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the Courts are justified in excepting from its operation a particular case.[10] In this suit, it is to avert a miscarriage of justice and to prevent petitioner from being deprived of a substantial right to be heard that relief is granted.

WHEREFORE, the questioned Decision and Resolution of the Court of Appeals are hereby set aside and another entered remanding the case to the Court of origin for further proceedings, and thereafter to render judgment accordingly.

No pronouncement as to costs.

SO ORDERED.

Teehankee (Acting C.J.), Fernandez, Guerrero, and *De Castro, JJ.,* concur.

FIRST DIVISION

[G.R. No. L-31087. September 27, 1979]

EASTERN SHIPPING LINES, INC., *petitioner, vs.* **MARGARINE-VERKAUFS-UNION GmbH,** *respondent.*

SYLLABUS

1. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF DEMANDS A FACTUAL, LEGAL OR EQUITABLE JUSTIFICATION; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— The text of the lower court's decision stated no justification nor reason for the award of attorney's fees and should therefore be disallowed. As restated in *Buan vs. Camaganacan,* the general rule is that it is contrary to sound public policy to place a penalty on the right to litigate nor should attorney's fees be awarded everytime a party wins a lawsuit.

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[10] *PHHC vs. Tiongco, supra.*

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Hence, Article 2208 of the Civil Code provides that "in the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered," save for the *eleven exceptions therein expressly provided. Insofar as the* present case is concerned, the lower court made no finding that it falls within any of the exceptions that would justify the award for attorney's fees, such as gross and evident bad faith in refusing to satisfy a plainly valid, just and demandable claim. Even under the broad eleventh exception of the cited article which allows the imposition of attorney's fees "in any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered," the Court stressed in *Buan, supra*, that "the conclusion must be borne out by findings of facts and law. What is just and equitable in a given case is not a mere matter of feeling but of demonstration . . . Hence, the exercise of judicial discretion in the award of attorney's fees under Article 2208 (11) of the Civil Code demands a factual, legal or equitable justification upon the basis of which the court exercises its discretion. Without such a justification, the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture." The summary award of counsel's fees made in the appealed judgment must therefore be set aside.

2. ID.; ID.; INTEREST RATE OF SIX PERCENT PER ANNUM, AWARDED IN CASE AT BAR.— The appealed judgment ordered petitioner to pay respondent the sum of US$591.38 with interest at the legal rate (which we hold to be the rate of six [6%] per cent under Article 2209 of the Civil Code in force at the time of the judgment of April 25, 1969) from the filing of the complaint on June 18, 1966 until fully paid. Petitioner did not appeal from nor question this portion of the judgment requiring that it pay respondent-creditor the damage claim with interest in U.S. currency (with reference to the general rule of discharging obligations in Philippine currency measured at the prevailing rate of exchange. Consequently, we find no necessity to make any further pronouncement thereon. We merely affirm the judgment in U.S. currency in favor of respondent corporation, a foreign corporation not engaged in business herein, in view of petitioner's acquiescence therein and view the judgment as one wherein the lower court sentenced petitioner to pay and remit to respondent as a non-resident foreign corporation the amount due under the judgment in U.S. currency.

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APPEARANCES OF COUNSEL

Ross, Salcedo, Del Rosario, Bito & Misa for petitioner.
Lichauco, Picazo & Agcaoili for respondent.

D E C I S I O N

TEEHANKEE, *J.*:

The Court affirms the appealed judgment holding petitioner liable under the terms of its own bill of lading for the damage suffered by respondent's copra cargo on board petitioner's vessel, but sets aside the award of attorney's fees to respondent-plaintiff for lack of any statement or reason in the lower court's judgment that would justify the award.

Respondent corporation, a West German corporation not engaged in business in the Philippines, was the consignee of 500 long tons of Philippine copra in bulk with a total value of US$108,750.00 shipped from Cebu City on board petitioner's (a Philippine corporation) vessel, the SS "EASTERN PLANET" for discharge at Hamburg, Germany. Petitioner's bill of lading for the cargo provided as follows:

"x x x Except as otherwise stated herein and in the Charter Party, this contract shall be governed by the laws of the Flag of the Ship carrying the goods. In case of average, same shall be adjusted according to York-Antwerp Rules of 1950."

While the vessel was off Gibraltar, a fire broke out aboard the vessel and caused water damage to the copra shipment in the amount of US$591.38. Petitioner corporation rejected respondent's claim for payment of the damage and respondent filed on June 18, 1966 in the Manila Court of First Instance its complaint against petitioner as defendant for recovery of the same and US$250.00-attorney's fees and expenses of litigation.

After trial, the lower court rejected petitioner's defense that it was not liable under Philippine Law for the damage which did not exceed 5% of respondent's interest in the cargo and rendered judgment on April 25, 1969 "ordering the defendant,

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Eastern Shipping Lines, Inc. to pay to the plaintiff, Margarine-Verkaufs-Union GMBH, the sum of US$591.38, with interest at the legal rate from the date of the filing of the complaint until fully paid, plus US$250.00 as attorney's fees and the costs of the suit."

In this review on questions of law, petitioner reiterates as its first assignment of error its submittal that Article 848 of the Code of Commerce[1] which would bar claims for averages not exceeding 5% of the claimant's interest should be applied rather than the lower court's ruling that petitioner's bill of lading expressly contained "an agreement to the contrary," *i.e.* for the application of the York-Antwerp Rules which provide for respondent's full recovery of the damage loss.

The Court finds no error and upholds the lower court's ruling sustaining respondent's damage claim although the amount thereof did not exceed 5% of respondent's interest in the cargo and would have been barred by the cited article of the Commerce Code. We hold that the lower court correctly ruled the cited codal article to be "not applicable in this particular case for the reason that the bill of lading (Exhibit 'F') contains 'an agreement to the contrary' for it is expressly provided in the last sentence of the first paragraph (Exhibit '1-A') that 'In case of average, same shall be adjusted according to York-Antwerp Rules of 1950.' The insertion of said condition is expressly authorized by Commonwealth Act No. 65 which has adopted *in toto* the U.S. Carriage of Goods by Sea Act. Now, it has not been shown that said rules limit the recovery of damage to cases within a certain percentage or proportion that said damage may bear to claimant's interest either in the vessel or cargo as provided in Article 848 of the Code of Commerce. On the contrary, Rule 3 of said York-Antwerp Rules expressly states that 'Damage done to a ship and cargo, or either of them, by water or otherwise,

[1] The text reads: "Article 848. Claims for averages shall not be admitted if they do not exceed 5 per cent of the interest which the claimant may have in the vessel or in the cargo if it be gross average, and 1 per cent of the goods damaged if particular average, deducting in both cases the expenses of appraisal, unless there is an agreement to the contrary."

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including damage by breaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be made good as general average x x x."'

There is a clear and irreconcilable inconsistency between the York-Antwerp Rules expressly adopted by the parties as their contract under the bill of lading which sustains respondent's claim and the codal article cited by petitioner which would bar the same. Furthermore, as correctly contended by respondent, what is here involved is a contract of adhesion as embodied in the printed bill of lading issued by petitioner for the shipment to which respondent as the consignee merely adhered, having no choice in the matter, and consequently, any ambiguity therein must be construed against petitioner as the author.

We find, however, petitioner's second and only other assignment of error against the award of attorney's fees of US$250.00 to be well taken. The text of the lower court's decision stated no justification nor reason for the award of attorney's fees and should therefore be disallowed. As restated in *Buan vs. Camaganacan*,[2] the general rule is that it is contrary to sound public policy to place a penalty on the right to litigate nor should attorney's fees be awarded everytime a party wins a lawsuit. Hence, Article 2208 of the Civil Code provides that "in the absence of stipulation, attorney's fees end expenses of litigation, other than judicial costs, cannot be recovered," save for the eleven exceptions therein expressly provided.

Insofar as the present case is concerned, the lower court made no finding that it falls within any of the exceptions that would justify the award for attorney's fees, such as gross and evident bad faith in refusing to satisfy a plainly valid, just and demandable claim. Even under the broad eleventh exception of the cited article which allows the imposition of attorney's fees "in any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered," the Court stressed in *Buan, supra*, that "the conclusion must be borne out by findings of facts and law.

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[2] 16 SCRA 321 (1966), per Reyes, J.B.L., *J.* (retired).

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What is just and equitable in a given case is not a mere matter of feeling but of demonstration . . . Hence, the exercise of judicial discretion in the award of attorney's fees under Article 2208 (11) of the Civil Code demands a factual, legal or equitable justification upon the basis of which the court exercises its discretion. Without such a justification, the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture." The summary award of counsel's fees made in the appealed judgment must therefore be set aside.

A final observation. The appealed judgment ordered petitioner to pay respondent the sum of US$591.38 with interest at the legal rate (which we hold to be the rate of six [6%] per cent under Article 2209 of the Civil Code in force at the time of the judgment of April 25, 1969) from the filing of the complaint on June 18, 1966 until fully paid. Petitioner did not appeal from nor question this portion of the judgment requiring that it pay respondent-creditor the damage claim with interest in U.S. currency (with reference to the general rule of discharging obligations in Philippine currency measured at the prevailing rate of exchange[3]). Consequently, we find no necessity to make any further pronouncement thereon. We merely affirm the judgment in U.S. currency in favor of respondent corporation, a foreign corporation not engaged in business herein, in view of petitioner's acquiescence therein and view the judgment as one wherein the lower court sentenced petitioner to pay and remit to respondent as a non-resident foreign corporation the amount due under the judgment in U.S. currency.

ACCORDINGLY, the appealed judgment is hereby affirmed with the modification that the award of attorney's fees is set aside. With costs against petitioner.

Makasiar, Fernandez, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

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[3] Cf. Art. 1249, Civil Code, and related Acts such as R.A. No. 529, etc.