REMEDIAL LAW

ROSS SYSTEMS INTERNATIONAL, INC *v.* GLOBAL MEDICAL CENTER OF LAGUNA, INC.

GR No. 230112 and 230119, 11 May 2021, *EN BANC* (Caguioa, *J.*)

DOCTRINE OF THE CASE

The Court held that the direct recourse of an appeal of a CIAC award on questions of law directly to this Court is the rule, pursuant to Executive No. 1008 (E.O. No. 1008) otherwise known as the Construction Industry Arbitration Law and Republic Act No. 9285 (R.A. No. 9285) otherwise known as Alternative Dispute Resolution of 2004, notwithstanding Rule 43 of the Rules of Court on the CA's jurisdiction over quasi-judicial agencies, and Rule 45 of the Rules of Court in its exclusive application to lower courts. Thus, an appeal from an arbitral award of the CIAC may take either of two tracks, as determined by the subject matter of the challenge.

The CA misapplied its appellate function when it delved into settling the factual matters and modified the mathematical computation of the CIAC with respect to the presence or absence of an outstanding balance payable to RSII. This mathematical re-computation is an error not because the new ruling on judicial review of CIAC awards is applicable to this case (as it applies prospectively) but RSII because the amounts reimbursable to were not specifically raised by the RSII as an issue in its Rule 43 petition before the CA, since the issues raised before it were confined to the release of the amount deducted by GMCLI from its Progress Billing No. 15 to cover the CWT of 2% on payments for the first fourteen (14) Progress Billings. In addition, that the CA made a precipitate factual conclusion of the correctness of RSII's mathematical computation over that of GMCLI after citing gossamer-thin basis perhaps betrays the general impropriety of an appellate court's review of factual findings of more specialized tribunals and quasi-judicial agencies, which were legally ascribed primacy.

FACTS

Global Medical Center of Laguna, Inc. (GMCLI) engaged the services of Ross Systems International, Inc. (RSII) for the construction of its hospital in Laguna, in accordance with a Construction Contract (Contract) which value the entire construction project at ₱248,500,000.00, with 15% of said contract price to be paid to RSII as down payment and the remaining balance to be paid in monthly installments based on the percentage of work accomplished. Under Section 9 of the Contract, all taxes on the services rendered were for the account of RSII. Finally, an arbitration clause additionally stipulated the parties' resort to arbitration in the event of dispute.

In 2015, RSII submitted to GMCLI its Progress Billing No. 15, which indicated that it had already accomplished 79.31% of the project, equivalent to ₱9,228,286.77, inclusive of VAT. After receipt and upon evaluation of GMCLI, however, it estimated that the accomplished percentage was only at 78.84% of the entire contract price or equivalent to ₱7,043,260.00 for Progress Billing No. 15. GMCLI, after its internal audit, learned that it was unable to withhold and remit 2% Credible Withholding Tax (CWT) not only from Progress Billing No. 15 (or from the amount of ₱7,043,260.00 but from the cumulative amount of all Progress Billings Nos. 1-15 (or from the amount of ₱197,088,497.00, equivalent to the submitted

79.31% accomplishment of RSII). Thus, for RSII's Progress Billing No. 15 priced at ₱7,043,260.00, GMCLI only paid a total of ₱3,101,491.00, with computation as cited by the Construction Industry Arbitration Commission (CIAC).

RSII sent two (2) demand letters to GMCLI, claiming that it still had a balance of ₱4,884,778.92 to collect from the latter, under the following allegations: (1) GMCLI's outstanding obligation under Progress Billing No. 15 should have been P8,131,474.83, and not merely P7,043,260.00; and (2) GMCLI should not have belatedly withheld the 2% CWT on Progress Billings Nos. 1 to 14, but should only have withheld the 2% CWT from Progress Billing No. 15. With its demand unheeded, RSII filed a complaint and request for arbitration before the Construction Industry Arbitration Commission (CIAC).

After both parties submitted their respective affidavits and pieces of documentary evidence, and presented their respective witnesses, CIAC promulgated its decision in favor of GMCLI. The CIAC's Final Award contained the following: (1) The CIAC has jurisdiction over the instant case as it involves a construction dispute; (2) GMCLI is not authorized to withhold and remit the CWT of 2% on the cumulative amount based on Progress Billings Nos. 1 to 15; (3) RSII is not entitled to the release of the amount of P4,884,778.92 as the balance for Progress Billing No. 15; (4) GMCLI is not entitled to moral damages; (5) No attorney's fees shall be paid by either party to the other; (6) The cost arbitration shall be shouldered by the Parties in proportion to their respective claims.

Aggrieved, RSII filed a petition for review under Rule 43 of the Rules of Court before the Court of Appeals (CA) and assailed the CIAC arbitral award on CIAC's ruling that it was not entitled to the release of P4,884,778.92. CA partially granted the petition, ruling that the amount of P3,815,996.50, equivalent to the 2% CWT on Progress Billings Nos. 1 to 14 was already remitted to the BIR, and it would be unjust to require GMCLI, as the withholding agent, to effectively shoulder the amount of tax which RSII had the legal duty to pay. With respect to granting RSII's entitlement to P1,088,214.83, the CA reasoned that RSII is still entitled to collect the amount as GMCLI did not contest to RSII's computation for the amount due for Progress Billing No. 15. Both parties filed for a Motion for Reconsideration, which where both denied by the CA.

ISSUE

Was the appeal before the CA under Rule 43 proper?

RULING

NO. The Court held that the direct recourse of an appeal of a CIAC award on questions of law directly to this Court is the rule, pursuant to Executive No. 1008 (E.O. No. 1008) otherwise known as the Construction Industry Arbitration Law and Republic Act No. 9285 (R.A. No. 9285) otherwise known as Alternative Dispute Resolution of 2004, notwithstanding Rule 43 of the Rules of Court on the CA's jurisdiction over quasi-judicial agencies, and Rule 45 of the Rules of Court in its exclusive application to lower courts. Thus, an appeal from an arbitral award of the CIAC may take either of two tracks, as determined by the subject matter of the challenge.

On the one hand, if the parties seek to challenge a finding of law of the tribunal, then the same may be appealed only to this Court under Rule 45 of the Rules of Court. To determine whether a question is one of law which may be brought before the Court under Rule 45 of the of the Rules of Court, it is useful to recall that a question of law involves a doubt or controversy as to what the law is on a certain state of facts, as opposed to a question of fact which involves a doubt or difference that arises as to the truth or falsehood of facts, or when the query necessarily calls for a review and reevaluation of the whole evidence, including the credibility of witnesses, existence of specific surrounding circumstances, and the decided probabilities of the situation. The test here is not the party's characterization of the question before the Court, but whether the Court may resolve the issue brought to it by solely inquiring as to whether the law was properly applied and without going into a review of the evidence.

On the other hand, if the parties seek to challenge the CIAC's finding of fact, the same may only be allowed under either of two premises, namely assailing the very integrity of the composition of the tribunal, or alleging the arbitral tribunal's violation of the Constitution or positive law, in which cases the appeal may be filed before the CA on these limited grounds through the special civil action of a petition for certiorari under Rule 65 of the of the Rules of Court.

Further, the resort to a petition for certiorari under Rule 65 of the of the Rules of Court is confined to assailing the integrity of the arbitral tribunal based on any of the aforementioned factual scenarios (e.g., corruption, fraud, evident partiality of the tribunal), or the constitutionality or legality of the conduct of the arbitration process and may not remain unqualified as to embrace other badges of grave abuse. The design and intent of the relevant laws on judicial review of CIAC arbitral awards do not empower the CA to look into the factual findings of the CIAC apart from the foregoing circumscribed grounds, lest the authoritative and conclusive factual findings of the CIAC be nevertheless defeated, albeit via a petition other than Rule 43 of the of the Rules of Court.

The CA misapplied its appellate function when it delved into settling the factual matters and modified the mathematical computation of the CIAC with respect to the presence or absence of an outstanding balance payable to RSII. This mathematical re-computation is an error not because the new ruling on judicial review of CIAC awards is applicable to this case (as it applies prospectively) but RSII because the amounts reimbursable to were not specifically raised by the RSII as an issue in its Rule 43 petition before the CA, since the issues raised before it were confined to the release of the amount deducted by GMCLI from its Progress Billing No. 15 to cover the CWT of 2% on payments for the first fourteen (14) Progress Billings. In addition, that the CA made a precipitate factual conclusion of the correctness of RSII's mathematical computation over that of GMCLI after citing gossamer-thin basis perhaps betrays the general impropriety of an appellate court's review of factual findings of more specialized tribunals and quasi-judicial agencies, which were legally ascribed primacy.

HAZEL MA. C. ANTOLIN-ROSERO *v.* PROFESSIONAL REGULATION COMMISSION, ET AL.

G.R. NO. 220378, 30 JUNE 2021, *THIRD DIVISION*, (INTING, *J.*)

DOCTRINE OF THE CASE

For the right to information to be comparable by mandamus, a petitioner must establish the following requisites:

(a) The information sought must be in relation to matters of public concern and public interest; and

(b) It must not be exempt by law from the operation of the constitutional guarantee.

Here, the Court conceded that national board examinations, such as the CPA Board Exams, are matters of public concern as the populace in general and the examinees in particular would understandably be interested in the fair and competent administration of these exams in order to ensure that only those qualified are admitted into the accounting profession.

FACTS

A petition for *mandamus* with damages before the Regional Trial Court (RTC) was filed by Hazel Ma. C. Antolin-Rosero (Rosero) against the Board of Accountancy (BOA) and its members, Conchita L. Manabat, Abelardo T. Domondon (Domondon), Reynaldo D. Gamboa (Gamboa), Jose A. Gangan (Gangan), Violeta J. Josef (Josef), Jose V. Ramos (Ramos), and Antonieta Fortuna-Ibe (Ibe); and later, also against the Professional Regulation Commission (PRC) (BOA, *et.al.*)

Rosero took the 1997 Certified Public Accountant (CPA) Board Exams conducted by the BOA. The 1997 CPA Board Exam's list of passers was released on October 29, 1997. Unfortunately, she did not make it. She then wrote to Domondon, Acting Chairman of the BOA, and requested that her answer sheets be reconnected. However, the BOA only showed her answer sheets which merely consisted of shaded marks. Thus, Rosero was unable to determine why she failed the exam.

Thus, Rosero again wrote to the BOA to request for copies of (a) the questionnaire in each of the seven subjects; (b) her answer sheets; (c) the answer keys to the questionnaires; and (d) an explanation of the grading system used in each subject (the examination documents) so that she could refer them to an expert for checking.

However, Domondon denied her request on two (2) grounds. First, Section 36, Article III of the Rules and Regulations Governing the Regulation and Practice of Professionals (RRG), as amended by PRC Resolution No. 332, only permitted access to her answer sheet, which she had been shown previously; and that a reconsideration of her examination result is only proper under the grounds stated therein. Second, the BOA is precluded from releasing the examination documents, other than her answer sheet, by Section 20 of PRC Resolution No. 338. Under Sec. 20 of PRC Resolution No. 338, the act of providing, getting, receiving, holding, using, or reproducing questions that have been given in the examination constitutes prejudicial, illegal, grossly immoral, dishonorable, or unprofessional conduct, except if the test bank for the subject has on deposit at least 2,000 questions.

Later on, BOA informed Rosero that it found no mechanical error in the grading of her test papers.

Thus, Rosero filed a petition for *mandamus* with damages against the BOA and its members before the RTC. During the pendency of the case before the RTC, Rosero took and passed the May 1998 CPA Board Exams. She then took her oath as a CPA. As a result, the RTC dismissed Rosero's application for a writ of preliminary mandatory injunction and ruled that the matter had become moot. Subsequent to the RTC's disposition, three (3) separate petitions for *certiorari* were filed before the Court of Appeals (CA).

As to the petition of Domondon, Gamboa, Gangan, Josef, and Ramos (Domondon, *et al.*) in CA-G.R. SP No. 76498, the CA vacated and set aside the RTC Orders and reinstated the Order dismissing the petition for *Mandamus*. In CA-G.R. SP No. 76545, the CA dismissed the petition filed by the BOA due to *litis pendentia.* As to respondent Ibe's petition in CA-GR SP No. 76546, the CA granted the petition for *certiorari* and dismissed the petition for *Mandamus* on the ground that the latter has become moot. In its Omnibus Order, the RTC granted the motion for judgment on demurrer to evidence and consequently dismissed the petition for *mandamus* against *Domondon, et al.*

ISSUES

(1) Did Rosero violate the rule on forum shopping?
(2) Did Rosero timely assail the RTC Omnibus Orders?
(3) Did the RTC err in dismissing the petition for *mandamus* on the ground that Rosero's constitutional right to have access to the examination documents is restricted?
(4) Is Section 20 of PRC Resolution No. 338 reasonable?

RULING

(1) **NO.** The test to determine the existence of forum shopping is as follows:
    (a) identity of parties, or at least such parties as representing the same interests in both actions;
    (b) identity of rights asserted, and reliefs prayed for, the relief being founded on the same facts; and
    (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration. Said requisites are also constitutive of the requisites for auter action *pendant* or *lis pendens*.

Here, the Court found no similarity between the present petition filed by Rosero's and Ibe's appeal. There is no question that there is an identity of parties in the present petition and the appeal in CA-G.R. SP No. 143078. However, it must be emphasized that while both the present petition and the appeal in CA-G.R. SP No. 143078 assail the Decision dated July 20, 2015, and Omnibus Order dated September 11, 2015, there is no identity of rights asserted and the reliefs prayed for.

In the present petition, Rosero prayed for the Court to direct Domondon, *et.al.* to give her the examination documents or copies thereof as would enable her to determine whether respondents fairly administered the 1997 CPA Board Exams and correctly grade her performance therein. On the other hand, Ibe's appeal in CA-G.R. SP No. 143078 dealt with the RTC's dismissal of the counterclaim for damages and attorney's fees through the RTC Decision July 20, 2015 and Omnibus Order dated September 11, 2015.

Evidently, the reversal of the dismissal of the petition for *Mandamus*, and the reversal of the dismissal of Ibe's counterclaim for damages and attorney's fees prayed for in the appeal in CA-G.R. SP No. 143078 are different reliefs, albeit related as they arose from the same case.

(2) **YES.** Rosero timely assailed in this present Petition for Review on *Certiorari* the RTC Omnibus Orders.

Section 1, Rule 41 of the 2019 Rules of Court provides that the aggrieved party may file a petition for *certiorari* under Rule 65 of the 2019 Rules of Court in the enumerated cases where no appeal may be taken.

Thus, Rosero could have either filed a petition for *certiorari* of the Omnibus Orders dated December 19, 2013 and April 8, 2014 under Rule 65 of the Rules of Court on errors of jurisdiction or she could have awaited the RTC's dismissal of the petition for the mandamus as to the rest of Domondon, *et.al.* thru RTC Decision dated July 20, 2015 and/or Omnibus Order dated August 6, 2015 so that she may appeal both the two sets of disposition by the RTC on the ground of errors of judgment.

(3) **NO**. Under Section 3, Rule 65 of the Rules of Court, the appropriate court may issue a Writ of *Mandamus* in two situations: (1) when any tribunal, corporation, board officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station; and (2) when any tribunal, corporation, board, office or person unlawfully excludes another from the use and enjoyment of a right or office to which the other is entitled.

However, it must be emphasized that the writ will issue only if the legal right to be enforced is well defined, clear, and certain. *Mandamus* is a remedy only when there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law. The Court recognized that the right to information is not absolute as it is limited to "matters of public concern," and is further "subject to such limitation as may be provided by law." Similarly, the Court emphasized that the State's policy of full disclosure is limited to "transactions involving public interest," and is "subject to reasonable conditions prescribed by the law."

For the right to information to be comparable by *mandamus*, a petitioner must establish the following requisites:

(c) The information sought must be in relation to matters of public concern and public interest; and

(d) It must not be exempt by law from the operation of the constitutional guarantee.

Here, the Court conceded that national board examinations, such as the CPA Board Exams, are matters of public concern as the populace in general and the examinees in particular would understandably be interested in the fair and competent administration of these exams in order to ensure that only those qualified are admitted into the accounting profession.

In connection with the second requisite, Section 5, Paragraph (e) of Republic Act. No. 6713 (R.A. 6713), otherwise known as Code of Conduct and Ethical Standards for Public Officials and Employees, does not give Rosero an absolute right to access information and documents. R.A. 6713recognizes that not all kinds of information in the possession of public officials and employees may be made available to the public. Thus, while Sec. 5, Par. (e) of R.A. 6713 provides that "All public documents must be made accessible to and readily available for inspection by the public within reasonable working hours," it must be read together with Section 7, Paragraph (c) of R.A. 6713 which prohibits public officials and employees from disclosing and misusing confidential information. Thus, confidential information is exempt from the mandate of making public documents available for inspection within reasonable working hours.

Further, as to what constitutes confidential information under the purview of Sec.7, Par. (c) of R.A. 6713, the Internal Rules and Regulations of Civil Service Commission on R.A. 6713provides for the exceptions from the rule that every department, office, or agency shall provide official information, records, or documents to any requesting public.

(4) **YES.** The Court found that Section 20 of PRC Resolution No. 338 constitutes a valid limitation to petitioner's right to access and inspect public documents within reasonable working hours under Sec. 5, Par. (e) of R.A. 6713 and her constitutional right to information under Section 7, Article III of the 1987 Constitution. Moreover, the Court finds that the examination documents are confidential and exempt from the constitutional guarantee of the right to information. Specifically, the test questions sought by petitioner fall within the concept of established privilege or recognized exceptions as may be provided by law or settled policy or jurisprudence under Sec.7, Par. (c) of R.A. 6713

As to the reasonableness of Sec. 20 of PRC Resolution No. 338 as a restriction on Rosero's right to information, the Court explained that "More than the mere convenience of the examiner, it may well be that there exist inherent difficulties in the preparation, generation, encoding, administration and checking of these multiple-choice exams that require that the questions and answers remain confidential for a limited duration."

Thus, to preserve the integrity and fairness of the examinations for future applicants, the questions in the test banks must be kept confidential subject only to the conditions provided by law and the relevant rules for their availability. Besides, Sec. 20 of PRC Resolution No. 338 does not constitute an absolute prohibition on the release of test questions that have been given in the CPA Board Exams. A petitioner must only show that the condition provided in Sec. 20 of PRC

Resolution No. 338 has been satisfied, i.e., that the test bank for each subject has at least 2,000 questions. Suffice it to state that this condition is a reasonable limitation on the availability of the test questions to the public taking the inherent difficulties surrounding the preparation of the test questions and the need to preserve the integrity of the CPA Board Exams.

KUWAIT AIRWAYS CORPORATION *v.* THE TOKIO MARINE AND FIRE INSURANCE CO., LTD and TOKIO MARINE MALAYAN INSURANCE CO., INC.

G.R. No. 213931, 17 November 2021, *THIRD DIVISION*, (Carandang, *J.*)

DOCTRINES OF THE CASE

Section 4, Rule 130 of the 2019 Rules of Court provide that an original document may consist of a "duplicate" produced by means of photography, mechanical or electronic re-recording, or by other equivalent techniques which accurately reproduce the original. A photocopy of an original, therefore, may consist of a "duplicate" if there is no question that it is an accurate reproduction of the original.

Here, TMMICI and TMFICL formally offered the MIASCOR receipt as proof of their respective contents. In addition, the Court ruled that both the aforementioned receipts were not authenticated as required by Sec. 20, Rule 132 of the Rules of Court. TMMICI and TMFICL's witnesses also did not testify that they saw the receipts and the notations of damage being executed or written. As such, the photocopies of said receipts are inadmissible and have no evidentiary value.

The Court further elaborated that in any case, the evidence does not show whether the receipts of the inspection was conducted on the goods upon the vehicle's arrival in the Philippines. As such, the Court held that the photographs of the cargo are competent to prove the damage as they were taken when the cargo has already arrived at FCPCP's premises.

FACTS

Fujitsu Europe Limited (FEL) engaged the services of O'Grady Air Services (OAS) for the transport of pallets containing crates of disk drives from FEL's address in the United Kingdom (UK) to the consignee's, Fujitsu Computer Products Corporation of the Philippines (FCPCP), addressed in the Philippines. From UK, the pallets were loaded onto Kuwait Airways Corporation's (KAC) aircraft and was insured with Tokio Marine and Fire Insurance Co., Ltd. (TMFICL).

The shipment arrived at the Ninoy Aquino International Airport (NAIA). The lower courts did not narrate the circumstances of the shipment's unloading, however, according to a photocopy of MIASCOR Storage and Delivery Receipt (MIASCOR Receipt), wherein it was noted that one crate had a hole on the side and another was dented.

Thereafter, FCPCP filed a claim on the insurance policy. Consequently, Tokio Marine Malayan Insurance Co., Inc. (TMMICI) hired the services of Toplis Marine to survey the alleged damage. Further, the report of the survey was done *via* the provided photocopies of the MIASCOR receipt which showed that multiple cartons were deformed. Lastly, the survey also deduced that the denting of the shipment was due to the rigor of voyage during the various stages loading to or discharging from the KAC.

As such, FCPCP formally claimed from KAC for the damage sustained by the shipment. When the claim was not acted upon, FCPCP claimed for insurance to which TMMICI complied with. Subsequently, FCPCP transferred all its rights and interests on the damaged cargo to respondent TMFICL. Hence, TMMICI and TMFICL filed a complaint against OAS and KAC for actual damages.

The Regional Trial Court (RTC) dismissed both TMMICI and TMFICL complaint and KAC's counterclaim. The Court of Appeals (CA) reversed the ruling of the RTC.

ISSUES

(1) Are the MIASCOR Storage and Delivery Receipt and the Japan Cargo Delivery Receipt adequate proofs of damage to the goods?
(2) May annotations of the MIASCOR receipt be considered *prima facie* evidence of damage to the goods as "entries in the course of business"?
(3) May the doctrine of *res ipsa loquitur* be applied in the instant case?

RULING

(1) **NO.** Section 4, Rule 130 of the 2019 Rules of Court provide that an original document may consist of a "duplicate" produced by means of photography, mechanical or electronic re-recording, or by other equivalent techniques which accurately reproduce the original. A photocopy of an original, therefore, may consist of a "duplicate" if there is no question that it is an accurate reproduction of the original.

Further, Section 5, Rule 130 of the 2019 Rules of Court provides that a party is allowed to submit secondary evidence to prove the contents of a lost or destroyed document by a copy, a recital of its contents in some authentic document, or the testimony of witnesses, provided that the offeror of the secondary evidence proves:

(a) that the original existed and duly executed;
(b) it was lost or destroyed; and
(c) its unavailability is not due to bad faith on his or her part.

However, regardless of whether an exhibit is an original, a "duplicate" of a document, or secondary evidence, it must still be presented at trial in the manner provided for by the Rules on Evidence before it can be admitted into evidence. For such purposes, it is important to distinguish between public or private documents.

Public documents are admissible in evidence without further proof of their due execution and genuineness. On the other hand, under Section 20, Rule 132 of the Rules Court provides that a private document cannot be admitted into evidence unless its due execution and authenticity is proven by:

(a) anyone who saw the document executed or written;
(b) evidence of the genuineness of the handwriting of the maker; or
(c) other evidence showing its due execution and authenticity.

Here, TMMICI and TMFICL formally offered the MIASCOR receipt as proof of their respective contents. In addition, the Court ruled that both the aforementioned receipts were not authenticated as required by Sec. 20, Rule 132 of the Rules of Court. TMMICI and TMFICL's witnesses also did not testify that they saw the receipts and the notations of damage being executed

or written. As such, the photocopies of said receipts are inadmissible and have no evidentiary value.

The Court further elaborated that in any case, the evidence does not show whether the receipts of the inspection was conducted on the goods upon the vehicle's arrival in the Philippines. As such, the Court held that the photographs of the cargo are competent to prove the damage as they were taken when the cargo has already arrived at FCPCP's premises.

(2) **NO.** Since the Rules of Evidence has already been amended, "entries in the course of business" have now been replaced with "records of regularly conducted business activity" under Section 45, Rule 130 of the 2019 Rules of Court.

In Canque *v.* CA, the Court provided for the requisites for admission in evidence of entries in the course of business:

(a) the person who made the entry is dead, outside the country, or unable to testify;
(b) the entries were made at or near the time of the transactions to which they refer;
(c) the person who made the entry was in position to know the facts stated in the entries;
(d) the entries were made in a professional capacity or in the performance of a duty; and
(e) the entries were made in the ordinary or regular course of business or duty.

Here, the first, second, and third requisites were not proven at trial because TMMICI and TMFICL failed to establish who made the annotation in the MIASCOR receipt that the cargo was damaged.

(3) **NO.** The doctrine of *res ipsa loquitur* provides a mode of ascribing negligence upon a defendant in certain circumstances. The requisites of *res ipsa loquitur* are:

(a) the accident is of a kind that ordinarily does not occur in the absence of someone's negligence;
(b) it is caused by an instrumentality within the exclusive control of the defendant or defendants; and
(c) the possibility of contributing conduct that would make the plaintiff responsible is eliminated.

In the instant case, the first requisite has not been met because no injury or damage was proven to begin with. It was not proven by competent evidence that an accident had indeed occurred.