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SECOND DIVISION

[G.R. No. 217356. September 07, 2016]

DOROTEO C. GAERLAN, (DECEASED) SUBSTITUTED BY HIS SON, RAYMOND G. GAERLAN, PETITIONER, VS. PHILIPPINE NATIONAL BANK, RESPONDENT.

DECISION

MENDOZA, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the December 18, 2014 Decision[1] and the March 16, 2015 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CV No. 101297, which reversed and set aside the April 16, 2013 Decision[3] of the Regional Trial Court, Branch 96, Quezon City (*RTC-QC*), in Civil Case No. Q-02-45873, a case for nullification of contract of loan, real estate mortgage and extrajudicial foreclosure of sale.

The Antecedents

In March 1997, Supreme Marine Company, Inc. (*SMCI*) and MGG Marine Services, Inc. (*MGG*) obtained from Philippine National Bank (*PNB*) a 5-year FCDU[4] term loan of not exceeding US$4,000,000.00 and a domestic bills purchase line (*DBP line*) not exceeding P10,000,000.00. This agreement was embodied in a Credit Agreement,[5] signed by Robert S. Jaworski (*Jaworski*), President of SMCI and petitioner Doroteo Gaerlan (*Gaerlan*), President and General Manager of MGG, as borrowers, and Inocencio Deza, Jr., Executive Vice-President of PNB, as lender. The loan had an annual interest rate equivalent to 90-day London inter-bank offered rate plus spread of 2.5% from initial drawdown until its full payment. The loan proceeds would be utilized to finance the construction of a double hull oil tanker called Arabian Horse II, a joint business venture of SMCI and MGG.

To secure the loan, Gaerlan and Jaworski executed the Chattel Mortgage with Power of Attorney[6] over the vessel and, as additional security and by way of payment to the loan, Gaerlan, as president of MGG, executed the Deed of Assignment[7] in favor of PNB,

pertaining to its monthly income of at least P6,000,000.00 arising from the proceeds of the Consecutive Voyage Charter Party between Petron Corporation (*Petron*) and MGG. To personally guarantee the loan, Jaworski and his wife, Evelyn (*Spouses Jaworski*), together with Gaerlan and his wife Marilen (*Spouses Gaerlan*), executed the Joint and Solidary Agreement (*JSA*),[8] whereby the parties absolutely, unconditionally and irrevocably bound themselves, jointly and severally, to pay PNB in case the principal debtors defaulted in the payment of the loan.

On May 29, 1998, SMCI and MGG obtained another P40,000,000.00 one-year omnibus line and a grace period to pay the loan for six (6) months.[9] As additional security for the loan, Spouses Gaerlan, as accommodation mortgagor, executed in favor of PNB, the Real Estate Mortgage[10] over their parcel of land located on Arguelles Street, Sta. Mesa, Manila, covered by TCT No. RT-10565 (247945).

On January 4, 1999, PNB again granted SMCI and MGG an additional three (*3*) year and six (*6*) month term loan in the amount of Ten Million Pesos (P10,000,000.00) which would be secured continuously by the existing Real Estate Mortgage, the JSA and the 5-year Consecutive Voyage Contract.[11]

When SMCI and MGG defaulted in the payment of their loan obligation, PNB sent a demand letter but it was unheeded.

To protect its interest, PNB instituted a petition for the extrajudicial foreclosure sale of Spouses Gaerlan's real property. The public auction sale was held on February 20, 2001, with PNB as the winning and highest bidder. The bid price amounting to P35,875,000.00 was applied as partial payment of the loan obligation of SMCI and MGG, which amounted to P520,647,758.55[12] as of February 13, 2001. Thereafter, the Certificate of Sale was issued and recorded on February 13, 2002.

On January 3, 2002, Gaerlan filed a complaint[13] before the RTC-QC for the nullification of contracts of loan, real estate mortgage and extrajudicial foreclosure sale, which was docketed as Civil Case No. Q-02-45873. In his complaint, Gaerlan alleged, among others, that as of February 13, 2001, the account secured by the real estate mortgage had a principal amount of P239,168,222.87, interest charges of P108,431,111.64, and penalty charges of P119,353,328.17; that the auction sale of the property amounting to P35,875,000.00, which would only cover part of the accrued interests and penalties and would not reduce the principal obligation, was unjust and inequitable; that the stipulated

interests and penalties were much higher than 12% per annum; that all the loans secured by the promissory notes and real estate mortgage were null and void as they violated the Usury Law; and that in view of the nullity of the contracts of loan and the promissory notes, the real estate mortgage and the extrajudicial foreclosure sale were likewise null and void. Gaerlan also questioned the legality of the extrajudicial foreclosure sale contending that it was made without notice, posting and publication. He asserted that the extrajudicial foreclosure sale was published in the Philippine Star, a newspaper edited and published in the City of Manila, and not in Quezon City, where the property was located.

In its Answer with Compulsory Counterclaim,[14] PNB moved for the dismissal of the complaint for lack of cause of action because Gaerlan neither denied his liability under the loan contracts, promissory notes and real estate mortgage nor questioned the genuineness and due execution of the said notes and contract. PNB further averred that with the suspension of the Usury Law, the lender and the borrower could validly agree on any interest that could be charged on the loan. With respect to the publication in the Philippine Star, it was valid as it was a newspaper of general circulation with a nationwide coverage.

Meanwhile, Spouses Jaworski filed an action for declaratory relief before the RTC, Branch 24, Manila (*RTC-Manila*), docketed as Civil Case No. 02-104294, contending that in August 1998, Jaworski and Gaerlan had executed a Memorandum of Agreement (*MOA*) whereby the parties had entered into a "business divorce" and agreed that the ownership of the vessel, Arabian Horse II, would be transferred to Gaerlan in favor of the latter's assumption of all the loans extended by PNB to finance the construction of the said vessel; and that PNB had been informed of the said agreement. Spouses Jaworski prayed that their liability under the JSA executed on February 25, 1997 be extinguished by reason of the said business divorce.

In an Order,[15] the RTC-Manila granted the action for declaratory relief and released the spouses Jaworski from their duties and responsibilities under the Joint and Solidary Agreement. The RTC-Manila explained that the business divorce and the agreement of Jaworski and Gaerlan which was conveyed and approved by PNB per Board Resolution, dated May 13, 1999, had the effect of extinguishing the liability of Spouses Jaworski in their personal capacities and as principal officers of SMCI. On appeal, the said order was affirmed *in toto* by the CA in its Decision[16] dated June 23, 2005. The said CA decision became final and executory and the Entry of Judgment[17] was issued on July 20, 2005.

Consequenty, Gaerlan filed his Supplemental Complaint[18] asserting that the nullification of the JSA in Civil Case No. 02-104294, which was the principal obligation undertaken by

Spouses Gaerlan, in effect, nullified the real estate mortgage covering their property as the mortgage was merely an accessory of the said agreement.

On May 3, 2011, Gaerlan died.[19] Thereafter, he was substituted by his son, Raymond G. Gaerlan (*petitioner*).[20]

Ruling of the RTC

On April 16, 2013, the RTC-QC rendered its judgment[21] in Civil Case No. Q-02-45873, declaring the contracts of loan and extrajudicial foreclosure sale null and void and releasing Gaerlan from liability. The RTC-QC stated that because the JSA was declared void in the January 13, 2004 Order of the RTC-Manila, the principal obligation, guaranteed by the said agreement, and the real estate mortgage were likewise void pursuant to the principle of *res judicata* in the concept of conclusiveness of judgment. Thus, the dispositive portion reads:

> WHEREFORE, in light of the foregoing, judgment is hereby rendered in favor of the plaintiff and against the defendant. Accordingly:
>
> 1. the contracts of loan between the Spouses Gaerlan and co-obligors and the defendant, as well as the promissory notes relative thereto is nullified or declared null and void;
> 2. the real estate mortgage executed by the spouses Gaerlan in favor of defendant is likewise nullified;
> 3. the extrajudicial foreclosure sale and the certificate of sale issued by the Clerk of Court and the *Ex Officio* Sheriff are declared null and void;
> 4. the plaintiff, wife and co-obligors are relieved with their obligations to pay the principal, interests and penalties of the loans obtained from the defendant, since the subject contracts of loan and the promissory notes are declared null and void.
>
> SO ORDERED.[22]

The Ruling of the CA

On appeal, the CA *reversed* and *set aside* the April 16, 2013 Decision of the RTC-QC. The CA

held that the JSA remained valid and enforceable considering that only certain stipulations and clauses were declared void by the RTC-Manila in Civil Case No. 02-104294. It likewise explained that the contract of loan was the principal contract while the JSA was merely an accessory to the contract that guaranteed the payment of the principal obligation. The CA further ruled that even assuming that the JSA was void, Gaerlan's liability subsisted because after the business divorce, the loan was restructured and Gaerlan substituted SMCI as principal borrower.

Petitioner filed a motion for reconsideration but it was denied in the CA Resolution, dated March 16, 2015.

Hence, this petition raising the following

ISSUES

A. WHETHER OR NOT THE REAL ESTATE MORTGAGE IS AN ACCESSORY CONTRACT OF THE JOINT AND SOLIDARY AGREEMENT DATED 05 MARCH 1997.

B. WHETHER OR NOT THE DECISION OF THE REGIONAL TRIAL COURT OF MANILA, BRANCH 24, NULLIFIED THE JOINT AND SOLIDARY AGREEMENT DATED 05 MARCH 1997 IN ITS ENTIRETY.

C. WHETHER OF NOT THE NULLIFICATION OF THE JOINT AND SOLIDARY AGREEMENT DATED 05 MARCH 1997 BY THE REGIONAL TRIAL COURT OF MANILA, BRANCH 24 AFFECTED OR REDOUNDED TO THE BENEFIT OF THE PETITIONER.

D. WHETHER OR NOT DOCUMENTS AND ISSUES WHICH WERE NOT PRESENTED AND RAISED IN THE HONORABLE TRIAL COURT MAY CONSIDERED IN RESOLVING AN APPEAL.

E. WHETHER OR NOT THE INTEREST RATE AGREED UPON BY THE PARTIES IS USURIOUS.[23]

Petitioner contends that the prior judgment, rendered in Civil Case No. 02-104294,

releasing Spouses Jaworski from liability under the JSA constitutes *res judicata* in the present case. He insists that the declaration of the nullity of the JSA in the said case renders the real estate mortgage and other loan documents without force and effect because these documents were executed pursuant to the JSA. He rationalizes that if Spouses Jaworski were released from their liability under the JSA. the same pronouncement should likewise apply to him and his spouse as they were a party/signatory to the said agreement; otherwise, it would be a clear violation of their constitutional right to equal protection of laws and would cause undue prejudice to their rights.

Petitioner alleges that the CA erred when it used the May 13, 1999 Board Resolution of the PNB and the Omnibus Agreement as basis for resolving the appeal, as these documents were neither presented in court nor were the contents thereof litigated.

Finally, petitioner avers that the interest rate imposed by PNB on the loan was so excessive that it led to the hemorrhaging of his assets.

In its Comment,[24] PNB argued that petitioner mistakenly invoked the principles of *res judicata* and conclusiveness of judgment. It reiterated its position before the CA that the JSA was not the principal contract or obligation; it was a security contract or a surety contract and, as such, was also an accessory contract like the real estate mortgage. The PNB further posited that the January 13, 2004 Order of the RTC-Manila in Civil Case No. 02-104294 did not invalidate or declared void *ab initio* the entire JSA but only the specified paragraphs that pertained to the obligations and liabilities of Spouses Jaworski. Thus, "the obligations and liabilities of the Spouses Jaworski alone and not that of, or together with, the Gaerlans were the ones that were extinguished."[25]

The Court's Ruling

Essentially, the issue to be resolved is whether the decision of the RTC-Manila, which released Spouses Jaworski from liability, constitutes *res judicata* redounding to the benefit of petitioner.

It does not.

The doctrine of *res judicata* provides that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit. It embraces two concepts as enunciated in Section 47, Rule 39 of the Revised Rules of Court, namely: (1) bar by prior

judgment and (2) conclusiveness of judgment.[26] Both concepts are founded on public "(1) policy and necessity which makes it to the interest of the State that there should be an end to litigation, interest *reipublicae ut sit finis litium*, and (2) the hardship on the individual that he should be vexed twice for the same cause, *nemo debet bis vexari et eadem causa*."[27]

There is bar by former judgment when, between the first case where the judgment was rendered and the second case where such judgment was invoked, there was identity of parties, subject matter and cause of action.[28] But where there is identity of parties and subject matter in the first and second cases, but no identity of causes of action, the judgment is conclusive in the second case, only as to those matters actually and directly controverted and determined, and not as to matters merely involved therein. This is what is termed conclusiveness of judgment.[29] Bar by prior judgment is the effect of a judgment barring to the prosecution of a second action upon the same claim, demand or cause of action while conclusiveness of judgment precludes the relitigation of a particular fact of issue in another action between the same parties on a different claim or cause of action.[30]

In the present case, neither of the two concepts of *res judicata* finds relevant application. While there may be substantial identity of parties in Civil Case No. 02-104294 and the subject petition, there is no identity of subject matter and cause of action. Civil Case No. 02-104294 was a complaint for declaratory relief filed by Spouses Jaworski for the extinguishment of their liability under the JSA on the basis of the MOA stating their business divorce; whereas the present case stemmed from a complaint for nullification of loan contracts, real estate mortgage and extrajudicial foreclosure sale questioning the alleged usurious interest imposed by PNB and the latter's non-compliance with the requirements of publication and posting of notices. The decision of the RTC-Manila in Civil Case No. 02-104294 was neither determinative nor conclusive on the matters raised in the present case. The two cases, Civil Case No. 02-104294 and the present action, are entirely different as to the form of action, relief sought and the evidence required to substantiate their claims. As enunciated by the Court in *Nabus v. Court of Appeals*,[31]

> It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issues be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties will be final and conclusive in the second if that same point or question was in

> issue and adjudicated in the first suit; but the adjudication of an issue in the first case is not conclusive of an entirely different and distinct issue arising in the second. In order that this rule may be applied, it must clearly and positively appear, either from the record itself or by the aid of competent extrinsic evidence that the precise point or question in issue in the second suit was involved and decided in the first. And in determining whether a given question was an issue in the prior action, it is proper to look behind the judgment to ascertain whether the evidence necessary to sustain a judgment in the second action would have authorized a judgment for the same party in the first action.[32]

Petitioner's contention that the nullification of the JSA by the RTC-Manila redounded to his benefit is without basis. A reading of the January 13, 2004 Order of the RTC-Manila would show that Spouses Jaworski were released from their liability primarily thru the MOA documenting the business divorce and Gaerlan's undertaking that he would assume the entire loan obligation with the PNB in exchange of the full ownership of the vessel. The substitution of Gaerlan was a valid arrangement as it was with the knowledge and consent of PNB. Moreover, the declaration of the RTC-Manila that the JSA referred only to the extinguishment of the liability of Spouses Jaworski. The pertinent portions of the January 13, 2004 Order of the RTC-Manila are hereby quoted as follows:

> We note that the instant case was initiated by plaintiffs after defendant PNB acknowledged the "business divorce" between plaintiffs and defendant-spouses Gaerlan as documented on August 6, 1998 and relayed to the PNB on January 25, 1999. This development led PNB through its Board of Directors to approve the resolution of May 13, 1999, releasing plaintiffs from their joint and several obligations. On January 24, 2000, the Secretary of the PNB Board issued a Certification as to the existence of the May 13, 1999 Resolution. And in pursuance thereof, defendant-spouses Gaerlan were duly informed in a letter dated June 10, 1999 of the restructuring of their loan and the release of the plaintiffs therefrom.
>
> Faced with these facts, defendant PNB nevertheless maintains that declaratory relief is not proper considering the breach by plaintiffs of the JSA, a factual issue which requires the presentation of evidence for its resolution.
>
> In resolving the motion, this Court is guided by the rule laid down in the case of

Ma. Patricia Garcia, et al. v. Court of Appeals, et al., 336 SCRA 475, citing Gatchalian v. Pavilin, 6 SCRA 508, to wit:

xxx xxx xxx

A perusal of defendant PNB's exhibits fails to support its stand as to the existence of a genuine issue. Compared to the actual records of the PNB as submitted by plaintiffs during the pre-trial, we find that plaintiffs were ordered released from their joint and several undertakings.

We consider it very significant that PNB never filed any case against the plaintiffs notwithstanding the letter of demand to the Jaworskis dated August 31, 2000 and its claim of a breach by the plaintiffs of the JSA, a claim belied by the very records of defendant PNB.

We notice the absence of board resolutions denying the release of the plaintiffs; the absence of internal memoranda and reports that the Jaworskis were not released or any letter from PNB informing the plaintiffs of their continuing obligation.

The failure by the PNB to file any complaint against the plaintiffs is borne from the facts that PNB's own records indicate that the plaintiffs were already fully released. And the defenses of alleged breach and conditional release are not genuine defenses.

Summary Judgment is resorted to in order to avoid long drawn out litigations and useless delays when depositions, affidavits and admission on file show that there are no genuine issues of fact to be tried. The Rules allow a party to pierce the allegations in the pleadings and to obtain immediate relief by way of summary judgment. In short, since the facts are not in dispute, the Court is allowed to decide the case summarily by applying the law to the material facts. (Gil Miguel Puyat v. Ron Zabarte, 352 SCRA 738.)

This Court thus finds that at the time of the filing of the Declaratory Relief, there has been no breach by the plaintiffs as shown by PNB's own corporate records. We note with interest that more than fifteen (15) months had already elapsed from the approval of the release of plaintiffs by the PNB Board on May 13, 1999

and no less confirmed by the Board Secretary on January 24, 2000 to the date of the demand letter which is August 31, 2000.

On the claim of PNB that the release of the plaintiffs was only conditional, such claim is belied by PNB's own corporate enactments, namely, the Resolution of May 13, 1999, the Certification of the Secretary on January 24, 2000, and the letter of defendant PNB to defendant-spouses Gaerlan dated June 10, 1999. Of particular interest is the following Board Resolution which is very revealing:

> "RESOLVED, to approve and confirm as recommended by management the following requests of Supreme Marine Co., Inc. (SMCI)-debtor, MGG Marine Services, Inc. (MGG) – Co-Debtor, viz:
>
> "(1) Substitution of borrower SMCI by Mr. Doroteo C. Gaerlan as principal borrower and SMCI & MGG as co-borrowers;
>
> (2) Release of Sps. Robert and Evelyn Jaworski in their personal capacities and as principal officers of SMCI from any liabilities of SMCI with the Bank , specifically on loans acquired pertaining to Arabian Horse 2 (AH2);
>
> (3) Restructuring of SMCI's and MGG's loans as follows:"

The conditionality imposed by the PNB to the Board Resolution of May 13, 1999, as stated in the Resolution itself, and in the Certification by the Secretary of the PNB dated January 24, 2000, to wit:

> "Subject to the following terms and conditions:
>
> 5. Applicable provisions of all existing policies/circulars of the Bank and such other terms and conditions the Legal Division may impose to protect the interest of the bank"

does not refer to the release of the Jaworskis which was without any conditions. Said conditional phrase covers only the restructuring of the loan covenants between PNB and the remaining debtors, Supreme Marine Company, Inc., MGG

Marine Services, Inc. and Mr. Doroteo Gaerlan.

Based on the foregoing, the Court finds the motion for declaratory relief to be proper. In view hereof, **we rule that plaintiffs' obligation and liabilities under the Joint and Solidary Agreement (JSA), particularly paragraphs "i" and "k" thereof, are void *ab initio*** for being contrary to law and public policy since such stipulations constitute a violation of the constitutional right of borrowers to any1 existing beneficial law or one which may hereafter be enacted.

Such clauses constitute an infringement of the rights of borrowers to the protection of laws and it erodes the power of Congress to legislate on existing loans.

As to the claim of PNB that defendants Supreme Marine Company, Inc., MGG Marine Services, Inc. and Doroteo C. Gaerlan, the remaining debtors, failed to comply with the conditions of restructuring under the Resolution of PNB dated May 13, 1999, such failure is a matter that should be addressed by PNB to the debtors. Such omission cannot defeat nor can it render nugatory the release of the Jaworskis as expressed in the Resolution itself.

xxx.[33] [Emphasis supplied]

Without a quibble, the above-cited order clearly pertains to the extinguishment of the liability of Spouses Jaworski under the JSA. Nowhere in the said order did it pronounce the entire Joint and Solidary Agreement invalid as to render it without force and effect. As surety to the contract of loan, Gaerlan's liability subsists. It must be emphasized that a surety is bound equally and absolutely with the principal and his liability is immediate and direct.[34] The Court has no alternative but to enforce the contractual stipulations in the manner they have been agreed upon and written. It could not relieve the parties from obligations voluntarily assumed simply because their contract turned out to be disastrous or unwise investments.[35] Hence, in view of the principal borrowers' failure to pay their outstanding obligation upon demand, it was proper for PNB to exercise its right to foreclose on the mortgaged property. This right of PNB to extrajudicially foreclose on the real estate mortgage is provided under the various contracts of the parties.

With respect to the claim of petitioner that the stipulated interest on the contract of loan was usurious, the Court finds the same untenable. The law and jurisprudence empowers the

courts to temper interest rates and penalty charges that are iniquitous, unconscionable and exorbitant.[36] In exercising this vested power, however, the Court must consider the circumstances of the case for what may be iniquitous and unconscionable in one may be totally just and equitable in another.[37] In the present case, petitioner failed to show that the stipulated rate of interest was indeed exorbitant. He did not present the Omnibus Agreement after the loan contract was restructured or any other evidence to support his claim.

WHEREFORE, the petition is **DENIED**. The December 18, 2014 Decision and the March 16, 2015 Resolution of the Court of Appeals in CA-G.R. CV No. 101297 are **AFFIRMED**.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, and *Leonen, JJ.*, concur.
Brion, J., on leave.

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[1] *Rollo*, pp. 48-70. Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Franchito N. Diamante and Melchor Q.C. Sadang, concurring.

[2] *Rollo*, pp. 95-96.

[3] Records (Vol. II), pp. 853-861.

[4] Foreign Currency Deposit Unit.

[5] Id. at 485-491.

[6] Id. at 492-495.

[7] Id. at 477-480.

[8] Id. at 481-484.

[9] Amendment to Credit Agreement, id. at 496-503.

[10] Id. at 509-513.

[11] Second Amendment to Credit Agreement, id. at 505-508.

[12] Annex “F” of the Complaint, Records (Vol. I), p. 52.

[13] Id. at 1-14.

[14] Id. at 84-94.

[15] Records (Vol. II), pp. 516-522.

[16] Records (Vol. I), pp. 323-331. Penned by Associate Justice Delilah Vidallon-Magtolis with Associate Justices Perlita J. Trias Tirona and Jose C. Reyes, Jr., concurring

[17] Id. at 332.

[18] Id. at 313-318.

[19] Death Certificate, Records (Vol. II), p. 651.

[20] Id. at 663-664.

[21] Id. at 853-861.

[22] Id. at 860-61.

[23] *Rollo*, pp. 25-26.

[24] Id. at 437-451.

[25] Id. at 446.

[26] *Mallion v. Alcantara*, 536 Phil. 1049, 1054 (2006).

[27] *Madarieta v. RTC, Branch 28, Mambajao, Camiguin*, 383 Phil. 381, 386 (2000).

[28] *Republic of the Philippines (Civil Aeronautics Administration) v. Yu*, 519 Phil. 391, 397 (2006).

[29] *Spouses Camara v. Court of Appeals*, 369 Phil. 858, 866 (1999).

[30] *Salud v. Court of Appeals*, G.R. No. 100156, June 27, 1994, 233 SCRA 384, 388.

[31] 271 Phil. 768 (1991).

[32] Id. at 784-785.

[33] Records (Vol. II), pp. 520-522.

[34] *Garcia v. Llamas*, 462 Phil. 779, 794 (2003).

[35] *Development Bank of the Phils. v. Court of Appeals*, 526 Phil. 525, 543 (2006).

[36] *Filinvest Land, Inc. v. Court of Appeals*, 507 Phil. 259, 268 (2005).

[37] *Trade & Investment Development Corporation of the Philippines v. Roblett Industrial Construction Corporation*, 523 Phil. 360, 366 (2006).

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