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Wilfredo V. Lapitan
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Division Clerk of Court
Third Division

Republic of the Philippines
Supreme Court
Manila

OCT 02 2018

THIRD DIVISION

**BELINA CANCIO and JEREMY G.R. No. 182307
PAMPOLINA,**

Petitioners,

Present:

VELASCO, JR., *J.*, Chairperson,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

-versus-

**PERFORMANCE FOREIGN
EXCHANGE CORPORATION,**
Respondent.

Promulgated:

June 6, 2018

Wilfredo V. Lapitan

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DECISION

LEONEN, *J.*:

When a party assails a lower court's appreciation of the evidence, that party raises a question of fact that cannot be entertained in a petition for review filed under Rule 45 of the Rules of Court.

This is a Petition for Review on Certiorari¹ assailing January 31, 2008 Decision² and March 31, 2008 Resolution³ of the Court of Appeals, which

¹ *Rollo*, pp. 23-52.

² *Id.* at 54-75. The Decision, docketed as CA-G.R. CV No. 88439, was penned by Associate Justice Mariano C. Del Castillo (now Supreme Court Associate Justice) and concurred in by Associate Justices Arcangelita Romilla-Lontok and Romeo F. Barza of the Fourteenth Division, Court of Appeals, Manila.

³ *Id.* at 77. The Resolution, docketed as CA-G.R. CV No. 88439, was penned by Associate Justice Mariano C. Del Castillo (now Supreme Court Associate Justice) and concurred in by Associate Justices Arcangelita Romilla-Lontok and Romeo F. Barza of the Former Fourteenth Division, Court of Appeals,

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overturned the Regional Trial Court July 15, 2006 Decision. The Regional Trial Court found Performance Foreign Exchange Corporation (Performance Forex) solidarily liable with broker Rolando Hipol (Hipol) for unauthorized trade transactions he made on Belina Cancio (Cancio) and Jeremy Pampolina's (Pampolina) joint trading account. The Court of Appeals, however, absolved Performance Forex from any liability.

Performance Forex is a corporation operating as a financial broker/agent between market participants in foreign exchange transactions.⁴

Foreign currency exchange trading or forex trading is the speculative trade of foreign currency for the sole purpose of gaining profit from the change in prices.⁵ The forex market is a "global, decentralized," and essentially "an over-the-counter (OTC) market where the different currency trading locations around the globe electronically form a unified, interconnected market entity."⁶

Unlike a stock exchange market where the opening and closing of trades rely on only one (1) or two (2) time zones, a forex market may have overlapping time zones. Foreign currency, due to its decentralized nature, may be traded in different financial markets.⁷ For instance, trading currency using US dollars would not depend on the business or banking hours only of financial institutions in the United States.⁸

Traders are drawn to the forex market since the price of currency constantly fluctuates. The value of a foreign currency is determined by international capital flow or the "movement of money from one currency to another."⁹ International capital flow is caused by a number of factors, among which are "a country's interest rates, inflation situation, [Gross Domestic Product] growth, employment, trade balance, and other barometers of economic health."¹⁰

Currencies are traded in pairs by speculating the value of one currency against another.¹¹ One currency, usually the US dollar,¹² is considered the "base currency" while the other currency is a "quote or counter currency."¹³ If a trader speculates that the base currency will be stronger than the counter currency, the trader will sell the base currency to buy more counter currency.

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⁴ Id. at 55.

⁵ JAMES CHEN, ESSENTIALS OF FOREIGN EXCHANGE TRADING, 2 (2009).

⁶ Id. at 7.

⁷ Id.

⁸ Id. at 9.

⁹ Id. at 15.

¹⁰ Id. at 15-16.

¹¹ Id. at 22.

¹² Id. at 10.

¹³ Id. at 22.

If the trader speculates that the base currency will be weaker than the counter currency, then the trader will sell the counter currency to buy more of the base currency.¹⁴ For example, if a trader speculates that the US dollar will rise in value as against the Philippine peso, the trader will sell dollars to acquire more pesos. If the trader speculates that the dollar will weaken against the peso, the trader will sell pesos to acquire more dollars.

In a standard forex trade, a trader would “open a position” by buying or selling a certain amount of a particular currency based on its value against the US dollar. The trader would then hold on to this particular currency until its value appreciates or depreciates. Once the value changes, the trader then “closes position” by selling this currency at a higher price or buying it at a lower price; hence, earning a profit.¹⁵ If the trader sells when the value depreciates or buys when the value appreciates, the trader suffers a loss. Losses, however, are only realized when the traders close their positions.¹⁶

The participants in a forex market are banks, hedge funds, investment firms, and individual retail traders.¹⁷ Unlike banks, hedge funds, and investment firms that have significant amounts of capital to engage in trade, individual retail traders often make use of brokers, who “serve as an agent of the customer in the broader [foreign currency exchange] market, by seeking the best price in the market for a retail order and dealing on behalf of the retail customer.”¹⁸ Individual retail traders also rely on “leverage trading,” where traders can open margin accounts with a financial broker or agent to make use of that broker or agent’s credit line to engage in trade.¹⁹

A margin account is an account where the broker-dealer lends money to the trader to purchase currency, using the same purchased currency as collateral.²⁰ Returns will be proportional to the amount deposited.²¹ Leverage is determined by the amount that the trader is required to deposit. If a trader has to deposit US\$1,000.00 into a margin account to trade US\$100,000.00 in currency, the margin account has a leverage of 100 to 1.²² This system allows the trader to control more money in the market than what was originally deposited.²³

¹⁴ Id. at 22–23.

¹⁵ See *rollo*, pp. 185 and 334.

¹⁶ See THOMAS OBERLECHNER, *THE PSYCHOLOGY OF THE FOREIGN EXCHANGE MARKET*, 85 (2004).

¹⁷ JAMES CHEN, *ESSENTIALS OF FOREIGN EXCHANGE TRADING*, 13–14 (2009).

¹⁸ A. MORALY, *INTERNATIONAL ROBBERY OF U.S. WEALTH*, 132 (2011).

¹⁹ *Rollo*, pp. 61–62.

²⁰ See UNITED STATES SECURITIES AND EXCHANGE COMMISSION INVESTOR BULLETIN, *Understanding Margin Accounts*, <<https://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-bulletin-understanding-margin-accounts>> (Last accessed June 1, 2018).

²¹ See UNITED STATES SECURITIES AND EXCHANGE COMMISSION INVESTOR BULLETIN, *Understanding Margin Accounts*, <<https://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-bulletin-understanding-margin-accounts>> (Last accessed June 1, 2018).

²² See JAMES CHEN, *ESSENTIALS OF FOREIGN EXCHANGE TRADING*, 35-36 (2009).

²³ See JAMES CHEN, *ESSENTIALS OF FOREIGN EXCHANGE TRADING*, 35-36 (2009).

Individual retail traders make use of leverage trading and margin accounts since price movements are usually miniscule. A “pip” is “the smallest unit of price movement in the exchange rate of a currency pair.”²⁴ The goal of every trader in foreign currency exchange is to earn pips. To underscore how miniscule expected profits are, pips commonly refer to the price movement of the *fourth* decimal place of major currencies.²⁵ Miniscule price movements, thus, require large amounts of capital for them to have significant impact on the profits to be earned.

For example, the current Philippine peso equivalent of one (1) Japanese yen is ₱0.4830.²⁶ A pip would be a change from ₱0.4830 to ₱0.4831. A ₱0.0001 price movement in the purchase of one (1) Japanese yen may not exactly have a significant effect but when multiplied by a hundred, it will actually mean a ₱48.31 increase for every trader betting on the rise of the yen and a ₱48.31 decrease for those expecting a rise in peso prices. Leverage trading can substantially magnify profits. Considering, however, that leverage trading is essentially trade using borrowed money, leverage trading can magnify losses just as much. Forex trade is, thus, considered a lucrative but risky endeavor since every trade multiplies profit and loss by a much higher rate than what was originally invested.

Sometime in 2000, Cancio and Pampolina accepted Hipol’s invitation to open a joint account with Performance Forex. Cancio and Pampolina deposited the required margin account deposit of US\$10,000.00 for trading. The parties executed an application for the opening of a joint account,²⁷ with a trust/trading facilities agreement²⁸ between Performance Forex, and Cancio and Pampolina. They likewise entered into an agreement for appointment of an agent²⁹ between Hipol, and Cancio and Pampolina.³⁰ They agreed that Cancio and Pampolina would make use of Performance Forex’s credit line to trade in the forex market while Hipol would act as their commission agent and would deal on their behalf in the forex market.

The trust/trading facilities agreement between Performance Forex, and Cancio and Pampolina provided:

6. Orders

You hereby irrevocably authorize us to act upon any instructions, whether in writing, by cable, telex, facsimile or telephone given or purported to be given by you or your agent or representative which appear whether on

²⁴ See JAMES CHEN, ESSENTIALS OF FOREIGN EXCHANGE TRADING, 37 (2009).

²⁵ See JAMES CHEN, ESSENTIALS OF FOREIGN EXCHANGE TRADING, 37 (2009).

²⁶ See BANGKO SENTRAL NG PILIPINAS FINANCIAL MARKET OPERATIONS SUB-SECTOR, *Reference Exchange Bulletin*, June 1, 2018, <http://www.bsp.gov.ph/statistics/sdds/ExchRate.htm> (Accessed June 6, 2018).

²⁷ *Rollo*, pp. 153–155, Denominated as “Application (Individual/Non-Incorporated Business)”.

²⁸ *Id.* at 156–161.

²⁹ *Id.* at 162–164.

³⁰ *Id.* at 55–56.

their respective faces (in the case of writing, cable, telex or facsimile) or otherwise to be bonafide. We shall not be responsible and you shall indemnify us for any losses incurred as a result of acting upon such instructions should there in fact be any error commission ambiguities or other irregularities therein or therewith.

....

Commission Agent

You acknowledge and agree that the commission agent (one Mr/Ms Ronald (sic) M. Hipol) who introduced you to us in connection with this Facility is your agent and we are in no way responsible for his actions or any warranties or representations he may have made (whether expressly on our behalf or not) and that pursuant to his having introduced you to us, we will (if you accept this Facility) pay him a commission based on your trading with us (details of which will be applied to you on request). Should you choose to also vest in him trading authority on your behalf please do so only after considering the matter carefully, for we shall not be responsible nor liable for any abuse of the authority you may confer on him. This will be regarded strictly as a private matter between you and him. You further acknowledge that for our own protection and commercial purpose you are aware of the terms of the trading agreement between the commission agent and ourselves where the commission agent is to trade for you.³¹

All parties agreed that the trading would only be executed by Cancio and Pampolina, or, upon instructions to their agent, Hipol. The trading orders to Hipol would be coursed through phone calls from Cancio and Pampolina.³²

From March 9, 2000 to April 4, 2000, Cancio and Pampolina earned US\$7,223.98. They stopped trading for more or less two (2) weeks, after which, however, Cancio again instructed Hipol to execute trading currency orders. When she called to close her position, Hipol told her that he would talk to her personally.³³

Cancio later found out that Hipol never executed her orders. Hipol confessed to her that he made unauthorized transactions using their joint account from April 5, 2000 to April 12, 2000. The unauthorized transactions resulted in the loss of all their money, leaving a negative balance of US\$35.72 in their Statement of Account. Cancio later informed Pampolina about the problem.³⁴

Pampolina met with two (2) Performance Forex officers, Dave Almarinez and Al Reyes, to complain about Hipol's unauthorized trading on their account and to confront them about his past unauthorized trades with

³¹ Id. at 156 and 161.

³² Id. at 56.

³³ Id.

³⁴ Id. at 57.

Performance Forex's other client,³⁵ Justine Dela Rosa.³⁶ The officers apologized for Hipol's actions and promised to settle their account. However, they stayed quiet about Hipol's past unauthorized trading.³⁷

Performance Forex offered US\$5,000.00 to settle the matter but Cancio and Pampolina rejected this offer. Their demand letters to Hipol were also unheeded.³⁸ Thus, they filed a Complaint³⁹ for damages against Performance Forex and Hipol before the Regional Trial Court of Mandaluyong City.

Hipol was declared in default. Since the parties were unable to come to a settlement, trial commenced.⁴⁰

During trial, Performance Forex's General Manager for Sales and Marketing Jonathan Reyes Ocampo (Ocampo) testified that clients could trade through two (2) types of brokers. The first type is the independent broker, or one who is already experienced in trading and merely attends Performance Forex's orientation trainings to know its policies and regulations. The second type is an in-house broker or business relations officer, who is new to the business and has to be supervised by the sales and marketing managers. He stated that Hipol was an Investment Portfolio Manager, or an independent broker who not only provided information from financial experts but also executed orders on behalf of the clients.⁴¹

Performance Forex Senior Manager Gabriel Erazo (Erazo) added that in-house brokers usually cater to walk-in clients and are stationed in the company premises while independent brokers, like Hipol, seek clients and introduce them to the company.⁴²

Ocampo likewise testified that clients must first sign a Purchase Order Form before Performance Forex could authorize an order transaction. Every transaction must have its own Purchase Order Form.⁴³ Erazo confirmed that dealings were still done manually at the time of the questioned transactions, and that clients or agents must submit an actual signed Purchase Order Form.⁴⁴

Ocampo confirmed that they paid a "goodwill offer," i.e. the return of

³⁵ Id.

³⁶ Id. at 60–61.

³⁷ Id. at 57.

³⁸ Id. at 58. *See also rollo*, pp. 299–301.

³⁹ Id. at 302–306.

⁴⁰ Id. at 59.

⁴¹ Id. at 61–62.

⁴² Id. at 64–65.

⁴³ Id. at 63.

⁴⁴ Id. at 64–65.

the broker's commission, to their client Justine Dela Rosa for Hipol's alleged unauthorized transactions. He also testified that Hipol's accreditation had to be cancelled after Pampolina complained against him to protect the reputation of the company.⁴⁵

On July 15, 2006, the Regional Trial Court rendered its Decision⁴⁶ finding Performance Forex and Hipol solidarily liable to Cancio and Pampolina for damages.

According to the Regional Trial Court, Performance Forex should have disclosed to Cancio and Pampolina that Hipol made similar unauthorized trading activities in the past, which could have affected their consent to Hipol's appointment as their agent. It also noted that innocent third persons should not be prejudiced due to Performance Forex's failure to adopt the necessary measures to prevent unauthorized trading by its agents.⁴⁷ The dispositive portion of the Regional Trial Court July 15, 2006 Decision read:

ACCORDINGLY, judgment is hereby rendered in favor of the plaintiffs and against the defendants PERFORMANCE FOREIGN EXCHANGE CORPORATION and ROLANDO HIPOL. Both defendants are jointly and severally liable to pay the plaintiffs the following:

a. the amount of US\$17,223.98 or its peso equivalent plus legal interest from the filing of the complaint until the whole obligation is fully paid.

b. the amount of Php50,000.00 as attorney's fees; Php100,000.00 moral damages and Php100,000.00 exemplary damages.

c. cost of suit

SO ORDERED.⁴⁸

Performance Forex appealed this Decision to the Court of Appeals, arguing that it had adequate safeguards concerning dealings with commission agents, and that it was Cancio and Pampolina who vested Hipol with "broad powers to conduct trading on their behalf."⁴⁹

On January 31, 2008, the Court of Appeals rendered its Decision⁵⁰ granting the appeal.

⁴⁵ Id. at 64.

⁴⁶ The Decision is not attached to the *Rollo*.

⁴⁷ *Rollo*, pp. 65–66, as quoted in the CA Decision.

⁴⁸ Id. at 24.

⁴⁹ Id. at 67.

⁵⁰ Id. at 54–75.

According to the Court of Appeals, Performance Forex was a trading facility that acted only on whatever their clients or their representatives would order. It was not privy to anything that happened between its clients and their representatives.⁵¹ It found that Cancio admitted to giving Hipol pre-signed authorizations to trade; hence, Performance Forex relied on these orders and on Hipol's designation as their agent to facilitate the trades from April 5, 2000 to April 9, 2000.⁵²

The Court of Appeals likewise found that Performance Forex's non-disclosure of Hipol's prior unauthorized transactions with another client was irrelevant since he was an independent broker who was not employed with Performance Forex. Thus, Performance Forex had no legal duty to disclose any prior misconduct to its clients. It also noted that the trust/trading facilities agreement between Cancio and Pampolina, and Performance Forex contained a provision freeing itself from any liability from losses incurred by acting on the instructions of its clients or their authorized representatives. Thus, the Court of Appeals concluded that Cancio and Pampolina's action should only be against Hipol.⁵³ The dispositive portion of the Court of Appeals January 31, 2008 Decision read:

WHEREFORE, the appeal is hereby GRANTED. Appellant Performance Foreign Exchange Corporation is hereby released from liability.

SO ORDERED.⁵⁴

Cancio and Pampolina moved for reconsideration but were denied by the Court of Appeals in its March 31, 2008 Resolution.⁵⁵ Hence, this Petition⁵⁶ was filed before this Court.

Petitioners Cancio and Pampolina argue that bonafide transactions in respondent Performance Forex's facility depends on signed purchase order forms from clients. They allege that there were only 10 purchase order forms signed by petitioner Cancio and yet respondent executed 29 transactions on their account, in clear breach of its assurance that only bonafide transactions would be honored.⁵⁷ They likewise point out that respondent was aware of similar unauthorized transactions by Hipol in the past and even settled the complaint against him, but respondent neglected to

⁵¹ Id. at 68–69.

⁵² Id. at 70.

⁵³ Id. at 72–74.

⁵⁴ Id. at 74–75.

⁵⁵ Id. at 77.

⁵⁶ Id. at 23–52. Comment was filed on August 29, 2008 (*rollo*, pp. 84–104) while Reply was filed on November 10, 2008 (*rollo*, pp. 434–450). Parties were ordered to submit their respective memoranda (*rollo*, pp. 481–500 and 503–531) on January 28, 2009 (*rollo*, pp. 474–475).

⁵⁷ Id. at 507–518.

inform petitioners about them, thus, failing to observe the degree of care, precaution, and vigilance for the protection of petitioners' interests.⁵⁸ They claim that in view of respondent's bad faith and breach of its contractual obligations, it is liable for actual damages, exemplary damages, and moral damages with attorney's fees.⁵⁹

Respondent counters that it was unnecessary to examine other purchase order forms since "petitioners' cause of action against respondent is grounded on defendant Hipol's purported unauthorized trading transactions which occurred during the period 4 to 12 April 2000 **and no other.**"⁶⁰ It likewise insists that it cannot be held liable for damages caused by Hipol considering that it is not Hipol's employer and that any losses suffered were due to "the very broad and vast powers"⁶¹ that petitioners gave him to transact on their behalf. It also points out that according to the trust/trading facilities agreement, petitioners agreed that respondent would not be responsible for any act, warranty, or representation made by their agent on their behalf; thus, it cannot be held liable for any damages claimed.⁶²

Respondent asserts that the Petition should be dismissed outright since petitioners failed to attach the necessary documents to support their Petition. It also submits that the Petition raises questions of fact by asking this Court to examine the probative value of the evidence introduced before the Regional Trial Court and the Court of Appeals.⁶³

Petitioners, on the other hand, counter that there was substantial compliance by their subsequent submission of the required documents.⁶⁴ They claim that they only raise questions of law since the facts have been settled. What they argue is merely the Court of Appeals' application of the law given the facts of the case.⁶⁵

From the arguments of the parties, this Court is asked to resolve the issue of whether or not respondent Performance Forex Exchange Corporation should be held solidarily liable with petitioners Belina Cancio and Jeremy Pampolina's broker, Hipol, for damages due to the latter's unauthorized transactions in the foreign currency exchange trading market. Before this issue can be resolved, this Court must first pass upon the procedural issues of whether or not the Petition should be dismissed for

⁵⁸ Id. at 513-516.

⁵⁹ Id. at 528-529.

⁶⁰ Id. at 493.

⁶¹ Id. at 494.

⁶² Id. at 496-497.

⁶³ Id. at 487-491.

⁶⁴ Id. at 442-443.

⁶⁵ Id. at 440-441.

petitioners' failure to attach necessary pleadings, and whether or not the Petition raises questions of fact.

I

The failure to attach material portions of the record will not necessarily cause the outright dismissal of the petition. While Rule 45, Section 4 of the Rules of Court requires that the petition "be accompanied by . . . such material portions of the record as would support the petition,"⁶⁶ this Court may still give due course if there is substantial compliance with the Rules.⁶⁷ Rule 45, Section 7 states:

Section 7. Pleadings and documents that may be required; sanctions. — For purposes of determining whether the petition should be dismissed or denied pursuant to section 5 of this Rule, or where the petition is given due course under section 8 hereof, the Supreme Court may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may consider appropriate, and impose the corresponding sanctions in case of non-filing or unauthorized filing of such pleadings and documents or non-compliance with the conditions therefor.⁶⁸

In *E.I. Dupont Nemours v. Francisco*,⁶⁹ this Court stated that a petition for review under Rule 45 may still be given due course if the petitioner later submits the required documents, thus:

[A] petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that petitioner later submitted the documents required, or that it will serve the higher interest of justice that the case be decided on the merits.⁷⁰

In this instance, petitioners submitted the assailed Court of Appeals

⁶⁶ RULES OF COURT, Rule 45, sec. 4 provides:

Section 4. Contents of petition. — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42.

⁶⁷ See *F.A.T. Kee Computer Systems v. Online Networks International*, 656 Phil. 403 (2011) [Per J. Leonardo-De Castro, First Division].

⁶⁸ RULES OF COURT, Rule 45, sec. 7.

⁶⁹ G.R. No. 174379, August 31, 2016
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/174379.pdf>> [Per J. Leonen, Second Division].

⁷⁰ *Id.* at 11 citing *Magsino v. De Ocampo*, 741 Phil. 394 (2014) [Per J. Bersamin, First Division].

January 31, 2008 Decision in their Petition,⁷¹ which quoted substantial portions of the Regional Trial Court June 15, 2006 Decision; the Regional Trial Court's records; and the Court of Appeals' *rollo*. They likewise attached in their Reply a copy of the Complaint,⁷² the Balance Ledger for Dealings,⁷³ and the Purchase Order Forms⁷⁴ presented before the Regional Trial Court. These documents more than suffice to substantiate petitioners' claims.

II

This Court is not a trier of facts. Factual findings of the lower courts will not be disturbed by this Court if supported by substantial evidence.⁷⁵ Thus, Rule 45 of the Rules of Court requires that a petition for review on certiorari only raise questions of law.⁷⁶

The distinction between a question of fact and a question of law is settled. In *Century Iron Works v. Bañas*:⁷⁷

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.

Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.⁷⁸

⁷¹ *Rollo*, pp. 54–75.

⁷² *Id.* at 446–450.

⁷³ *Id.* at 452 and 454.

⁷⁴ *Id.* at 456–473.

⁷⁵ See *Pascual v. Burgos*, GR. No. 171722, January 11, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/171722.pdf>> 10–11 [Per J. Leonen, Second Division] citing *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541, 546 (1999) [Per J. Pardo, First Division]; *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002) [Per J. Pardo, First Division]; *Tabaco v. Court of Appeals*, 239 Phil. 485, 490 (1994) [Per J. Bellosillo, First Division]; *Padilla v. Court of Appeals*, 241 Phil. 776, 781 (1988) [Per J. Paras, Second Division]; and *Bank of the Philippine Islands v. Leobrero*, 461 Phil. 461, 469 (2003) [Per J. Ynares-Santiago, Special First Division].

⁷⁶ See RULES OF COURT, Rule 45, sec. 1 provides:

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.

⁷⁷ 711 Phil. 576 (2013) [Per J. Brion, Second Division].

⁷⁸ *Id.* at 585–586 citing *Leoncio v. De Vera*, 569 Phil. 512 (2008) [Per J. Nachura, Third Division] and *Elenita S. Binay, in her capacity as Mayor of the City of Makati, Mario Rodriguez and Priscilla*

Appeal is not a matter of right but of sound judicial discretion.⁷⁹ While questions of fact are generally not entertained by this Court, there are, of course, certain permissible exceptions, summarized in *Medina v. Mayor Asistio, Jr.*:⁸⁰

(1) When the conclusion is a finding grounded entirely on speculation, surmises or 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) The findings of the Court of Appeals 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 petitioners' main and reply briefs are not disputed by the respondents . . . ; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record . . .⁸¹ (Citations omitted)

A case falling under any of these exceptions, however, does not automatically require this Court's review. In *Pascual v. Burgos*,⁸² this Court explained that a party cannot merely claim that his or her case falls under any of the exceptions; he or she "must demonstrate and prove"⁸³ that a review of the factual findings is necessary.

In this instance, petitioners do not plead that their case falls under any of the exceptions since their contention is that their Petition only raises questions of law. They claim that this Court "need not probe into the entirety of evidence on record, as the falsity or veracity of the facts, as stated in the assailed decision, [is] not in issue."⁸⁴

Petitioners, however, contradict this when they submit that while "[t]here is no doubt as to the existence of the . . . facts," the Court of Appeals' legal conclusions were "contradictory to its very findings" and that the case was "differently ruled, and correctly so, by the [Regional Trial Court]."⁸⁵ This argument, otherwise stated, assails the Court of Appeals'

Ferrolino v. Emerita Odeña, 551 Phil. 681 (2007) [Per J. Nachura, En Banc].

⁷⁹ RULES OF COURT, Rule 45, sec. 6.

⁸⁰ 269 Phil. 225 (1990) [Per J. Bidin, Third Division].

⁸¹ *Id.* at 232.

⁸² GR. No. 171722, January 11, 2016
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/171722.pdf>>
[Per J. Leonen, Second Division].

⁸³ *Id.* at 12.

⁸⁴ *Rollo*, p. 441.

⁸⁵ *Id.*

appreciation of the evidence and not merely its application of the law. This is clear when petitioners argue that:

29. Despite finding only two (2) purchase order forms for the twelve (12) enumerated transactions, the [Court of Appeals] still found no badge of negligence or breach of contractual obligation on the part of respondent. This is very much contradictory to its very findings that all trading transactions must be accompanied by purchase order forms, being the obligation of respondent to secure the orders of petitioners.⁸⁶

In *Pascual*, this Court stated that there is a question of fact “when the issue presented before this court is the correctness of the lower courts’ appreciation of the evidence presented by the parties.”⁸⁷ To determine whether a lower court erred in the appreciation of evidence, this Court must also examine the records to see if there was evidence that was overlooked or if certain pieces of evidence were given undue weight. Thus, petitioners cannot evade having raised questions of fact before this Court by simply arguing that the facts are not disputed.

This Court has previously stated that “[n]egligence, that is, a failure to comply with some duty of care owed by one to another, is a mixed question of law and fact.”⁸⁸ There is a question of law as to the duty of care owed by a defendant to a plaintiff. The existence of negligence, however, is determined by facts and evidence, which makes it a question of fact.⁸⁹

The review of a finding of negligence involves a question of fact.⁹⁰ It is evidentiary in nature. It requires an examination of the evidence presented by the parties to determine the basis of this negligence.⁹¹ This Court has likewise held that determination of the existence of a breach of contract is a question of fact.⁹²

A petition for review filed under Rule 45 of the Rules of Court that assails the Court of Appeals’ failure to find negligence or breach of contract based on the evidence presented is essentially raising questions of fact. This Court will uphold the findings of the Court of Appeals unless the case falls under certain exceptions, which must first be properly pleaded and substantiated. Otherwise, this Court must apply the general rule and deny

⁸⁶ Id.

⁸⁷ *Pascual v. Burgos*, GR. No. 171722, January 11, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/171722.pdf>> 11–12 [Per J. Leonen, Second Division].

⁸⁸ *Santos v. Rustia*, 90 Phil. 358, 360 (1951) [Per J. Feria, En Banc] citing *Corpus Juris*, Vol. 45, sec. 852.

⁸⁹ Id.

⁹⁰ *Far Eastern Shipping Co. v. Court of Appeals*, 357 Phil. 703, 747 (1998) [Per J. Regalado, En Banc] citing *Davidson Steamship Company vs. United States*, 205 U.S. 186, 51 Law, Ed. 764 (1907).

⁹¹ See *Cebu Shipyard and Engineering Works v. William Lines*, 366 Phil. 439 (1999) [Per J. Purisima, Third Division].

⁹² See *Dueñas v. Guce-Africa*, 618 Phil. 10, 19 (2009) [Per J. Del Castillo, Second Division] citing *Omengan v. Philippine National Bank*, 541 Phil. 293 (2007) [Per J. Corona, First Division].

the petition.

III

Even if this Court were to liberally review the factual findings of the Court of Appeals, the Petition would still be denied. A principal who gives broad and unbridled authorization to his or her agent cannot later hold third persons who relied on that authorization liable for damages that may arise from the agent's fraudulent acts.

Petitioners opened a joint account with respondent, through their broker, Hipol, to engage in foreign currency exchange trading. Respondent had a leverage system of trading,⁹³ wherein clients may use its credit line to facilitate transactions. This means that clients may actually trade more than what was actually in their accounts, signifying a higher degree of risk. The contract between petitioners and respondent provided that respondent was irrevocably authorized to follow bonafide instructions from petitioners or their broker:

6. Orders

You hereby irrevocably authorize us to act upon any instructions, whether in writing, by cable, telex, facsimile or telephone given or purported to be given by you or your agent or representative which appear whether on their respective faces (in the case of writing, cable, telex or facsimile) or otherwise to be bonafide. We shall not be responsible and you shall indemnify us for any losses incurred as a result of acting upon such instructions should there in fact be any error commission ambiguities or other irregularities therein or therewith.⁹⁴

According to respondent, for instructions to be considered "bonafide," there must be a signed purchase order form from the client:

[Direct Examination]

Q [B]ased on your testimony you said that every transaction is to be accompanied by a purchase order form which purchase order form is signed by the client?

[Gabriel Erazo]

A Yes, sir.

Q By transaction[,] am I correct to say that this [is] either a buy or sell transaction?

A Yes, sir.

Q And whether it be for one (1) lot, two (2) lots, or three (3) lots,

⁹³ *Rollo*, p. 61.

⁹⁴ *Id.* at 156.

there should be a purchase order form?

A Yes, sir.

Q So without this purchase order form[,] no transaction can be entered into?

A Yes, sir, because the [dealer] will not accept [an] order without [a] purchase order form.

Q Just supposing[,] Mr. Witness[,] that a transaction was entered without a purchase order form, what happens to the transaction?

A Basically[,] there will be no transaction if there is no purchase order form because the dealer will ask for the purchase order form before they will execute the order, sir.

Q So no incident will there be a transaction entered without a purchase order form signed by the client?

A Yes, sir.⁹⁵

Petitioner Cancio admitted to giving “[b]etween five (5) to ten (10)” pre-signed documentation⁹⁶ to facilitate their transactions.⁹⁷ Indeed, 10 signed purchase order forms were presented as evidence dated March 15, 2000,⁹⁸ March 17, 2000,⁹⁹ March 20, 2000,¹⁰⁰ March 21, 2000,¹⁰¹ March 24, 2000,¹⁰² March 29, 2000,¹⁰³ March 31, 2000,¹⁰⁴ April 4, 2000,¹⁰⁵ April 5, 2000,¹⁰⁶ and April 9, 2000.¹⁰⁷

Petitioners argue that there were 29 total transactions, as evidenced by the Balance Ledger for Dealings,¹⁰⁸ which means that 19 of the transactions were unauthorized. The Balance Ledger reads:

BOUGHT				SOLD			COMMISSION	PROFIT/LOSS	NEW BALANCE
UNIT	DATE	NO.	PRICE	DATE	NO.	PRICE			
BALANCE BROUGHT FORWARD ->								0.00	
MARGIN IN								10,000.00	
2	16/03/00	39)	1.6607		0)	1.6590		10,009.72	
2	16/03/00	39)	1.6607	17/03/00	8)	1.6630(L)	-140.00	276.61	
3		0)	106.75	17/03/00	33)	106.65		9,990.08	

⁹⁵ Id. at 414–417.

⁹⁶ Id. at 246.

⁹⁷ Id. at 247.

⁹⁸ Id. at 189.

⁹⁹ Id.

¹⁰⁰ Id. at 192.

¹⁰¹ Id. at 384.

¹⁰² Id. at 389.

¹⁰³ Id.

¹⁰⁴ Id. at 391.

¹⁰⁵ Id. at 308.

¹⁰⁶ Id. at 307.

¹⁰⁷ Id. at 309.

¹⁰⁸ Id. at 452 and 454.

3	20/03/00	25)	106.50(L)	17/03/00	33)	106.65	-210.00	422.54	10,202.62
1		0)	107.08	21/03/00	22)	107.00			10,185.26
1		0)	106.98	21/03/00	22)	107.00			10,167.90
1		0)	107.43	21/03/00	22)	107.00			10,115.82
2		0)	107.43	23/03/00	3)	107.55			10,115.82
1	24/03/00	40)	107.10(L)	21/03/00	22)	107.00	-70.00	-93.37	11,028.54
2	24/03/00	16)	106.90(L)	23/03/00	3)	107.55	-140.00	1,216.09	11,028.54
1	29/03/00	25)	105.77		0)	105.45			11,020.90
1	29/03/00	25)	105.77		0)	105.40			11,013.26
1	29/03/00	25)	105.77	31/03/00	5)	106.00(L)	-70.00	216.98	13,444.70
2	31/03/00	33)	104.80(L)	31/03/00	4)	105.60	-140.00	1,526.72	13,444.70
1	31/03/00	34)	104.80(L)	31/03/00	8)	106.05	-70.00	1,192.75	13,444.70
1	31/03/00	53)	102.50		0)	102.35			13,444.70
1	31/03/00	70)	103.03		0)	102.35			13,444.70
3		0)	102.45	31/03/00	54)	102.10			13,444.70
1	31/03/00	43)	103.00		0)	102.35			13,444.70
12							-840.00	4,758.32	
									BALANCE BROUGHT FORWARD -> 13,444.70
1	31/03/00	43)	103.00	03/04/00	1)	104.00(L)	-70.00	961.54	17,298.98
1	31/03/00	70)	103.03	03/04/00	13)	104.70(L)	-70.00	1,595.03	17,298.98
1	31/03/00	53)	102.50	03/04/00	14)	104.70(L)	-70.00	2,101.24	17,298.98
2	03/04/00	12)	104.83	03/04/00	21)	104.62(L)	-140.00	-401.45	17,298.98
3		0)	104.90	31/03/00	54)	102.10			17,298.98
3		0)	105.00	31/03/00	54)	102.10			17,223.98
3	04/04/00	26)	105.75		0)	104.90			17,223.98
1	04/04/00	26)	105.75	05/04/00	31)	105.27(L)	-70.00	-455.97	16,630.65
3		0)	104.95	31/03/00	54)	102.10			16,630.65
2	04/04/00	26)	105.75		0)	104.85			16,630.65
2	04/04/00	26)	105.75	06/04/00	4)	104.77(L)	-140.00	-1,870.76	14,567.81
3		0)	104.80	31/03/00	54)	102.10			14,567.81
3		0)	105.50	31/03/00	54)	102.10			14,411.56
3	10/04/00	36)	106.90		0)	106.40			14,336.56
3		0)	106.50	31/03/00	54)	102.10			14,336.56
3		0)	107.07	31/03/00	54)	102.10			14,261.56
3	10/04/00	36)	106.90		0)	106.97			14,261.56
3	10/04/00	36)	106.90	12/04/00	22)	105.85(L)	-210.00	-2,975.91	-35.72
3	12/04/00	21)	105.95(L)	31/03/00	54)	102.10	-210.00	-10,901.37	-35.72
14							-980.00	-11,947.65	

Petitioners' argument would have been correct if each transaction was counted for every buy and sell. During petitioner Cancio's cross-examination, respondent's counsel counted by date of transaction, thus, counting 27 transactions. Petitioner Cancio, however, clarified that they had a "buy and out" type of transaction. Each "open position" and "close position" would be considered as only one (1) transaction.¹⁰⁹

Q Allow me to count the number of transactions here and see how far we could go in this kind of questioning. From March 9 to April 4, I counted twenty[-]seven (27) transactions. And out of these twenty-seven (27) transactions you said that you are responsible for five (5) of them?

A Those are not twenty[-]seven (27) transactions[,] Sir.

Q What are those?

A Because there is what we call "buy" and "out," Sir. So, the "buy and out" is considered as one (1) transaction only, Sir.

Q So, how many transactions are there on [these] orders?

A We made about ten (10)[,] Sir.¹¹⁰

¹⁰⁹ Id. at 229–230.

¹¹⁰ Id.

According to respondent, each “buy and out” should be covered by one (1) purchase order form. The actual count then of the transactions, according to petitioners’ own enumeration of the dealings,¹¹¹ should be:

TRANSACTION	DATE [OPEN NEW POSITION]	LOTS	PRICE	DATE [CLOSE POSITION]	LOTS	PRICE
1	March 16, 2000 [Buy]	2	1.6607	March 17, 2000 [Sell]	2	1.6630
2	March 17, 2000 [Sell]	3	106.65	March 20, 2000 [Buy]	3	106.50
3	March 21, 2000 [Sell]	1	107.00	March 24, 2000 [Buy]	1	107.10
4	March 23, 2000 [Sell]	2	107.55	March 24, 2000 [Buy]	2	106.90
5	March 29, 2000 [Buy]	1	105.77	March 31, 2000 [Sell]	1	106.00
6	March 31, 2000 [Sell]	2	105.60	March 31, 2000 [Buy]	2	104.80
7	March 31, 2000 [Sell]	2	106.05	March 31, 2000 [Buy]	2	104.80
8	March 31, 2000 [Buy]	1	102.50	April 3, 2000 [Sell]	1	104.70
9	March 31, 2000 [Buy]	1	103.03	April 3, 2000 [Sell]	1	104.70
10	March 31, 2000 [Sell]	3	102.10	April 12, 2000 [Buy]	3	105.95
11	March 31, 2000 [Buy]	1	103.00	April 3, 2000 [Sell]	1	104.00
12	April 3, 2000 [Sell]	2	104.62	April 3, 2000 [Buy]	2	104.83
13	April 4, 2000 [Buy]	3	105.75	April 5, 2000 [Sell]	1	105.27
14				April 6, 2000 [Sell]	2	104.77
15	April 10, 2000 [Buy]	3	106.90	April 12, 2000 [Sell]	3	105.85

Thus, by petitioners’ own count, there were 15 transactions, not 29 transactions.¹¹² According to the Balance Ledger, commission was deducted from petitioners’ account 15 times. Thus, commission was deducted for every successful *transaction*, not for every time a “buy” or “sell” was made.

Interestingly, the eleventh and twelfth transactions occurred when petitioners were still actively trading. This means that they executed more instructions to Hipol than what was covered by the signed purchase order forms that he held, without complaint. Petitioner Pampolina even testified that they were constantly aware of the status of their account when they were trading:

¹¹¹ Id. at 512–513.

¹¹² Id. at 69. The Court of Appeals likewise noted that petitioners’ counsel “mistakenly counted” 29 transactions to include even those transactions that were authorized and not in issue.

Q How did you get to know that you accumulated around \$7,000.00 for your account?

A Because every time that we execute orders[,] we take a position[,] and at the same time[,] we monitor also the rate of the position that we are taking and we also relieve orders to take profit. So, as long as we relieve orders to take profit[,] we know that we are making money.¹¹³

Petitioners would have been aware that respondent could execute instructions relayed by Hipol even without the required purchase order form. Otherwise, they would have stopped executing orders upon their tenth transaction. Even if this Court were to apply petitioners' argument that a "buy" and a "sell" is counted as one (1) transaction each, that would still mean that there were 23 transactions made when petitioners were actively trading. There would still be 13 orders that petitioners relayed to Hipol over and above the 10 pre-signed purchase order forms that he held.

Moreover, petitioners assail the alleged unauthorized transactions executed after April 4, 2000, when they allegedly stopped relaying instructions to Hipol. These alleged unauthorized transactions, they argue, breached respondent's contractual obligation to execute only bonafide instructions from petitioners. From the table above, these transactions would refer to the thirteenth, fourteenth, and fifteenth transactions.

Respondents, however, presented signed purchase order forms for the contested transactions occurring after April 4, 2000, namely, the purchase order forms dated April 4, 2000,¹¹⁴ April 5, 2000,¹¹⁵ and April 9, 2000.¹¹⁶ If there was any breach committed by respondent, it occurred when petitioners actively traded and they would have been aware of this breach, not when they stopped trading.

Respondent likewise did not have the duty to disclose to petitioners any previous infractions committed by their agent.

Hipol, petitioners' agent, was not employed with respondent. He was categorized as an independent broker for commission. In *Behn, Meyer, and Co. v. Nolting*:¹¹⁷

A broker is generally defined as one who is engaged, for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern; the negotiator between other parties, never

¹¹³ Id. at 262.

¹¹⁴ Id. at 308.

¹¹⁵ Id. at 307.

¹¹⁶ Id. at 309.

¹¹⁷ 35 Phil. 274 (1916) [Per J. Johnson, En Banc].

acting in his own name, but in the name of those who employed him; he is strictly a middleman and for some purposes the agent of both parties.¹¹⁸

When Hipol became petitioners' agent, he had committed only one (1) known prior infraction against a client of respondent. Respondent might have been construed this as an isolated incident that did not warrant heightened scrutiny. Hipol's infraction committed against petitioners was his second known infraction. Respondent cancelled his accreditation when petitioners informed them of his unauthorized transactions.

It would be different if Hipol committed a series of infractions and respondent continued to accredit him. In that instance, respondent would have been complicit to Hipol's wrongdoings. Respondent, not being Hipol's employer, had no power of discipline over him. It could only cancel his accreditation, which it did after a second incident was reported. This was the extent by which respondent was obligated to act on Hipol's infractions.

Moreover, petitioners and respondent signed and agreed to absolve respondent from actions, representations, and warranties of their agent made on their behalf, thus:

Commission Agent

You acknowledge and agree that the commission agent (one Mr/Ms Ronald (sic) M. Hipol) who introduced you to us in connection with this Facility is your agent and we are in no way responsible for his actions or any warranties or representations he may have made (whether expressly on our behalf or not) and that pursuant to his having introduced you to us, we will (if you accept this Facility) pay him a commission based on your trading with us (details of which will be applied to you on request). Should you choose to also vest in him trading authority on your behalf please do so only after considering the matter carefully, for we shall not be responsible nor liable for any abuse of the authority you may confer on him. This will be regarded strictly as a private matter between you and him. You further acknowledge that for our own protection and commercial purpose you are aware of the terms of the trading agreement between the commission agent and ourselves where the commission agent is to trade for you.¹¹⁹

Petitioners conferred trading authority to Hipol. Respondent was not obligated to question whether Hipol exceeded that authority whenever he made purchase orders. Respondent was likewise not privy on how petitioners instructed Hipol to carry out their orders. It did not assign Hipol to be petitioners' agent. Hipol was the one who approached petitioners and offered to be their agent. Petitioners were highly educated¹²⁰ and were

¹¹⁸ Id. at 279 citing 19 Cyc., 186; *Henderson vs. The State*, 50 Ind., 234; and Black's Law Dictionary.

¹¹⁹ *Rollo*, p. 161.

¹²⁰ Id. at 199, Petitioner Cancio was a clinical psychologist. *Rollo*, p. 253, petitioner Pampolina was a

“[a]lready knowledgeable in playing in this foreign exchange trading.”¹²¹ They would have been aware of the extent of authority they granted to Hipol when they handed to him 10 pre-signed blank purchase order forms. Under Article 1900 of the Civil Code:

Article 1900. So far as third persons are concerned, an act is deemed to have been performed within the scope of the agent’s authority, if such act is within the terms of the power of attorney, as written, even if the agent has in fact exceeded the limits of his authority according to an understanding between the principal and the agent.

Before a claimant can be entitled to damages, “the claimant should satisfactorily show the existence of the factual basis of damages and its causal connection to defendant’s acts.”¹²² The acts of petitioners’ agent, Hipol, were the direct cause of their injury. There is no reason to hold respondent liable for actual and moral damages. Since the basis for moral damages has not been established, there would likewise be no basis to recover exemplary damages¹²³ and attorney’s fees¹²⁴ from respondent. If there was any fault, the fault remains with petitioners’ agent and him alone.

The State has already taken notice of the high risks involved in foreign exchange leverage trading. In the prior case of *Securities and Exchange Commission v. Performance Foreign Exchange Corporation*,¹²⁵ the Securities and Exchange Commission tried to issue a cease-and-desist order against respondent for trading foreign currency futures contracts without the proper license.

This Court invalidated the cease-and-desist order upon finding that it was improperly issued. It also took note that even the Securities and Exchange Commission was unsure of whether foreign currency exchange trading constituted futures commodity trading, and that it had to request the Bangko Sentral ng Pilipinas for its advice. The Bangko Sentral ng Pilipinas’ reply read:

Dear Ms. Bautista,

This refers to your letter dated February 8, 2001 requesting for a

bank employee.

¹²¹ Id. at 55.

¹²² *Kierulf v. Court of Appeals*, 336 Phil. 414, 431–432 (1997) [Per J. Panganiban, Third Division].

¹²³ CIVIL CODE, art. 2234 provides:

Article 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. . . .

¹²⁴ CIVIL CODE, art. 2208 provides:

Article 2208. In the absence of stipulation, attorney’s fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded[.]

¹²⁵ 528 Phil. 169 (2006) [Per J. Sandoval-Gutierrez, Second Division].

definitive statement that the foreign currency leverage trading engage[d] in by private corporations, particularly, Performance Foreign Exchange Corporation (PFEC), is a financial derivatives transaction and that it can only be undertaken by banks or non-bank financial intermediaries performing quasi-banking functions and/or its subsidiaries/affiliates.

As indicated in your description of the transactions and the documents submitted, *the foreign currency leverage trading, subject of your query, is essentially similar in mechanics to currency future trading, particularly with respect to the margin requirements, standard contract size, and daily market-to-market of open position. However, it does not fall under the category of futures trading because it is not exchange-traded. Further, we can not classify it as being financial derivatives transactions as we consider the transaction as plain currency margin trading, which by its mechanics, involve the set-up of margin and non-delivery of the currencies involved.*

In view of the foregoing facts, the activities of the aforesaid corporation are not covered by [the Bangko Sentral ng Pilipinas'] guidelines on derivative licensing.

We hope we have satisfactorily clarified your concerns.

Very truly yours,
(Sgd.)

AMANDO M. TETANGCO, JR.¹²⁶ (Emphasis supplied)

Nonetheless, the Securities and Exchange Commission persisted in regulating entities involved in foreign exchange leverage trading, issuing the following Advisory:

SEC ADVISORY

20 October 2016

FOREIGN EXCHANGE TRADING

The advisory is prompted by the complaints of retail investors who lost their moneys to forex trading.

The public is advised that TRADING OF COMMODITIES FUTURES CONTRACTS IN THE PHILIPPINES (including Foreign Exchange Trading as consistently held by the Commission) and the pertinent RULES ARE STILL SUSPENDED pursuant to Paragraph 4 of Rule II of the Amended Rules and Regulations implementing the Securities Regulation Code.

Based on the reports, huge amount of money has been invested (usually in US dollars) in forex trading corporations where investors opened margin accounts to enable them to trade in foreign currency. The so-called "experts" of the forex trading corporations execute foreign trade positions in behalf of the investors on the representation that investors

¹²⁶ Id. at 176-177.

shall gain profit as in the stock market.

It has to be reiterated that under Section 11 of the Securities Regulation Code “no person shall offer, sell or enter into commodity futures contract except in accordance with rules and regulations and orders of the Commission may prescribe in the public interest”.

The investors should also take the cue from the ruling laid down in *Onapal v. Court of Appeals* (G.R. No. 90707, February 3, 1993) where the Supreme Court stated in this wise: “xxx The payments made under said contract were payments of difference in prices arising out of the rise or fall in the market price above or below the contract price thus making it purely gambling and declared null and void by law.”

The public is encouraged to report to the Commission entities operating Foreign Exchange Trading and those acting as agents of these operators.¹²⁷

Considering, however, that the legality of foreign exchange leverage trading is not in issue in this case, this Court will not delve further into the current regulations affecting it. It has been concluded that foreign exchange leverage trading is known to be risky and may lead to substantial losses for investors. Petitioners, who were experienced in this kind of trading, should have been more careful in the conduct of their affairs.


Currency trading adds no new good or service into the market that would be of use to real persons. Instead, it has the tendency to alter the price of real goods and services to the detriment of those who manufacture, labor, and consume products. It may alter the real value of goods and services on the basis of a rumor or anything else that will cause a herd of speculative traders to move one way or the other. Put in another way, those who participate in it must be charged with knowledge that getting rich in this way is accompanied with great risk. Given its real effects on the real economy and on real people, it will be unfair for this Court to provide greater warranties to the parties in currency trading. They should bear their own risks perhaps to learn that their capital is better invested more responsibly and for the greater good of society.

Be that as it may, to arrive at these conclusions, this Court has to extensively review the evidence submitted by the parties. If, as petitioners claim, the Petition only raised pure questions of law, there would have been no need to re-examine the evidence. As it stands, the Petition must be denied.


¹²⁷ SECURITIES AND EXCHANGE COMMISSION, *Advisory on Foreign Exchange Trading*, October 20, 2016 <<http://www.sec.gov.ph/sec-advisory-foreign-exchange-trading/>> (last accessed June 1, 2018).

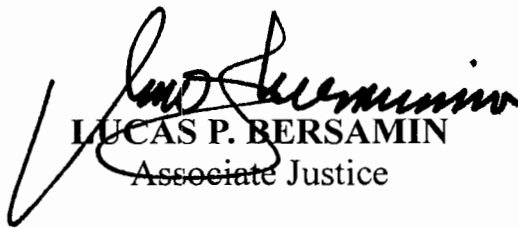
WHEREFORE, the Petition is **DENIED**. The January 31, 2008 Decision and March 31, 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 88439 are **AFFIRMED**.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

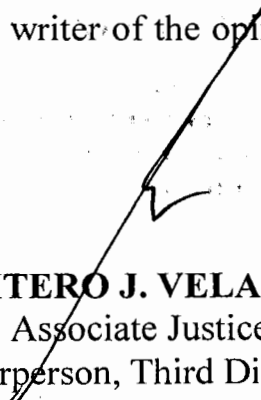

LUCAS P. BERSAMIN
Associate Justice


SAMUEL R. MARTIRES
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

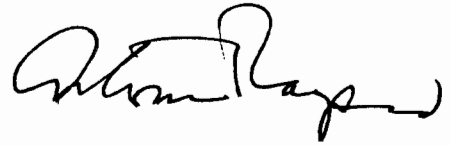
ATTESTATION

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.



ANTONIO T. CARPIO
Acting Chief Justice

