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SECOND DIVISION

[G.R. No. L-26339. December 14, 1979]

MARIANO C. PAMINTUAN, *petitioner-appellant, vs.* **COURT OF APPEALS and YU PING KUN CO., INC.,** *respondent-appellees.*

SYLLABUS

1. **CIVIL LAW; DAMAGES; LIQUIDATED DAMAGES AND PENALTY ARE THE SAME.**— There is no justification for the Civil Code to make an apparent distinction between penalty and liquidated damages because the settled rule is that there is no difference between penalty and liquidated damages insofar as legal results are concerned and that either may be recovered without the necessity of proving actual damages and both may be reduced when proper.

2. **ID.; ID.; ID.; PROVEN DAMAGES SUPERSEDE THE STIPULATED LIQUIDATED DAMAGES; CASE AT BAR.**— After a conscientious consideration of the facts of the case, as found by Court of Appeals and the trial court, and after reflecting on the tenor of the stipulation for liquidated damages herein, the true nature of which is not easy to categorize, we further hold that justice would be adequately done in this case by allowing Yu Ping Kun Co., Inc. to recover only the actual damages proven and not to award to it the stipulated liquidated damages of ten thousand pesos for any breach of the contract. *The proven damages supersede the stipulated liquidated damages.* This view finds support in the opinion of Manresa (whose comments were the bases of the new matter found in Article 1226, not found in Article 1152 of the old Civil Code) that in case of fraud the difference between the proven damages and the stipulated penalty may be recovered.

ANTONIO, ***J.,*** ***concurring opinion:***

1. **CIVIL LAW; CIVIL CODE; DAMAGES; INSTANCES WHEN INDEMNITY FOR DAMAGES IS RECOVERABLE IN ADDITION TO AND APART FROM PENALTY.**— As an

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exception to this rule, the penalty and the indemnity for damages and payment of interest may be recovered when there is an express stipulation to that effect. Aside from incorporating the provisions of Article 1152 of the Spanish Civil Code, Article 1226 of the New Civil Code also added two other exceptions when indemnity for damages, in addition to and part from the penalty for damages, in addition to and apart from the penalty stipulated, may be recovered: (1) when the obligor having failed to comply with the principal obligation also refuses to pay the penalty, in which case the creditor is entitled to interest in the amount of the penalty, in accordance with Article 2209; or (2) when the obligor is guilty of fraud in the fulfillment of the obligation. The reason for the third exception is based on the principle that an action to enforce is based on the principle that an action to enforce liability for future fraud cannot be renounced, as that would be against public policy and would contravene the express provisions of Article 1171 of the Civil Code which states that "any waiver of an action for future fraud is void."

2. ID.; ID.; ID.; ID.; REQUIREMENT OF PROOF.— It is evident from the foregoing that in case of fraud in the fulfillment of an obligation with a penal clause, proof of such fraud is incumbent upon the creditor, and in case he demands indemnity in addition to the penalty stipulated, proof of the existence and amount of the damages shall also correspond to him.

APPEARANCES OF COUNSEL

V. E. del Rosario & Associates for appellant.
Sangco & Sangalang for private respondent.

D E C I S I O N

AQUINO, *J.*:

This case is about the recovery of compensatory damages for breach of a contract of sale in addition to liquidated damages.

Mariano C. Pamintuan appealed from the judgment of the Court of Appeals wherein he was ordered to deliver to Yu Ping Kun Co., Inc. certain plastic sheetings and, if he could

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not do so, to pay the latter ₱100,559.28 as damages with six percent interest from the date of the filing of the complaint. The facts and the findings of the Court of Appeals are as follows:

In 1960, Pamintuan was the holder of a barter license wherein he was authorized to export to Japan one thousand metric tons of white flint corn valued at forty-seven thousand United States dollars in exchange for a collateral importation of plastic sheetings of an equivalent value.

By virtue of that license, he entered into an agreement to ship his corn to Toyo Menka Kaisha, Ltd. of Osaka, Japan in exchange for plastic sheetings. He contracted to sell the plastic sheetings to Yu Ping Kun Co., Inc. for two hundred sixty-five thousand five hundred fifty pesos. The company undertook to open an irrevocable domestic letter of credit for that amount in favor of Pamintuan.

It was further agreed that Pamintuan would deliver the plastic sheetings to the company at its bodegas in Manila or suburbs directly from the piers "within one month upon arrival of" the carrying vessels. Any violation of the contract of sale would entitle the aggrieved party to collect from the offending party liquidated damages in the sum of ten thousand pesos (Exh. A).

On July 28, 1960, the company received a copy of the letter from the Manila branch of Toyo Menka Kaisha, Ltd. confirming the acceptance by Japanese suppliers of firm offers for the consignment to Pamintuan of plastic sheetings valued at forty-seven thousand dollars. Acting on that information, the company lost no time in securing in favor of Pamintuan an irrevocable letter of credit for two hundred sixty-five thousand five hundred fifty pesos.

Pamintuan was apprised by the bank on August 1, 1960 of that letter of credit which made reference to the delivery to Yu Ping Kun Co., Inc. on or before October 31, 1960 of 336, 360 yards of plastic sheetings (p. 21, Record on Appeal).

On September 27 and 30 and October 4, 1960, the Japanese suppliers shipped to Pamintuan, through Toyo Menka Kaisha,

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Ltd., the plastic sheetings in four shipments to wit: (1) Firm Offer No. 327 for 50,000 yards valued at $9,000; (2) Firm Offer No. 328 for 70,000 yards valued at $8,050; (3) Firm Offers Nos. 329 and 343 for 175,000 and 18,440 yards valued at $22,445 and $2,305, respectively, and (4) Firm Offer No. 330 for 26,000 yards valued at $5,200, or a total of 339,440 yards with an aggregate value of $47,000 (pp. 4-5 and 239-40, Record on Appeal).

The plastic sheetings arrived in Manila and were received by Pamintuan. Out of the shipments, Pamintuan delivered to the company's warehouse only the following quantities of plastic sheetings:

November 11, 1960 - 140 cases, size 48 inches by 50 yards.
November 14, 1960 - 258 cases out of 352 cases.
November 15, 1960 - 11 cases out of 352 cases.
November 15, 1960 - 10 cases out of 100 cases.
November 15, 1960 - 30 cases out of 100 cases.

Pamintuan withheld delivery of (1) 50 cases of plastic sheetings containing 26,000 yards valued at $5,200; (2) 37 cases containing 18,440 yards valued at $2,305; (3) 60 cases containing 30,000 yards valued at $5,400 and (4) 83 cases containing 40,850 yards valued at $5,236.97.

While the plastic sheetings were arriving in Manila, Pamintuan informed the president of Yu Ping Kun Co., Inc. that he was in dire need of cash with which to pay his obligations to the Philippine National Bank. Inasmuch as the computation of the prices of each delivery would allegedly be a long process, Pamintuan requested that he be paid immediately.

Consequently, Pamintuan and the president of the company, Benito Y.C. Espiritu, agreed to fix the price of the plastic sheetings at ₱0.782 a yard, regardless of the kind, quality or actual invoice value thereof. The parties arrived at that figure by dividing the total price of ₱265,550 by 339,440 yards, the aggregate quantity of the shipments.

After Pamintuan had delivered 224,150 yards of sheetings of inferior quality valued at ₱163,047.87, he refused to deliver

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the remainder of the shipments with a total value of ₱102,502.13 which were covered by (1) Firm Offer No. 330, containing 26,000 yards valued at ₱29,380; (2) Firm Offer No. 343, containing 18,440 yards valued at ₱13,023.25; (3) Firm Offer No. 217, containing 30,000 yards valued at ₱30,510 and (4) Firm Offer No. 329 containing 40,850 yards valued at ₱29,588.88 (See pp. 243-2, Record on Appeal).

As justification for his refusal, Pamintuan said that the company failed to comply with the conditions of the contract and that it was novated with respect to the price.

On December 2, 1960, the company filed its amended complaint for damages against Pamintuan. After trial, the lower court rendered the judgment mentioned above but including moral damages.

The unrealized profits awarded as damages in the trial court's decision were computed as follows (pp. 248-9, Record on Appeal):

(1)	26,000 yards with a contract price of ₱1.13 per yard and a selling price at the time of delivery of ₱1.75 a yard ----------	₱16,120.00
(2)	18,000 yards with a contract price of ₱0.7062 per yard and selling price of ₱1.20 per yard at the time of delivery ----------	9,105.67
(3)	30,000 yards with a contract price of ₱1.017 per yard and a selling price of ₱1.70 per yard --------	20,490.00
(4)	40,850 yards with a contract price of ₱0.7247 per yard and a selling price of ₱1.25 a yard at the time of delivery ----------	21,458.50
	Total unrealized profits	₱67,174.17

The overpayment of ₱12,282.26 made to Pamintuan by Yu Ping Kun Co., Inc. for the 224,150 yards, which the trial court

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regarded as an item of damages suffered by the company, was computed as follows (p. 71, Record on Appeal):

Liquidation value of 224,150 yards at P0.7822 a yard	₱ 175,330.13
Actual peso value of 224,150 yards as per firm offers or as per contract	163,047.87
Overpayment	₱ 12,282.26

To these two items of damages (₱67,174.17 as unrealized profits and ₱12,282.26 as overpayment), the trial court added (a) ₱10,000 as stipulated liquidated damages, (b) ₱10,000 as moral damages, (c) ₱1,102.85 as premium paid by the company on the bond of ₱102,502.13 for the issuance of the writ of preliminary attachment and (d) ₱10,000 as attorney's fees, or total damages of ₱110,559.28 (p. 250, Record on Appeal). The Court of Appeals affirmed that judgment with the modification that the moral damages were disallowed (Resolution of June 29, 1966).

Pamintuan appealed. The Court of Appeals in its decision of March 18, 1966 found that the contract of sale between Pamintuan and the company was partly consummated. The company fulfilled its obligation to obtain the Japanese suppliers' confirmation of their acceptance of firm offers totalling $47,000. Pamintuan reaped certain benefits from the contract. Hence, he is estopped to repudiate it; otherwise, he would unjustly enrich himself at the expense of the company.

The Court of Appeals found that the writ of attachment was properly issued. It also found that Pamintuan was guilty of fraud because (1) he was able to make the company agree to change the manner of paying the price by falsely alleging that there was a delay in obtaining confirmation of the suppliers' acceptance of the offer to buy; (2) he caused the plastic sheetings to be deposited in the bonded warehouse of his brother and then required his brother to make him (Pamintuan), his attorney-in-fact so that he could control the disposal of the goods; (3) Pamintuan, as attorney-in-fact of the warehouseman, endorsed to the customs broker the warehouse receipts covering the

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plastic sheetings withheld by him and (4) he overpriced the plastic sheetings which he delivered to the company.

The Court of Appeals described Pamintuan as a man "who, after having succeeded in getting another to accommodate him by agreeing to liquidate his deliveries on the basis of ₱0.7822 per yard, irrespective of invoice value, on the pretense that he would deliver what in the first place he ought to deliver anyway, when he knew all the while that he had no such intention, and in the process delivered only the poorer or cheaper kind or those which he had predetermined to deliver and did not conceal in his brother's name and thus deceived the unwary party into overpaying him the sum of ₱12,282.26 for the said deliveries, and would thereafter refuse to make any further delivery in flagrant violation of his plighted word, would now ask us to sanction his actuation" (pp. 61-62, *Rollo*).

The main contention of appellant Pamintuan is that the buyer, Yu Ping Kun Co., Inc., is entitled to recover only liquidated damages. That contention is based on the stipulation "that any violation of the provisions of this contract (of sale) shall entitle the aggrieved party to collect from the offending party liquidated damages in the sum of ₱10,000."

Pamintuan relies on the rule that a penalty and liquidated damages are the same (*Lambert vs. Fox*, 26 Phil. 588); that "in obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance, if there is no stipulation to the contrary" (1st sentence of Art. 1226, Civil Code) and, it is argued, there is no such stipulation to the contrary in this case and that "liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof" (Art. 2226, Civil Code).

We hold that appellant's contention cannot be sustained because the second sentence of Article 1226 itself provides that "nevertheless, damages shall be paid if the obligor x x x is guilty of fraud in the fulfillment of the obligation." "Responsibility arising from fraud is demandable in all obligations" (Art. 1171,

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Civil Code). "In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the nonperformance of the obligation" (*Ibid.*, Art. 2201).

The trial court and the Court of Appeals found that Pamintuan was guilty of fraud because he did not make a complete delivery of the plastic sheetings and he overpriced the same. That factual finding is conclusive upon this Court.

There is no justification for the Civil Code to make an apparent distinction between penalty and liquidated damages because the settled rule is that there is no difference between penalty and liquidated damages insofar as legal results are concerned and that either may be recovered without the necessity of proving actual damages and both may be reduced when proper (Arts. 1229, 2216 and 2227, Civil Code. See observations of Justice J.B.L. Reyes, cited in 4 Tolentino's Civil Code, p. 251).

Castan Tobeñas notes that the penal clause in an obligation has three functions: "1. *Una funcion coercitiva o de garantia consistente en estimular al deudor al complimiento de la obligaciòn principal, ante la amenaza de tener que pagar la pena. 2. Una funciòn liquidadora del daño, o sea la de evaluar por anticipado los perjuicios que habrìa de ocasionar al acreedor el incumplimiento o cumplimiento inadecuado de la obligaciòn. 3. Una funcion estrictamente penal, consistente en sancionar o castigar dicho incumplimiento o cumplimiento inadecuado, atribuyendole consecuencias màs onerosas para el deudor que las que normalmente lleva aparejadas la infraccion contractual.*" (3 *Derecho Civil Español*, 9th Ed., p. 128).

The penalty clause is strictly penal or cumulative in character and does not partake of the nature of liquidated damages (*pena sustitutiva*) when the parties agree "*que el acreedor podrà pedir, en el supuesto incumplimiento o mero retardo de la obligaciòn principal, ademàs de la pena, los daños y perjuicios. Se habla en este caso de pena cumulativa a diferencia de aquellos otros ordinarios, en que la pena es sustitutiva de la reparacion ordinaria.*" (*Ibid.*, Castan Tobeñas, p. 130).

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After a conscientious consideration of the facts of the case, as found by Court of Appeals and the trial court, and after reflecting on the tenor of the stipulation for liquidated damages herein, the true nature of which is not easy to categorize, we further hold that justice would be adequately done in this case by allowing Yu Ping Kun Co., Inc. to recover only the actual damages proven and not to award to it the stipulated liquidated damages of ten thousand pesos for any breach of the contract. *The proven damages supersede the stipulated liquidated damages.*

This view finds support in the opinion of Manresa (whose comments were the bases of the new matter found in Article 1226, not found in Article 1152 of the old Civil Code) that in case of fraud the difference between the proven damages and the stipulated penalty may be recovered (Vol. 8, part. I, Codigo Civil, 5th Ed., 1950, p. 483).

Hence, the damages recoverable by the firm would amount to ninety thousand five hundred fifty-nine pesos and twenty-eight centavos (₱90,559.28), with six percent interest a year from the filing of the complaint.

With that modification the judgment of the Court of Appeals is affirmed in all respects. No costs in this instance.

SO ORDERED.

Barredo (Chairman), Concepcion Jr., and *Santos, JJ.*, concur.

Antonio, J., concurs in a separate opinion.

Abad Santos, J., concurs in the result.

CONCURRING OPINION

ANTONIO, *J.*:

As a general rule, the penalty takes the place of the indemnity for damages and the payment of interest.[1] This was also the

[1] Article 1126, first sentence: *Araneta v. Paterno*, L-2886, August 22, 1952, 91 Phil. 786.

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rule under the Old Civil Code. Thus, Article 1152 of the Spanish Civil Code provided that in "obligations with a penal clause the penalty shall substitute indemnity for damages and the payment of interest in case of non-performance should there be no agreement to the contrary." As an exception to this rule, the penalty and the indemnity for damages and payment of interest may be recovered when there is an express stipulation to that effect. Aside from incorporating the provisions of Article 1152 of the Spanish Civil Code, Article 1226 of the New Civil Code also added two other exceptions when indemnity for damages, in addition to and apart from the penalty stipulated, may be recovered: (1) when the obligor having failed to comply with the principal obligation also refuses to pay the penalty, in which case the creditor is entitled to interest in the amount of the penalty, in accordance with Article 2209; or (2) when the obligor is guilty of fraud in the fulfillment of the obligation.[2] The reason for the third exception is based on the principle that an action to enforce liability for future fraud cannot be renounced, as that would be against public policy and would contravene the express provisions of Article 1171 of the Civil Code which states that "any waiver of an action for future fraud is void."

On this matter, Manresa commented, thus:

"*La pena y la indemnizaciòn por dolo. — Es, en nuestra opiniòn, otro caso de excepciòn a la regla general de incompatibilidad, y lo entendemos asì, no ya por el primer pàrrafo del articulo 1.102, que declara exigible la responsibilidad del dolo procedente en toda clase de obligaciones, sino principalmente por la segunda parte de dicho articulo, que se opone a la validez de toda renuncia anticipada de la acciòn para exigir tal responsibilidad. En efecto, esto supone que la ley no autoriza en modo alguno la impunidad del dolo por cause de convenios anteriores, y por tanto, rechaza lo mismo la impunidad completa que la parcial, es decir, referirà aquellos perjuicios que no quedan satisfechos con el importe de la pena convenida. Limitada asì! la cuestiòn, y no olvidando que, a falta de convenio especial, tiene la pena asignado el fin de reparar*

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[2] *Cabarroguis v. Vicente*, L-14304, March 23, 1960, 107 Phil. 340, 343.

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los perjuicios, concretamos asì! nuestra opinion: 1.º, que en caso de dolo de una obligacion con clausula penal, la prueba de aquél para reclamar mas indemnizacion corresponde al actor; 2.º, que también, caso de pedirla le corresponde la de existencia y cuantià los perjuicios; y 3.º, que probando ambos extremos, podra pedir la diferencia de dicha cuantià sobre el importe de la pena estipulada."[3]

It is evident from the foregoing that in case of fraud in the fulfillment of an obligation with a penal clause, proof of such fraud is incumbent upon the creditor, and in case he demands indemnity in addition to the penalty stipulated, proof of the existence and amount of the damages shall also correspond to him. However, the creditor may demand only the difference of such amount over the amount of the penalty stipulated as the creditor cannot recover *both* the proven damages and the stipulated penalty. In the case at bar, he is only entitled to the stipulated penalty *plus* the *difference* between the proven damages and the stipulated penalty.

SECOND DIVISION

[G.R. No. L-28201. December 14, 1979]

EVARISTO COLOMA, MODESTA COLOMA, AMADEA COLOMA, NICOLASA COLOMA, VICTORIO COLOMA and FORTUNATA COLOMA, *petitioners, vs.* **HON. PLACIDO C. RAMOS, District Judge of the Court of First Instance of Nueva Ecija, 4th Judicial District, Guimba Branch, and Spouses JESUS T. GARCIA and DIONISIA DOMINGO,** *respondents.*

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[3] VIII Manresa, *Codigo Civil*, pp. 482-483.