Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BANKRUPTCY ESTATE OF CHARLES B. MITICH *a.k.a.* CHARLIE MITICH and JAMES L. KENNEDY, TRUSTEE OF THE BANKRUPTCY ESTATE OF CHARLES B. MITICH *a.k.a.* CHARLIE MITICH,
Petitioners,

-versus-

MERCANTILE INSURANCE COMPANY, INC.,
Respondent.
x----------x

G.R. No. 238041

Members:
GESMUNDO, *C.J., Chairperson,*
CAGUIOA,
LAZARO-JAVIER,
LOPEZ, M., and
LOPEZ, J., ***JJ.***

MERCANTILE INSURANCE COMPANY, INC.,
Petitioner,

-versus-

BANKRUPTCY ESTATE OF CHARLES B. MITICH *a.k.a.* CHARLIE MITICH and JAMES L. KENNEDY, TRUSTEE OF THE BANKRUPTCY ESTATE OF CHARLES B. MITICH *a.k.a.* CHARLIE MITICH,
Respondents.

G.R. No. 238502

Promulgated:
FEB 15 2022

x----------x

DECISION

LAZARO-JAVIER, *J.*:

The Cases

In **G.R. No. 238041**, the Bankruptcy Estate of Charles B. Mitich *a.k.a.* Charlie Mitich and its trustee James L. Kennedy (Mitich, *et al.*) assail in part the **Decision**[1] dated November 27, 2017 and **Resolution**[2] dated March 12, 2018 of the Court of Appeals in CA-G.R. CV No. 104238 insofar as the same deleted the award of legal interest and attorney's fees in their favor and denied their subsequent motion for reconsideration, respectively.

In **G.R. No. 238502**, Mercantile Insurance Company, Inc. (Mercantile) assails the same dispositions of the Court of Appeals which affirmed the trial court's order to enforce a default judgment rendered by a foreign court against Mercantile.

Antecedents

On April 7, 1998, Mitich, *et al.* filed before the Regional Trial Court – Manila a civil case for recognition and enforcement of foreign judgment against Mercantile docketed Civil Case No. 98-88259[3] and entitled *Bankruptcy Estate of Charles B. Mitich a.k.a. Charlie Mitich and James L. Kennedy, Trustee of the Bankruptcy Estate of Charles B. Mitich a.k.a. Charlie Mitich v. Mercantile Insurance Company, Inc.*. It got raffled to Branch 10.

Mitich, *et al.* essentially alleged:

Charles B. Mitich (Mitich) was the owner and operator of a teen club in San Diego, California, United States of America (USA) called Club Tronix. On March 30, 1991, a gunfight erupted in the parking lot of Club Tronix which claimed the life of a patron – a young man named Theodros Zewdalem (Zewdalem).[4]

On March 13, 1992, the estate and heirs of Zewdalem filed a wrongful death action before the San Diego Superior Court against Mitich, doing business as Club Tronix.[5] At that time, Mitich and Club Tronix had a comprehensive general liability insurance policy issued by Mercantile.[6]

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1 G.R. No. 238041, Vol. I, *rollo*, pp. 8-24.
2 *Id.* at 25-29.
3 *Id.* at 165-178.
4 *Id.* at 135.
5 *Id.*
6 *Id.*

Mitich thus made a tender of defense[7] to Mercantile which, in turn, hired US attorney Jay Kopelowitz (Kopelowitz) to represent him. Mercantile's broker paid Kopelowitz's legal fees, but only until July 1992.[8] Hence, Mitich proceeded with the trial before the San Diego Superior Court *sans* Mercantile's assistance. On May 28, 1993, the San Diego Superior Court ruled in favor of the Zewdalems and awarded USD$285,500.00 in their favor.[9]

On February 18, 1994, both Mitich, *et al.* and the Zewdalems filed a Complaint before the Superior Court of the State of California, USA (California Court) against Mercantile for insurance bad faith. The case was docketed Case No. 673936 and entitled *Charlie Mitich, individually and dba Club Tronix; Amde Zewdalem as Special Administrator of the estate of Theodros Zewdalem; Zewdalem Kebede and Yaromnesh Admasu v. Mercantile Insurance Company, Inc. and Does 1-10 inclusive.*[10]

By Default Judgment[11] dated July 21, 1994, the California Court ruled in favor of Mitich and awarded $1,135,929.14 in his favor, *viz.*:

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CHARLIE MITICH, individually and dba CLUB TRONIX; AMDE ZEWDALEM as Special Administrator for the estate of THEODROS ZEWDALEM; ZEWDALEM KEBEDE; AND YAROMNESH ADMASU, Plaintiffs, v. *MERCANTILE INSURANCE COMPANY, INC. and DOES 1-10 inclusive,* Defendants.	CASE NO. 673936 DEFAULT JUDGMENT BY COURT ENTERED JUL 22 1994 Judgment Book___Pg___ 2391_277

The Application of Plaintiff Charles B. Mitich, individually and dba Club Tronix (hereinafter referred to as "Mitich"), for a default judgment against defendant Mercantile Insurance Company ("Mercantile") came on for hearing on July 18, 1994, at 8:30 a.m., in Department 16 of this Court, the Honorable Wayne L. Peterson, Judge Presiding. Pamela J. Naughton

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7 The act in which one party places its defense and all costs associated with said defense with another due to a contract or other agreement.

8 G.R. No. 238041, Vol. I, *rollo*, pp. 135-136.

9 *Id.* at 137.

10 *Id.* at 47-48.

11 *Id.* at 158-160.

and Steven E. Comer of Baker & McKenzie, appeared on behalf of James L. Kennedy, as trustee[s] of the bankruptcy estate of Mitich. Mercantile did not appear. Testimony was given by Mr. Mitich, Jay Kopelowitz, and Pamela Naughton.

It appearing that Mercantile was properly served with process and failed to appear and answer the complaint herein, and that its default was duly entered on May 25, 1994; and the Court having considered the evidence and points and authorities filed in support of Mitich's application, the documents on file in this action, and the testimony and evidence presented at the prove-up hearing, and good cause appearing[,] therefore, the Court enters judgment in favor of James L. Kennedy, as trustee of the bankruptcy estate of Charles B. Mitich, as follows:

THE COURT FINDS that Mitich has been damaged by Defendant Mercantile in the amount of $635,929.14. Said damages include the following:

Judgment in the Zewdalem action	$285,500.00
Prejudgment interest, $78.22 per diem, (10% simple interest from [the] date of Zewdalem Judgment entered June 18, 1993, through July 20, 1994)	31,053.34
Attorney's fees, costs[,] and disbursements	64,219.00
Prejudgment interest, $17.60 per diem (10% simple interest from last billing, October 1, 1993, through July 20, 1994)	5,156.80
SUBTOTAL	$385,929.14
Emotional distress	$250,000.00
TOTAL	$635,929.14

The Court further finds that Mitich is entitled to punitive damages from Defendant Mercantile in the amount of $500,000.00

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that James L. Kennedy, as trustee of the bankruptcy estate of Charles B. Mitich, shall have and recover judgment against defendant Mercantile Insurance Company in the amount of $1,135,929.14, together with interest on such judgment as provided by law.

Dated: July 21, 1992 [handwritten]

[Signature of Judge Wayne L. Peterson]
Judge of the Superior Court
WAYNE L. PETERSON

The foregoing instrument is a full, true[,] and correct copy of the original on file in this office.

Attest: July 29, 1994

KENNETH E. MARTONE
Clerk of the Superior Court of the State of California, in and for the County of San Diego.

By: [Signature of Louise Shroeder] Deputy
LOUISE SCHROEDER[12]

Notably, a handwritten date "July 21, 1992"[13] appeared on the *fallo* of the Default Judgment. It preceded the signature of Wayne L. Peterson, Judge of the Superior Court who rendered the judgment. The body of the judgment though bore the entry "July 18, 1994, at 8:30 in the morning" as the date and time of promulgation. The rest of the Default Judgment also bore the entry "1994" as the year judgment was rendered.

The judgment got entered into the records of the California Court on July 22, 1994, and personally served[14] on Mercantile on October 13, 1994, at its principal place of business on General Luna St. corner Beaterio Street, Intramuros, Manila, Philippines.[15] It was received by Carol de la Cruz who represented herself as person-in-charge of receiving documents.

Despite Mercantile's receipt of the Default Judgment, however, Mercantile did not file an appeal in accordance with the California Rules of Court. Consequently, the Default Judgment lapsed into finality.[16]

For these reasons, they filed the petition for recognition of foreign judgment in order to compel Mercantile to pay $1,135,929.14 or its equivalent in pesos (₱42,710,935.66) plus interest, attorney's fees of ₱200,000.00, and costs of suit.

In response, Mercantile filed a motion to dismiss[17] on two (2) grounds:

First, the complaint stated no cause of action. The Default Judgment of the California Court was void due to invalid extraterritorial service of summons on Mercantile, hence, it cannot be enforced in the Philippines.

To be sure, extraterritorial service of summons is governed by *lex fori* or the internal law of the forum. As it was, the California Code of Civil

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12 *Id.*
13 *Id.* at 160.
14 On October 13, 1994, by personal service to Mercantile, with address at General Luna corner Beaterio Streets, Intramuros, Manila. G.R. No. 238041, see Affidavit of Service dated October 17, 1994, *rollo*, p. 163.
15 G.R. No. 238041, *rollo*, p. 567, See also Affidavit of Service of Lauro M. Ferrer dated October 26, 1994, *id.* at 587-593.
16 *Id.* at 568.
17 *Id.* at 180-189.

Procedure[18] required that summonses be served[19] on "the president or other head of the corporation, a vice president, a secretary, or assistant secretary, a treasurer or assistant treasurer, a general manager, or a person authorized by the corporation to receive service of process"; only then could the California Court acquire jurisdiction over it (Mercantile).[20] But here, the summons from the California Court got served on Ms. Imelda Caseres (Caseres), a Claims Clerk III of Mercantile who was neither authorized to receive summonses on its behalf nor among those authorized to receive summons for a corporation under the California Code of Civil Procedure.

Second, the certifications against forum shopping attached to the complaint were defective and not properly authenticated. The complaint was prepared in April 1998, but the certifications were executed by Charles B. Mitich and James L. Kennedy way earlier on December 3, 1997 and December 23, 1997, respectively. This was a clear violation of Section 5, Rule 7 of the 1997 Rules of Civil Procedure.[21] More, the certifications were

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18 416.10 - A summons may be served on a corporation by delivering a copy of the summons and of the complaint:
(a) To the person designated as agent for service of process as provided by any provision in Section 202, 1502, 2105 or 2107 of the Corporation Code (or Section 3101 to 3303, inclusive or Section 6500 to 6504, inclusive, of the Corporation Code as in effect on Dec. 31, 1976 with respect to Corporation which they remain applicable);
(b) To the president or other head of the corporation, a vice president, a secretary, or assistant secretary, a treasurer or assistant treasurer, a general manager, or a person authorized by the corporation to receive service of process[;]
(c) If the corporation is a bank, to a cashier or assistant cashier or to a person specified in subdivision (a) or (b)[;] or
(d) When authorized by any provision in Section 1701, 1702, 2110, or 2111 of the Corporation Code (a Section 3301 to 3303, inclusive, or Section 6500 to 6504, inclusive of the Corporation Code as in effect on December 31, 1976 with respect to Corporation which they remain applicable), as provided by such provision. (Chapter 4, Title 5, Code of Civil Procedure of the State of California), G.R. No. 238041, Vol. I, *rollo*, pp. 182-183.

19 Section 413.10 - Except as otherwise provided by the statute, a summons shall be served on a person:
(a) Within this state, as provided in this Chapter.
(b) Outside this state but within the United States, as provided in this Chapter or as prescribed by the law of the place where the person is served.
(c) Outside the United States, as provided in this Chapter or as directed by the Court in which the action is pending, or, if the court before or after service finds that the service is reasonably calculated to give actual notice, as prescribed by the law of the place where the person is served or as directed by the foreign authority in response to a letter rogatory. These rules are subject to the provisions of the Convention on the "Service Abroad of Judicial and Extra-judicial Documents" in Civil or Commercial Matters (Hague Service Convention), (Chapter 4, Title 5, Code of Civil Procedure of the State of California), *id.* at 182.

20 Section 410.50 of the said Code on "Jurisdiction in Action" provides that,
Section 410.50(a) Except as otherwise provided by statute, the Court in which an action is pending has jurisdiction over a party from the time summons is served on him as provided by Chapter 4 (Commencing with Section 413.10). A general appearance by a party is equivalent to personal service of summons to such party.
(b) Jurisdiction of the Court over the parties and the subject matter of an action continues throughout subsequent proceedings in the action, (Chapter 4, Title 5, Code of Civil Procedure of the State of California) *id.*

21 Rule 7, Section 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

notarized in California but not authenticated in accordance with Section 24, Rule 132 of the Rules of Evidence.[22]

In opposition,[23] Mitich, *et al.* riposted that by filing a motion to dismiss on ground of failure to state a cause of action, Mercantile was deemed to have admitted the allegations[24] in the complaint against it, including the proper service of summons and the jurisdiction of the California Court. Further, Caseres represented herself as someone authorized to receive summonses on Mercantile's behalf. Finally, Mercantile was estopped from attacking the jurisdiction of the California Court over its person as it bound itself to the jurisdiction of any court of the USA when it issued an insurance policy in favor of Mitich.[25]

The certifications against forum shopping were not defective either. The date "April 7, 1998" appearing in the complaint was merely inserted when said complaint was filed. But when the corresponding certifications were executed in December 1997, a copy of the complaint was already appended thereto. Too, the required authentication was clearly stamped on the dorsal portion of the first page of the complaint. All told, the motion had no basis in law; it was a dilatory tactic purposely aimed to delay Mercantile's payment of the amount it owed.

By Order[26] dated January 14, 1999, the trial court denied the motion to dismiss and required Mercantile to file its answer within five (5) days from receipt. The trial court ruled that their allegations required the presentation of evidence, considering that the matter of service of summons was hinged on provisions of California law. The trial court denied reconsideration by Order[27] dated June 4, 1999.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (n) (1997 Rules of Civil Procedure, As Amended).

22 Rule 132, Section 24. *Proof of official record.* — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. (25a), (Revised Rules on Evidence, As Amended).

23 G.R. No. 238041, Vol. I, *rollo*, pp. 191-197.

24 See *Madrona, Sr. v. Rosal*, 281 Phi. 1, 8 (1991), citing *Republic Bank v. Cuaderno*, 125 Phil. 1076, 1083 (1967).

25 G.R. No. 238041, *rollo*, pp. 191-197.

26 *Id.* at 287-289.

27 *Id.* at 291-292.

Subsequently, Mercantile sought to nullify the twin orders of the trial court before the Court of Appeals *via a* petition for *certiorari* docketed CA-G.R. SP No. 55005. By Resolution[28] dated October 27, 1999, however, the Court of Appeals denied due course, ruling that Mercantile's petition was filed four (4) days late.[29] By Resolution[30] dated May 22, 2000, the Court of Appeals denied reconsideration for lack of merit.

Unrelenting, Mercantile elevated the case to the Court *via* another petition for *certiorari* under G.R. No. 143509. By Resolution dated July 19, 2000, the Court dismissed the petition for being an improper remedy[31]

Meantime, back to Civil Case No. 98-88259, Mitich, *et al.* moved to declare Mercantile in default.[32] It called the trial court's attention to Mercantile's failure to file its answer for over two (2) months reckoned from receipt of the Order dated June 4, 1999.

In its Opposition,[33] Mercantile explained that in view of the pendency of CA-G.R. SP No. 55005 at that time, it was procedurally constrained from filing an answer to the complaint; it would have been a waste of the trial court's time had Civil Case No. 98-88259 been dismissed by the Court of Appeals.

In its Reply,[34] Mitich, *et al.* asserted that absent an injunctive writ, the mere pendency of special civil action for *certiorari* did not interrupt the case. In any event, Mercantile was already in default even before it filed CA-G.R. SP No. 55005.

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28 Penned by Associate Justice (now Retired Supreme Court Associate Justice) Conchita Carpio Morales, concurred in by Associate Justices Bernardo P. Abesamis and Edgardo P. Cruz; G.R. No. 238041, *id.* at 294-296.

29 It is gathered that petitioner received a copy of the questioned first Order on March 26, 1999, ten days after which on April 5, 1999, it filed a motion for reconsideration.
On July 30, 1999, petitioner received a copy of the second assailed Order denying the motion for reconsideration.
Following Sec. 4, Rule 65 of the 1997 of Civil Procedure, as amended by Circular No. 39-98 of the Office of the Court Administrator, Supreme Court which took effect on September 1, 1998, since petitioner filed a motion for reconsideration 10 days after notice of the first order, the 60-day period to file for *certiorari* was interrupted. Its motion for reconsideration having been denied by the court a quo, petitioner had remaining period, reckoned from notice of the order denying said motion, within which to file the petition for *certiorari.*
Since 10 days of the 60-day period to file petition had lapsed when petitioner filed a motion for reconsideration, it had 50 days from July 30, 1999, when it received copy of the Order denying the motion for reconsideration or up to September 18, 1999 to file the instant petition. As reflected above, however, it was filed On September 22, 1999, hence, it was 4 days late. G.R. No. 238041, *id.* at 294-296.

30 *Id.* at 298-301.

31 *Id.* at 303.

32 *Id.* at 305-309.

33 *Id.* at 311-313.

34 *Id.* at 315-319.

By Order[35] dated July 16, 2001, the trial court declared Mercantile in default. It also denied the subsequent motion to lift or set aside order of default for lack of merit under Order[36] dated September 5, 2008

The Court of Appeals later on upheld the orders of the trial court in CA-G.R. SP No. 105992,[37] noting that Mercantile's recourse was meant to further delay the proceedings.

The Court affirmed *via* G.R. No. 185564.[38]

Meanwhile, Mitich, *et al.* presented evidence *ex parte* in Civil Case No. 98-88259. Despite due notice, Mercantile never came to even at least observe the proceedings. On October 13, 2009, Mitich, *et al.* formally offered their documentary evidence, terminating their presentation of evidence in chief.[39]

Rulings of the Trial Court

By **Decision**[40] dated July 25, 2014,[41] trial court ruled in favor of Mitich, *et al.*, thus:

> **WHEREFORE**, in view of the foregoing, judgment is hereby rendered enforcing the foreign judgment against the defendant and ordering the defendant to pay to the plaintiff the sum of U.S. $1,135,929.14 or its equivalent in Philippine Peso, amounting to Php42,710,935.66 with interest at ten percent (10%) *per annum* from the date of entry of judgment by the California Court on July 22, 1994, together with interest until fully paid and ordering the defendant to pay plaintiff the amount of Php200,000.00 as and for attorney's fees, expenses of litigation and costs of suit.

It held that Mitich, *et al.* successfully established the existence and authenticity of the Default Judgment dated July 21, 1994 of the California Court. Said Default Judgment had been certified by the clerk of the California Court and authenticated by the Philippine Consulate in Los Angeles, California, USA, in compliance with Section 24, Rule 132 of the Rules of Evidence prior to amendment. More, the Default Judgment was rendered in accordance with the California Code of Civil Procedure.

The trial court did not give credence to Mercantile's claim that the California Court failed to acquire jurisdiction over its person. On the contrary, summonses were served on Mercantile three (3) times, all in accordance with the California Code of Civil Procedure.

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35 Penned by Judge Ricardo G. Bernardo, Jr., Presiding Judge of the Regional Trial Court of Manila, Branch 10; G.R. No. 238041, *id.* at 337-345.

36 *Id.* at 402-411.

37 Penned by Associate Justice Teresita Dy-Liacco Flores, concurred in by Associate Justices Portia Aliño-Hormachuelos and Hakim S. Abdulwahid.

38 G.R. No. 238041, Vol. I, *rollo*, pp. 427-428.

39 G.R. No. 238041, Vol. II, *rollo*, pp. 647-661.

40 Penned by Judge Virgilio M. Alameda, Regional Trial Court of Manila – Branch 10, *id.* at 698-703.

41 *Id.*

Finally, the trial court held that the handwritten date of July 21, 1992, appearing on the Default Judgment was obviously a mere typographical error. The correct date of the judgment was July 21, 1994, considering that (a) the complaint was filed with the California Court only on February 18, 1994; (b) summons against Mercantile was issued on February 18, 1994; (c) requests for Default Judgment were filed on May 24, 1994, May 27, 1994, and July 6, 1994; and (d) the application for default judgment was heard by the California Court on July 18, 1994.[42]

Proceedings before the Court of Appeals

On appeal, Mercantile faulted the trial court for ruling that the Default Judgment dated July 21, 1994 was valid and regular considering that the California Court allegedly did not acquire jurisdiction over its person. More, the trial court seriously erred in effecting a change of date of the Default Judgment from July 21, 1992 to July 21, 1994. Finally, there was no basis for the award of legal interest, attorney's fees, and costs of suit.

Dispositions of the Court of Appeals

By **Decision**[43] dated November 27, 2017 in CA-G.R. CV No. 104238, the Court of Appeals affirmed in the main but deleted the award of interest and attorney's fees. It noted that the Default Judgment dated July 21, 1994 itself did not allegedly award interest and attorney's fees; it did not even contain a computation of the interest due or, at the very least, the law of California on the imposition of interest.

By **Resolution**[44] dated March 12, 2018, the Court of Appeals denied the parties' respective motions for partial reconsideration.[45]

The Present Petitions

In **G.R. No. 238041**,[46] Mitich, *et al.* seek to restore the deleted award of interest and attorney's fees. They claim to have proven that California law imposes ten percent (10%) interest *per annum* on judgment awards based on deposition transcripts and authenticated copies of the California Code of Civil Procedure. At any rate, post-judgment interest of twelve percent (12%) *per annum* from judicial demand should be applied in accordance with the doctrine of processual presumption. It is simply inequitable to deny Mitich, *et al.* twenty (20) years of post-judgment interest considering the dilatory tactics of Mercantile.

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42 *Id.* at 702.
43 G.R. No. 238041, Vol. I, *rollo*, pp. 8-24.
44 *Id.* at 25-29.
45 Motion for Partial Reconsideration (Petitioner), G.R. No. 238041, Vol II, *rollo*, pp. 842-856; Motion for Partial Reconsideration (Mercantile), *id.* at. 811-840.
46 G.R. No. 238041, Vol. I, *rollo*, pp. 45-85.

As for their claim for attorney's fees, they assert that it is simply erroneous to require the Default Judgment to contain an award for attorney's fees locally incurred in Civil Case No. 98-88259. They are entitled to the award as they were forced to litigate here in the Philippines to enforce the Default Judgment.

In its Comment[47] dated September 21, 2018, Mercantile defends the dispositions of the Court of Appeals relative to the deletion of the award of interest and attorney's fees.

In **G.R. No. 238502**[48] though, Mercantile harps anew on its theory that the California Court did not acquire jurisdiction over its person. It insists that Mitich, *et al.* failed to discharge the burden of proving the pertinent foreign law applicable to the service of summons, thus, the doctrine of processual presumption should apply. Following Section 12, Rule 14 of the 1997 Rules of Civil Procedure[49] on service of summons upon foreign corporations, the California Court should have served summons on the resident agent of Mercantile in the USA.

More, the handwritten entry "1992" is a material discrepancy that renders doubtful the foreign judgment itself. Petitioners, therefore, failed to establish the authenticity of the foreign judgment.

In its Comment,[50] Mitich, *et al.* defend the rulings of the Court of Appeals and assert that Mercantile failed to prove by clear and convincing evidence that the Default Judgment was invalid.

Core Issues

1. Have Mitich, *et al.* successfully established the authenticity of the Default Judgment?

2. Was the Default Judgment rendered void by the alleged improper service of summons on Mercantile?

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47 G.R. No. 238041, Vol II, *rollo*, pp. 1211-1240.

48 G.R. No. 238502, *rollo*, pp. 11-41.

49 Section 12. *Service upon domestic private juridical entity.* – When the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel of the corporation wherever they may be found, or in their absence or unavailability, on their secretaries.
If such service cannot be made upon any of the foregoing persons, it shall be made upon the person who customarily receives the correspondence for the defendant at its principal office.
In case the domestic juridical entity is under receivership or liquidation, service of summons shall be made on the receiver or liquidator, as the case may be.
Should there be a refusal on the part of the persons above-mentioned to receive summons despite at least three (3) attempts on two (2) separate dates, service may be made electronically, if allowed by the court, as provided under Section 6 of this rule. (11)
(Rule 14, 1997 RULES OF CIVIL PROCEDURE, As Amended).

50 G.R. No. 238041, Vol. II, *rollo*, pp. 1127-1168.

3. Are Mitich, *et al.* entitled to interest and attorney's fees?

Our Ruling

The courts below did not err in ordering the enforcement of the Default Judgment rendered by the California Court

Under Section 48(b), Rule 39 of the 1997 Rules of Civil Procedure, a foreign judgment or final order against a person creates presumptive evidence of a right as between the parties involved, *viz.*:

> Section 48. *Effect of foreign judgments or final orders.* – The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is as follows:
>
> (a) In case of a judgment or final order upon a specific thing, the judgment or final order, is conclusive upon the title to the thing, and
>
> (b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.
>
> In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. (50a)

But before the presumption may be invoked, the party seeking the enforcement of the foreign judgment must first prove it as a fact. This, in turn, demands compliance with Sections 24 and 25, Rule 132 of the Rules of Evidence prior to its amendment, *viz.*:

> Section 24. *Proof of official record.* – The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. (25a)
>
> Section 25. *What attestation of copy must state.* — Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court. (26a)

Verily, the fact of foreign judgment may be proved through: (1) an official publication or (2) a certification or copy attested by the officer who has custody of the judgment. If the office which has custody is in a foreign country, the certification may be made by the proper diplomatic or consular officer of the Philippine foreign service in that country and authenticated by the seal of office.[51]

Here, Mitich, *et al.* presented the Default Judgment dated July 21, 1994[52] before the trial court, together with a Certification dated August 3, 1994[53] of Kenneth E. Martone, Clerk of the San Diego Superior Court who has custody of the seal and all records pertaining to cases of that court, to the effect that the Default Judgment had been entered in his record last July 22, 1994, as attested to by James R. Milliken, Judge of the San Diego Superior Court. These documents were authenticated by Consul Antonio S. Curameng of our Philippine Consulate in Los Angeles, State of California, USA through Authentication dated August 9, 1994.[54] Certainly, Mitich, *et al.* complied with Sections 24 and 25, Rule 132 of the Rules of Evidence.

Mercantile nevertheless questions the authenticity of the Default Judgment since there was an error in the handwritten date "1992" which should have been "1994" – a material discrepancy that allegedly renders doubtful the foreign judgment itself.

We are unconvinced.

Since Mitich, *et al.* have proven the existence and authenticity of the Default Judgement in accordance with Sections 24 and 25, Rule 132 of the Rules of Evidence, the Default Judgment already enjoys presumptive validity. The burden has therefore shifted to Mercantile to prove otherwise. But instead of presenting preponderant evidence[55] against the authenticity of the Default Judgment, Mercantile simply indulged in conjectures.

At any rate, the trial court and Court of Appeals uniformly ruled that the handwritten year "1992" was a mere clerical error. Indeed, it is settled that when the factual findings of the trial court are confirmed by the Court of Appeals, said facts are final and conclusive on the Court unless the same are not supported by the evidence on record. The Court will not assess all over again the evidence adduced by the parties, particularly whereas in this case the findings of both the trial court and the Court of Appeals completely coincide.[56]

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51 See Rules of Court, Rule 132, Sec. 24-25. See also *Corpuz v. Santo Tomas*, 642 Phil. 420, 433 (2010).
52 G.R. No. 238041, Vol. I, *rollo* pp. 158-160.
53 *Id.* at 161.
54 *Id.* at 157.
55 See *Riguer v. Atty. Mateo*, 811 Phil. 538, 547 (2017).
56 See *Gatan, et al. v. Vinarao*, 820 Phil. 257, 273-274 (2017), citing *BPI v. Leobrera*, 461 Phil. 461, 469 (2003).

As consistently found by the courts below, the handwritten date July 21, "1992" was a mere typographical error. Circumstances showed that the actual date of the Default Judgment was July 21, 1994: the complaint before the California Court was dated February 18, 1994 summonses on Mercantile were issued on February 18, 1994; Mitich requested for default judgment on May 24, 1994, May 27, 1994 and July 6, 1994; and the application for default judgment was heard by the California Court on July 18, 1994. The Default Judgment showed that the year "1992" was erroneously written thereon; the rest of the Default Judgement specifically pointed to 1994 as the year when it was promulgated.

The California Court validly acquired jurisdiction over Mercantile

Mercantile invokes the final proviso of Section 48(b), Rule 39 of the 1997 Rules of Civil Procedure in its bid to repel the enforcement of the Default Judgment. It asserts that the California Court did not validly acquire jurisdiction over its person because it was not validly served summons, hence, the Default Judgment may not be enforced in this jurisdiction.

We do not agree.

Matters of remedy and procedure such as those relating to the service of process upon a defendant are governed by the *lex fori* or the internal law of the forum.[57] As found by the courts below, the pertinent provisions of the California Code of Civil Procedure state:[58]

> § 415.30 Service by mail; Articles mailed; Form of Notice; When service complete; Liability for Expense on failure to return acknowledgment; Approved form
>
> (a) A summons may be served by mail as provided in this section. A copy of the summons and of the complaint shall be mailed (by first-class mail or airmail, postage prepaid) to the person to be served, together with two copies of the notice and acknowledgment provided for in subdivision (b) and a return envelope, postage prepaid, addressed to the sender.
>
> x x x x
>
> § 415.40 Service outside state; Completion of service
>
> A summons may be served on a person outside this state in any manner provided by this article or by sending a copy of the summons and of the complaint to the person to be served by first-class mail, postage prepaid, requiring a return receipt. Service of a summons by this form of mail is deemed complete on the 10th days after such mailing.

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57 See *St. Aviation Services v. Grand International Airways*, 535 Phil. 757, 763 (2006), citing *Northwest Orient Airlines, Inc. v. Court of Appeals*, 311 Phil. 203, 216 (1995), 241 SCRA 192; *Asiavest Merchant Bankers (M) Berhad v. Court of Appeals*, 414 Phil. 13, 31 (2001).

58 G.R. No. 238041, Vol. I, *rollo*, pp. 472-519.

§ 416.10 Service on corporation

A summons may be served on a corporation by delivering a copy of the summons and the complaint by any of the following methods:

(a) To the person designated as agent for service of process as provided by any provision in Section 202, 1502, 2015, or 2107 of the Corporation Code x x x

Also relevant is § 1604, California Insurance Code, *viz.*:[59]

§ 1604 Stipulation for service on commissioner

Every foreign insurer, as a further condition precedent to admission and in consideration thereof, shall file with the commissioner an agreement or stipulation, executed by the proper authorities of such insurer, in form and substance as follows:

The (giving name of insurer) does hereby stipulate and agree, in consideration of the permission granted by the State of California to it to transact insurance business in this State, that if at any time it leaves this State, ceases to transact business in this State or is without an agent for service of process in this State, then in any case where such agent could be served, service may be made upon the Insurance Commissioner, and such service upon the commissioner shall have the same force and effect as if made upon the insurer.

When a foreign insurer, prior to the date this code takes effect, has filed with the commissioner an agreement for service upon him pursuant to the provisions of section 616 of the Political Code as then in effect, such filing is a compliance with this section while such agreement remains in effect.

Here, Mitich, *et al.* presented three (3) modes by which Mercantile got served with summonses of the California Court:[60]

(a) on March 18, 1994, ***via* certified mail**, return receipt to Atty. Zosimo B. Namit of Mercantile Insurance Co., Mercantile Insurance Building, General Luna corner Beaterio Streets, Intramuros, Manila with Proof of Service by Certified Mail/Return Requested dated May 23, 1994;[61]

(b) on April 11, 1994, by **personal service on registered agent** to Michael Bayless, Agent of Service for Mercantile under the insurance policy, with address at 45 Fremont St., 24th Floor, San Francisco, California 94105, with Declaration of Service dated April 21, 1994;[62] and

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59 *Id.* at 472-545.
60 *Id.* at 116.
61 *Id.* at 117-120.
62 *Id.* at 128-129.

(c) on April 20, 1994, again by **personal service** at the principal place of business in Manila of Mercantile, with address at General Luna corner Beaterio Streets, Intramuros, Manila with Affidavit of Service dated April 25, 1994.[63] This was received by Caseres who represented herself as someone authorized to receive processes on Mercantile's behalf.

Despite valid services of summons on these three (3) occasions, however, Mercantile chose to ignore them and refused to appear or file any responsive pleading before the California Court. Consequently, the California Court properly declared Mercantile in default and rendered the Default Judgment dated July 21, 1994 pursuant to Rule 3.110, (g) and (h), California Rules of Court.[64]

Mercantile argues though that Mitich, *et al.* should have first established the rules on summons of California in the same way that the fact of a foreign judgment may be proved, that is, by compliance with Sections 24 and 25, Rule 132 of the Rules of Evidence prior to amendment. Otherwise, the doctrine of processual presumption would apply and summons upon foreign corporations under Section 12, Rule 14 of the 1997 Rules of Civil Procedure prior to amendment should have been observed.

The argument utterly lacks merit.

Mercantile had already raised the same arguments and tactics in ***Mercantile Insurance Co., Inc. v. Yi.***[65] There, Sara Yi (Yi) filed a personal injury action before the same Superior Court of the State of California, County of San Diego, USA against FAM MART which was owned by Young C. Chun and Young H. Chun (Chuns) and insured by Mercantile. Pursuant to FAM MART's insurance policy, Mercantile defended FAM MART in said personal injury action. Before the trial concluded, however, Mercantile withdrew its representation. Eventually, on November 2, 1993, the California Court adjudged damages in the amount of USD$350,000.00 in favor of Yi. Thereafter, the Chuns and Yi filed a complaint for breach of insurance against Mercantile for withdrawing its representation. As Mercantile never appeared despite summonses, a Default Judgment was rendered against it on September 22, 1995, in the amount of USD$1,552,664.67. Yi then filed a petition for recognition of foreign judgment before the Philippine courts. Mercantile opposed the petition, alleging it was not validly served summons by the California Court.

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63 *Id.* at 131-132.

64 *Id.* at 456-545.

65 G.R. No. 234501, March 18, 2019.

The Court nevertheless ruled in favor of Yi, noting that Yi sufficiently established valid service of summons on Mercantile, *viz.*:

> In disputing the foreign judgment, MIC argues that there was want of notice to it as there was no proper service of summons in the trial before the California court.
>
> On this note, we highlight that matters of remedy and procedure such as those relating to the service of process upon a defendant are governed by the *lex fori* or the internal law of the forum, which is the State of California in this case. This Court is well aware that foreign laws are not a matter of judicial notice. Like any other fact, they must be alleged and proven.
>
> Section 24, Rule 132 of the Rules of Court provides that the records of the official acts of a sovereign authority may be evidenced by an official publication thereof or by a copy attested by its legal custodian, his deputy, and accompanied with a certificate that such officer has a custody, in case the record is not kept in the Philippines. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.
>
> **An exception to this rule, however, is recognized in the cases of *Willamette Iron & Steel Works v. Muzzal,* and *Manufacturers Hanover Trust Co. v. Guerrero*, wherein we emphatically ruled that the testimony under oath of an attorney-at-law of a foreign state, who quoted verbatim the applicable law and who stated that the same was in force at the time the obligations were contracted, was sufficient evidence to establish the existence of said law. In *Manufacturers Hanover Trust*, we stated that it is necessary to state the specific law on which the claim was based.**
>
> In this case, Atty. Robert G. Dyer (Atty. Dyer), [a] member of the bar of the State of California for more than 30 years, testified as to the applicable law related to summons. In detail, he stated the exact pertinent provision under the California Code of Civil Procedure, to wit:
>
> > **Section 415.40. A summons may be served on a person outside this state in any manner provided by this article or by sending a copy of the summons and of the complaint to the person to be served by first-class mail, postage prepaid, requiring a return receipt. Service of a summons by this form of mail is deemed complete on the 10th day after such mailing.**
>
> **Indeed, pursuant to the above-proven law in the State of California, the service of summons by mail to MIC, an entity outside its state, was valid.** As such law was sufficiently alleged and proven, it is beyond the province of this Court's authority to pass upon the issue as to the factual circumstances relating to the proper service of summons upon MIC in the case before the State of California.[66](Emphases added)

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66 *Id.*

Verily, the Court has allowed the use of expert testimony in proving foreign law as well as compliance therewith. Indeed, Mr. Jay Ghoreichi's unrebutted and compelling testimony on the validity of the methods by which Mercantile got summoned deserves full weight and credence.[67] We simply see no cogent reason to depart from our ruling in ***Mercantile Insurance Co., Inc. v. Yi.***

So must it be.

Mitich, et al. are not entitled to post-judgment interest

The Court of Appeals ruled that the Default Judgment should be enforced *sans* ten percent (10%) interest *per annum* because the computation of interest was supposedly not contained on the *fallo* thereof, and for failure of Mitich, *et al.* to prove California's law on interest.

We agree.

The Default judgment does not contain the rate and manner by which the monetary award would earn interest. It simply states "with interest on such judgment as provided by law." But what is this rate of interest? Is it computed *per annum* or compounded? The foreign judgment is silent on this matter. Surely, we cannot supply words, nay, vary the terms of the foreign judgment. As held in ***BPI v. Guevara***:[68]

> Section 48(b), Rule 39 of the Rules of Court provides that a foreign judgment or final order against a person creates a "presumptive evidence of a right as between the parties and their successors in interest by a subsequent title." Moreover, Section 48 of the Rules of Court states that "the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact." ***Thus, Philippine courts exercise limited review on foreign judgments. Courts are not allowed to delve into the merits of a foreign judgment.*** Once a foreign judgment is admitted and proven in a Philippine court, it can only be repelled on grounds external to its merits, *i.e.*, "want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact." The rule on limited review embodies the policy of efficiency and the protection of party expectations, as well as respecting the jurisdiction of other states.[69] (Emphases and italics supplied)

Verily, Philippine courts cannot delve into the merits of the foreign judgment under a policy of limited review. In the recognition of foreign judgments, Philippine courts are incompetent to substitute their judgment on how a case was decided under foreign law.[70] Thus, we cannot simply impose

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67 G.R. No. 238041, Vol. I, *rollo*, pp. 456-545.
68 755 Phil. 434-466 (2015).
69 *Id.* at 458-459.
70 See *Fujiki v. Marinay, et al.*, 712 Phil. 524, 554 (2013).

post judgment interest here unless it was specifically and categorically awarded by the California Court. In other words, the foreign court itself should have fixed the amount of legal interest taking all necessary factors into account, but did not. For sure, the Court cannot now assume this task. We cannot substitute the discretion which should have been exercised by the California Court with our own.

In any case, it is a conflict of law policy that foreign law ordinarily applicable will not be applied if to do so would violate domestic public policy. In other words, the normal operation of foreign law is subject to a public policy limitation. When a judge rejects the application of foreign law on public policy grounds, it is not that the foreign law does not seem so reasonable to the judge as his or her own good homemade precedent, only that it violates some fundamental principle of justice, good morals, or some deep-rooted tradition of society. Relief may be refused at the forum state because of disapproval of a particular cause of action on grounds of policy.[71]

Insofar as awards of interest are concerned, Philippine courts are flexible on the matter. The computation of interest is never mechanical. It always takes into account the surrounding circumstances but is always guided by fairness and equity.[72]

There is no hard and fast rule in determining whether an interest rate is unconscionable. It "may be iniquitous and unconscionable in one case, but may be totally just and equitable in another."[73]

Associate Justice Marvic M.V.F. Leonen, in his concurring and dissenting opinion in ***Lara's Gifts & Decors, Inc. v. Midtown Industrial Sales, Inc.***,[74] opined that interest functions as a replacement for the opportunity lost by the owner in profiting from his or her money, which could have been used in a remunerative investment. In this case, interest is the forbearance of money and is called monetary or conventional interest. But interest also functions as a form of penalty or indemnity for damages. It may be stipulated by the parties as a consequence of delay, or it may be imposed by the courts for breach of contract in accordance with Articles 2209, 2210, and 2212 of the Civil Code, thus:

> ARTICLE 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent *per annum*.

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71 Monrad G. Paulsen and Michel I. Sovern, "Public Policy" in the Conflict of Laws, 56 Columbia Law Review, November 1956.

72 See *Vitug v. Abuda*, 776 Phil. 540, 569 (2016).

73 *Rizal Commercial Banking Corporation v. Court of Appeals*, 352 Phil. 101, 126 (1998) [Per J. Melo, Second Division].

74 G.R. No. 225433, August 28, 2019.

> ARTICLE 2210. Interest may, in the discretion of the court, be allowed upon damages awarded for breach of contract.
>
> ARTICLE 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.[75]

Interest which takes the form of damages for either delay or breach of contract is called compensatory interest. As with monetary interests, compensatory interests are subject to the unconscionability standard under Articles 1229 and 2227 of the Civil Code:

> ARTICLE 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.
>
> ARTICLE 2227. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.[76]

Thus, in ***Ligutan v. Court of Appeals***,[77] the Court has this to say:

> ***The question of whether a penalty is reasonable or iniquitous can be partly subjective and partly objective.*** Its resolution would depend on such factors as, but not necessarily confined to, the type, extent and purpose of the penalty, the nature of the obligation, the mode of breach and its consequences, the supervening realities, the standing and relationship of the parties, and the like, the application of which, by and large, is addressed to the sound discretion of the court. In Rizal Commercial Banking Corp. vs. Court of Appeals, just an example, the Court has tempered the penalty charges after taking into account the debtor's pitiful situation and its offer to settle the entire obligation with the creditor bank.[78] (Citations omitted and emphasis supplied)

Verily, if a penalty is so unconscionable that its enforcement constitutes a "repugnant spoliation and an iniquitous deprivation of property," the courts can strike it down for being invalid.[79]

Here, we find the award of ten percent (10%) legal interest *per annum* iniquitous and unconscionable considering that the California Court already awarded moral damages (*i.e.*, emotional distress) of $250,000.00 and punitive damages of $500,000.00. This, by itself, is already almost triple the amount it owed Mitich (*i.e.*, $285,500.00) based on the latter's insurance policy. And if we are to reinstate the 27 years' worth of interest awarded by the trial court, Mercantile's debt would balloon to $4,202,937.82. This amount is certainly shocking to the senses and would drive Mercantile to bankruptcy. Post-

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75 REPUBLIC ACT NO. 386, AN ACT TO ORDAIN AND INSTITUTE THE CIVIL CODE OF THE PHILIPPINES, APPROVED ON JUNE 18, 1949.

76 *Id.*

77 427 Phil. 42-55 (2002).

78 *Id.* at 52.

79 *Ibarra v. Aveyro*, 37 Phil. 273, 282 (1917) [Per J. Torres, First Division].

judgment interests were never meant to drive a litigant to the ground, especially when the right to litigate and its exercise are allowed by law and rules. To award the ten percent (10%) would wreak havoc to the financial solvency[80] of Mercantile and surely result in financial distress, or worse, insolvency proceedings, to the detriment of Mercantile's insurance undertaking, creditors, and other obligations. The Court is simply not prepared to do that. Hence, the Court is disinclined to exacerbate the colossal financial burden on Mercantile.

Even then, we cannot simply ignore the fact that the California Court awarded "interest on such [Default Judgment] as provided by law." In view however, of the failure of the California Court to specify the rate of interest and the manner of its accrual, compounded by the iniquitous result of applying the supposed prevailing rate of post-judgment interest in California, the Court deems it just and equitable to award temperate damages of ₱500,000.00.

Mitich, et al. are entitled to attorney's fees

In Civil Case No. 98-88259,[81] Mitich, *et al.* prayed for attorney's fees of ₱200,000.00 and costs of suit. The trial court granted this relief, albeit the Court of Appeals disagreed on the supposed ground that attorney's fees were not awarded in the Default Judgment.

We agree with the trial court.

Article 2208 of the Civil Code[82] provides that attorney's fees may be recovered when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest. Applying this provision, Mercantile is liable for attorney's fees.

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80 Section 200- An insurance company doing business in the Philippines shall at all times maintain the minimum paid-up capital and net worth requirements as prescribed by the Commissioner. Such solvency requirements shall be based on internationally accepted solvency frameworks and adopted only after due consultation with the insurance industry associations. Whenever the aforementioned requirement be found to be less than that herein required to be maintained, the Commissioner shall forthwith direct the company to make good any such deficiency by cash, to be contributed by all stockholders of record in proportion to their respective interests, and paid to the treasurer of the company, within fifteen (15) days from receipt of the order: *Provided*, That the company in the interim shall not be permitted to take any new risk of any kind or character unless and until it make good any such deficiency: *Provided; further*, That a stockholder who aside from paying the contribution due from him, pays the contribution due from another stockholder by reason of the failure or refusal of the latter to do so, shall have a lien on the certificates of stock of the insurance company concerned appearing in its books in the name of the defaulting stockholder on the date of default, as well as on any interests or dividends that have accrued or will accrue to the said certificates of stock, until the corresponding payment or reimbursement is made by the defaulting stockholder. (Republic. Act No. 10607, The Insurance Code, Approved on August 15, 2013).

81 G.R. No. 238041, Vol. I, *rollo*, pp. 165-178.

82 Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
x x x x
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
x x x x;
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
x x x x.

To be clear though, the basis for the award is not the Default Judgment dated July 21, 1994 *per se*, but the fact that Mitich, *et al.* were forced to litigate and hire counsel in the Philippines in order to collect from Mercantile which refused to meet its defense and indemnity obligations for about thirty (30) years now. Hence, on this score, the award of attorney's fees of ₱200,000.00 is justified. This amount shall earn six percent (6%) legal interest *per annum* from finality of this Decision until fully paid.[83]

ACCORDINGLY, the **Decision dated November 27, 2017** and **Resolution dated March 12, 2018** of the Court of Appeals in CA-G.R. CV No. 104238 are **AFFIRMED** with **MODIFICATION**.

MERCANTILE INSURANCE COMPANY, INC. is also **REQUIRED** to pay the ESTATE OF CHARLES B. MITICH *a.k.a.* CHARLIE MITICH and JAMES L. KENNEDY, TRUSTEE OF THE BANKRUPTCY ESTATE OF CHARLES B. MITICH *a.k.a.* CHARLIE MITICH ₱500,000.00 as temperate damages and ₱200,000.00 as attorney's fees. This amount shall earn six percent (6%) legal interest *per annum* from finality of this Decision until fully paid.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

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

See Concurring & Dissenting Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

ALEXANDER G. GESMUNDO
Chief Justice

FIRST DIVISION

G.R. Nos. 238041 & 238502 – BANKRUPTCY ESTATE OF CHARLES B. MITICH a.k.a. CHARLIE MITICH and JAMES L. KENNEDY, TRUSTEE OF THE BANKRUPTCY ESTATE OF CHARLES B. MITICH a.k.a. CHARLIE MITICH, *petitioners*, ***versus*** **MERCANTILE INSURANCE COMPANY, INC.,** *respondent.*

Promulgated:

FEB 15 2022

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CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

The *ponencia* affirms, with modification, the Decision dated November 27, 2017 and Resolution dated March 12, 2018 of the Court of Appeals (CA), and rules in favor of the bankruptcy estate of Charles B. Mitich and its trustee, James L. Kennedy (Mitich, *et al.*). In sum, while the *ponencia* affirms the enforcement of the Default Judgment dated July 21, 1994 (Default Judgment) of the Superior Court of the State of California, U.S.A. (California Court) in Case No. 673936 and reinstates the Regional Trial Court's (RTC) award of Php200,000.00 as attorney's fees in favor of Mitich, *et al.*, it nevertheless rejects the RTC's award of post-judgment interest at the rate of ten percent (10%) *per annum* and, in lieu thereof, awards temperate damages of Php500,000.00.[1]

I concur with the *ponencia* that the lower courts did not err in ordering the enforcement of the Default Judgment rendered by the California Court.[2] Indeed, Mitich, *et al.* have proven the existence and authenticity of the Default Judgment and as such, said judgment enjoys presumptive validity which can only be overturned by preponderant evidence.[3] I likewise agree with the *ponencia*'s award of attorney's fees of Php200,000.00, as Mitich, *et al.* were clearly forced to litigate and to hire counsel in the Philippines in order to collect from Mercantile Insurance Company, Inc. (Mercantile Insurance), which had refused to make good on its indemnity obligations for about 30 years.[4]

Nevertheless, I write this opinion to express my disagreement with the *ponencia* that Mitich, *et al.* are not entitled to post-judgment interest, and that the Court should simply award Php500,000.00 as temperate damages in lieu of such interest.

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[1] *Ponencia*, pp. 3, 20-22.
[2] Id. at 12-14.
[3] Id.
[4] Id. at 21-22.

I expound.

First, it is clear from the Default Judgment, the existence and authenticity of which have been duly established,[5] that the California Court's monetary award includes legal interest. The decretal portion of the Default Judgment reads, to wit:

> THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that James L. Kennedy, as trustee of the bankruptcy estate of Charles B. Mitich, shall have and recover judgment against defendant Mercantile Insurance Company in the amount of $1,135,929.14, **together with interest on such judgment as provided by law**.[6]

Notwithstanding the clear import of the Default Judgment however, the *ponencia* proceeds with the following disquisition:

> The Court of Appeals ruled that the Default Judgment should be enforced *sans* ten percent (10%) interest *per annum* because the computation of interest was supposedly not contained [in] the *fallo* thereof, and for failure of Mitich, *et al.* to prove California's law on interest.
>
> We agree.
>
> The Default [J]udgment does not contain the rate and manner by which the monetary award would earn interest. It simply states "with interest on such judgment as provided by law." But what is this rate of interest? Is it computed *per annum* or compounded? The foreign judgment is silent on this matter. Surely, we cannot supply words, nay, vary the terms of the foreign judgment. As held in [***Bank of the Philippine Islands Securities Corporation***] ***v. Guevara***:[7]
>
> > Section 48(b), Rule 39 of the Rules of Court provides that a foreign judgment or final order against a person creates a "presumptive evidence of a right as between the parties and their successors in interest by a subsequent title." Moreover, Section 48 of the Rules of Court states that "the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact." ***Thus, Philippine courts exercise limited review on foreign judgments. Courts are not allowed to delve into the merits of a foreign judgment.*** Once a foreign judgment is admitted and proven in a Philippine court, it can only be repelled on grounds external to its merits, *i.e.*, "want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact." The rule on limited review embodies the policy of efficiency and the protection of party expectations, as well as respecting the jurisdiction of other states. x x x[8]

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5 Id. at 13.
6 Id. at 4; emphasis and underscoring supplied.
7 G.R. No. 167052, March 11, 2015, 752 SCRA 342.
8 Id. at 370.

> Verily, Philippine courts cannot delve into the merits of the foreign judgment under a policy of limited review. In the recognition of foreign judgments, Philippine courts are incompetent to substitute their judgment on how a case was decided under foreign law.[9] Thus, we cannot simply impose post[-]judgment interest here unless it was specifically and categorically awarded by the California Court. In other words, the foreign court itself should have fixed the amount of legal interest taking all necessary factors into account, but did not. For sure, the Court cannot now assume this task. We cannot substitute the discretion which should have been exercised by the California Court with our own.[10]

The foregoing pronouncements in the *ponencia* suggest that the California Court's judgment imposing said interest is neither specific nor categorical, and imply, further, that the Court may not award interest here without necessarily "delv[ing] into the merits of the foreign judgment."[11]

Respectfully, I disagree.

At the outset, it bears stressing that while the *ponencia* underscores that Courts are not allowed to delve into the merits of a foreign judgment,[12] it seems to nevertheless proceed to do just that. It suggests that the "foreign court itself should have fixed the amount of legal interest taking all necessary factors into account, but did not[,]"[13] implying that a foreign judgment imposing legal interest which does not follow such standard does not warrant enforcement by the Court. To my mind, this statement appears to be both tangential and, to an extent, antithetical to the essence of an action for the recognition of a foreign judgment, in which the *ponencia* itself acknowledged that Philippine courts are "incompetent to substitute their judgment on how a case was decided under foreign law."[14]

Moreover, the Default Judgment is by no means equivocal that the monetary award should earn interest. Even granting that the Default Judgment is "silent" on the specific rate and manner by which the monetary award would earn interest,[15] it is nevertheless clear and categorical that the award of US$1,135,929.14 should earn interest, and further, that the rate and manner by which the monetary award would earn interest that is "provided by law."

In other words, to enforce the Default Judgment to its fullest extent, it was simply incumbent upon Mitich, *et al.*, to allege and prove not only the existence and authenticity of the Default Judgment, as they did,[16] but also the provisions of the "applicable law" referred to in the Default Judgment, *i.e.*, the California law providing for the rate and manner by which the monetary award would earn interest. After all, foreign laws do not prove themselves in

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9 *See Fujiki v. Marinay*, G.R. No. 196049, June 26, 2013, 700 SCRA 69.
10 *Ponencia*, pp. 18-19; emphasis in the original.
11 Id. at 18.
12 Id.
13 Id. at 19.
14 Id. at 18, citing *Fujiki v. Marinay*, supra note 9.
15 Id.
16 Id. at 13.

our jurisdiction and our courts are not authorized to take judicial notice of them.[17] As such, like any other fact, they must be alleged and proved.[18]

Proceeding from the foregoing, I concur with the majority that post-judgment interest at the rate of ten percent (10%) *per annum* may not be awarded by the Court, **but not because the California Court failed to specify the "rate and manner by which the monetary award would earn interest;" rather, it may not be awarded in this case simply because of the failure of Mitich, *et al.* to prove California's law imposing such rate of interest.**[19]

On this score, I respectfully disagree with the *ponencia*'s conclusion that the Court cannot impose post-judgment interest for the Default Judgment's failure to "specifically and categorically" award such interest. **On the contrary, the Default Judgment is clear and express that Mitich, *et al.* are entitled to legal interest "as provided by law**." Hence, in order for the Court to enforce the Default Judgment in full without unnecessarily delving into its merits, the Court should award, in addition to the California Court's monetary award of US$1,135,929.14, legal interest under Philippine law, following the doctrine of processual presumption.

In this regard, the doctrine of processual presumption has been explained in this wise:

> It is incumbent upon respondent to plead and prove that the national law of the Netherlands does not impose upon the parents the obligation to support their child (either before, during or after the issuance of a divorce decree), because *Llorente v. Court of Appeals*, has already enunciated that:
>
> > True, foreign laws do not prove themselves in our jurisdiction and our courts are not authorized to take judicial notice of them. Like any other fact, ***they must be alleged and proved.***
>
> In view of respondent's failure to prove the national law of the Netherlands in his favor, the doctrine of processual presumption shall govern. Under this doctrine, if the foreign law involved is not properly pleaded and proved, our courts will presume that the foreign law is the same as our local or domestic or internal law. Thus, since the law of the Netherlands as regards the obligation to support has not been properly pleaded and proved in the instant case, it is presumed to be the same with Philippine law, which enforces the obligation of parents to support their children and penalizing the noncompliance therewith.[20]

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17 *Del Socorro v. Van Wilsem*, G.R. No. 193707, December 10, 2014, 744 SCRA 516, 528.

18 Id. at 528.

19 *See ponencia*, p. 18; emphasis supplied. The Court of Appeals removed the award of ten percent (10%) interest "because the computation of interest was supposedly not contained [in] the *fallo* [of the Default Judgment], and for failure of Mitich, *et al.* to prove California's law on interest." Id.

20 *Del Socorro v. Van Wilsem*, supra note 17, at 527-528, citing *Llorente v. Court of Appeals*, G.R. No. 124371, November 23, 2000, 345 SCRA 592; emphasis and italics in the original.

Here, it is clear that the Default Judgment imposes interest "as provided by law"[21] although Mitich, *et al.* failed to prove California's law on interest.[22] As such, applying the doctrine of processual presumption, California's law on the imposition of legal interest shall be presumed to be the same as Philippine law,[23] which, at present, is governed by the Court's ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*[24] (*Eastern Shipping Lines*), as modified in its subsequent ruling in *Nacar v. Gallery Frames*[25] (*Nacar*).

In the same vein, I find the award of temperate damages of Php500,000.00 in lieu of post-judgment interest unwarranted in this case, as the Court may simply award legal interest based not on California law, but on Philippine law.

Here, the *ponencia* awards temperate damages of Php500,000.00 in lieu of post-judgment interest not only "[i]n view x x x of the failure of the California Court to specify the rate of interest and the manner of its accrual,"[26] which I have addressed above, but also because of "the iniquitous result of applying the supposed prevailing rate of post-judgment interest in California."[27] The *ponencia* reasons in this regard that:

> Here, we find the award of ten percent (10%) legal interest *per annum* iniquitous and unconscionable considering that the California Court already awarded moral damages (*i.e.*, emotional distress) of $250,000.00 and punitive damages of $500,000.00. This, by itself is already almost triple the amount it owed Mitich (*i.e.*, $285,500.00) based on the latter's insurance policy. And if we are to reinstate the 27 years' worth of interest awarded by the trial court, Mercantile's debt would balloon to $4,202,937.82. This amount is certainly shocking to the senses and would drive Mercantile to bankruptcy. Post-judgment interests were never meant to drive a litigant to the ground, especially when the right to litigate and its exercise are allowed by law and rules. To award the ten percent (10%) would wreak havoc to the financial solvency of Mercantile and surely result in financial distress, or worse, insolvency proceedings, to the detriment of Mercantile's insurance undertaking, creditors, and other obligations. The Court is simply not prepared to do that. Hence, the Court is disinclined to exacerbate the colossal financial burden on Mercantile.[28]

Again, I respectfully disagree.

For one, the foregoing discussion is founded on the premise that the "supposed prevailing rate of post-judgment interest in California"[29] of ten percent (10%) *per annum* has been duly proved by Mitich, *et al.* In fact, the

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21 *Ponencia*, p. 4.
22 Id. at 18.
23 *Nedlloyd Lijnen B.V. Rotterdam v. Glow Laks Enterprises, Ltd.*, G.R. No. 156330, November 19, 2014, 740 SCRA 592, 605.
24 G.R. No. 97412, July 12, 1994, 234 SCRA 78.
25 G.R. No. 189871, August 13, 2013, 703 SCRA 439.
26 *Ponencia*, p. 21.
27 Id.
28 Id. at 20-21; citations omitted.
29 Id. at 21.

ponencia already attempts to painstakingly demonstrate why the imposition of post-judgment interest of ten percent (10%) *per annum* is "unconscionable[,] x x x shocking to the senses and would drive Mercantile to bankruptcy."[30] Yet, the CA already made a definitive finding that Mitich, *et al.* failed to prove California's law on interest in the first place.[31] In other words, the foregoing discourse should not even be relevant in this case, in view of the express finding that Mitich, *et al.* actually failed to prove California's law on interest.[32]

For another, the amount and manner by which legal interest is to run can easily be ascertained by the Court. It is well-settled that temperate damages may only be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with a reasonable degree of certainty.[33] Such, however, is not the case here, considering that the Court, as discussed above, may easily impose legal interest by simply applying Philippine law under the doctrine of processual presumption. Undoubtedly, there is, in this case, no uncertainty to speak of, as the Supreme Court, in *Eastern Shipping Lines* and *Nacar* already provided the "rules of thumb for future guidance"[34] by "la[ying] down the guidelines regarding the manner of computing legal interest."[35]

Squarely on point is the Court's ruling in *Bank of the Philippine Islands Securities Corporation v. Guevara*[36] (*Guevara*), which is, in fact, relied upon by the *ponencia*.[37] In the said case, therein respondent sought to enforce a judgment rendered by the U.S. District Court for the Southern District of Texas, Houston which awarded in respondent's favor the sum of US$49,450.00.[38] On the other hand, while therein petitioner did not dispute the fact of said foreign judgment, it nevertheless opposed its enforcement and prayed that the Court look into the merits of the same.

Since the fact of the foreign judgment was established, the Court refused, in *Guevara*, to "review and pronounce its own judgment" on the merits of the said foreign judgment, and ultimately, ruled in favor of respondent. Notably, the Court ordered the payment to respondent of "the sum of US$49,450.00 or its equivalent in Philippine Peso, **with interest at six percent (6%) *per annum* from the filing of the case before the trial court on May 28, 1992 until fully paid**[,]"[39] **following the guidelines on interest in *Eastern Shipping Lines* and *Nacar***.

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30 Id. at 20.
31 Id. at 18.
32 Id.
33 CIVIL CODE, Art. 2224. *See also Seven Brothers Shipping Corporation v. DMC-Construction, Resources, Inc.*, G.R. No. 193914, November 26, 2014, 743 SCRA 33.
34 *Eastern Shipping Lines, Inc. v. Court of Appeals*, supra note 24, at 95.
35 *Nacar v. Gallery Frames*, supra note 25, at 453, citing *Eastern Shipping Lines, Inc. v. Court of Appeals*, id.
36 Supra note 7.
37 *Ponencia*, p. 18.
38 *See* footnote 43 of *Bank of the Philippine Islands Securities Corporation v. Guevara*, supra note 7, at 378.
39 Id.; emphasis supplied.

Interestingly enough, while the *ponencia* banks on *Guevara* to emphasize the "rule on limited review" of foreign judgments to reject the RTC's earlier award of post-judgment interest in the amount of ten percent (10%) *per annum*, it nevertheless glosses over how the Court, in *Guevara*, actually applied Philippine law to award legal interest counted from May 28, 1992, or around 23 years' worth of legal interest.[40] Notably, the Court, in *Guevara*, applied the guidelines on the imposition of legal interest in *Eastern Shipping Lines* and *Nacar* in enforcing a foreign judgment which granted a monetary award, despite said judgment not having specifically fixed the "rate and manner by which the monetary award would earn interest"[41] — contrary to what the *ponencia* seeks to require in this case.[42]

Moreover, to precipitously award, in lieu of legal interest, temperate damages of Php500,000.00 without any factual basis would be to shortchange Mitich, *et al.* Indeed, as aptly pointed out by Mitich, *et al.*, it would simply be "inequitable to deny [them] twenty (20) years of post-judgment interest,"[43] especially in light of the "dilatory tactics" employed by Mercantile Insurance[44] and its refusal to meet its indemnity obligations for about 30 years.[45]

To this end, rather than to award temperate damages, I submit that the Court should instead impose, as in *Guevara*, legal interest on the monetary award based on Philippine law. Hence, following the guidelines in *Eastern Shipping Lines* and *Nacar*, the sum of US$1,135,929.14, or Php42,710,935.66 should earn legal interest of six percent (6%) *per annum* from judicial demand, or from April 7, 1998,[46] until full payment. Meanwhile, the award of Php200,000.00 as attorney's fees shall likewise earn legal interest at the rate of six percent (6%) *per annum* from finality of the Court's Decision until full payment.

In light of the foregoing, I vote to **GRANT** the instant Petition and to reinstate the RTC's award of Php200,000.00 as attorney's fees. However, rather than award temperate damages, I maintain that the sum of US$1,135,929.14 or Php42,710,935.66 awarded by the Default Judgment should likewise earn legal interest. Following the guidelines in *Eastern*

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40 Until the Court's promulgation of its Decision in *Bank of the Philippine Islands Securities Corporation v. Guevara*, supra note 7, on March 11, 2015.

41 *See ponencia*, p. 18.

42 Id.

43 Id. at 10.

44 Id. at 7-10. Instead of filing its answer, Mercantile Insurance filed a motion to dismiss, which the RTC denied. Unrelenting, Mercantile Insurance, instead of filing an answer, then elevated the same to the CA via a petition for *certiorari*, which was denied due course. It then filed yet another petition for *certiorari* with the Supreme Court (SC), which the latter likewise dismissed. The RTC then declared Mercantile Insurance in default for failure to file an answer. Mercantile Insurance then questioned the RTC's order declaring it in default before the CA. However, the CA upheld the RTC's order noting that Mercantile Insurance's recourse "was meant to further delay the proceedings." The CA's ruling was then affirmed by the SC.

45 Id. at 20.

46 Id. at 1.

Shipping Lines and *Nacar*, said amount should earn legal interest of six percent (6%) *per annum* from judicial demand, or from April 7, 1998, until full payment.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice