Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

TOCOMS PHILIPPINES, INC.,
Petitioner,

- versus -

PHILIPS ELECTRONICS AND LIGHTING, INC.,
Respondent.

G.R. No. 214046

Present:

PERLAS-BERNABE, *J.*,
Chairperson,
REYES, A., JR.,
HERNANDO,*
INTING, *and*
DELOS SANTOS, *JJ.*

Promulgated:
05 FEB 2020

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DECISION

REYES, A., JR., *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court dated October 24, 2014, assailing the Decision[2] dated March 13, 2014 and the Resolution[3] dated August 29, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 130873, which reversed the denial of the Motion to Dismiss filed by Philips Electronics and Lighting, Inc. (PELI) in Civil Case No. 73779-TG before the Regional Trial Court of Pasig City, Branch 266.

Civil Case No. 73779-TG is a suit for damages and injunction[4] filed by Tocoms Philippines, Inc. (Tocoms) on February 4, 2013 against several

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* On official leave.
1 *Rollo* (Vol. 1), pp. 35-63.
2 Penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Magdangal M. De Leon and Eduardo B. Peralta, Jr. Id. at 8-22.
3 Id. at 24-27.
4 Id. at 224-240.

defendants including PELI. The appellate court explains the factual background of the case, *viz.*:

> In its Complaint, [Tocoms] alleged that: Philips Singapore, a foreign corporation, and its agent in the Philippines, [PELI], appointed [Tocoms] as distributor in the country of Philips Domestic Appliance, as shown by a contract entered into between them denominated as the Distribution Agreement which was regularly renewed on a yearly basis; from 2001 to 2008, [Tocoms], with more than 250 stores nationwide and through its goodwill and reputation, had introduced and established Philips Domestic Appliance to the market; [Tocoms] consistently delivered on its commitment and has even surpassed its sales target on a yearly basis; before the end of 2012, [Tocoms] had made disclosures to the representatives of Philips as to its marketing plans for the year 2012 and had complied with all the requirements of Philips in preparation for the renewal of the Distributorship Agreement; however, in a January 2, 2013 meeting called by Oh, [PELI]'s General Manager, [Tocoms] was handed a letter signed by Thurer, [PELI]'s Vice President/Manager Asia Pacific, informing [Tocoms] that the Distributorship Agreement will not be renewed; the sudden termination of the agreement came as a surprise considering that [Tocoms] has been [PELI]'s distributor since 2001 and it has been consistently delivering its commitments to [PELI]; it was not given sufficient notice of the sudden change of the distributorship; [Tocoms] discovered that as early as December 2012, [PELI], with evident malice and bad faith and in collusion with the new distributor, Fabriano, has been selling to Fabriano the products subject of the Distribution Agreement at a much lower price, to the great prejudice of [Tocoms]; as a result, Western Marketing, one of [Tocoms'] strongest clients, is set to return its existing inventory amounting to more or less Five Million Pesos (₱5,000,000.00), accusing [Tocoms] of dishonest dealings; Fabriano prodded Western Marketing to return the products to [Tocoms] with a promise to deliver the same at a much lower price; [Tocoms] is under threat of incurring more losses with the return of stocks from other stores, amounting to more or less Two Million Pesos (₱2,000,000.00).
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> [Tocoms] further alleged that: in the meantime, [PELI] has given an unreasonable, unfair and one-sided demand to buy-back all inventory that remain in possession of [Tocoms] under the following terms: 1) phased out models at less forty percent [40%] of the actual price, 2) Class B products at less sixty percent [60%] of the actual price, and 3) products to be returned by clients are not included in the buy-back; the buy-back of the inventory under the said terms would result to losses on the part of [Tocoms] in the amount of Twelve Million Pesos (₱12,000,000.00), more or less; [Tocoms] is being coerced into accepting the said terms and conditions when [PELI] recalled the Import Commodity Clearance or ICC stickers that allow the selling of the items to the public; further [Tocoms] sent a letter demanding that [PELI] buy-back the inventory still in its possession, subject to the following terms: 1) phased out models at landed cost plus twelve percent [12%] since most of these items are still being sold at the store level and announcement as to the phasing out is yet to be made to the dealers, 2) Class B stocks at less forty percent [40%] only, 3) the parties agree first on the transfer price, which is at landed cost plus twelve percent [12%], 4) all new stocks in the master box and the return of

new stocks from the stores shall not be subject to inspection and selection, 5) all Class B stocks to be transferred to the new distributor, and 6) terms of payment shall be fifty percent [50%] downpayment of the agreed value and fifty percent [50%] based on the actual pick up values, and [PELI] failed and refused to heed said demand.

[Tocoms] prayed for payment of actual and exemplary damages, and attorney's fees. It also applied for the issuance of a temporary restraining order and/or preliminary mandatory injunction, enjoining [PELI], Philips Singapore and Fabriano from proceeding with the change in distributorship, enjoining Fabriano from selling the subject Philips products in the market, and directing [PELI] and Philips Singapore to release the ICC stickers to allow [Tocoms] to sell the products to its clients and the public.

In its Motion to Dismiss, [PELI] alleged that the trial court has not acquired jurisdiction over its person since there was an invalid service of summons; that it is not a real party-in-interest in the case and was improperly impleaded; that venue was improperly laid, and that the complaint failed to state a cause of action.

In the first assailed Order dated May 30, 2013, public respondent judge denied [PELI]'s Motion to Dismiss. Public respondent declared that the allegations in the complaint show a cause of action as [Tocoms] is averring that its rights under the Constitution, the Human Relations provisions of the Civil Code and the subject Distribution Agreement have been violated by [PELI] on account of the latter's acts subject of the complaint, and that [PELI] has committed acts that are clearly tainted with malice and bad faith. As to the service of summons, public respondent held that Philips Singapore is represented in the Philippines by its resident agent, [PELI], and its officers, Oh and Thurer, who all hold office in Bonifacio Global City, Taguig City, and that the summons was served upon a certain Maricel Magallanes who claimed to be [PELI]'s corporate secretary, and hence, service thereof was valid. As to whether Oh, Thurer and [PELI] are real party-in-interest, public respondent ruled in the affirmative, reiterating that they are the agents of Philips Singapore, one of the contracting parties in the Distribution Agreement. As to the issue of venue, public respondent held that it is properly laid since Oh, Thurer and [PELI], agents of Philips Singapore, are holding office in Taguig City, and that the provision in the Distribution Agreement as to the filing of actions in the courts of Singapore does not preclude the parties therein from bringing the case in other venues as the said provision is not shown to be restrictive or exclusive.

[PELI]'s Motion for Partial Reconsideration was denied in the second assailed Resolution dated July 1, 2013.[5]

PELI thus filed a Petition for *Certiorari* with the CA to assail the denial of its Motion to Dismiss. The appellate court, in granting PELI's petition, held that the trial court committed grave abuse of discretion in denying PELI's motion to dismiss. The CA held that the complaint's

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5 Id. at 10-12.

essential thrust was a prayer for damages resulting from the non-renewal of the Distributorship Agreement. In determining whether the complaint failed to state a cause of action, the appellate court considered not only the complaint and its annexes but also the evidence presented by PELI in the hearing on Tocoms' application for a Writ of Preliminary Injunction, justifying its decision to do so on the basis of the ruling in *Santiago v. Pioneer Savings and Loan Bank*.[6] It held that the trial court should have considered all the pleadings and evidence on record in deciding the question of whether or not the complaint states a cause of action. Thus, the appellate court found that Tocoms' complaint failed to state a cause of action because the Distribution Agreement upon which the complaint is based is non-exclusive in character and was already expired at the time the complaint was filed.

Tocoms filed a Motion for Reconsideration dated March 13, 2014, which the CA denied in the herein assailed resolution; hence, this petition, which raises the following errors:

> 1. THE [CA] SERIOUSLY ERRED IN HOLDING THAT THE [TRIAL COURT] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DENIED PELI'S MOTION TO DISMISS ON THE GROUND THAT THE COMPLAINT FAILED TO STATE A CAUSE OF ACTION.
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> 2. THE [CA] SERIOUSLY ERRED IN HOLDING THAT [TOCOMS] WAS PRAYING FOR DAMAGES THAT RESULTED FROM THE NON-RENEWAL OF THE DISTRIBUTION AGREEMENT.
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> 3. THE [CA] SERIOUSLY ERRED IN HOLDING THAT [TOCOMS] WAS MERELY CLAIMING DAMAGES ON ACCOUNT OF PELI'S ENGAGEMENT OF ANOTHER DISTRIBUTOR.
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> 4. THE [CA] SERIOUSLY ERRED IN HOLDING THAT [TOCOMS] WAS CLAIMING DAMAGES ON ACCOUNT OF PELI'S REFUSAL OR FAILURE TO RENEW THE DISTRIBUTION AGREEMENT.[7]

The pivotal question raised by these errors is whether or not Tocoms' complaint states a cause of action against PELI.

I

Failure to state a cause of action in an initiatory pleading is a ground for the dismissal of a case. Rule 16, Section 1(g) of the Rules of Court states that:

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6 241 Phil. 113, 117 (1988).

7 *Rollo* (Vol. 1), p. 46.

> SECTION 1. Grounds. — Within the time for but before filing the answer to the **complaint or pleading asserting a claim**, a motion to dismiss may be made on any of the following grounds:
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> x x x x
>
> (g) That **the pleading asserting the claim** states no cause of action[.] (Emphasis supplied)

Though obvious from the text of the provision, it bears emphasis that the non-statement of the cause of action must be apparent from the complaint or other initiatory pleading. For this reason, it has been consistently held that in ruling upon a motion to dismiss grounded upon failure to state a cause of action, courts must only consider the facts alleged in the complaint, without reference to matters outside thereof.[8] Thus, an early commentary on the Rules of Court describes a motion to dismiss as "the usual, proper, and ordinary method of testing the legal sufficiency of a *complaint*."[9]

As early as 1949, this Court has held that "*where the ground is that the complaint does state no cause of action,* [a motion to dismiss] *must be based only on the allegations in the complaint.*"[10] This has been the consistent pronouncement[11] of this Court up until 1983, when *Tan v. Dir. of Forestry*[12] came out. The *Tan* ruling carved out an exception to the general rule which has since been crystallized in subsequent jurisprudence.[13] In *Dabuco v. Court of Appeals*,[14] it was explained that "[t]he theory behind *Tan* is that the trial court must not rigidly apply the device of hypothetical admission of allegations when, on the basis of evidence already presented, such allegations are found to be false." The crucial factual

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8 1 Vicente J. Francisco, The Revised Rules of Court in the Philippines 681 (1965), citing *Dalandan v. Julio*, 119 Phil. 678 (1964); *Lim v. De los Santos*, 118 Phil. 800 (1963); *Mindanao Realty Corp. v. Kintanar*, 116 Phil. 1130 (1962); *Uy Chao v. De la Rama Steamship Co. Inc.*, 116 Phil. 392 (1962); *Reinares v. Arrastia and Hizon*, 115 Phil. 726 (1962); *Convets, Inc. v. Nat. Dev. Co.*, 103 Phil. 46 (1958); *Zobel v. Abreu*, 98 Phil. 343 (1956); *Dimayuga v. Dimayuga*, 96 Phil. 859 (1955); *De Jesus v. Belarmino*, 95 Phil. 365 (1954); *Francisco v. Robles*, 94 Phil. 1035 (1954).

9 1 Vicente J. Francisco, The Revised Rules of Court in the Philippines 628 (1965).

10 *Ruperto v. Fernando and Tianco*, 83 Phil. 943 (1949).

11 *Heirs of Juliana Clavano v. Judge Genato*, 170 Phil. 275 (1977); *Socorro v. Vargas*, 134 Phil. 641 (1968); *Adamos v. J. M. Tuason & Co., Inc.*, 134 Phil. 470 (1968); *La Suerte Cigar v. Central Azucarera de Davao*, 132 Phil. 163 (1968); *Emilia v. Bado*, 131 Phil. 711 (1968); *Ramos v. Condez*, 127 Phil. 601 (1967); *Solancho v. Ramos*, 126 Phil. 179 (1967); *Republic Bank v. Cuaderno*, 125 Phil. 1076 (1967); *Quiem v. Seriña*, 126 Phil. 1426 (1966); *Mun. of Tacurong v. Abragan*, 130 Phil. 542 (1968); *A.U. Valencia & Co. v. Layug*, 103 Phil. 747 (1958); *Wise & Co., Inc. v. City of Manila*, 101 Phil. 244 (1957); *Aurelio v. Baquiran*, 100 Phil. 274 (1956); *Marabiles v. Quito*, 100 Phil. 64 (1956); *Carreon v. Province of Pampanga*, 99 Phil. 808 (1956).

12 210 Phil. 244 (1983).

13 *Heirs of Loreto Maramag v. Maramag*, 606 Phil. 782 (2009); *Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corp.*, 556 Phil. 822 (2007); *China Road v. Court of Appeals*, 401 Phil. 590 (2000); *Fil-Estate Golf and Dev't., Inc. v. CA*, 333 Phil. 465 (1996); *Marcopper Mining Corp. v. Garcia*, 227 Phil. 166 (1986).

14 379 Phil. 939, 951 (2000).

circumstance relied upon by the *Tan* court in allowing the consideration of evidence *aliunde* was the fact that:

> there was a hearing [on the petition for preliminary injunction] held in the instant case wherein answers were interposed and evidence introduced. In the course of the hearing, petitioner-appellant had the opportunity to introduce evidence in support of the allegations in his petition, which he readily availed of. Consequently, he is stopped from invoking the rule that to determine the sufficiency of a cause of action on a motion to dismiss, only the facts alleged in the complaint must be considered.[15]

The *Tan* court further relied on the case of *Locals No. 1470, No. 1469, and No. 1512 of International Longshoremen's Ass'n v. Southern Pac. Co.* which held that:

> For present purposes, it may be conceded that the complaint stated a valid cause of action; but the court below admitted documentary evidence by stipulation, and considered that evidence. This procedure without objection, enabled the court to go beyond the disclosures of the bill of complaint to the crucial point of law upon which the controversy turned.[16]

As in *Tan,* a hearing was likewise held on Tocoms' prayer for preliminary injunction, where PELI adduced documentary and testimonial evidence, which the appellate court found sufficient to determine that there was a failure to state a cause of action. Tocoms did not question the CA's expansion of the inquiry to include the evidence adduced by PELI; and therefore, like the petitioner in *Tan*, it should be deemed estopped from questioning the conclusions made by the CA thereby.

Nevertheless, the Court reiterates that the *Tan* doctrine is an exception and not the rule. A motion to dismiss for failure to state a cause of action must be resolved within the four corners of the complaint and its annexes, given its purpose as a filter for reducing court dockets by eliminating unmeritorious claims at the earliest opportunity.

However, it must be noted that Tocoms incorporated the Distribution Agreement into its Complaint as Annex "A"; and it is a settled rule that the attachments of a pleading are an integral part thereof.[17] It was therefore proper for both courts *a quo* to consider the terms of Distribution Agreement even without resorting to the *Tan* exception.

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15 Supra note 12, at 255-256.

16 131 F.2d 605 (1942).

17 *Bangko Sentral ng Pilipinas v. Legaspi*, 782 Phil. 147 (2016); *Fluor Daniel, Inc.-Philippines v. E.B. Villarosa and Partners Co., Ltd.*, 555 Phil. 295 (2007); *Jornales v. Central Azucarera de Bais*, 118 Phil. 909, 911 (1963).

II

"A cause of action is the act or omission by which a party violates a right of another."[18] It has three constitutive elements: first, a legal right accruing to the plaintiff; second, a duty on the defendant's part to respect such right; and third, an act or omission by the defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff.[19]

Tocoms bases its cause of action for damages upon Articles 19, 20, and 21 of the Civil Code, and its "constitutionally vested right to property and to peaceful, uninterrupted, and fair conduct of business".[20] According to Tocoms, the acts committed by PELI during and after the effectivity of the agreement are tainted with bad faith and malice in view of the significant investments made by the former during the effectivity of the Distribution Agreement and in the run-up to the expiration thereof in 2012.

The nature and purpose of Article 19 of the Civil Code was discussed in *Globe Mackay Radio and Cable Corp. v. CA*,[21] *viz.*:

> This article, known to contain what is commonly referred to as the principle of abuse of rights, sets certain standards which must be observed not only in the exercise of one's rights but also in the performance of one's duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. The law, therefore, recognizes a primordial limitation on all rights; that in their exercise, the norms of human conduct set forth in Article 19 must be observed. A right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. When a light is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. But while Article 19 lays down a rule of conduct for the government of human relations and for the maintenance of social order, it does not provide a remedy for its violation. Generally, an action for damages under either Article 20 or Article 21 would be proper.[22]

Most recently in *Chevron Philippines, Inc. v. Mendoza*,[23] this Court has held that abuse of rights under Article 19 has three elements, namely: (1) the existence of a legal right or duty, (2) an exercise of such right or discharge of such duty in bad faith, and (3) such exercise of right or

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18 RULES OF COURT, Rule 2, Section 2.

19 *Philippine National Bank v. Abello,* G.R. No. 242570, September 18, 2019; *ASB Realty Corp. v. Ortigas & Co. Ltd. Partnership*, 775 Phil. 262, 283 (2015).

20 Complaint, *rollo* (Vol. 1), pp. 232-233.

21 *Globe Mackay Cable and Radio Corp. v. Court of Appeals*, 257 Phil. 783 (1989).

22 Id. at 788-789.

23 G.R. Nos. 211533 & 212071, June 19, 2019.

discharge of duty was made with the sole intent of prejudicing or injuring another. However, the Court has also held that:

> There is x x x no hard and fast rule which can be applied to determine whether or not the principle of abuse of rights may be invoked. The question of whether or not the principle of abuse of rights has been violated, resulting in damages under Articles 20 and 21 or other applicable provision of law, depends on the circumstances of each case.[24]

Cases such as *University of the East v. Jader*[25] and the *Globe Mackay*[26] case, where the Court did not utilize the foregoing threefold test in finding a violation of Article 19, have therefore led to the following observation, *viz.*:

> [T]he principle [of abuse of rights] may be invoked if it is proven that a right or duty was exercised in bad faith, regardless of whether it was for the sole intent of injuring another. Thus, it is the absence of good faith which is essential for the application of this principle.[27]

The foregoing discussion highlights *bad faith* as the crucial element to a violation of Article 19. The *mala fide* exercise of a legal right in accordance with Article 19 is penalized by Article 21, under which "[a]ny person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage." Stated differently, Article 19 imposes upon all persons exercising their legal rights the duty to act with justice, give everyone his due, and to observe honesty and good faith. Failure to discharge such duties is compensable under Article 20 if the act is "contrary to law"; and under Article 21 if the act is legal but "contrary to morals, good customs, or public policy."[28]

Turning now to the case at bar, in the light of the foregoing discussion, we reconsider the allegations made by Tocoms in its Complaint, *viz.*:

> 3.06 Prior to the end of 2012, the plaintiff without the slightest information that defendant Philips would terminate the Distributorship Agreement dated 20 July 2011, had already made disclosures to the representatives of defendant Philips as to its marketing plans, among others, for the year 2013. In fact, the plaintiff has complied with all the

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24 *Albenson Enterprises Corp. v. Court of Appeals*, 291 Phil. 17, 27 (1993).
25 382 Phil. 697 (2000).
26 Supra note 21.
27 Rommel J. Casis, An Analysis of Philippine Law and Jurisprudence on Torts and Quasi-Delicts 515 (2012), citing *Sea Commercial Company, Inc. v. Court of Appeals*, 377 Phil. 221 (1999).
28 *Mata v. Agravante*, 583 Phil. 64 (2008).

requirements that were imposed by defendant Philips, in preparation for the renewal of the distributorship agreement for the coming year.

3.07 However, to the shock and utter disbelief of the plaintiff, on January 2, 2013, the plaintiff was informed in a hastily called meeting at the instance of defendant Angela Oh, the General Manager of Philips Consumer Lifestyle of defendant Philips Electronics and Lighting, Inc., that defendant Philips shall no longer be renewing the Distributorship Agreement with the plaintiff. The letter was signed by Philips Consumer Lifestyle's Vice President/General Manager Asia Pacific, defendant Selina Thurer.

3.08 Worse, the plaintiff was not given sufficient notice prior to the defendant Philips' announcement to the trade on the change of distributorship, so much so that many of the plaintiff's clients were caught by surprise. Consequently, plaintiff was left in a quandary on how to deal with its clients' queries and issues relating to the sudden change of distributorship.

x x x x

3.11 More importantly, the abrupt termination of the Distributorship Agreement was done in bad faith and with clear malice. Recently, the plaintiff has found out that as early as December 2012, or prior to the termination of the Distribution Agreement, the defendants, in collusion with defendant Fabriano S.P.A. Inc., have been selling to defendant Fabriano S.P.A. Inc. the products that are subject of the Distribution Agreement at a much lower price per unit cost.

3.12 As a consequence thereof, the plaintiff is being accused by its clients of dishonest dealings by selling the products at higher prices, thereby besmirching the good reputation and business standing of the plaintiff, which it had painstakingly built through the years.

3.13 On account thereof, one of the plaintiff's strongest clients, specifically Western Marketing, is set to return its existing inventory, amounting to more or less Five Million (Php5,000,000.00) pesos, upon the prodding of defendant Fabriano S.P.A. Inc. The return of stocks by Western will certainly lead to grave and irreversible losses on the plaintiff.

3.14 The plaintiff is presently under threat of incurring more losses with the return of stocks from other stores that will amount at this time to more or less Two Million (Php2,000,000.00) pesos.

3.15 Worse, defendant Philips, in the alleged exercise of its right pursuant to the Distribution Agreement has given an unreasonable, unfair and one sided demand, to buy-back all inventory that remain in the possession of the plaintiff under the following terms and conditions, among others:

a. Phased out models at less forty (40%) percent of the actual price;
b. Class B products as less sixty (60%) percent of the actual price;
c. Products to be returned by clients of plaintiff are not included in the buy-back of defendant Philips.

3.16 It is certainly unreasonable and oppressive for defendant Philips to buy remaining inventory of the plaintiff in an amount less forty (40%) percent of the actual price, considering that phased out models are sold at landed cost plus twelve (12%) percent; most of the phased out items are still being sold at the store level; and the announcement declaring the items as phased out models is yet to be made to the dealers.

3.17 Likewise, the demand of defendant Philips to buy-back remaining inventory of the plaintiff classified as Class B products at less sixty (60%) percent, and the refusal of the defendant from buying the stocks that were returned by Philips, are certainly unconscionable, if not oppressive and confiscatory, for the simple reason that it would mean gargantuan financial losses on the part of the plaintiff. The plaintiff stands to lose more or less Twelve Million (Php12,000,000.00) pesos.

3.18 Meantime, the plaintiff is practically being held hostage with defendant Philips' recall of the ICC stickers that prohibit the plaintiff from selling its inventory to the public. The plaintiff is left only with two choices, either to accept the buy back terms of the defendants, or to incur losses resulting from the inventory that they cannot sell in view of the prohibition.

3.19 In view of the stubborn refusal of defendant Philips to buy-back the inventory/stocks remaining in the possession of the plaintiff and the stocks to be returned by plaintiff's clients under a fair and reasonable arrangement, the plaintiff has incurred actual damages in the amount of Php20,000,000.00[.]

3.20 The claim for damages of the plaintiff is principally anchored on the Human Relations Provisions of the Civil Code of the Philippines among others. Thus-

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

x x x x

4.03 The bad faith and malice on the part of the defendants were further shown when defendant Fabriano S.P.A. Inc. prodded a client of the plaintiff, specifically Western Marketing, to just return the Philips products to the plaintiff as it can sell the same products at a very much lower price.

4.04 Clearly, such act of bad faith and malice and in collusion with each other, defendants Philips and Fabriano S.P.A. had besmirched the reputation and business standing of the plaintiff for which the former

> should be held liable for exemplary damages to deter others from committing the same act of bad faith and malice.[29]

In determining the sufficiency of a cause of action, the test is, whether or not, admitting hypothetically the truth of the allegations of fact made in the complaint, the court may validly grant the relief prayed for in the complaint.[30] As correctly pointed out by the Senior Associate Justice during the deliberations of this case, if the foregoing allegations in Tocoms' complaint are hypothetically admitted, these acts constitute bad faith on the part of respondent PELI in the exercise of its rights under the Distributorship Agreement, in violation of Article 19, and as punished by Article 21. Consequently, the court may validly award damages in favor of Tocoms as prayed for in its Complaint. While all the foregoing acts committed by PELI are indeed justifiable under the terms of the Distributorship Agreement, the question of whether or not these acts were committed with malice or in bad faith — in light of the allegations in the Complaint — still remains disputed.

While it has submitted voluminous documents to show that its actions were justified by the terms of the Distributorship Agreement, PELI has not had the opportunity to prove that the foregoing acts mentioned in the Complaint were indeed made without malice and bad faith, since it was not even able to file an answer to Tocoms' complaint. The legal concept of bad faith denotes a dishonest purpose, moral deviation, and a conscious commission of a wrong. It includes "*a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud. It is, therefore, a question of intention, which can be inferred from one's conduct and/or contemporaneous xxxstatements*".[31] Bad faith under the law cannot be presumed; it must be established by clear and convincing evidence.[32] As such, the case must be reinstated so that PELI may once and for all prove its *bona fides* in its dealings with Tocoms, in connection with the expiration of their Distribution Agreement.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The Decision dated March 13, 2014, and the Resolution dated August 29, 2014 of the Court of Appeals, in CA-G.R. SP No. 130873, are hereby **REVERSED** and **SET ASIDE**. Civil Case No. 73779-TG before the Regional Trial Court of Pasig City, Branch 266, is hereby **REINSTATED**. The Regional Trial Court of Pasig City, Branch 266, is hereby ordered to try Civil Case No. 73779-TG with utmost dispatch.

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29 *Rollo* (Vol. 1), pp. 230-234.

30 *Spouses Fernandez v. Smart Communications, Inc.*, G.R. No. 212885, July 17, 2019; *Guillermo v. Philippine Information Agency*, 807 Phil. 555 (2017); *Aquino v. Quiazon*, 755 Phil. 793 (2015).

31 *Adriano v. Lasala*, 719 Phil. 408 (2013).

32 *Philippine Air Lines v. Miano*, 312 Phil. 287 (1995), citing *LBC Express, Inc. v. Court of Appeals*, 306 Phil. 624 (1994).

SO ORDERED.

ANDRES B. REYES, JR.
Associate Justice

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

(On official leave)
RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice