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with a stern warning that a repetition of negligence and irregularity abovecited or similar act in the future will be dealt with more severely.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and *De Leon, Jr., JJ.,* concur.

Buena, J., on official leave.

THIRD DIVISION

[G.R. No. 47013. February 17, 2000]

ANDRES LAO, *petitioner, vs.* **COURT OF APPEALS, THE ASSOCIATED ANGLO-AMERICAN TOBACCO CORPORATION and ESTEBAN CO,** *respondents.*

[G.R. No. 60647. February 17, 2000]

ESTEBAN CO, *petitioner, vs.* **COURT OF APPEALS and ANDRES LAO,** *respondents.*

[G.R. Nos. 60958-59. February 17, 2000]

THE ASSOCIATED ANGLO-AMERICAN TOBACCO CORPORATION, *petitioner, vs.* **COURT OF APPEALS, ANDRES LAO, JOSE LAO, and TOMAS LAO,** *respondents.*

SYNOPSIS

On April 6, 1965, the Associated Anglo-American Tobacco Corporation (Corporation) entered into a contract of sales agent with Andres Lao. Under the contract, Lao agreed to sell cigarettes

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manufactured and shipped by the corporation to his business address in Tacloban City. For his services, Lao would receive commission depending on the kind of cigarettes sold, fixed monthly salary and operational allowances. As a guarantee to Lao's compliance with his contractual obligations, his brothers Jose and his father Tomas executed a deed of mortgage in favor of the corporation in the amount of ₱200,000.00. The agreement went on smoothly. But in February 1968, Lao failed to accomplish his monthly sales report. Due to this failure, the corporation reminded Lao of his enormous accounts and the difficulty of obtaining a tally thereon despite Lao's avowal of regular remittances of his collection. In 1969, the corporation summoned Lao, for an accounting, collections and that Lao's liability was established. On May 21, 1970, Andres, Jose and Tomas Lao brought a complaint (Civil Case No. 4452) for accounting and damages against the corporation. The lower court ordered the formation of a Committee on Audit to determine the true and correct accountability of Andres Lao to the corporation. After the accounting, the trial court promulgated a supplemental decision wherein it dismissed Lao's claim of overpayment and ordered Lao to pay the corporation the sum of ₱167,745.20. The corporation appealed the decision, just as Lao appealed the supplemental decision to the Court of Appeals. On October 26, 1981, the appellate court rendered a decision ordering the corporation to pay Lao the total amount of ₱190,000.00 for damages. Likewise, the appellate court reversed and set aside the supplemental decision of the trial court and ordered the corporation to reimburse Lao's overpayment of ₱556,444.20. The corporation filed motions for reconsideration but the same were denied.

Meanwhile, during the pendency of Civil Case 4952, the corporation filed a complaint for estafa (Criminal Case No. 2650-0) against Lao for his alleged failure to remit the amount of ₱224,585.82 which he allegedly misappropriated and converted for his personal use. The said case was dismissed later but during the pendency of said Criminal Case, Lao lodged a complaint for malicious prosecution (Civil Case No. 5528) against the corporation praying for the award of damages. On March 18, 1977, the lower court rendered a decision in the action for malicious prosecution finding the corporation liable for damages. On April 18, 1977, Lao filed a motion for execution pending appeal in Civil Case No. 5528.

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This was opposed by the corporation, but the trial court granted said motion. Because of these decisions, both parties filed an appeal before the Court of Appeals primarily questioning the decision rendered by the lower courts. On September 14, 1977, the Court of Appeals in CA G.R. No. 06761 rendered a decision annulling the granting of execution pending appeal. The Court of Appeals likewise affirmed in CA GR No. 62532-R the trial court's finding that Criminal Case No. 2650-P was filed without probable cause and with malice and held the corporation and Esteban Co solidarily liable for damages. Because of these decisions, both parties filed several petitions in the Supreme Court questioning the decisions rendered by the Court of Appeals.

In G.R. No. 47013, the Court ruled that the appellate court correctly opted to make its own finding of facts on the issue of the propriety of the issuance of the writ of execution pending appeal as it was necessary and inevitable for it to look into the diverse factual allegations of the parties. Anent the issue of posting of the bond, the Court ruled that mere posting of a bond to answer for damages does not suffice as a good reason for granting execution pending appeal.

In G.R. No. 60647, the Court ruled that petitioner Co's authority to institute the estafa case is buttressed by the fact that the corporation failed to make an issue out of his authority to file said case. The failure of the corporation to interpose such a defense could only mean that the filing of the affidavit complaint by petitioner Co was with the consent and authority of the corporation. In the same vein, petitioner Co may not be held personally liable for acts performed in pursuance of an authority and therefore, holding him solidarily liable with the corporation for the damages awarded to petitioner Lao does accorded with law and jurisprudence.

In G.R. Nos. 606958-59, the Court ruled that the complaint for damages based on malicious prosecution and Articles 20 and 21 of the Civil Code should have been dismissed for lack of cause of action. As regards the decision in CA G.R. No. 62532-R, the Court ruled that it is within the power of the trial court to refer the accounting to court-appointed commissioners because true and correct accounting is necessary for the information of the court before it can render judgment. Since both parties offered no

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objection to the commissioners' report, they are deemed to have accepted and admitted the finding therein contained. Thus, in the absence of proof that the goods were actually received by Lao as evidenced by delivery receipts, the shipments allegedly made by the corporation in the amount of ₱597,239.40 and ₱126,950.00 covered only by bills of lading and factory consignment receipt invoices cannot be included in Lao's accountability.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; COURT SHOULD NOT BE SO STRICT ABOUT PROCEDURAL LAPSES THAT DO NOT REALLY IMPAIR THE PROPER ADMINISTRATION OF JUSTICE.**— In holding that the Court of Appeals may entertain a second motion for reconsideration of its decision although the filing of such motion violates a prohibition thereof, the Court said: "x x x (I)t is within the power of this Court to temper rigid rules in favor of substantial justice. While it is desirable that the Rules of Court be faithfully and even meticulously observed, courts should not be so strict about procedural lapses that do not really impair the proper administration of justice. If the rules are intended to ensure the orderly conduct of litigation, it is because of the higher objective they seek which is the protection of substantive rights of the parties." In the case under consideration, private respondents substantially complied with the Rules of Court when they submitted a copy of the writ of execution sought to be enjoined on the same day they filed the petition for *certiorari*, prohibition and *mandamus*. Petitioner Co's allegation of irregularity as to the time of receipt of the "compliance" to which copy of the writ was attached being unsubstantiated, the presumption of regularity of its receipt on the day the original petition was filed should prevail.

2. **ID.; ID.; SPECIAL CIVIL ACTION; IN A PETITION FOR *CERTIORARI* AND *MANDAMUS*, THE COURT OF APPEALS, WHEN INEVITABLE, MAY EXAMINE THE FACTUAL MERITS OF THE CASE.**— Petitioner Co argues that the Court of Appeals cannot disturb the factual findings of the trial court and substitute its own in a petition for *certiorari*, prohibition and *mandamus* where the basic issue is one of jurisdiction or grave abuse of discretion. It is well-settled,

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however, that in a petition for *certiorari* and *mandamus*, the Court of Appeals, when inevitable, may examine the factual merits of the case. In the present case, it was necessary and inevitable for the Court of Appeals to look into the diverse factual allegations of the parties. It is worthy to note that petitioner's motion for execution pending appeal was premised on his contention that the award of damages in his favor would be meaningless on account of respondent Corporation's precarious financial status. On the other hand, respondent Corporation countered that it was operating at a profit, an assurance that at the time, it was a stable business entity that could answer for its obligations. In the face of these contradictory allegations, the appellate court correctly opted to make its own finding of facts on the issue of the propriety of the issuance of the writ of execution pending appeal. It should be stressed that what was at issue was not the award of damages itself but the issuance of said writ.

3. **ID.; ID.; JUDGMENT; EXECUTION PENDING APPEAL; MERE POSTING OF A BOND TO ANSWER FOR DAMAGES DOES NOT SUFFICE AS A GOOD REASON FOR THE GRANT THEREOF.**— Petitioner Lao's position that the posting of a good and solvent bond is a special reason for the issuance of the writ of execution pending appeal is utterly barren of merit. Mere posting of a bond to answer for damages does not suffice as a good reason for the granting of execution pending appeal, within the context of "good reasons" under Section 2, Rule 39 of the Rules of Court. In *Roxas v. Court of Appeals,* the Court held: "It is not intended obviously that execution pending appeal shall issue as a matter of course. 'Good reasons, special, important, pressing reasons must exist to justify it; otherwise, instead of an instrument of solicitude and justice, it may well become a tool of oppression and inequity. But to consider the mere posting of a bond a 'good reason' would precisely make immediate execution of a judgment pending appeal routinary, the rule rather than the exception. Judgments would be executed immediately, as a matter of course, once rendered, if all that the prevailing party needed to do was to post a bond to answer for damages that might result therefrom. This is a situation, to repeat, neither contemplated nor intended by law."

4. **ID.; ID.; ACTIONS; LACK OF AUTHORITY OF AN OFFICER OF A CORPORATION TO BIND IT BY CONTRACT**

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EXECUTED BY HIM IN ITS NAME, IS A DEFENSE WHICH SHOULD HAVE BEEN SPECIALLY PLEADED BY THE CORPPORATION.— That petitioner Co was authorized to institute the estafa case is buttressed by the fact that the Corporation failed to make an issue out of his authority to file said case. Upon well-established principles of pleading, lack of authority of an officer of a corporation to bind it by contract executed by him in its name, is a defense which should have been specially pleaded by the Corporation. The Corporation's failure to interpose such a defense could only mean that the filing of the affidavit-complaint by petitioner Co was with the consent and authority of the Corporation. In the same vein, petitioner Co may not be held personally liable for acts performed in pursuance of an authority and therefore, holding him solidarily liable with the Corporation for the damages awarded to respondent Lao does accord with law and jurisprudence.

5. **CIVIL LAW; DAMAGES; MALICIOUS PROSECUTION; DEFINED; ELEMENTS.—** Malicious prosecution has been defined as an action for damages brought by one against whom a criminal prosecution, civil suit or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit or other proceeding in favor of the defendant therein. As thus defined, the fact of termination of the criminal prosecution, civil suit or legal proceeding maliciously filed and without probable cause, should precede the complaint for malicious prosecution. Such a complaint states a cause of action if it alleges: (a) that the defendant was himself the prosecutor or at least instigated the prosecution; (b) that the prosecution finally terminated in the acquittal of the plaintiff; (c) that in bringing the action the prosecutor acted without probable cause, and (d) that the prosecutor was actuated by malice, *i.e.*, by improper and sinister motives.

6. **REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; UNLESS THE PLAINTIFF HAS A VALID AND SUBSISTING CAUSE OF ACTION AT THE TIME HIS ACTION IS COMMENCED, THE DEFECT CANNOT BE CURED OR REMEDIED BY THE ACQUISITION OR ACCRUAL OF ONE WHILE THE ACTION IS PENDING AND A SUPPLEMENTAL COMPLAINT OR AN AMENDMENT SETTING UP SUCH AFTER-ACCRUED CAUSE OF**

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ACTION IS NOT PERMISSIBLE.— The contention of Lao that the elements of an action for malicious prosecution are evidentiary in nature and should be determined at the time the plaintiff offers evidence and rests his case, is untenable. To rule otherwise would, in effect, sanction the filing of actions without a cause of action. The existence of a cause of action is determined solely by the facts alleged in the complaint. Consideration of other facts is proscribed and any attempt to prove extraneous circumstances is not allowed. As this Court said in *Surigao Mine Exploration Co., Inc. v. Harris,* "unless the plaintiff has a valid and subsisting cause of action at the time his action is commenced, the defect cannot be cured or remedied by the acquisition or accrual of one while the action is pending, and a supplemental complaint or an amendment setting up such after-accrued cause of action is not permissible." Thus, the circumstance that the estafa case concluded in respondent Lao's acquittal during the pendency of the complaint for malicious prosecution did not cure the defect of lack of cause of action at the time of filing of the complaint.

7. **ID.; ID.; TRIAL BY COMMISSIONER; WHEN ALLOWED.**— Trial by commissioners is allowed by the Rules of Court when a) the trial of an issue of fact requires the examination of a long account on either side, in which case the commissioner may be directed to hear and report upon the whole issue or any specific question involved therein; b) when the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect; and c) when a question of fact, other than upon the pleadings, arises upon motion or otherwise, at any stage of a case, or for carrying a judgment or order into effect. Ultimately, the trial court, in the exercise of its sound discretion, may either adopt, modify, or reject in whole or in part, the commissioners' report or it may recommit the same with instructions, or require the parties to present additional evidence before the commissioners or before the court. In the case under consideration, it is thus within the power of the trial court to refer the accounting to court-appointed commissioners because a true and correct accounting is necessary for the information of the court before it can render judgment. Moreover, the technical nature of the audit procedure necessitates the assistance of a certified public accountant. And since both parties offered no objection to the commissioners' report, they are deemed to have accepted and admitted the findings therein contained.

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8. COMMERCIAL LAW; TRANSPORTATION LAW; BILL OF LADING; A BILL OF LADING CANNOT SUBSTITUTE FOR A DELIVERY RECEIPT.— Delivery is generally evidenced by a written acknowledgment of a person that he or she has actually received the thing or the goods, as in delivery receipts. A bill of lading cannot substitute for a delivery receipt. This is because it is a written acknowledgment of the receipt of the goods by the carrier and an agreement to transport and deliver them at a specific place to a person named or upon his order. It does not evidence receipt of the goods by the consignee or the person named in the bill of lading; rather, it is evidence of receipt by the carrier of the goods from the shipper for transportation and delivery.

9. ID.; ID.; CONSIGNMENT INVOICE; NOT EVIDENCE OF ACTUAL DELIVERY OF THE GOODS.— A factory consignment invoice is not evidence of actual delivery of the goods. An invoice is nothing more than a detailed statement of the nature, quantity and cost of the thing sold. It is not proof that the thing or goods were actually delivered to the vendee or the consignee.

10. CIVIL LAW; ACTUAL DAMAGES; PROPERLY AWARDED BUT REDUCED TO ₱30,000.00.— Petitioner Corporation also opposes for being conjectural, the award of ₱150,000.00 in Civil Case No. 4452, representing actual damages for loss of earnings. True, damages cannot be presumed or premised on conjecture or even logic. A party is entitled to adequate compensation only for duly substantiated pecuniary loss actually suffered by him or her. In this case, however, the trial court correctly found that an award for actual damages was justified because several months before their contract of agency was due to expire in 1969, the petitioner Corporation replaced Lao with Ngo Kheng as sales agent for the areas of Leyte and Samar. This, despite the fact that they had already agreed that Lao would continue to act as the corporation's sales agent provided that he would reduce his accountability to ₱200,000.00, the amount covered by his bond, and engaged the services of an independent accounting firm to do an audit to establish Lao's true liability. Due to his ouster as sales agent, Lao failed to realize a net income from his sales agency in the amount of ₱30,000.00 a year. However, the amount of actual damages should be reduced to ₱30,000.00 only instead of the ₱150,000.00 awarded by the appellate court. Since the contract of sales agency was on a yearly basis, the actual damages Lao suffered should be

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limited to the annual net income he failed to realize due to his unjust termination as sales agent prior to the expiration of his contract in 1969. Unrealized income for the succeeding years cannot be awarded to Lao because the corporation is deemed to have opted not to renew the contract with Lao for the succeeding years.

APPEARANCES OF COUNSEL

Gruba Tanlimco Lamson & Apuhin for Associated Anglo American Tobacco Corporation.

Alfredo O. Felizardo for petitioner Esteban Co.

Sycip, Salazar, Hernandez & Gatmaitan for Andres Lao, Jose Lao and Tomas Lao.

DECISION

PURISIMA, *J.*:

These consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court revolve around discrepant statements of accountability between a principal and its agent in the sale of cigarettes.

The common factual background at bar follows:

On April 6, 1965, The Associated Anglo-American Tobacco Corporation (Corporation for brevity) entered into a "Contract of Sales Agent" with Andres Lao. Under the contract, Lao agreed to sell cigarettes manufactured and shipped by the Corporation to his business address in Tacloban City. Lao would in turn remit the sales proceeds to the Corporation. For his services, Lao would receive commission depending on the kind of cigarettes sold, fixed monthly salary, and operational allowance. As a guarantee to Lao's compliance with his contractual obligations, his brother Jose and his father Tomas executed a deed of mortgage[1] in favor of the Corporation in the amount of ₱200,000.00.

In compliance with the contract, Lao regularly remitted the proceeds of his sales to the Corporation, generating, in the process,

[1] *Rollo* of G.R. Nos. 60958-59, Vol. II, p. 292.

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a great deal of business. Thus, the Corporation awarded him trophies and plaques in recognition of his outstanding performance from 1966 to 1968. However, in February 1968 and until about seven (7) months later, Lao failed to accomplish his monthly sales report. In a conference in Cebu, Ching Kiat Kam, the President of the Corporation, reminded Lao of his enormous accounts and the difficulty of obtaining a tally thereon despite Lao's avowal of regular remittances of his collections.

Sometime in August and September 1969, Esteban Co, the vice-president and general manager of the Corporation, summoned Lao to Pasay City for an accounting. It was then and there established that Lao's liability amounted to ₱525,053.47. And so, Lao and his brother Lao Y Ka, enlisted the services of the Sycip Gorres and Velayo Accounting Firm (SGV) to check and reconcile the accounts.

Ching Kiat Kam allowed Lao to continue with the sales agency provided Lao would reduce his accountability to ₱200,000.00, the amount secured by the mortgage. The Corporation thereafter credited in favor of Lao the amount of ₱325,053.47 representing partial payments he had made but without prejudice to the result of the audit of accounts. However, the SGV personnel Lao had employed failed to conclude their services because the Corporation did not honor its commitment to assign two of its accountants to assist them. Neither did the Corporation allow the SGV men access to its records.

Subsequently, the Corporation discovered that Lao was engaging in the construction business so much so that it suspected that Lao was diverting the proceeds of his sales to finance his business. In the demand letter of April 15, 1979,[2] counsel for the Corporation sought payment of the obligations of Lao, warning him of the intention of the Corporation to foreclose the mortgage. Attached to said letter was a statement of account indicating that Lao's total obligations duly supported by receipts amounted to ₱248,990.82.

Since Lao appeared to encounter difficulties in complying with his obligations under the contract of agency, the Corporation sent

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[2] *Ibid.*, p. 224; Record on Appeal of C.A. G.R. No. 61925-R, Vol. II, p. 202.

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Ngo Kheng to supervise Lao's sales operations in Leyte and Samar. Ngo Kheng discovered that, contrary to Lao's allegation that he still had huge collectibles from his customers, nothing was due the Corporation from Lao's clients. From then on, Lao no longer received shipments from the Corporation which transferred its vehicles to another compound controlled by Ngo Kheng. Shipments of cigarettes and the corresponding invoices were also placed in the name of Ngo Kheng.

On May 21, 1970, Andres, Jose and Tomas Lao brought a complaint for accounting and damages with writ of preliminary injunction[3] against the Corporation, docketed as Civil Case No. 4452 before the then Court of First Instance of Leyte, Branch I in Tacloban City, which court[4] came out with its decision[5] on March 26, 1975, disposing as follows:

"IN VIEW OF ALL THE FOREGOING PREMISES, and upon a clear preponderance of evidence in favor of the plaintiffs, the court hereby renders judgment as follows:

1. Ordering both the plaintiffs and defendant corporation to undergo a Court supervised accounting of their respective account with the view of establishing once and for all, by a reconciliation of their respective books of accounts, the true and correct accountability of Andres Lao to the defendant corporation. Pursuant thereto, both plaintiff Andres Lao and the defendant The Associated Anglo-American Tobacco Corporation are directed to make available all their records pertainting [sic] to their business transactions with each other under the contract of sales agent, from 1965 up to the time Andres Lao ceased being the agent of the defendant. A Committee on Audit is hereby formed to be composed of three (3) members, one member to be nominated by the plaintiffs, another to be nominated by the defendant corporation and the third member who shall act as the Committee Chairman to be appointed by this Court. As Committee Chairman, the Court hereby appoints the Branch Clerk of Court of this Court, Atty.

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[3] *Ibid.*, p. 273.

[4] Presided by Judge Gregorio G. Collantes.

[5] *Rollo* of G.R. Nos. 60958-59, Vol. I, p. 225; Amended Record on Appeal, p. 476.

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Victorio Galapon, who shall immediately convene the Committee upon appointment of the other two members, and undertake to finish their assigned task under his decision within two (2) months.

2. Ordering the defendant corporation to pay Plaintiffs the amount of ₱180,000 representing actual loss of earnings.
3. Ordering the defendant to pay plaintiffs moral damages in the amount of ₱130,000.00.
4. Ordering the defendant to pay to the plaintiffs, exemplary damages in the amount of ₱50,000.00.
5. Ordering the defendant to pay to the plaintiffs, attorney's fees in the amount of ₱40,000.00.
6. Ordering the plaintiff and the defendant to pay the compensation of the commissioners pro-rata.
7. Finally ordering the defendant to pay the cost of this suit.

SO ORDERED."

The Committee of Audit that was eventually constituted was composed of Atty. Victorio L. Galapon, Jr., as chairman, Wilfredo Madarang, Jr. and Cesar F.P. Corcuera, as representatives of the Corporation, and Lao himself. On September 16, 1976, said committee submitted a report[6] with the following findings:

"Total remittances made by Mr. Andres Lao in favor of Associated from April 10, 1965 to November 1969 which are substantially supported by official receipt ..... ₱13,686,148.80

Shipments by Associated to Mr. Andres Lao duly supported by bills of lading, factory consignment invoices and delivery receipts 9,110,777.00

Shipments by Associated to Mr. Andres Lao, covered by bills of lading and factory consignment invoices but with no supporting delivery receipts purported to have been delivered to Mr. Lao on the basis of sales made by him as reported in his monthly sales reports (except for sales in December, 1968 and November

[6] *Ibid.*, p. 867.

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and December 1968 where the sales reports were not available to the Audit Committee) 4,018,927.60

Shipments covered by bills of lading and factory consignment invoices but with no supporting delivery receipts 597,239.40

Shipments with covering factory consignment invoices but not covered by bills of lading and delivery receipts .... 126,950.00"

On February 28, 1977, the trial court[7] promulgated a supplemental decision wherein it dismissed Lao's claim that he had made an overpayment of ₱556,444.20. The alleged overpayment was arrived at after deducting the total payment made by Lao in the amount of ₱13,686,148.80 from the total volume of shipments made by the Corporation in the amount of ₱13,129,704.60, without including the amount of ₱597,239.40, representing alleged shipments covered by bills of lading and factory consignment invoices but with no supporting delivery receipts, and the amount of ₱126,950.00, representing shipments with factory consignment invoices but not covered by bills of lading and delivery receipts. The trial court, in rejecting the claim of overpayment, held that "when he (referring to Lao) made partial payments amounting to ₱325,053.47 subsequent to the demand in September, 1969, he is deemed to have admitted his liability and his claim of overpayment is not only preposterous but devoid of logic." Therefore, with the sums of ₱597,239.40 and ₱126,950.00 included in the total volume of shipments made by the Corporation in the amount of ₱13,129,704.60, Lao's total remittances of ₱13,686,248.80 were short of ₱167,745.20. Thus, the trial court held:

"WHEREFORE, judgment is hereby rendered declaring plaintiff Andres Lao's accountability to defendant Corporation in the amount of ₱167,745.20 and ordering him to pay said amount of ₱167,745.20 to defendant The Associated Anglo-American Tobacco Corporation."

The Corporation appealed the decision, dated March 26, 1975, just as Lao appealed the supplemental decision, dated

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[7] Thru Judge Jose P. Arro who succeeded Judge Collantes.

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February 28, 1977, to the Court of Appeals. Docketed as CA-G.R. No. 62532-R, the appeal was resolved in the Decision of the Court of Appeals dated October 26, 1981,[8] disposing thus:

"WHEREFORE, in connection with the decision of March 26, 1975, defendant corporation is hereby ordered to pay plaintiffs ₱150,000.00 actual damages for loss of earnings, ₱30,000.00 by way of moral damages and ₱10,000.00 for exemplary damages. As modified, the decision is AFFIRMED in all other respects.

As for the supplemental decision of February 28, 1977, the same is hereby reversed and set aside, and defendant-appellant corporation sentenced to reimburse Andres Lao's overpayment in the amount of ₱556,444.20. Costs against defendant-appellant corporation."

The Corporation presented a motion for reconsideration[9] of the said Decision but the same was denied in a Resolution dated May 18, 1982.[10] A motion for leave to file a second motion for reconsideration was likewise denied.[11]

Meanwhile, on June 24, 1974 and during the pendency of Civil Case No. 4452, Esteban Co, representing the Corporation as its new vice-president, filed an affidavit of complaint[12] with the Pasay City Fiscal's Office under I.S. No. 90994; alleging that Lao failed to remit the amount of ₱224,585.82 which he allegedly misappropriated and converted to his personal use. Although the amount supposedly defalcated was put up as a counterclaim in Civil Case No. 4452 for accounting, the Corporation averred that it reserved the right to institute a criminal case against Lao.

On July 31, 1974, after finding a *prima facie* case against Lao, the Pasay City Fiscal filed an information[13] for estafa against Lao,

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[8] *Rollo* of G.R. Nos. 60958-59, Vol. 1, p. 141.

[9] *Ibid.*, p. 142.

[10] *Ibid.*, p. 177.

[11] *Ibid.*, p. 218.

[12] *Ibid.*, p. 224; Record on Appeal, G.R. No. 61925-R, Vol. II, p. 194.

[13] *Ibid.*, p. 205.

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docketed as Criminal Case No. 2650-P before the then Court of First Instance of Rizal, Branch XXVII. Lao sought a reinvestigation[14] of the case, contending that he was never served a subpoena or notice of preliminary investigation that was considered mandatory in cases cognizable by Court of First Instance, now Regional Trial Court. Apparently, the preliminary investigation proceeded *ex-parte* because Esteban Co made it appear that Lao could not be located.

On December 17, 1974, without awaiting the termination of the criminal case, Lao lodged a complaint[15]for malicious prosecution against the Corporation and Esteban Co, praying for an award of damages for violation of Articles 20 and 21 of the Civil Code. The case was docketed as Civil Case No. 5528 before Branch I of the then Court of First Instance in Cotabato City.

In his resolution dated January 3, 1975,[16] then Pasay City Fiscal Jose Flaminiano found merit in the petition for reinvestigation of the estafa case. He opined that Lao had not committed estafa as his liability was essentially civil in nature. The Fiscal entertained doubts about the motive of the Corporation in instituting the criminal case against Lao because of the undue delay in its filing, aside from the fact that the estafa case involved the same subject matter the Corporation sued upon by way of counterclaim in Civil Case No. 4452. Eventually, on May 13, 1976, the Court of First Instance of Rizal, Branch XXVII, in Pasay City, promulgated a decision[17] acquitting Lao of the crime charged and adopting *in toto* the said Resolution of Fiscal Flaminiano.

On March 18, 1977, the Court of First Instance of Samar[18] handed down a decision in Civil Case No. 5528, the action for damages arising from malicious prosecution, disposing thus:

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[14] *Ibid.*, p. 140.

[15] *Ibid.*, p. 16.

[16] *Ibid.*, p. 158.

[17] *Rollo* of G.R. Nos. 60958-59, Vol. II, p. 296.

[18] Presided by Judge Segundo M. Zosa.

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"WHEREFORE, the Court declares that the defendants filed Criminal Case No. 2650-P against the plaintiff for estafa before the Court of First Instance of Rizal, Branch XXVII, Pasay City, without probable cause and with malice and therefore orders the defendants Associated Anglo-American Tobacco Corporation and Esteban Co to jointly and severally pay the plaintiff:

a. ₱30,000 as actual damages;
b. ₱150,000.00 as moral damages;
c. ₱100,000.00 as exemplary damages;
d. ₱50,000.00 as attorney's fees and costs.

SO ORDERED."

The Corporation and Esteban Co both appealed the aforesaid decision to the Court of Appeals under CA-G.R. No. 61925-R.

On April 18, 1977, Lao presented a motion for execution pending appeal[19] before the trial court. The opposition of the Corporation notwithstanding, on June 8, 1977 the trial court issued a special order granting the motion for execution pending appeal,[20] and on the following day, the corresponding writ of execution issued.[21]

On June 10, 1977, the Court of Appeals issued a Restraining Order enjoining the execution of subject judgment.[22] The said order was issued on account of a petition for *certiorari*, prohibition and *mandamus* with preliminary injunction[23] filed by the Corporation and Esteban Co with the said appellate court. Docketed as CA-G.R. No. 06761, the petition was received by the Court of Appeals on June 9, 1977. A supplemental to the petition and a "compliance" were also received on the same time and date.[24] On June 21, 1977, Lao moved to lift the restraining order.

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[19] *Rollo* of G.R. No. 47013, p. 112.

[20] *Ibid.*, p. 166.

[21] *Ibid.*, p. 185.

[22] *Ibid.*, p. 187.

[23] *Ibid.*, p. 189.

[24] *Ibid.*, pp. 213 & 215.

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On September 14, 1977, the Court of Appeals resolved in CA-G.R. No. 06761 thus:

"WHEREFORE, the petition for *certiorari* is hereby granted, the special order granting execution pending appeal is annulled and the restraining order heretofore issued is made permanent.

No pronouncement as to costs."

On October 21, 1981, the Court of Appeals likewise rendered a Decision[25] in CA-G.R. No. 62532-R, affirming the trial court's finding that Criminal Case No. 2650-P was filed without probable cause and with malice; and held the Corporation and Esteban Co solidarily liable for damages, attorney's fees and costs.

The Corporation and Esteban Co moved to reconsider[26] the said decision in CA-G.R. No. 61925-R but to no avail. The motion for reconsideration was denied in a Resolution promulgated on May 18, 1992. A motion for leave of court to file a second motion for reconsideration[27] met the same fate. It was likewise denied in a Resolution[28] dated June 23, 1982.

From the said cases sprung the present petitions which were ordered consolidated in the Resolutions of December 15, 1982 and November 11, 1985.[29] Subject petitions are to be passed upon in the order they were filed.

G.R. No. 47013

A petition for review on *certiorari* of the Decision of the Court of Appeals in CA-G.R. No. 06761 that Lao filed, contending that:

1. The Court of Appeals cannot validly give due course to an original action for certiorari, prohibition and *mandamus* where the petition is fatally defective for not being

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[25] *Rollo* of G.R. Nos. 60958-59, Vol. I, p. 51.

[26] *Rollo* of G.R. No. 60647, p. 56.

[27] *Rollo* of G.R. Nos. 60958-59, p. 178.

[28] *Ibid.*, pp. 217-218.

[29] *Rollo* of G.R. No. 47013, p. 425 and G.R. No. 60647, p. 71.

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accompanied by a copy of the trial court's questioned process/order.

2. The Court of Appeals, cannot, in a petition for *certiorari*, prohibition and *mandamus*, disregard, disturb and substitute its own judgment for the findings of facts of the trial court, particularly as in the present case, where the trial court did not exceed nor abuse its discretion.

3. The Court of Appeals did not act in accordance with established jurisprudence when it overruled the trial court's holding that the posting of a good and solvent bond is a good or special reason for execution pending appeal.

For clarity, the petition for review on *certiorari* questioning the Decision of the Court of Appeals that nullified the special order granting execution pending appeal is anchored on the antecedent facts as follows:

After the Court of First Instance of Samar had decided in favor of Lao in the action for damages by reason of malicious prosecution, Lao filed a motion for execution pending appeal[30] even as the Corporation and Co had interposed an appeal from the said decision. In that motion, Lao theorized that the appeal had no merit and the judgment in his favor would be rendered ineffectual on account of losses incurred by the Corporation in the 1972 floods in Luzon and in a fire that cost the Corporation ₱5 million, as well as the fact that the properties of the Corporation were heavily encumbered as it had even incurred an overdraft with a bank; for which reasons, Lao evinced his willingness to post a bond although Section 2, Rule 39 of the Rules of Court does not require such bond. Lao thereafter sent in a supplemental motion[31] asserting that the Corporation's properties were mortgaged in the total amount of Seven Million (₱7,000,000.00) Pesos. The Corporation and Co opposed both motions.

On June 8, 1977, after hearing and presentation of evidence by both parties, the Court of First Instance of Samar issued a special

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[30] *Rollo* of G.R. No. 47013, pp. 112-124.

[31] *Ibid.*, pp. 125-129.

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order granting the motion for execution pending appeal.[32] The following day, June 9, 1977, the corresponding writ of execution pending appeal issued.[33] At 8:00 a.m. on the same day, the Corporation and Co filed a petition for *certiorari*, prohibition and *mandamus* with preliminary injunction with the Court of Appeals, the filing of which petition was followed by the filing of a supplement to the petition and a "compliance" with each pleading bearing the docket stamp showing that the Court of Appeals also received the same at 8:00 a.m.[34]

In the petition under consideration, petitioner Lao contends that the supplemental petition and "compliance" could not have been filed with the Court of Appeals at the same time as the original petition; pointing out that the supplemental petition contains an allegation to the effect that the special order granting execution pending appeal was then still "being flown to Manila" and would be attached to the petition "as soon as it arrives in Manila which is expected tomorrow, June 10, 1977 or Saturday."[35] Petitioner Lao thus expressed incredulity on the fact that both the supplemental petition and the "compliance" submitted to the appellate court a copy of the special order bearing the same time of receipt. He theorized that the writ of execution could have been issued by the Court of First Instance of Samar at the earliest, at 8:30 a.m. on July 9, 1977. Petitioner Lao then noted that, the restraining order enjoining execution pending appeal did not mention the date of issuance of the writ subsequently issued and the names of the special sheriffs tasked to execute it simply because when the restraining order was issued the copy of the writ of execution was not yet filed with the Court of Appeals. Petitioner Lao also averred that because his counsel was furnished a copy of the restraining order through the mail, he was deprived of the opportunity to take immediate "remedial steps in connection with the improvident issuance of the restraining order."[36]

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[32] *Ibid.*, pp. 166-184.

[33] *Ibid.*, pp. 185-186.

[34] *Ibid.*, pp. 9-10.

[35] *Ibid.*, pp. 17-18.

[36] *Ibid.*, p. 19.

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In their comment on the petition, respondent Corporation and Co assail petitioner Lao's insinuation of irregularity in the filing of their pleadings. They aver that in view of petitioner Lao's allegation, they, made inquiries in the Docket Section of the Court of Appeals, and they were informed that the receiving machine of said section was out of order when the pleadings were received "as the time of receipt appearing therein is always 8:00 a.m."[37]

This Court cannot gloss over, as it has never glossed over allegations of irregularity in the handling of pleadings filed in the Court. However, in the absence of concrete proof that there was malicious intent to derail the propriety of procedure, this Court has no basis on which to arrive at a conclusion thereon. The documentary evidence of simultaneous receipt of pleadings that should ordinarily be received one after another is simply insufficient to warrant any conclusion on irregularity of procedure.

All court personnel are enjoined to do their jobs properly and according to law. Should they notice anything in the performance of their duties that may generate even a mere suspicion of irregularity, they are duty-bound to correct the same. In this case, more diligence on the part of the personnel handling the receiving machine could have prevented the stamping on the pleadings with erroneous date and time of receipt and would have averted suspicion of an anomaly in the filing of pleadings. Persons responsible for the negligence should be taken to task. However, since this is not the proper forum for whatever administrative measures may be taken under the premises, the Court opts to discuss the merits of the petition for review on *certiorari* at bar rather than tarry more on an administrative matter that is fundamentally extraneous to the petition.

Petitioner Lao maintains that the Court of Appeals should not have been given due course to the petition for *certiorari*, prohibition and *mandamus* considering that it was fatally defective for failure of the petitioners to attach thereto a copy of the questioned writ of execution. On their part, private respondents concede the mandatory

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[37] *Ibid.*, p. 318.

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character of the requirement of Section 1, Rule 65 of the Rules of Court — that the petition "shall be accompanied by a certified true copy of the judgment or order subject thereof, together with copies of all pleadings and documents relevant and pertinent thereto." However, private respondents asked that their submission of a certified true copy of the special order granting execution pending appeal attached to their "compliance" dated June 9, 1977[38] be taken as substantial compliance with the rule.

The Court gives due consideration to private respondents' stance. Strict adherence to procedural rules must at all times be observed. However, it is not the end-all and be-all of litigation. As this Court said:

"x x x adjective law is not to be taken lightly for, without it, the enforcement of substantive law may not remain assured. The Court must add, nevertheless, that technical rules of procedure are not ends in themselves but primarily devised and designed to help in the proper and expedient dispensation of justice. In appropriate cases, therefore, the rules may have to be so construed liberally as to meet and advance the cause of substantial justice."[39]

Thus, in holding that the Court of Appeals may entertain a second motion for reconsideration of its decision although the filing of such motion violates a prohibition thereof, the Court said:

"x x x (I)t is within the power of this Court to temper rigid rules in favor of substantial justice. While it is desirable that the Rules of Court be faithfully and even meticulously observed, courts should not be so strict about procedural lapses that do not really impair the proper administration of justice. If the rules are intended to ensure the orderly conduct of litigation, it is because of the higher objective they seek which is the protection of substantive rights of the parties."[40]

In the case under consideration, private respondents substantially complied with the Rules of Court when they submitted a copy of

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[38] *Ibid.*, p. 215.

[39] *Republic of the Philippines v. Court of Appeals*, 343 Phil. 428, 436 (1997).

[40] *GSIS v. Court of Appeals*, 334 Phil. 163, 174 (1997) citing *Mauna v. Civil Service Commission*, G.R. No. 97794, May 13, 1994, 232 SCRA 388, 398.

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the writ of execution sought to be enjoined on the same day they filed the petition for *certiorari*, prohibition and *mandamus*. Petitioner Co's allegation of irregularity as to the time of receipt of the "compliance" to which copy of the writ was attached being unsubstantiated, the presumption of regularity of its receipt on the day the original petition was filed should prevail.

Petitioner Co argues that the Court of Appeals cannot disturb the factual findings of the trial court and substitute its own in a petition for *certiorari*, prohibition and *mandamus* where the basic issue is one of jurisdiction or grave abuse of discretion. It is well-settled, however, that in a petition for *certiorari* and *mandamus*, the Court of Appeals, when inevitable, may examine the factual merits of the case.[41] In the present case, it was necessary and inevitable for the Court of Appeals to look into the diverse factual allegations of the parties. It is worthy to note that petitioner's motion for execution pending appeal was premised on his contention that the award of damages in his favor would be meaningless on account of respondent Corporation's precarious financial status. On the other hand, respondent Corporation countered that it was operating at a profit, an assurance that at the time, it was a stable business entity that could answer for its obligations. In the face of these contradictory allegations, the appellate court correctly opted to make its own finding of facts on the issue of the propriety of the issuance of the writ of execution pending appeal. It should be stressed that what was at issue was not the award of damages itself but the issuance of said writ.

Petitioner Lao's position that the posting of a good and solvent bond is a special reason for the issuance of the writ of execution pending appeal is utterly barren of merit. Mere posting of a bond to answer for damages does not suffice as a good reason for the granting of execution pending appeal, within the context of "good reasons" under Section 2, Rule 39 of the Rules of Court.[42] In *Roxas*

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[41] *Mesina v. Intermediate Appellate Court*, G.R. No. 70145, November 13, 1986, 145 SCRA 497, 506; *Seechung-Federis v. Sunga*, L-34803, January 17, 1985, 134 SCRA 16, 24.

[42] Sec. 2. Execution pending appeal.— On motion of the prevailing party with notice to the adverse party, the court may, in its discretion, order execution

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v. Court of Appeals,[43] the Court held:

"It is not intended obviously that execution pending appeal shall issue as a matter of course. 'Good reasons, special, important, pressing reasons must exist to justify it; otherwise, instead of an instrument of solicitude and justice, it may well become a tool of oppression and inequity. But to consider the mere posting of a bond a 'good reason' would precisely make immediate execution of a judgment pending appeal routinary, the rule rather than the exception. Judgments would be executed immediately, as a matter of course, once rendered, if all that the prevailing party needed to do was to post a bond to answer for damages that might result therefrom. This is a situation, to repeat, neither contemplated nor intended by law."[44]

G.R. No. 60647

From the decision of the Court of First Instance of Samar in Civil Case No. 5528, finding that they are liable for malicious prosecution and therefore, they must pay Lao damages, the Corporation and Co appealed to the Court of Appeals. In affirming the lower court's decision, the Court of Appeals deduced from the facts established that the Corporation knew all along that Lao's liability was civil in nature. However, after around four (4) years had elapsed and sensing that Civil Case No. 4452 would result in a decision against them, they instituted the criminal case for estafa. In awarding damages in the total amount of ₱330,000, the Court of Appeals took into account Lao's social and business standing.[45]

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to issue even before the expiration of the time to appeal, upon *good reasons* to be stated in a special order. If a record on appeal is filed thereafter, the motion and the special order shall be included therein. (Italics supplied.)

[43] G.R. No. 56960, January 28, 1988, 157 SCRA 370, 377-378.

[44] *Quoted in David v. Court of Appeals,* 342 Phil. 387, 391 (1997).

[45] The Court of Appeals found that petitioner "was held in high esteem in his community, being the President of the Tacloban City Jaycees in 1969; a member of its Board of Directors; a member in good standing of the Tacloban City Chapter of The Lions Club; a member of the Bachelors Club of Tacloban City and was a participant in the Jaycees National Convention in Cagayan de Oro and in Manila, attended by Jaycees representatives from all over the world. He was also the adviser of the Tacloban Chinese Chamber of Commerce, co-founder of the Tacloban Community Chest; and a consistent donor to charitable institutions in Catbalogan, Samar" (Decision in CA-G.R. No. 61925-R, pp. 26-27). Lao was

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From the Decision of the Court of Appeals in CA-G.R. No. 61925-R, Co filed the instant petition for review on *certiorari*; contending that the Court of Appeals erred in affirming the decision of the Samar Court of First Instance because when the case for malicious prosecution was commenced there was as yet no cause of action as the criminal case was still pending decision. Co also asserted that he should not be held jointly and severally liable with the Corporation because in filing the affidavit-complaint against respondent Lao, he was acting as the executive vice-president of the Corporation and his action was within the scope of his authority as such corporate officer.

The issue of whether the Court of Appeals correctly ruled that the Corporation and petitioner Co should be held liable for damages on account of malicious prosecution shall be ratiocinated upon and resolved with the issues submitted for resolution in G.R. Nos. 60958-59. What should concern the Court here is whether petitioner Co should be held solidarily liable with the Corporation for whatever damages would be imposed upon them for filing the complaint for malicious prosecution.

Petitioner Co argues that following the dictum in agency, the suit should be against his principal unless he acted on his own or exceeded the limits of his agency.

A perusal of his affidavit-complaint reveals that at the time he filed the same on June 24, 1974, petitioner Co was the vice-president of the Corporation. As a corporate officer, his power to bind the Corporation as its agent must be sought from statute, charter, by-laws, a delegation of authority to a corporate officer, or from the acts of the board of directors formally expressed or implied from a habit or custom of doing business.[46] In this case, no such sources of petitioner's authority from which to deduce whether or not he was acting beyond the scope of his responsibilities

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also the operations manager of the Tomas Lao Construction Company and the Thomas and James Developers that engaged in multimillion-peso projects (*Ibid.*, p. 28).

[46] *Boyer-Roxas v. Court of Appeals*, G.R. No. 100866, July 14, 1992, 211 SCRA 470, 486.

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as corporate vice-president are mentioned, much less proven. It is thus logical to conclude that the board of directors or by-laws of the corporation vested petitioner Co with certain executive duties[47] one of which is a case for the Corporation.

That petitioner Co was authorized to institute the estafa case is buttressed by the fact that the Corporation failed to make an issue out of his authority to file said case. Upon well-established principles of pleading, lack of authority of an officer of a corporation to bind it by contract executed by him in its name, is a defense which should have been specially pleaded by the Corporation.[48] The Corporation's failure to interpose such a defense could only mean that the filing of the affidavit-complaint by petitioner Co was with the consent and authority of the Corporation. In the same vein, petitioner Co may not be held personally liable for acts performed in pursuance of an authority and therefore, holding him solidarily liable with the Corporation for the damages awarded to respondent Lao does accord with law and jurisprudence.

G.R. Nos. 606958-59

In this petition for review on *certiorari* of the Decisions of the Court of Appeals in CA-G.R. No. 61925-R, regarding Lao's claim for damages on account of malicious prosecution, and in CA-G.R. No. 62532-R that arose from Lao's complaint for accounting and damages, petitioner Corporation assigns as errors, that:

1. The respondent Court of Appeals erred and/or committed a grave abuse of discretion in affirming the erroneous decision of the lower court. The civil case for malicious prosecution was filed during the pendency of the criminal case upon which the civil suit was based. There is as yet no cause of action. x x x.
2. The respondent Court of Appeals erred and/or committed a grave abuse of discretion when it reversed or set aside the supplemental decision of the lower court in Civil Case No. 4452, which reversal was merely based on surmises and conjectures. x x x.
3. The respondent Court of Appeals erred and/or committed grave abuse of discretion when it awarded moral damages in Civil Case

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[47] See: De Leon, The Corporation Code of the Philippines, 1993 ed., p. 225.

[48] *Ramirez v. Orientalist Co. & Fernandez,* 38 Phil. 634 (1918).

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> No. 4452 which was not prayed for because Andres Lao prayed for moral damages and was already awarded in Civil Case No. 5528. Moral damages must be specifically prayed for. x x x.[49]

Petitioner Corporation contends that the complaint for malicious prosecution brought by Lao during the pendency of subject criminal case for estafa, states no cause of action as it was prematurely filed when the criminal case that resulted in the acquittal of Lao was not yet terminated. On the other hand, respondent Lao countered that the elements supportive of an action for malicious prosecution are evidentiary in nature and their existence or non-existence cannot be the subject of evaluation and conclusion upon the filing of the complaint. For Lao, those elements must be determined at the time the plaintiff has offered all his evidence and rested his case.

Malicious prosecution has been defined as an action for damages brought by one against whom a criminal prosecution, civil suit or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit or other proceeding in favor of the defendant therein.[50] As thus defined, the fact of termination of the criminal prosecution, civil suit or legal proceeding maliciously filed and without probable cause, should precede the complaint for malicious prosecution. Such a complaint states a cause of action if it alleges: (a) that the defendant was himself the prosecutor or at least instigated the prosecution; (b) that the prosecution finally terminated in the acquittal of the plaintiff; (c) that in bringing the action the prosecutor acted without probable cause, and (d) that the prosecutor was actuated by malice, *i.e.*, by improper and sinister motives.[51]

Ocamp v. Buenaventura[52] demonstrates the importance of the requirement that the case maliciously commenced should be

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[49] Petition in G.R. Nos. 60958-59, pp. 15-17.

[50] *Drilon v. Court of Appeals,* 336 Phil. 949, 957 (1997).

[51] *Cometa and State Investment Trust, Inc. v. Court of Appeals,* G.R. No. 124062, January 21, 1999, 301 SCRA 459, 466.

[52] 154 Phil. 253 (1974).

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terminated before a claim for damages arising from the filing of such case should be presented. In that case, a complaint for damages arising from the alleged malicious filing of an administrative case for serious misconduct, grave abuse of authority and commission of a felony, was held to be premature during the pendency of said administrative case before the then Police Commission (POLCOM). Observing that the complaint for damages was based on the claim that the administrative case brought before the POLCOM was malicious, unfounded and aimed to harass the respondents, the Court there held:

"x x x. The veracity of this allegation is not for us to determine, for if We rule and allow the civil case for damages to proceed on that ground, there is the possibility that the court *a quo* in deciding said case might declare the respondents victims of harassment and thereby indirectly interfere with the proceedings before the POLCOM. The respondents' case for damages before the lower court is, therefore, premature as it was filed during the pendency of the administrative case against the respondents before the POLCOM. The possibility cannot be overlooked that the POLCOM may hand down a decision adverse to the respondents, in which case the damage suit will become unfounded and baseless for wanting in cause of action. Of persuasive force is the ruling in *William H. Brown vs. Bank of the Philippine Islands and Santiago Freixas,* 101 Phil. 309, 312, where this Court said:

> "x x x. In effect, plaintiff herein seeks to recover damages upon the ground that the detainer case has been filed, and is being maintained, maliciously and without justification; but this pretense affects the merits of said detainer case. Should final judgment be eventually rendered in that case in favor of the plaintiffs therein, such as the one rendered in the municipal court, the validity of the cause of action of said lessors against Brown, would thereby be conclusively established, and necessarily, his contention in the present case would have to be rejected. Similarly, we cannot sustain the theory of Brown in the case at bar, without prejudging the issue in the detainer case, which is still pending. Until final determination of said case, plaintiff herein cannot, and does not, have, therefore, a cause of action — if any, on which we do not express our opinion — against the herein defendants. In short, the lower court has correctly held that the present action is premature, and, that,

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consequently, the complain herein does not set forth a cause of action against the defendants."[53]

A similar ruling was laid down in *Cabacungan v. Corrales*[54] where the Court sustained the dismissal of an action for damages on the ground of prematurity. The records disclosed that the alleged false and malicious complaint charging plaintiffs with malicious mischief was still pending trial when the action for damages based on the subject complaint was brought.

Premises studiedly viewed in proper perspective, the contention of Lao that the elements of an action for malicious prosecution are evidentiary in nature and should be determined at the time the plaintiff offers evidence and rests his case, is untenable. To rule otherwise would, in effect, sanction the filing of actions without a cause of action. The existence of a cause of action is determined solely by the facts alleged in the complaint. Consideration of other facts is proscribed and any attempt to prove extraneous circumstances is not allowed.[55] As this Court said in *Surigao Mine Exploration Co., Inc. v. Harris,*[56] "unless the plaintiff has a valid and subsisting cause of action at the time his action is commenced, the defect cannot be cured or remedied by the acquisition or accrual of one while the action is pending, and a supplemental complaint or an amendment setting up such after-accrued cause of action is not permissible."[57] Thus, the circumstance that the estafa case concluded in respondent Lao's acquittal during the pendency of the complaint for malicious prosecution did not cure the defect of lack of cause of action at the time of filing of the complaint.

Neither does the Court find merit in respondent Lao's submission that the complaint for malicious prosecution is viable inasmuch as

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[53] *Ibid.*, pp. 257-258.

[54] 95 Phil. 919 (1954).

[55] *Peltan Development Inc. v. Court of Appeals,* 336 Phil. 824 (1997).

[56] 68 Phil. 113 (1939).

[57] Cited in *Young v. Court of Appeals*, G.R. No. 83271, May 8, 1991, 196 SCRA 795, 801 and *Naga Development Corporation v. Court of Appeals*, 148-B Phil. 591, 599 (1971).

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it is also anchored on Articles 20 and 21 of the Civil Code. This may appear to be a persuasive argument since there is no hard and fast rule which can be applied in the determination of whether or not the principle of abuse of rights has been violated, resulting in damages under the said articles of the Civil Code on Human Relations. Indeed, a party injured by the filing of a court case against him, even if he is later on absolved, may file a case for damages grounded either on the principle of abuse of rights or on malicious prosecution.[58] However, whether based on the principle of abuse of rights or malicious prosecution, a reading of the complaint here reveals that it is founded on the mere filing of the estafa charge against respondent Lao. As such, it was prematurely filed and it failed to allege a cause of action. Should the action for malicious prosecution be entertained and the estafa charge would result in respondent Lao's conviction during the pendency of the damage suit, even if it is based on Articles 20 and 21, such suit would nonetheless become groundless and unfounded. To repeat; that the estafa case, in fact, resulted in respondent Lao's acquittal would not infuse a cause of action on the malicious prosecution case already commenced and pending resolution.

The complaint for damages based on malicious prosecution and/or on Articles 20 and 21 should have been dismissed for lack of cause of action and therefore, the Court of Appeals erred in affirming the decision of the trial court of origin. It should be stressed, however, that the dismissal of subject complaint should not be taken as an adjudication on the merits, the same being merely grounded on the failure of the complaint to state a cause of action.[59]

As regards the Decision in CA-G.R. No. 62532-R which was spawned by respondent Lao's complaint for accounting, petitioner contends that the appellate court erred when it reversed and set aside the supplemental decision in Civil Case No. 4452 and directed the corporation to reimburse the amount of ₱556,444.20, representing Lao's overpayment to the Corporation. The Court

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[58] *Albenson Enterprises Corporation v. Court of Appeals,* G.R. No. 88694, January 11, 1993, 217 SCRA 16, 25 & 28.

[59] I Regalado, *Remedial Law Compendium,* Vol. I (1988 ed.) 161.

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would normally have restricted itself to questions of law and shunned away from questions of fact were it not for the conflicting findings of fact by the trial court and appellate court on the matter. The Court is therefore constrained to relax the rule on conclusiveness of factual findings of the Court of Appeals and, on the basis of the facts on record, make its own findings.[60]

It is significant to note that as per decision of the trial court dated March 26, 1975, a court-supervised accounting was directed so as to ascertain the true and correct accountability of Andres Lao to the defendant corporation. Thus, a three-man audit committee was formed with the branch of clerk of court, Atty. Victorio Galapon, as chairman, and two other certified public accountants respectively nominated by the parties, as members.

On September 16, 1976, the said Audit Committee submitted its report[61] and in the hearing of November 25, 1976, the parties interposed no objection thereto and unanimously accepted the Audit Committee Report. The Committee found that Andres Lao has made a total overpayment to defendant corporation in the amount of ₱556,444.20.

Trial by commissioners is allowed by the Rules of Court when a) the trial of an issue of fact requires the examination of a long account on either side, in which case the commissioner may be directed to hear and report upon the whole issue or any specific question involved therein; b) when the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect; and c) when a question of fact, other than upon the pleadings, arises upon motion or otherwise, at any stage of a case, or for carrying a judgment or order into effect.[62] Ultimately, the trial court, in the exercise of its sound discretion, may either adopt, modify, or reject in whole or in part, the commissioners' report or it may recommit the same with

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[60] *Suntay v. Court of Appeals,* 321 Phil. 809 (1995).

[61] *Supra*, p. 6.

[62] Section 2, Rule 32, Revised Rules of Court.

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instructions, or require the parties to present additional evidence before the commissioners or before the court.[63]

In the case under consideration, it is thus within the power of the trial court to refer the accounting to court-appointed commissioners because a true and correct accounting is necessary for the information of the court before it can render judgment. Moreover, the technical nature of the audit procedure necessitates the assistance of a certified public accountant. And since both parties offered no objection to the commissioners' report, they are deemed to have accepted and admitted the findings therein contained.

There is no discernible cause for veering from the findings of the Audit Committee. In arriving at its conclusion, the Audit Committee subtracted the total remittances of Lao in the amount of ₱13,686,148.80 from the entire volume of shipments made by the corporation. In determining the total volume of shipments made by the corporation, the Audit Committee did not include the shipments covered by bills of lading and factory consignment invoices but without the corresponding delivery receipts. These included shipments in the amount of ₱597, 239.40 covered by bills of lading and factory consignment invoices but with no supporting delivery receipts, and shipments worth ₱126, 950.00 with factory consignment invoices but not covered by bills of lading and delivery receipts. However, the Audit Committee considered shipments made by the corporation to Lao in the amount of ₱9,110,777.00 covered by bills of lading and factory invoices but without the corresponding delivery receipts because subject shipments were duly reported in Lao's monthly sales report.

The Audit Committee correctly excluded the shipments not supported by delivery receipts, albeit covered by bills of lading and factory consignment invoices. Under Article 1497 of the Civil Code, a thing sold shall be understood as delivered when it is placed in the control or possession of the vendee. Unless possession or control has been transferred to the vendee, the thing or goods sold cannot be considered as delivered. Thus, in the present case, the

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[63] Section 11, *ibid.*

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Audit Committee was correct when it adopted as guideline that accountability over the goods shipped was transferred from the corporation to Andres Lao only upon actual delivery of the goods to him. For it is only when the goods were actually delivered to and received by Lao, did Lao have control and possession over subject goods, and only when he had control and possession over said goods could he sell the same.

Delivery is generally evidenced by a written acknowledgment of a person that he or she has actually received the thing or the goods, as in delivery receipts. A bill of lading cannot substitute for a delivery receipt. This is because it is a written acknowledgment of the receipt of the goods by the carrier and an agreement to transport and deliver them at a specific place to a person named or upon his order.[64] It does not evidence receipt of the goods by the consignee or the person named in the bill of lading; rather, it is evidence of receipt by the carrier of the goods from the shipper for transportation and delivery.

Likewise, a factory consignment invoice is not evidence of actual delivery of the goods. An invoice is nothing more than a detailed statement of the nature, quantity and cost of the thing sold.[65] It is not proof that the thing or goods were actually delivered to the vendee or the consignee. As admitted by the witness for the corporation:

A: Factory consignment invoices represents what the company billed the plaintiff Mr. Lao and the bill of lading represents the goods which were supposed to have been shipped.

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A: Shipments covered by factory consignment invoices simply meant these are billings made again by the Associated Anglo-American Tobacco Corporation to plaintiff Andres Lao. (t.s.n., November 25, 1976, pp. 45-47 as cited in Respondent Lao's Comment, *Rollo*, p. 259)

Thus, in the absence of proof that the goods were actually received by Lao as evidenced by delivery receipts, the shipments

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[64] *Saludo, Jr. vs. Court of Appeals,* 207 SCRA 498.

[65] *Sy vs. Mina*, 164 SCRA 312.

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allegedly made by the corporation in the amount of ₱597,239.40 and ₱126,950.00 covered only by bills of lading and factory consignment invoices cannot be included in Lao's accountability.

However, as to the shipments worth ₱4,018,927.60 likewise covered only by bills of lading and factory consignment invoices, the Audit Committee correctly considered them in Lao's account because such shipments were reported in the latter's sales reports. The fact that Lao included them in his sales reports is an implied admission that subject goods were actually delivered to him, and that he received the said goods for resale.

As regards the award of moral damages, petitioner Corporation faults the Court of Appeals for awarding such damages not specifically prayed for in the complaint for accounting and damages in Civil Case No. 4452. Petitioner Corporation argues that moral damages were prayed for and duly awarded in Civil Case No. 5528 and therefore, it would be unfair and unjust to allow once again, recovery of moral damages on similar grounds.

Contrary to the allegation of the petitioner Corporation, the award of moral damages was specifically prayed for in the complaint albeit it left the amount of the same to the discretion of the court.[66] Moreover, Civil Case Nos. 4452 and 5528 were on varied causes of action. While the award for moral damages in Civil Case No. 4452 was based on the evident bad faith of the petitioner Corporation in unilaterally rescinding respondent Lao's sales agency through his immediate replacement by Ngo Kheng, the claim for moral damages in Civil Case No. 5528 was anchored on the supposed malice that attended the filing of the criminal case for estafa.

Petitioner Corporation also opposes for being conjectural, the award of ₱150,000.00 in Civil Case No. 4452, representing actual damages for loss of earnings. True, damages cannot be presumed or premised on conjecture or even logic. A party is entitled to adequate compensation only for duly substantiated pecuniary loss

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[66] *Rollo* of G.R. Nos. 60958-59, Vol. II, p. 282.

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actually suffered by him or her.[67] In this case, however, the trial court correctly found that an award for actual damages was justified because several months before their contract of agency was due to expire in 1969, the petitioner Corporation replaced Lao with Ngo Kheng as sales agent for the areas of Leyte and Samar. This, despite the fact that they had already agreed that Lao would continue to act as the corporation's sales agent provided that he would reduce his accountability to ₱200,000.00, the amount covered by his bond, and engaged the services of an independent accounting firm to do an audit to establish Lao's true liability. Due to his ouster as sales agent, Lao failed to realize a net income from his sales agency in the amount of ₱30,000.00 a year.

However, the amount of actual damages should be reduced to ₱30,000.00 only instead of the ₱150,000.00 awarded by the appellate court. Since the contract of sales agency was on a yearly basis, the actual damages Lao suffered should be limited to the annual net income he failed to realize due to his unjust termination as sales agent prior to the expiration of his contract in 1969. Unrealized income for the succeeding years cannot be awarded to Lao because the corporation is deemed to have opted not to renew the contract with Lao for the succeeding years.

As to the award of exemplary damages, suffice it to state that in contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.[68] In the case under scrutiny, the Court finds the award of exemplary damages unjustified or unwarranted in the absence of any proof that the petitioner Corporation acted in a wanton, fraudulent, reckless, oppressive, and malevolent manner. For the same reasons, the award for attorney's fees should be deleted.

WHEREFORE,

In G.R. No. L-47013, the petition for review on certiorari is *DENIED* for lack of merit;

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[67] *Oarde v. Court of Appeals*, G.R. Nos. 104774-75, October 8, 1997, 280 SCRA 235, 250.

[68] Article 2232, Civil Code.

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In G.R. No. 60647, the petition is *GRANTED* and the assailed decision is *SET ASIDE;* and the Decision of the Court of Appeals in CA-G.R. No. 61925-R, finding Esteban Co solidarily liable with the respondent Associated Anglo-American Tobacco Corporation for damages, is *REVERSED AND SET ASIDE.* As above ratiocinated, the respondent corporation cannot be held liable for damages.

In G.R. Nos. 60958-59, the Decision in CA-G.R. No. 61925-R is *REVERSED AND SET ASIDE*; the respondent corporation is adjudged not liable for malicious prosecution due to the prematurity of the action; while the Decision in CA-G.R. No. 62532-R is *AFFIRMED*, insofar as it ordered respondent corporation to reimburse Andres Lao's overpayment in the amount of ₱556,444.20, but *MODIFIED*, in that only an award of ₱30,000.00 for actual damages is *GRANTED*, and all the other monetary awards are deleted. No pronouncement as to costs.

SO ORDERED.

Melo (Chairman), Vitug and *Panganiban, JJ.*, concur.

Gonzaga-Reyes, J., took no part; spouse is with counsel for respondents.