



Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

CERTIFIED TRUE COPY
Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

MAY 25 2018

EXCELLENT ESSENTIALS
INTERNATIONAL CORPORATION,
Petitioner,

G.R. No. 192797

Present:

VELASCO, JR., J.,
Chairperson,
BERSAMIN,
LEONEN,
MARTIRES, and
GISMUNDO, JJ.

- versus -

EXTRA EXCEL INTERNATIONAL
PHILIPPINES, INC.,
Respondent.

Promulgated:

April 18, 2018

X-----
Wilfredo V. Lapitan X

DECISION

MARTIRES, J.:

We resolve the petition for review on certiorari assailing the 28 June 2010 Decision¹ of the Court of Appeals (CA) in CA-G.R. CV No. 88388. The CA decision, in effect, reversed the Regional Trial Court, Branch 138, Makati City (RTC, Branch 138), by ordering petitioner Excellent Essentials International Corporation (*Excellent Essentials*) to pay respondent Extra Excel International Philippines, Inc. (*Excel Philippines*) damages, attorney's fees, and costs of suit.

FACTUAL ANTECEDENTS

The present controversy started from a complaint filed by E. Excel International, Inc. (*Excel International*) and Excellent Essentials against Excel Philippines for damages and to enjoin the latter from selling, distributing, and marketing E. Excel products in the Philippines.

¹ *Rollo*, pp. 43-59; penned by Associate Justice Amy C. Lazaro-Javier, and concurred in by Associate Justices Sesinando E. Villon and Marlene Gonzales-Sison.

On 9 August 1996, Excel International and Excel Philippines entered into an exclusive rights contract wherein the latter was granted exclusive rights to distribute E. Excel products in the Philippines.² Under the same contract, Excel International reserved the right to discontinue or alter their agreement at any time.³

Over the span of four (4) years, Excel International experienced intra-corporate struggle over the control of the corporation and the operations of its various exclusive distributors in Asia. The dispute even reached the Judicial District Court of Utah (*Utah Court*). Eventually, the conflict between the principal stakeholders of Excel International, Jau-Hwa Stewart (*Stewart*) and Jau-Fei Chen (*Chen*), took a turn and Stewart somehow succeeded in gaining control of the company.

On 1 December 2000, Stewart, in her capacity as president of Excel International, revoked Excel Philippines' exclusive rights contract and appointed Excellent Essentials as its new exclusive distributor in the Philippines.⁴

Despite the revocation of its exclusive rights contract and the appointment of Excellent Essentials, Excel Philippines continued its operation in violation of the new exclusive distributorship agreement. Thus, on 26 January 2001, Excel International, through counsel, demanded that Excel Philippines cease from selling, importing, distributing, or advertising, directly or indirectly, any and all of E. Excel products.⁵

With its demand unheeded, Excel International and Excellent Essentials filed a complaint for injunction and damages against Excel Philippines. The complaint was originally filed before the RTC, Branch 56, of Makati City (*RTC, Branch 56*).⁶

On its part, Excel Philippines filed its answer with counterclaims saying that Excel International had no right to unilaterally revoke its exclusive right to distribute E. Excel products in the Philippines. Attached to its answer was an agreement dated 22 May 1995 between Excel International and Bright Vision Consultants, Ltd. (*Bright Vision*) showing that Excel Philippines' exclusive distributorship was irrevocable.⁷ In fact, it was because of this agreement that Excel Philippines was incorporated so that it would become Excel International's exclusive distributor within the Philippines. Pertinent portions of this agreement read:



² Records, Vol. I., p. 119.

³ Id.

⁴ Id. at 123 & 126

⁵ Id. at 127.

⁶ The case was re-raffled to Branch 138, which eventually rendered the RTC decision.

⁷ Records, Vol. I, pp. 165-171.

AGREEMENT

THIS AGREEMENT is made [on] the 22nd day of May 1995 by and between E. Excel International, Inc., a company registered in the State of Utah, USA (hereinafter referred to as "E. Excel USA") and Bright Vision Consultants Limited, a company registered in British Virgin Islands with Registration No. 133985 (hereinafter referred to as "BV").

WHEREAS:

1. E. Excel USA manufactures, markets and/or distributes the products, including but not limited to nutritional supplements, herbal foods, skin care products, and household products (hereinafter referred to as "Products"). The term "Product" means all products manufactured, marketed and distributed by E. Excel USA under the name and style of E. Excel USA's company name and/or its logo.
2. BV desires to invest and establish a new company with other shareholders in the Philippines for the sole purpose of distributing the Products in the Philippines.
3. The shareholders of BV have considerable marketing experience of the Products in other countries, and have [a] long term working relationship with E. Excel USA.
4. BV shall be the majority shareholder of the new company in the Philippines.
5. E. Excel USA desires to market the Products in the Philippines through the New Company.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein set forth, E. Excel USA and BV agree as follows:

1. FORMATION OF NEW COMPANY

- 1.1 Within six months from the date of this Agreement, BV shall form or help with the formation and establishment of a new company for the sole purpose of distributing the Products of E. Excel USA.
- 1.2. The name of the new company shall be Extra Excel International Philippines Inc. (herein referred to as the "New Company").
- 1.3. The New Company may be jointly owned by shareholders other than BV, however, BV shall be the majority shareholder.

2. BUSINESS PURPOSE OF THE NEW COMPANY

The formation of the New Company shall be for the following business purposes:



- 2.1. Distributing exclusively the Products licensed/manufactured by E. Excel USA in the Philippines.
- 2.2. Promote, advertise, and build up the brand name of the Products of E. Excel USA.
- 2.3. Train and recruit sales force and/or distributors for the Products of E. Excel USA.
- 2.4. Build a network of consumers for the Products of E. Excel USA.
- 2.5. Set up head office, and branch offices and/or training centers and/or distributing centers as may be necessary for the Products in the Philippines.
- 2.6. Warehouse and maintain necessary stock of the Products for the distributors/consumers.
- 2.7. Be responsible for all the costs and expenses relating to all promotional and marketing expenditure relating to the distribution of the Products in the Philippines.

3. APPOINTMENT OF EXCLUSIVE DISTRIBUTOR

- 3.1. Upon formation of the New Company, the New Company shall automatically become E. Excel USA's "Authorized Exclusive Distributor."
- 3.2. E. Excel hereby agrees to grant the New Company the irrevocable and exclusive right to distribute, market and/or sell the Products of E. Excel USA in the Philippines. The New Company shall be entitled to describe itself as E. Excel USA's "Authorized Exclusive Distributor" for its Products in the Philippines.
- 3.3. E. Excel USA also hereby authorizes and gives an exclusive, irrevocable license to the New Company the right to use its patents, trademarks, logo, designs, product formulations, copyrights, service marks, business and trade names, research and development and any other rights of a similar nature.
- 3.4. E. Excel USA shall not directly and/or indirectly appoint any other person, firm or company other than the New Company, as a distributor, seller and/or agent for its Products in the Philippines or to sell, supply and/or distribute to any other person, firm or company any of its Products, whether for use or resale in the Philippines.
- 3.5. E. Excel USA shall not directly and/or indirectly sell or appoint any other person, firm or company in any other country, other than the New Company, to cause a resale of the Products or export of the Products into the Philippines.



- 3.6. This license of Exclusive Distributorship shall continue in force until the 21st day of May 2005. At the expiration of the period stipulated, the New Company shall have the sole and exclusive right to renew this Exclusive Distributorship for another ten (10) years by giving E. Excel USA a written notice at least six (6) months before the expiration of this Exclusive Distributorship.
- 3.7. The validity of this Exclusive Distributorship is also subject to the New Company fulfilling the sales volume requirement as designated by E. Excel USA and specified in clause 3.8.
- 3.8. The New Company shall need to fulfill a minimum sales volume of 200,000,000 pesos per year starting 1997 to maintain its exclusive distributorship with E. Excel USA. Sales volume means the amount of sales in Philippine currency, Peso, of all the Products that are sold by the New Company's network of sales force in the Philippines, i.e., the price at which the Products are sold by the New Company to its sales network and/or consumer and/or distributors.
- 3.9. This exclusive distributorship awarded by E. Excel USA to the New Company may not be modified, transferred or terminated except by an instrument in writing signed by the duly authorized representative of E. Excel USA, and BV.

x x x x

7. DURATION AND TERMINATION OF AGREEMENT

- 7.1. This agreement shall come into force on the 22nd day of May 1995 and shall continue in force until the 21st day of May 2005. At the expiration of the period stipulated, BV shall have the sole and exclusive right to renew this agreement for another ten (10) years by giving E. Excel USA a written notice at least six (6) months before the expiration of this Agreement.
- 7.2. The validity of this Agreement is also subject to the New Company fulfilling the sales volume requirement as designated by E. Excel USA and specified in clause 3.8.
- 7.3. Unless otherwise mutually agreed upon between E. Excel USA and BV, neither party may terminate and/or revoke this Agreement until the expiry of the Agreement referred to in clause 7.1.
- 7.4. In the event of breach of this Agreement by E. Excel USA, E. Excel USA shall pay liquidated damages to either BV or the New Company (to be solely determined by BV) equal to 20% of the sales volume of the previous Agreement Year before the breach of the Agreement. Agreement Year means the period of 12 months from the date of this Agreement and each subsequent consecutive period of 12



months during the period of this Agreement. Nothing contained in this clause shall preclude BV or the New Company from demanding that E. Excel USA perform the obligations imposed in this Agreement until the expiry and/or optional renewal of this Agreement.

- 7.5. In the event that the New Company is not able to fulfill the sales volume as designated in Clause 3.8, BV, as the major shareholder of the New Company, warrants to E. Excel USA that it will ensure the New Company turns over to E. Excel USA all its trained [sales] network of distributors, and return to E. Excel USA any of its trademarks, logos and any other information related to the Intellectual Property of E. Excel USA. E. Excel USA shall have the right to appoint another agent, company or individual as its sole exclusive distributor of the Products in the Philippines.

8. NATURE OF AGREEMENT

- 8.1. E. Excel USA acknowledges that BV shall be the majority shareholder of the New Company, and that the New Company shall have other shareholders, therefore, in consideration of the mutual covenants herein set forth, E. Excel USA acknowledges that this Agreement may not be modified or changed by any representative of the New Company. This Agreement can only be modified by an instrument in writing signed by duly authorized representatives of both E. Excel USA and BV.
- 8.2. The Exclusive Distributorship, the right to use of Intellectual Property and any other rights given to the New Company by E. Excel USA is strictly for the use by the New Company and does not entitle the New Company to transfer, sub-contract or in any manner make over to third party except by an instrument in writing signed by the duly authorized representative of both BV and E. Excel USA.
- 8.3. This agreement contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes all previous agreement and understanding between the Parties with respect thereto, and may not be modified except by an instrument in writing signed by the duly authorized representatives of both BV and E. Excel USA.

X X X X

- 8.5. Any change in the Board of Directors, shareholdings and/or management of E. Excel USA or BV shall not, in any event, affect the validity and continuity of the rights and obligations of E. Excel USA and BV as contained in this Agreement.⁸



⁸ Id. at 165-170.

The RTC ruling

On 4 April 2001, after trial was conducted on the parties' respective applications for temporary restraining order and/or writ of preliminary injunction, the RTC, Branch 56 ruled in favor of Excel Philippines and enjoined Excellent Essentials from: (1) interfering with Excel Philippines' exclusive right to distribute; (2) claiming, publishing, and announcing that Excel Philippines has ceased to be Excel International's exclusive distributor in the Philippines; (3) intimidating, enticing, or persuading Excel Philippines' agents to abandon the company; and (4) infringing and using in its products, packaging, and promotional materials the trademarks, logos, designs, and other intellectual property that Excel International has exclusively licensed to Excel Philippines.⁹

After Excellent Essentials' motion for reconsideration was denied on 31 May 2001,¹⁰ it filed a petition for certiorari before the CA, docketed as CA-G.R. SP No. 65115.

Prior to this, however, Excel International and Excel Philippines filed a joint motion for a judgment based on their compromise agreement wherein both parties agreed to dismiss their claims against each other, without prejudice to the continuation of the case with respect to Excellent Essentials and Excel Philippines.¹¹ On 14 June 2001, the RTC, Branch 56 approved the compromise agreement and dismissed the claims and counterclaims of both parties accordingly.¹²

On 11 February 2002, the CA reversed and set aside the RTC, Branch 56's order issuing the preliminary injunction saying it was tainted with grave abuse of discretion.¹³ The CA ruled:

[Excel Philippines'] title or right over the contested exclusive distributorship of E. Excel's products cannot be said to be clear and unmistakable since there is a cloud of doubt in said right in view of the revocation of the same by [Excel International] and the subsequent grant of an Exclusive Rights Contract in favor of [Excellent Essentials]. The issuance by [Excel International] of the two (2) documents should already put the court *a quo* on guard as to the veracity of [Excel Philippines'] claim of exclusive distributorship. The court *a quo* should be, more so, be wary since both parties claim validity of their respective Exclusive Rights Contract.

x x x x



⁹ Id. at 572; Order dated 4 April 2001.

¹⁰ Id. at 709-710.

¹¹ Id. at 713-714.

¹² Id. at 715.

¹³ *Rollo*, pp. 132-145.

On the second requirement, it cannot be imagined how the continued operation of [Excellent Essentials] could work injustice on [Excel Philippines'] operation. The operation of Excellent Essentials appears to have no effect at all on [Excel Philippines] since it has not lifted a finger despite knowledge of [Excellent Essentials'] operation. [Excel Philippines'] visible action on the matter surfaced only when it was called by the court a quo to answer [Excellent Essentials'] cause of action. In fact, there are no indications that it had been hindered, stopped and thwarted by the commencement of [Excellent Essentials'] operations.

On the issue of damages, this Court is not convinced that [Excel Philippines] will suffer irreparable injury to warrant the issuance of a writ of preliminary injunction.

x x x x

A writ of injunction should never issue when an action for damages would adequately compensate the injuries caused. The very foundation of the jurisdiction to issue the writ of injunction rests in the possibility of irreparable injury, inadequacy of pecuniary compensation and prevention of multiplicity of suits. When the facts of the case fail to show the foregoing conditions, injunction should be issued.

In the instant case, [Excel Philippines] has aptly showed that the damages it incurred and may incur are capable of pecuniary estimation.

All told, it is clear that [the RTC, Branch 56] committed grave abuse of discretion in the issuance of a writ of preliminary injunction.

WHEREFORE, the instant petition is hereby GRANTED. Accordingly, the assailed Orders dated April 4, 2001 and May 31, 2001 issued by [the RTC, Branch 56] in Civil Case No. 01-164 are hereby **REVERSED AND SET ASIDE** for having been issued with grave abuse of discretion.¹⁴

On 30 August 2002, the CA's decision in CA-G.R. SP No. 65115 became final and executory.¹⁵

Meanwhile, the trial on the main case continued and the RTC, Branch 138, on 8 September 2006, rendered a decision dismissing Excellent Essentials' complaint as well as Excel Philippines' counterclaims.¹⁶ The RTC, Branch 138 found the issue on who was rightfully Excel International's exclusive distributor in the Philippines moot and academic after the Utah Court came out with a decision annulling Stewart's actions, as president of Excel International, in revoking Excel Philippines' exclusive distributorship and designating Excellent Essentials as its new distributor in the Philippines.¹⁷



¹⁴ Id. at 142-144.

¹⁵ Records, Vol. II, p. 3.

¹⁶ Id. at 345-348.

¹⁷ Id. at 346-347.

As for Excel Philippines' counterclaims for damages, the RTC, Branch 138 held that there was no bad faith and malice on the part of Excellent Essentials who merely relied on the actions of Stewart, who was then acting in her capacity as president of Excel International.¹⁸ The RTC, Branch 38 noted as a matter of fact that Excellent Essentials immediately desisted from distributing and marketing Excel International's products when the Utah Court came out with its decision declaring Stewart's actions in the Philippines illegal and that Excel Philippines was the rightful exclusive distributor.¹⁹ Moreover, the RTC said it could not award actual or compensatory damages for the decrease in sales volume based on projected sales as the claim was not clearly substantiated with a reasonable degree of certainty.²⁰

Unsatisfied with the outcome, Excel Philippines appealed from this decision before the CA.

In the assailed decision, the CA granted the appeal and ordered Excellent Essentials to pay Excel Philippines temperate and exemplary damages, attorney's fees, and costs of suit:

ACCORDINGLY, the appeal is **GRANTED IN PART**. The Decision dated September 8, 2006 of the Regional Trial Court, Branch 138, Makati City in Civil Case No. 01-164 is **MODIFIED** to this effect only: [Excellent Essentials] is **ORDERED TO PAY** [Excel Philippines] **₱170,897,948.00** as temperate damages, with legal interest at six percent (6%) per annum from the date of this Decision, and when this Decision becomes final and executory, the legal interest shall be twelve percent (12%) per annum until the amount due is fully paid; **₱2,500,000.00** as exemplary damages; **₱25,000.00** as attorney's fees; and the **COSTS OF SUIT**. The [RTC, Branch 138 decision] is **AFFIRMED IN ALL OTHER RESPECTS**.²¹

x x x x

Petition for Review

Excellent Essentials did not file a motion for reconsideration anymore and filed the present petition before this Court. In support of its petition, Excellent Essentials raised the following arguments:

1. The Court of Appeals had earlier ruled, in CA-G.R. SP No. 65115, that [Excel Philippines] would never be damaged by the continued actions or operations of [Excellent Essentials], which is tantamount to saying



¹⁸ Id. at 347.

¹⁹ Id.

²⁰ Id. at 348.

²¹ *Rollo*, pp. 57-58.

that [Excel Philippines'] claim for damages is speculative, conjectural, and whimsical;

2. Winniefer Go Tam, [Excel Philippines'] witness who testified on [its] purported damages, in her Affidavit-Direct Testimony, had singled out [Stewart], not [Excellent Essentials] or its new stockholders, that strained the contractual relationship of [Excel International] and [Excel Philippines], revoked the latter's distributorship contract with [Excel International], diverted the supply of Excel products from and stopped the shipment of Excel products to [Excel Philippines];
3. [Excellent Essentials'] new stockholders, who now comprised the controlling shareholdings, the present membership in the Board of Directors and corporate officers of [Excellent Essentials], have no direct or indirect participation in the actions of Stewart that precipitated the present controversy, since they became stockholders of [Excellent Essentials] long after the happening of these events; and
4. [Excellent Essentials] acted in good faith and without malice.²²

OUR RULING

We DENY Excellent Essentials' petition.

In sum, we are presented with two (2) issues that are crucial in resolving the present petition: (a) whether the CA's ruling in CA-G.R. SP No. 65115 is conclusively binding with regard to the award for damages in the instant case; and (b) whether Excellent Essentials' corporate existence and its business operations caused damage to Excel Philippines.

Findings of fact and opinion of a court when issuing a writ for preliminary injunction are interlocutory in nature.

One of the aspects of *res judicata*, known as "conclusiveness of judgment," ordains that issues actually and directly resolved in a former suit cannot again be raised in any future case between the parties involving a different cause of action.²³ Conclusiveness of judgment does not require identity of the causes of action; instead, it requires identity of issues. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit; but the adjudication of an issue in the first case is not conclusive of an entirely different and distinct issue arising in the second.²⁴ Hence, facts and

²² Id. at 25.

²³ *Presidential Commission on Good Government v. Sandiganbayan*, 590 Phil. 382, 396 (2008).

²⁴ *Alcantara v. Department of Environment and Natural Resources*, 582 Phil. 717, 735 (2008).

issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties, even if the latter suit may involve a different claim or cause of action.²⁵

In the case at bar, Excellent Essentials persuades us that the issues resolved during the preliminary injunction proceedings should simply carry over in the resolution of main case. To recall, the RTC, Branch 56 initially issued a temporary restraining order and/or writ of preliminary injunction but the CA nullified its order for being issued with grave abuse of discretion. The CA's reasons were: (1) Excel Philippines' exclusive distributorship in the Philippines was *doubtful* considering that Excel International revoked it and gave it to Excellent Essentials; and (2) Excel Philippines would not suffer any irreparable injury should Excellent Essentials be allowed to continue distributing Excel products in the Philippines. Thus, since it would appear that Excellent Essentials' continued operations have no effect at all on Excel Philippines, there is no injury to speak of when it comes to awarding damages in favor of the latter.

However, we cannot ascribe to Excellent Essentials' position because of the nature of a writ of preliminary injunction.

A writ of preliminary injunction is warranted where there is a showing that there exists a right to be protected and that the acts against which the writ is to be directed violate an established right.²⁶ Otherwise stated, for a court to decide on the propriety of issuing a temporary restraining order and/or a writ of preliminary injunction, it must only inquire into the existence of two things: (1) a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage.²⁷ Accordingly, we must remember that the sole object of a writ of preliminary injunction, whether prohibitory or mandatory, is to preserve the status quo and prevent further injury on the applicant until the merits of the main case can be heard.²⁸ The injunctive writ may only be resorted to by a litigant for the preservation and protection of his rights or interests during the pendency of the principal action.²⁹

Given that the writ of preliminary injunction is temporary until the main case is resolved on the merits, the evidence submitted during the hearing on the preliminary injunction is not conclusive; for only a "sampling" is needed to give the trial court an idea of the justification for its issuance pending the decision of the case on the merits.³⁰ As such, the

²⁵ *Ley Construction & Development Corporation v. Philippine Commercial & International Bank*, 635 Phil. 503, 512 (2010).

²⁶ Rules of Court, Rule 58, Section 3.

²⁷ *Borlongan v. Banco De Oro*, G.R. No. 217617, 5 April 2017.

²⁸ *Dolmar Real Estate Development Corporation v. CA*, 570 Phil. 434, 439 (2008).

²⁹ *Id.*

³⁰ *Levi Strauss (Phils.) Inc. v. Vogue Traders Clothing Company*, 500 Phil. 438, 461 (2005)


findings of fact and opinion of a court when issuing the writ of preliminary injunction are interlocutory in nature.³¹

From the foregoing, the CA's findings, despite being final and executory, were clearly limited to the issuance of an injunctive relief pending the final resolution of the main case. In other words, the resolution of the issue as to the existence or non-existence of an injury to Excel Philippines was determined only to preserve the status quo between the parties and not to prejudge the outcome of the claim for damages. To our mind, when the CA reversed the RTC, Branch, 56's order to issue a writ for preliminary injunction, it did not mean to say that Excel Philippines did not suffer losses. A closer look at the CA's decision in CA-G.R. SP No. 65115 would reveal that Excel Philippines was simply not entitled to an injunctive relief at that stage of the case.

A corporation, who is a third party to a contract, may be held liable for damages if used as a means to breach the obligations between the contracting parties.

Under the principle of relativity of contracts, only those who are parties to a contract are liable to its breach.³² Under Article 1314 of the Civil Code, however, any third person who induces another to violate his contract shall be liable to damages to the other contracting party. Said provision of law embodies what we often refer to as tortuous or contractual interference. In *So Ping Bun v. CA*,³³ we laid out the elements of tortuous interference: (1) existence of a valid contract; (2) knowledge on the part of the third person of the existence of contract; and (3) interference of the third person is without legal justification or excuse.³⁴

Prior to the revocation of its exclusive distributorship, Excel International had an existing contract with Bright Vision wherein they agreed to set up a corporation to exclusively distribute E. Excel products within the Philippines. This corporation, eventually, turned out to be Excel Philippines who was given the irrevocable and exclusive right to distribute, market, and/or sell. Under its agreement with Bright Vision, Excel Philippines' exclusive distributorship right was irrevocable and may only be modified, transferred, or terminated upon the mutual consent of both parties. This agreement was effective from 22 May 1995 until 21 May 2005.



³¹ Id.

³² Civil Code, Article 1311.

³³ 373 Phil. 532, 540 (1999).

³⁴ See also *Lagon v. CA*, 493 Phil. 739, 747 (2005).

The relationship between Excel International and Excel Philippines took an unexpected turn when Stewart, acting as Excel International's president, unilaterally revoked Excel Philippines' right and conferred it to Excellent Essentials. Although Stewart's actions were later considered unlawful by the Utah Court, whose opinion was adopted by both the RTC, Branch 138 and the CA, Excellent Essentials was able to set up shop and disrupt Excel Philippines' distribution of E. Excel products in the Philippines.

At this point, Excel International had already breached its contractual obligations by unilaterally revoking Excel Philippines' exclusive distributorship even if it was prohibited from doing so under the 22 May 1995 agreement. Stewart could not have done what she did during her temporary control over Excel International because, under clause 8.5 of the agreement, any change in the management of Excel International shall not affect the validity and continuity of the rights and obligations of both parties. In other words, Stewart, as Excel International's interim president, was bound by the company's grant of exclusive distributorship to Excel Philippines and the conditions that came with it.

Having established the first element of tortuous interference, we now have to determine if Excellent Essentials had knowledge of Excel Philippines' exclusive right. On this score, we note that the exclusive distributorship right was granted to Excellent Essentials before it existed.³⁵ This circumstance suggests that even before Excellent Essentials was organized, its incorporators had the preconceived plan to maneuver around Excel Philippines. Worse, after going over the records, there is evidence showing that Excellent Essentials' incorporators were officers of and/or affiliated with Excel Philippines. In fact, these incorporators remained at work with Excel Philippines during this time and started to pirate its supervisors, employees, and agents to join Excellent Essentials' multi-level marketing system.

Under these circumstances, we can conclude that those behind Excellent Essentials not only had knowledge that Excel International had the obligation to honor Excel Philippines' exclusive right, but also conspired with Stewart to undermine Excel Philippines. Thus, we agree with the CA when it said:

It does not escape this Court's attention the stealthy maneuverings that [Excellent Essentials'] incorporators did while still working for [Excel Philippines]. As narrated above, they anticipated the revocation of [Excel Philippines'] exclusive right contract and the award to [Excellent Essentials] of the same gratuity while the latter has yet to be organized.



³⁵ The exclusive right contract of Excellent Essentials is dated 1 December 2000 but Excellent Essentials was organized and registered only on 8 December 2000.

With this expectation comes not a foreknowledge of divine origin but a conspiracy to rig existing contractual obligations so they could swaddle themselves with the benefits that go along with such maneuverings. The Utah Court made same observations as this Court now does because the coincidence of the revocation of the exclusive rights contract and its conferment later appears so surreal if they were not planned at all. It is in this sequence of events that this Court finds bad faith in [Excellent Essentials'] actuations. Contrary to its assertions, it did not just stand as an innocent bystander but a conspirator in the manner by which [Excel International's] corporate structure and contracts were skewed to fit the best interests of some.³⁶

On the last element, therefore, we cannot ascribe to Excellent Essentials' claim that it was not guilty of malice or bad faith.

A duty which the law of torts is concerned with is respect for the property of others, and cause of action *ex delicto* may be predicated by an unlawful interference by any person of the enjoyment of the other of his private property. This may pertain to a situation where a third person induces a person to renege on or violate his undertaking under a contract.³⁷

In *Yu v. CA*,³⁸ we ruled that the right to perform an exclusive distributorship agreement and to reap the profits resulting from such performance are proprietary rights which a party may protect.³⁹ In that case, the former dealer of the same goods purchased the merchandise from the manufacturer in England through a trading firm in West Germany and sold these in the Philippines. We held that the rights granted to the petitioner under the exclusive distributorship agreement may not be diminished nor rendered illusory by the expedient act of utilizing or interposing a person or firm to obtain goods for which the exclusive distributorship was conceptualized, at the expense of the sole authorized distributor.⁴⁰

In the case before us, we observe the same unjust conduct exhibited by Excellent Essentials tantamount to tortuous interference.

To sustain a case for tortuous interference, the defendant must have acted with malice or must have been driven by purely impure reasons to injure plaintiff; otherwise stated, his act of interference cannot be justified.⁴¹ We further explained that the word induce refers to situations where a

³⁶ *Rollo*, p. 53.

³⁷ *Ferro Chemicals, Inc. v. Garcia*, G.R. No. 168134, 5 October 2016, 804 SCRA 528, 570 citing *Lagon v. CA*, supra note 34 at 748.

³⁸ 291 Phil. 336, 340 (1993).

³⁹ See *Go v. Cordero*, 634 Phil. 69, 91 (2010).

⁴⁰ *Yu v. CA*, supra note 38.

⁴¹ *Go v. Cordero*, supra note 39 at 95-96 citing *Lagon v. CA*, supra note 34 at 748.

person causes another to choose one course of conduct by persuasion or intimidation.⁴²

Contrary to Excellent Essentials' argument in the instant petition, its participation in the scheme against Excel Philippines transgressed the bounds of permissible financial interest.⁴³ Its mere corporate existence played an important factor for Stewart to revoke Excel Philippines' exclusive right to distribute E. Excel products in the Philippines. For without it, or the participation of its incorporators, Excel International would not have the means to connect with the marketing network Excel Philippines established. Simply put, Excellent Essentials became the vessel for the breach of Excel International's contractual undertaking with Excel Philippines.

***Correction of the Award for Damages
and Imposition of Interest Due.***

Although Excellent Essentials is guilty of tortuous interference and, therefore, Excel Philippines is entitled to damages, we do not agree with the CA in the award of temperate damages.

Under Article 2224 of the Civil Code, temperate damages may be recovered when pecuniary loss has been suffered but its amount, from the nature of the case, cannot be proved with certainty. The amount thereof is usually left to the discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be more than nominal but less than compensatory.⁴⁴ Thus, to warrant an award for temperate damages, the plaintiff must prove that he actually suffered a pecuniary loss but cannot ascertain the exact amount of damage suffered.

In the present case, Excel Philippines bolsters claim for damages based on the decrease in its sales volume, the decline in the number of its distributors, and the expenses it incurred during the recovery period. The total amount of its claim is ₱512,693,845.63, at least half a billion of which is the loss in its sales volume.

In awarding temperate damages in lieu of actual or compensatory damages, the CA thought one-third (1/3) of the amount claimed as damages was proportionate, to *wit*:

As regards the relief for actual damages, the ruling in *Tan v. JAM Transit* teaches: "To warrant an award of actual and compensatory

⁴² Id.

⁴³ See *Gilchrist v. Cuddy*, 29 Phil. 542, 549 (1915).

⁴⁴ *Dueñas v. Guce-Africa*, 618 Phil. 10, 22 (2009); *Tan v. OMC Carriers, Inc.*, 654 Phil. 443, 455 (2011).

damages for repair to damage sustained, the best evidence should be the receipts or other documentary evidence proofs of the actual amount expended.”

Here, this Court finds no evidence of this sort to justify an award of actual damages. However, considering it was duly proven that the business of [Excel Philippines] was prejudiced and its operations indeed curtailed if not altogether stopped, but the actual amounts lost were not determined with certitude, this Court deems it appropriate to award temperate damages. Under Article 2224 of the Civil Code, temperate damages may be recovered when pecuniary loss has been suffered but its amount cannot be proved with certainty.

x x x x

Here, 1/3 of the total amount claimed as actual damages is just and reasonable as well as temperate damages to be adjudicated, thus: 1/3 x ₱512,693,845.63 equals ₱170,897,948.00.⁴⁵

Even though no proof of pecuniary loss is necessary in order that temperate damages may be awarded,⁴⁶ we cannot sustain the CA’s finding that Excel Philippines suffered substantial losses to warrant an award for temperate damages. In the first place, the figures offered to prove the decline in sales were based on **projected** monthly sales volume and forecasted computations. To be more specific, according to Excel Philippines’ administrative manager: (1) for calendar year 2000, the audited financial statement reported a net loss of ₱75,158,650.00 but the company estimated only a net loss of ₱65,253,626.33; hence, a difference of ₱9,905,023.67; (2) for calendar year 2001, the audited financial statement reported a net loss of ₱111,869,409.00 but the company estimated a net income of ₱127,058,622.83; hence, a difference of ₱238,955,031.83; and (3) for calendar year 2002, the audited financial statement reported a net loss of ₱43,280,889.00 but the company estimated a net income of ₱209,510,170.79; hence, a difference of ₱252,791,059.79. The total variance between the forecasted figures from the actual figures reported in its financial statement, roughly around ₱501,651,115.29, was Excel Philippines’ basis for its claim for damages for the decrease in its sales volume.⁴⁷

We cannot use these figures as basis that Excel Philippines suffered losses because of Excellent Essentials’ interference. Although attributable, we cannot be sure that Excellent Essentials solely caused the decrease in Excel Philippines sales volume. These figures were based on undocumented sales figures, summarized into a table, and also, on the company’s projections which cannot be relied upon if we were to account for loss of profits. Thus, having no factual basis to prove a pecuniary loss on the part

⁴⁵ *Rollo*, pp. 55-57.

⁴⁶ Civil Code, Article 2216.

⁴⁷ *Rollo*, pp. 153-154; Affidavit in Lieu of Direct Testimony of Winniefer Go Tam, Administrative Manager of Excel Philippines.

of Excel Philippines, we find it appropriate to delete the award for temperate damages and award nominal damages instead.

Under Article 2221 of the Civil Code, nominal damages may be awarded in order that the plaintiff's right, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered. Nominal damages are recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown.⁴⁸ In a number of cases, this Court has awarded nominal damages because there was no substantial injury on the plaintiff but there was definitely a legal right violated.⁴⁹

Given the circumstances, we believe the amount of ₱50,000,000.00, or 30% of the award for temperate damages, is just and reasonable as nominal damages.

Lastly, we impose the legal interest of six percent (6%) per annum from the time this judgment becomes final and executory until this judgment is wholly satisfied.⁵⁰

WHEREFORE, premises considered, we **DENY** the petition. The 28 June 2010 Decision of the Court of Appeals in CA-G.R. CV No. 88388 is **AFFIRMED** with the following **MODIFICATIONS**: (1) the award for temperate damages is deleted and, in lieu thereof, Excellent Essentials International Corporation is ordered to pay Extra Excel International Philippines, Inc. ₱50,000,000.00 as nominal damages; and (2) the total amount adjudged shall earn an interest rate of six percent (6%) per annum on the balance and interest due from the date of finality of this decision until fully paid.

SO ORDERED.

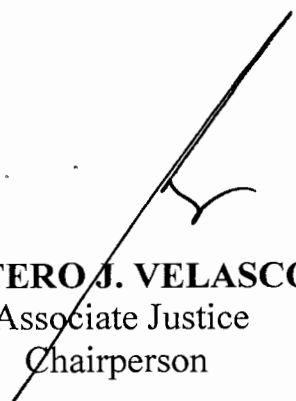

SAMUEL R. MARTIRES
Associate Justice

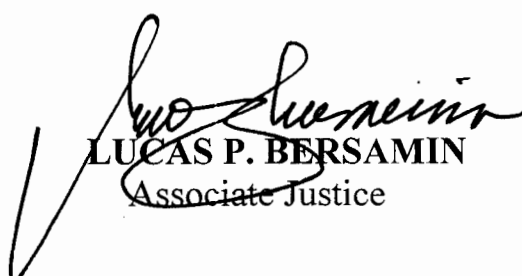
⁴⁸ *Seven Brothers Shipping Corporation v. DMC-Construction Resources, Inc.*, 748 Phil. 692, 700 (2014) citing *Francisco v. Ferrer*, 405 Phil. 741, 751 (2001) further citing *Areola v. CA*, 306 Phil. 656, 667 (1994).

⁴⁹ See *Saludo v. CA*, 207 Phil. 498, 536 (1992); *Northwest Airlines, Inc. v. Cuenca*, 122 Phil. 403 (1965); *Francisco v. Ferrer*, 405 Phil. 741, 751 (2001); and *Areola v. CA*, 306 Phil. 656, 667 (1994).

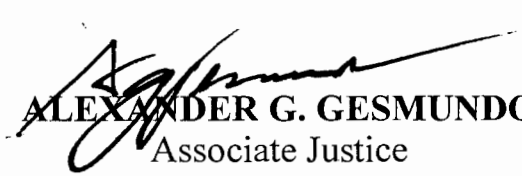
⁵⁰ See *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

WE CONCUR:


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson



LUCAS P. BERSAMIN
 Associate Justice


MARVIC M.V.F. LEONEN
 Associate Justice


ALEXANDER G. GESMUNDO
 Associate Justice

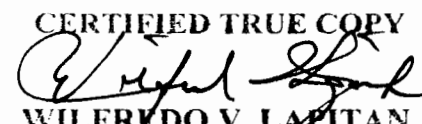
ATTESTATION

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.

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division


ANTONIO T. CARPIO
 Acting Chief Justice

MAY 25 2018