed ownership of an exclusive franchise was actually the consideration or price plaintiff gave in exchange for the share of 30 percent granted him in the net profits of the partnership business. Defendant agreed to give plaintiff 30 per cent share in the net profits because he was transferring his exclusive franchise to the partnership. x x x.
>
> Plaintiff had never been a bottler or a chemist; he never had experience in the production or distribution of beverages. As a matter of fact, when the bottling plant being built, all that he suggested was about the toilet facilities for the laborers.

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[56] 93 Phil. 526 (1953).

> We conclude from the above that while the representation that plaintiff had the exclusive franchise did not vitiate defendant's consent to the contract, it was used by plaintiff to get from defendant a share of 30 per cent of the net profits; in other words, by pretending that he had the exclusive franchise and promising to transfer it to defendant, he obtained the consent of the latter to give him (plaintiff) a big slice in the net profits. This is the *dolo incidente* defined in article 1270 of the Spanish Civil Code, because it was used to get the other party's consent to a big share in the profits, an incidental matter in the agreement.[57]

Thus, this Court held that the original agreement may not be declared null and void. This Court also said that the plaintiff had been entitled to damages because of the refusal of the defendant to enter into the partnership. However, the plaintiff was also held liable for damages to the defendant for the misrepresentation that the former had the exclusive franchise to soft drink bottling operations.

To summarize, if there is fraud in the performance of the contract, then this fraud will give rise to damages. If the fraud did not compel the imputing party to give his or her consent, it may not serve as the basis to annul the contract, which exhibits *dolo causante*. However, the party alleging the existence of fraud may prove the existence of *dolo incidente.* This may make the party against whom fraud is alleged liable for damages.

Quantum of Evidence to Prove the Existence of Fraud and the Liability of the Parties

The Civil Code, however, does not mandate the quantum of evidence required to prove actionable fraud, either for purposes of annulling a contract (*dolo causante*) or rendering a party liable for damages (*dolo incidente)*. The *definition* of fraud is different from the *quantum of evidence* needed to prove the existence of fraud. Article 1338 provides the legal definition of fraud. Articles 1339 to 1343 constitute the behavior and actions that, when in conformity with the legal provision, may constitute fraud.

Jurisprudence has shown that in order to constitute fraud that provides basis to annul contracts, it must fulfill two conditions. First, the fraud must be *dolo causante* or it must be fraud in obtaining the consent of the party. Second, this fraud must be proven by clear and convincing evidence. In *Viloria v. Continental Airlines*,[58] this Court held that:

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57 Id. at 536-538.

58 G.R. No. 188288, January 16, 2012, 663 SCRA 57.

> Under Article 1338 of the Civil Code, there is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to. In order that fraud may vitiate consent, it must be the causal (*dolo causante*), not merely the incidental (*dolo incidente*), inducement to the making of the contract. In *Samson v. Court of Appeals,* causal fraud was defined as "a deception employed by one party prior to or simultaneous to the contract in order to secure the consent of the other."
>
> Also, fraud must be serious and its existence must be established by clear and convincing evidence. (Citations omitted)[59]

In *Viloria*, this Court cited *Sierra v. Court of Appeals*[60] stating that mere preponderance of evidence will not suffice in proving fraud.

> Fraud must also be discounted, for according to the Civil Code:
>
> > Art. 1338. There is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which without them, he would not have agreed to.
> >
> > Art. 1344. In order that fraud may make a contract voidable, it should be serious and should not have been employed by both contracting parties.
>
> To quote Tolentino again, the "misrepresentation constituting the fraud must be established by full, clear, and convincing evidence, and not merely by a preponderance thereof. The deceit must be serious. The fraud is serious when it is sufficient to impress, or to lead an ordinarily prudent person into error; that which cannot deceive a prudent person cannot be a ground for nullity. The circumstances of each case should be considered, taking into account the personal conditions of the victim."[61]

Thus, to annul a contract on the basis of *dolo causante*, the following must happen: First, the deceit must be serious or sufficient to impress and lead an ordinarily prudent person to error. If the allegedly fraudulent actions do not deceive a prudent person, given the circumstances, the deceit here cannot be considered sufficient basis to nullify the contract. In order for the deceit to be considered serious, it is necessary and essential to obtain the consent of the party imputing fraud. To determine whether a person may be

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59 Id. at 81.
60 G.R. No. 90270, July 24, 1992, 211 SCRA 785.
61 Id. at 793 *citing* A.M. TOLENTINO, COMMENTARIES ON THE CIVIL CODE 508, 514 (Vol. IV, 1991).

sufficiently deceived, the personal conditions and other factual circumstances need to be considered.

Second, the standard of proof required is clear and convincing evidence. This standard of proof is derived from American common law. It is less than proof beyond reasonable doubt (for criminal cases) but greater than preponderance of evidence (for civil cases). The degree of believability is higher than that of an ordinary civil case. Civil cases only require a preponderance of evidence to meet the required burden of proof. However, when fraud is alleged in an ordinary civil case involving contractual relations, an entirely different standard of proof needs to be satisfied. The imputation of fraud in a civil case requires the presentation of clear and convincing evidence. Mere allegations will not suffice to sustain the existence of fraud. The burden of evidence rests on the part of the plaintiff or the party alleging fraud. The quantum of evidence is such that fraud *must* be clearly and convincingly shown.

The Determination of the Existence of Fraud in the Present Case

We now determine the application of these doctrines regarding fraud to ascertain the liability, if any, of the respondents.

Neither law nor jurisprudence distinguishes whether it is *dolo incidente* or *dolo causante* that must be proven by clear and convincing evidence. It stands to reason that both *dolo incidente* and *dolo causante* must be proven by clear and convincing evidence. The only question is whether this fraud, when proven, may be the basis for making a contract voidable (*dolo causante*), or for awarding damages (*dolo incidente*), or both.

Hence, there is a need to examine all the circumstances thoroughly and to assess the personal circumstances of the party alleging fraud. This may require a review of the case facts and the evidence on record.

In general, this Court is not a trier of facts. It makes its rulings based on applicable law and on standing jurisprudence. The findings of the Court of Appeals are generally binding on this Court provided that these are supported by the evidence on record. In the recent case of *Medina v. Court of Appeals*,[62] this Court held that:

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[62] G.R. No. 137582, August 29, 2012, 679 SCRA 191.

> It is axiomatic that a question of fact is not appropriate for a petition for review on *certiorari* under Rule 45. This rule provides that the parties may raise only questions of law, because the Supreme Court is not a trier of facts. Generally, we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below. **When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:** (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) **When the findings of fact are conflicting;** (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) When the findings are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. (Emphasis provided)[63]

The trial court and the Court of Appeals had appreciated the facts of this case differently.

The Court of Appeals was not correct in saying that petitioner could only raise fraud as a ground to annul his participation in the contract as against respondent Rupert V. Tankeh, since the petitioner did not make any categorical allegation that respondents Development Bank of the Philippines, Sterling Shipping Lines, Inc., and Asset Privatization Trust had acted fraudulently. Admittedly, it was only in the Petition before this Court that the petitioner had made the allegation of a "well-orchestrated fraud"[64] by the respondents. However, Rule 10, Section 5 of the Rules of Civil Procedure provides that:

> *Amendment to conform to or authorize presentation of evidence*. — When issues not raised by the pleadings are tried with the express or implied consent of the parties they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not effect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial

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63 Id. *citing Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, G.R. No. 190515, June 6, 2011, 650 SCRA 656, 660.

64 *Rollo*, p. 15.

> justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made. (5a)

In this case, the commission of fraud was an issue that had been tried with the *implied* consent of the respondents, particularly Sterling Shipping Lines, Inc., Asset Privatization Trust, Development Bank of the Philippines, and Arenas. Hence, although there is a lack of a categorical allegation in the pleading, the courts may still be allowed to ascertain fraud.

The records will show why and how the petitioner agreed to enter into the contract with respondent Ruperto V. Tankeh:

> ATTY. VELAYO: How did you get involved in the business of the Sterling Shipping Lines, Incorporated" [sic]
>
> DR. TANKEH: Sometime in the year 1980, I was approached by Ruperto Tankeh mentioning to me that he is operating a new shipping lines business and he is giving me free one thousand shares (1,000) to be a director of this new business which is worth one million pesos (₱1,000,000.00.),
>
> ATTY. VELAYO: Are you related to Ruperto V. Tankeh?
>
> DR. TANKEH: Yes, sir. He is my younger brother.
>
> ATTY. VELAYO: Did you accept the offer?
>
> DR. TANKEH: I accepted the offer based on his promise to me that I will be made a part of the administration staff so that I can oversee the operation of the business plus my son, the eldest one who is already a graduate lawyer with a couple of years of experience in the law firm of Romulo Ozaeta Law Offices (TSN, April 28, 1988, pp. 10-11.).[65]

The Second Amended Complaint of petitioner is substantially reproduced below to ascertain the claim:

> x x x x
>
> 2. That on May 12, 1981, due to the deceit and fraud exercised by Ruperto V. Tankeh, plaintiff, together with Vicente L. Arenas, Jr. and Jose Maria Vargas, signed a promissory note in favor of the defendant DBP, wherein plaintiff bound himself to jointly and severally pay the DBP the amount of the mortgage loan. This document insofar as plaintiff is concerned is a simulated document considering that plaintiff was never a real stockholder of the Sterling Shipping Lines, Inc.

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[65] *Rollo*, pp. 205-206.

3. That although plaintiff's name appears in the records of Sterling Shipping Lines, Inc. as one of its incorporators, the truth is that he had never invested any amount in said corporation and that he had never been an actual member of said corporation. All the money supposedly invested by him were put by defendant Ruperto V. Tankeh. Thus, all the shares of stock under his name in fact belongs to Ruperto V. Tankeh. Plaintiff was invited to attend the board meeting of the Sterling Shipping Lines, Inc. only once, which was for the sole purpose of introducing him to the two directors of the DBP, namely, Mr. Jesus Macalinag and Mr. Gil Corpus. Thereafter he was never invited again. Plaintiff was never compensated by the Sterling Shipping Lines, Inc. for his being a so-called director and stockholder. It is clear therefore that the DBP knew all along that plaintiff was not a true stockholder of the company.

4. That THE DECEIT OF DEFENDANT RUPERTO V. TANKEH IS SHOWN BY THE FACT THAT when the Sterling Shipping Lines, Inc. was organized in 1980, Ruperto V. Tankeh promised plaintiff that he would be a part of the administration staff so that he could oversee the operation of the company. He was also promised that his son, a lawyer, would be given a position in the company. None of these promises was complied with. In fact, he was not even allowed to find out the data about the income and expenses of the company.

5. THAT THE DECEIT OF RUPERTO V. TANKEH IS ALSO SHOWN BY THE FACT THAT PLAINTIFF WAS INVITED TO ATTEND THE BOARD MEETING OF THE STERLING SHIPPING LINES, INC. ONLY ONCE, WHICH WAS FOR THE SOLE PUPOSE OF INTRODUCING HIM TO THE TWO DIRECTORS OF THE DBP IN THE BOARD OF THE STERLING SHIPPING LINES, INC., NAMELY, MR. JESUS MACALINAG AND MR. GIL CORPUS. THEREAFTER HE WAS NEVER INVITED AGAIN. PLAINTIFF WAS NEVER COMPENSATED BY THE STERLING SHIPPING LINES, INC. FOR HIS BEING A SO-CALLED DIRECTOR AND STOCKHOLDER.

6. That in 1983, upon realizing that he was only being made a tool to realize the purposes of Ruperto V. Tankeh, plaintiff officially informed the company by means of a letter dated June 15, 1983 addressed to the company that he has severed his connection with the company, and demanded among others, that the company board of directors pass a resolution releasing him from any liabilities especially with reference to the loan mortgage contract with the DBP and to notify the DBP of his severance from the Sterling Shipping Lines, Inc.

8-A. THAT A WEEK AFTER SENDING THE ABOVE LETTER, PLAINTIFF MADE EARNEST EFFORTS TOWARDS A COMPROMISE BETWEEN HIM AND HIS BROTHER RUPERTO V. TANKEH, WHICH EFFORTS WERE SPURNED BY RUPERTO V. TANKEH, AND ALSO AFTER THE NEWS OF THE SALE OF THE "STERLING ACE" WAS PUBLISHED AT THE NEWSPAPER [sic], PLAINTIFF TRIED ALL EFFORTS TO

> CONTACT RUPERTO V. TANKEH FOR THE PURPOSE OF ARRIVING AT SOME COMPROMISE, BUT DEFENDANT RUPERTO V. TANKEH AVOIDED ALL CONTACTS [sic] WITH THE PLAINTIFF UNTIL HE WAS FORCED TO SEEK LEGAL ASSISTANCE FROM HIS LAWYER.[66]

In his Answer, respondent Ruperto V. Tankeh stated that:

> COMES NOW defendant RUPERTO V. TANKEH, through the undersigned counsel, and to the Honorable Court, most respectfully alleges:
>
> x x x x
>
> 3. That paragraph 4 is admitted that herein answering defendant together with the plaintiff signed the promissory note in favor of DBP but specifically denied that the same was done through deceit and fraud of herein answering defendant the truth being that plaintiff signed said promissory note voluntarily and with full knowledge of the consequences thereof; it is further denied that said document is a simulated document as plaintiff was never a real stockholder of the company, the truth being those alleged in the special and affirmative defenses;
>
> 4. That paragraphs 5,6,7,8 and 8-A are specifically denied specially the imputation of deceit and fraud against herein answering defendant, the truth being those alleged in the special and affirmative defenses;
>
> x x x x
>
> SPECIAL AND AFFIRMATIVE DEFENSES x x x
>
> 8. The complaint states no cause of action as against herein answering defendant;
>
> 9. The Sterling Shipping Lines, Inc. was a legitimate company organized in accordance with the laws of the Republic of the Philippines with the plaintiff as one of the incorporators;
>
> 10. Plaintiff as one of the incorporators and directors of the board was fully aware of the by-laws of the company and if he attended the board meeting only once as alleged, the reason thereof was known only to him;
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> 11. The Sterling Shipping Lines, Inc. being a corporation acting through its board of directors, herein answering defendant could not have promised plaintiff that he would be a part of the administration staff;

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[66] Id. at 85-87.

> 12. As member of the board, plaintiff had all the access to the data and records of the company; further, as alleged in the complaint, plaintiff has a son who is a lawyer who could have advised him;
>
> 13. Assuming plaintiff wrote a letter to the company to sever his connection with the company, he should have been aware that all he had to do was sell all his holdings in the company;
>
> 14. Herein answering defendant came to know only of plaintiff's alleged predicament when he received the summons and copy of the complaint; x x x.[67]

An assessment of the allegations in the pleadings and the findings of fact of both the trial court and appellate court based on the evidence on record led to the conclusion that there had been no *dolo causante* committed against the petitioner by Ruperto V. Tankeh.

The petitioner had given his consent to become a shareholder of the company without contributing a single peso to pay for the shares of stock given to him by Ruperto V. Tankeh. This fact was admitted by both petitioner and respondent in their respective pleadings submitted to the lower court.

In his Amended Complaint,[68] the petitioner admitted that "he had never invested any amount in said corporation and that he had never been an actual member of said corporation. All the money supposedly invested by him were put up by defendant Ruperto V. Tankeh."[69] This fact alone should have already alerted petitioner to the gravity of the obligation that he would be undertaking as a member of the board of directors and the attendant circumstances that this undertaking would entail. It also does not add any evidentiary weight to strengthen petitioner's claim of fraud. If anything, it only strengthens the position that petitioner's consent was not obtained through insidious words or deceitful machinations.

Article 1340 of the Civil Code recognizes the reality of some exaggerations in trade which negates fraud. It reads:

> Art. 1340. The usual exaggerations in trade, when the other party had an opportunity to know the facts, are not in themselves fraudulent.

Given the standing and stature of the petitioner, he was in a position to ascertain more information about the contract.

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67 Id. at 99-100.
68 Id. at 76.
69 Id. at 78.

Songco v. Sellner [70] serves as one of the key guidelines in ascertaining whether a party is guilty of fraud in obtaining the consent of the party claiming that fraud existed. The plaintiff Lamberto Songco sought to recover earnings from a promissory note that defendant George Sellner had made out to him for payment of Songco's sugar cane production. Sellner claimed that he had refused to pay because Songco had promised that the crop would yield 3,000 piculs of sugar, when in fact, only 2,017 piculs of sugar had been produced. This Court held that Sellner would still be liable to pay the promissory note, as follows:

> Notwithstanding the fact that Songco's statement as to the probable output of his crop was disingenuous and uncandid, we nevertheless think that Sellner was bound and that he must pay the price stipulated. The representation in question can only be considered matter of opinion as the cane was still standing in the field, and the quantity of the sugar it would produce could not be known with certainty until it should be harvested and milled. Undoubtedly Songco had better experience and better information on which to form an opinion on this question than Sellner. Nevertheless the latter could judge with his own eyes as to the character of the cane, and it is shown that he measured the fields and ascertained that they contained 96 1/2 hectares.
>
> x x x x
>
> The law allows considerable latitude to seller's statements, or dealer's talk; and experience teaches that it is exceedingly risky to accept it at its face value. The refusal of the seller to warrant his estimate should have admonished the purchaser that that estimate was put forth as a mere opinion; and we will not now hold the seller to a liability equal to that which would have been created by a warranty, if one had been given.
>
> x x x x
>
> It is not every false representation relating to the subject matter of a contract which will render it void. It must be as to matters of fact substantially affecting the buyer's interest, not as to matters of opinion, judgment, probability, or expectation. (Long vs. Woodman, 58 Me., 52; Hazard vs. Irwin, 18 Pick. [Mass.], 95; Gordon vs. Parmelee, 2 Allen [Mass.], 212; Williamson vs. McFadden, 23 Fla., 143, 11 Am. St. Rep., 345.) When the purchaser undertakes to make an investigation of his own, and the seller does nothing to prevent this investigation from being as full as he chooses to make it, the purchaser cannot afterwards allege that the seller made misrepresentations. (National Cash Register Co. vs. Townsend, 137 N. C., 652, 70 L. R. A., 349; Williamson vs. Holt, 147 N. C., 515.)

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[70] 37 Phil. 254 (1917).

> We are aware that where one party to a contract, having special or expert knowledge, takes advantage of the ignorance of another to impose upon him, the false representation may afford ground for relief, though otherwise the injured party would be bound. But we do not think that the fact that Songco was an experienced farmer, while Sellner was, as he claims, a mere novice in the business, brings this case within that exception.[71]

The following facts show that petitioner was fully aware of the magnitude of his undertaking:

First, petitioner was fully aware of the financial reverses that Sterling Shipping Lines, Inc. had been undergoing, and he took great pains to release himself from the obligation.

Second, his background as a doctor, as a bank organizer, and as a businessman with experience in the textile business and real estate should have apprised him of the irregularity in the contract that he would be undertaking. This meant that at the time petitioner gave his consent to become a part of the corporation, he had been fully aware of the circumstances and the risks of his participation. Intent is determined by the acts.

Finally, the records showed that petitioner had been fully aware of the effect of his signing the promissory note. The bare assertion that he was not privy to the records cannot counteract the fact that petitioner himself had admitted that after he had severed ties with his brother, he had written a letter seeking to reach an amicable settlement with respondent Rupert V. Tankeh. Petitioner's actions defied his claim of a complete lack of awareness regarding the circumstances and the contract he had been entering.

The required standard of proof – clear and convincing evidence – was not met. There was no *dolo causante* or fraud used to obtain the petitioner's consent to enter into the contract. Petitioner had the opportunity to become aware of the facts that attended the signing of the promissory note. He even admitted that he has a lawyer-son who the petitioner had hoped would assist him in the administration of Sterling Shipping Lines, Inc. The totality of the facts on record belies petitioner's claim that fraud was used to obtain his consent to the contract given his personal circumstances and the applicable law.

However, in refusing to allow petitioner to participate in the management of the business, respondent Ruperto V. Tankeh was liable for

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[71] Id. at 257-259.

the commission of *incidental* fraud. In *Geraldez*, this Court defined incidental fraud as "those which are not serious in character and without which the other party would still have entered into the contract."[72]

Although there was no fraud that had been undertaken to obtain petitioner's consent, there was fraud in the *performance* of the contract. The records showed that petitioner had been unjustly excluded from participating in the management of the affairs of the corporation. This exclusion from the management in the affairs of Sterling Shipping Lines, Inc. constituted fraud incidental to the performance of the obligation.

This can be concluded from the following circumstances.

First, respondent raised in his Answer that petitioner "could not have promised plaintiff that he would be a part of the administration staff"[73] since petitioner had been fully aware that, as a corporation, Sterling Shipping Lines, Inc. acted through its board of directors. Respondent admitted that petitioner had been "an incorporator and member of the board of directors"[74] and that petitioner "was fully aware of the by-laws of the company."[75] It was incumbent upon respondent to act in good faith and to ensure that petitioner would not be excluded from the affairs of Sterling Shipping Lines, Inc. After all, respondent asserted that petitioner had entered into the contract voluntarily and with full consent.

Second, respondent claimed that if petitioner was intent on severing his connection with the company, all that petitioner had to do was to sell all his holdings in the company. Clearly, the respondent did not consider the fact that the sale of the shares of stock alone did not free petitioner from his liability to Development Bank of the Philippines or Asset Privatization Trust, since the latter had signed the promissory and had still been liable for the loan. A sale of petitioners' shares of stock would not have negated the petitioner's responsibility to pay for the loan.

Third, respondent Ruperto V. Tankeh did not rebuff petitioner's claim that the latter only received news about the sale of the vessel M/V Sterling Ace through the media and not as one of the board members or directors of Sterling Shipping Lines, Inc.

All in all, respondent Ruperto V. Tankeh's bare assertion that petitioner had access to the records cannot discredit the fact that the petitioner had been effectively deprived of the opportunity to actually

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72 *Geraldez v. Court of Appeals*, supra note 50, at 336.
73 *Rollo*, p. 100.
74 Id.
75 Id.

engage in the operations of Sterling Shipping Lines, Inc. Petitioner had a reasonable expectation that the same level of engagement would be present for the duration of their working relationship. This would include an undertaking in good faith by respondent Ruperto V. Tankeh to be transparent with his brother that he would not automatically be made part of the company's administration.

However, this Court finds there is nothing to support the assertion that Sterling Shipping Lines, Inc. and Arenas committed incidental fraud and must be held liable. Sterling Shipping Lines, Inc. acted through its board of directors, and the liability of respondent Tankeh cannot be imposed on Sterling Shipping Lines, Inc. The shipping line has a separate and distinct personality from its officers, and petitioner's assertion that the corporation conspired with the respondent Ruperto V. Tankeh to defraud him is not supported by the evidence and the records of the case.

As for Arenas, in *Lim Tanhu v. Remolete,*[76] this Court held that:

> [In] all instances where a common cause of action is alleged against several defendants, some of whom answer and the others do not, the latter or those in default acquire a vested right not only to own the defense interposed in the answer of their co-defendant or co-defendants not in default but also to expect a result of the litigation totally common with them in kind and in amount whether favorable or unfavorable. The substantive unity of the plaintiffs' cause against all the defendants is carried through to its adjective phase as ineluctably demanded by the homogeneity and indivisibility of justice itself.[77]

As such, despite Arenas' failure to submit his Answer to the Complaint or his declaration of default, his liability or lack thereof is concomitant with the liability attributed to his co-defendants or co-respondents. However, unlike respondent Ruperto V. Tankeh's liability, there is no action or series of actions that may be attributed to Arenas that may lead to an inference that he was liable for incidental fraud. In so far as the required evidence for both Sterling Shipping Lines, Inc. and Arenas is concerned, there is no basis to justify the claim of incidental fraud.

In addition, respondents Development Bank of the Philippines and Asset Privatization Trust or Privatization and Management Office cannot be held liable for fraud. Incidental fraud cannot be attributed to the execution of their actions, which were undertaken pursuant to their mandated functions under the law. "Absent convincing evidence to the contrary, the presumption of regularity in the performance of official functions has to be upheld."[78]

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76 G.R. No. L-40098, August 29, 1975, 66 SCRA 425.
77 Id. at 458.
78 *People v. Lapura*, 325 Phil. 346, 352 (1996).

The Obligation to Pay Damages

As such, respondent Ruperto V. Tankeh is liable to his older brother, petitioner Alejandro, for damages. The obligation to pay damages to petitioner is based on several provisions of the Civil Code.

Article 1157 enumerates the sources of obligations.

> **Article 1157.** Obligations arise from:
>
> (1) Law;
>
> (2) Contracts;
>
> (3) Quasi-contracts;
>
> (4) Acts or omissions punished by law; and
>
> (5) Quasi-delicts. (1089a)

This enumeration does not preclude the possibility that a single action may serve as the source of several obligations to pay damages in accordance with the Civil Code. Thus, the liability of respondent Ruperto V. Tankeh is based on the law, under Article 1344, which provides that the commission of incidental fraud obliges the person employing it to pay damages.

In addition to this obligation as the result of the contract between petitioner and respondents, there was also a patent abuse of right on the part of respondent Tankeh. This abuse of right is included in Articles 19 and 21 of the Civil Code which provide that:

> **Article 19.** 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.
>
> **Article 21.** Any person who wilfully causes loss or injury to another in manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

Respondent Ruperto V. Tankeh abused his right to pursue undertakings in the interest of his business operations. This is because of his failure to at least act in good faith and be transparent with petitioner regarding Sterling Shipping Lines, Inc.'s daily operations.

In *National Power Corporation v. Heirs of Macabangkit Sangkay*,[79]

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[79] G.R. No. 165828, August 24, 2011, 656 SCRA 60.

this Court held that:

> When a right is exercised in a manner not conformable with the norms enshrined in Article 19 and like provisions on human relations in the *Civil Code,* and the exercise results to [sic] the damage of [sic] another, a legal wrong is committed and the wrongdoer is held responsible.[80]

The damage, loss, and injury done to petitioner are shown by the following circumstances.

First, petitioner was informed by Development Bank of the Philippines that it would still pursue his liability for the payment of the promissory note. This would not have happened if petitioner had allowed himself to be fully apprised of Sterling Shipping Lines, Inc.'s financial straits and if he felt that he could still participate in the company's operations. There is no evidence that respondent Ruperto V. Tankeh showed an earnest effort to at least allow the possibility of making petitioner part of the administration a reality. The respondent was the brother of the petitioner and was also the primary party that compelled petitioner Alejandro Tankeh to be solidarily bound to the promissory note. Ruperto V. Tankeh should have done his best to ensure that he had exerted the diligence to comply with the obligations attendant to the participation of petitioner.

Second, respondent Ruperto V. Tankeh's refusal to enter into an agreement or settlement with petitioner after the latter's discovery of the sale of the M/V Sterling Ace was an action that constituted bad faith. Due to Ruperto's refusal, his brother, petitioner Alejandro, became solidarily liable for an obligation that the latter could have avoided if he had been given an opportunity to participate in the operations of Sterling Shipping Lines, Inc. The simple sale of all of petitioner's shares would not have solved petitioner's problems, as it would not have negated his liability under the terms of the promissory note.

Finally, petitioner is still bound to the creditors of Sterling Shipping Lines, Inc., namely, public respondents Development Bank of the Philippines and Asset Privatization Trust. This is an additional financial burden for petitioner. Nothing in the records suggested the possibility that Development Bank of the Philippines or Asset Privatization Trust through the Privatization Management Office will not pursue or is precluded from pursuing its claim against the petitioner. Although petitioner Alejandro voluntarily signed the promissory note and became a stockholder and board member, respondent should have treated him with fairness, transparency, and consideration to minimize the risk of incurring grave financial reverses.

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[80] Id. at 83 *citing Cebu Country Club, Inc. v. Elizagaque*, G.R. No. 160273, January 18, 2008, 542 SCRA 65, 74-75.

In *Francisco v. Ferrer*,[81] this Court ruled that moral damages may be awarded on the following bases:

> To recover moral damages in an action for breach of contract, the breach must be palpably wanton, reckless, malicious, in bad faith, oppressive or abusive.
>
> Under the provisions of this law, in culpa contractual or breach of contract, moral damages may be recovered when the defendant acted in bad faith or was guilty of gross negligence (amounting to bad faith) or in wanton disregard of his contractual obligation and, exceptionally, when the act of breach of contract itself is constitutive of tort resulting in physical injuries.
>
> Moral damages may be awarded in breaches of contracts where the defendant acted fraudulently or in bad faith.
>
> Bad faith does not simply connote bad judgment or negligence, it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud.
>
> x x x x
>
> The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish, serious anxiety as the result of the actuations of the other party. Invariably such action must be shown to have been willfully done in bad faith or will ill motive. Mere allegations of besmirched reputation, embarrassment and sleepless nights are insufficient to warrant an award for moral damages. It must be shown that the proximate cause thereof was the unlawful act or omission of the [private respondent] petitioners.
>
> An award of moral damages would require certain conditions to be met, to wit: (1) *first*, there must be an injury, whether physical, mental or psychological, clearly sustained by the claimant; (2) *second*, there must be culpable act or omission factually established; (3) *third*, the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) *fourth*, the award of damages is predicated on any of the cases stated in Article 2219 of the Civil Code. (Citations omitted)[82]

In this case, the four elements cited in *Francisco* are present. First, petitioner suffered an injury due to the mental duress of being bound to such an onerous debt to Development Bank of the Philippines and Asset

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81 405 Phil. 741 (2001).

82 Id. at 748-750.

Privatization Trust. Second, the wrongful acts of undue exclusion done by respondent Ruperto V. Tankeh clearly fulfilled the same requirement. Third, the proximate cause of his injury was the failure of respondent Ruperto V. Tankeh to comply with his obligation to allow petitioner to either participate in the business or to fulfill his fiduciary responsibilities with candor and good faith. Finally, Article 2219[83] of the Civil Code provides that moral damages may be awarded in case of acts and actions referred to in Article 21, which, as stated, had been found to be attributed to respondent Ruperto V. Tankeh.

In the Appellant's Brief,[84] petitioner asked the Court of Appeals to demand from respondents, except from respondent Asset Privatization Trust, the amount of five million pesos (₱5,000,000.00). This Court finds that the amount of five hundred thousand pesos (₱500,000.00) is a sufficient amount of moral damages.

In addition to moral damages, this Court may also impose the payment of exemplary damages. Exemplary damages are discussed in Article 2229 of the Civil Code, as follows:

> ART. 2229. Exemplary or corrective damages are imposed, by way of example or correction of the public good, in addition to moral, temperate, liquidated or compensatory damages.

Exemplary damages are further discussed in Articles 2233 and 2234, particularly regarding the pre-requisites of ascertaining moral damages and the fact that it is discretionary upon this Court to award them or not:

> ART. 2233. Exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they should be adjudicated.
>
> ART. 2234. While the amount of the exemplary damages need not be proven, 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 x x x

The purpose of exemplary damages is to serve as a deterrent to future and subsequent parties from the commission of a similar offense. The case of *People v. Rante*[85] citing *People v. Dalisay*[86] held that:

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[83] CIVIL CODE, Article 2219**.** Moral damages may be recovered in the following and analogous cases: (1) A criminal offense resulting in physical injuries; (2) Quasi-delicts causing physical injuries; (3) Seduction, abduction, rape, or other lascivious acts; (4) Adultery or concubinage; (5) Illegal or arbitrary detention or arrest; (6) Illegal search; (7) Libel, slander or any other form of defamation; (8) Malicious prosecution; (9) Acts mentioned in Article 309; (10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

[84] *Rollo*, p. 214.

[85] G.R. No. 184809, March 29, 2010, 617 SCRA 115.

> Also known as 'punitive' or 'vindictive' damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant—associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud—that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.[87]

To justify an award for exemplary damages, the wrongful act must be accompanied by bad faith, and an award of damages would be allowed only if the guilty party acted in a wanton, fraudulent, reckless or malevolent manner.[88] In this case, this Court finds that respondent Ruperto V. Tankeh acted in a fraudulent manner through the finding of *dolo incidente* due to his failure to act in a manner consistent with propriety, good morals, and prudence.

Since exemplary damages ensure that future litigants or parties are enjoined from acting in a similarly malevolent manner, it is incumbent upon this Court to impose the damages in such a way that will serve as a categorical warning and will show that wanton actions will be dealt with in a similar manner. This Court finds that the amount of two hundred thousand pesos (₱200,000.00) is sufficient for this purpose.

In sum, this Court must act in the best interests of all future litigants by establishing and applying clearly defined standards and guidelines to ascertain the existence of fraud.

WHEREFORE, this **Petition is PARTIALLY GRANTED.** The Decision of the Court of Appeals as to the assailed Decision in so far as the finding of fraud is **SUSTAINED** with the **MODIFICATION** that respondent **RUPERTO V. TANKEH** be ordered to pay moral damages in

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86 G.R. No. 188106, November 25, 2009, 605 SCRA 807.

87 Id. at 126-127.

88 *Cervantes v. Court of Appeals,* G.R. No. 125138, March 2, 1999, 304 SCRA 25, 33 *citing* J. C. SANGCO, PHILIPPINE LAW ON TORTS AND DAMAGES, 1034 (Vol. II, 1993).

the amount of **FIVE HUNDRED THOUSAND PESOS (₱500,000.00)** and the amount of **TWO HUNDRED THOUSAND PESOS (₱200,000.00)** by way of exemplary damages.

SO ORDERED.

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE C. MENDOZA
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.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division 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