

GODOFREDO FRENILLA, APPELLANT, VS. NORMAN DE GUZMAN, NELIA MINAS, ROMEO MARTIN, MARGIE LUNA, BARTOLOME GIRON, MARTIN HONORATO AND ALVIN HIPOLITO, APPELLEES.

Ponente: LAZARO-JAVIER, A.C., J.

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LAZARO-JAVIER, A.C., J.:

This appeal assails the Decision[1] dated November 19, 2012 of the Regional Trial Court of Manila-Branch 7, dismissing the complaint in Civil Case No. 07-118197, and granting the respective counterclaims of Norman De Guzman and Alvin Hipolito.

Appellant Godofredo Frenilla filed the complaint[2] below against Norman De Guzman, Nelia Minas, Romeo Martin, Margie Luna, Bartolome Giron, Marvin Honorato, and Alvin Hipolito as unwilling co-plaintiffs. Appellant alleged:

- (1) Sometime in March 2005, he engaged the services of De Guzman, an architect by profession, for the construction of a building along Instruccion St., Sampaloc, Manila.
- (2) De Guzman proposed a five-storey residential/commercial building to be erected and prepared the construction plans.
- (3) De Guzman supervised the construction of the building.
- (4) The construction, however, caused damage to the neighboring houses of appellees Minas, Martin, Luna, Giron, Honorato and Hipolito who all demanded reparation. Since he should not be faulted for this damage, he impleaded Minas, Martin, Luna, Giron, Honorato and Hipolito as unwilling co-plaintiffs.
- (5) The building was also noticeably sinking below the ground.
- (6) On complaint of the neighboring houses, the Office of the Building Official, City of Manila, issued Building Notice[3] dated April 17, 2006 requiring, thus: “Please provide precautionary measures (steel sheet piles) – with complaint Dr. Alvin T. Hipolito, adjacent building. xxx”.
- (7) The Office of the City Engineer, issued a Work Stoppage Order[4] dated April 19, 2006 directing the construction to stop until subject violations had been rectified.
- (8) Because De Guzman did not install steel sheet piles, adjacent structures were damaged, and the building itself sank even during the construction.
- (9) De Guzman was, thus, liable for the building that had already sunk 10 meters below the ground, and for the cost of repairs to the adjacent houses amounting to not less than Five Hundred Thousand Pesos, conformably with Article 1723 of the New Civil Code.
- (10) Despite numerous demands, however, De Guzman failed to rectify his mistakes, thus, causing him serious anxiety, sleepless nights, besmirched reputation.

(11) De Guzman should be held liable for moral damages of P100,000.00; exemplary damages of P100,000.00; and attorney's fees of P100,000.00.

In his Answer with Compulsory Counterclaim,[5] De Guzman averred:

(1) Appellant engaged his services only for preparation of the architectural plan and specification for a five-storey building, and not as project contractor.

(2) He prepared an architectural plan for a five-storey building, which was approved by the Building Official of the City of Manila, albeit, appellant illegally constructed, instead, a six-storey building.

(3) Appellant had no cause of action against him because (a) soil and boring tests were conducted by licensed geotechnical materials testing engineers prior to the preparation of the structural plan; (b) the Office of the City Engineer of Manila screened and thoroughly examined all the requirements, building plans, and specifications he submitted which were accordingly found to conform safe architectural and engineering standards; (c) he entered into the project logbook precautionary measures in addition to those included in the General Specifications for the Proposed Five-Storey Residential Building such as provision for adequate shoring for neighboring structures, piece-meal excavation system for foundation to avoid soil erosion, and safety measures for manpower; unfortunately, appellant did not follow the precautionary measures mentioned, and even terminated his services when he insisted on the piece-meal method of excavation.

(4) Appellant himself took over the implementation of the construction works and only hired a project engineer to assist him, thus, taking direct control of all aspects of construction including supervision of manpower and purchase of construction materials.

(5) Appellant disregarded the following: precautionary measure requiring piece-meal excavation because he ordered the use of a backhoe to expedite the excavation and cut costs; construction of an additional floor on the originally proposed five-storey building; allotted only a 14-day concrete curing period when the recommended curing period was 28 days to ensure compressive strength of the concrete.

(6) The collective height of the building's five floors was 14.5 meters, thus, appellant lied about the building sinking by 10 meters because if this were true, then only 4.5 meters of it would have been left on the surface of the earth; as it was, the entire six-storey building was still standing on the lot.

(7) Appellant had already received proceeds paid by the insurance company for the alleged damage sustained by the adjacent properties, but he only kept the money for himself; the reason why appellant instituted the malicious and baseless suit was to avoid having to distribute the insurance proceeds to the owners of the adjacent properties and extort money from him (De Guzman).

(8) He had never received any demand from appellant because the latter knew very well that he had not committed any mistake or violation.

(9) Appellant's complaint must be dismissed outright for failure to comply with the requisite barangay conciliation procedure as pre-condition for filing a complaint under Section 412 of RA 7160 (Local Government Code).

(10) By way of counter-claim, appellant must be ordered to pay moral damages of P200,000.00 for filing a baseless and malicious suit; P100,000.00 as nominal damages; P100,000.00 as exemplary damages to set an example for the public good; and P100,000.00 as attorney's fees, and all costs of suit because he was compelled to litigate to defend his rights.

Appellee Alvin Hipolito, on the other hand, countered[6]:

(1) He should not be impleaded as an unwilling co-plaintiff because appellant did not approach him to become a plaintiff in the complaint below.

(2) A reading of the complaint revealed that no reason was stated why he was being impleaded as unwilling co-plaintiff.

(3) Assuming he could be impleaded as unwilling co-plaintiff, he was not the proper party impleaded because the house he and his family were occupying was actually owned by his parents, Luisito and Florentina Hipolito, who, as actual owners, were the ones who suffered damage to their property.

(4) By way of counterclaim, appellant must be held liable for filing a malicious and unfounded suit against him in the amount of P300,000.00, exemplary damages of P200,000.00, as attorney's fees and costs of litigation of P100,000.00.

Appellees Bartolome Giron and Martin Honorato did not file their answers because they were not served with summonses as they were no longer living at their given addresses. Nelia Minas, Romeo Martin, and Margie Luna simply failed to file their respective answers. Consequently, under Order[7] dated June 26, 2008, they (Nelia, Romeo, and Margie) were declared in default.

Meantime, De Guzman filed a motion[8] to set for preliminary hearing his affirmative defense on appellant's non-compliance with the required barangay conciliation as pre-condition to filing the case in court.

After the parties had filed their comment,[9] reply,[10] rejoinder[11] and memoranda,[12] the trial court resolved to deny De Guzman's motion under Order[13] dated October 3, 2008.

Following the termination of pre-trial, trial proper ensued.

By Decision[14] dated November 19, 2012, the trial court ruled in this wise:

WHEREFORE, the Complaint for Specific Performance filed by plaintiff Godofredo Frenilla against answering defendants Architect Norman F. De Guzman and Dr. Alvin Hipolito pursuant to Articles 1167 and 1723 of the New Civil Code is DISMISSED for lack of sufficient basis.

Meantime, the counter-claims filed by Architect Norman F. De Guzman and Dr. Alvin Hipolito in their respective Answer are GRANTED, directing plaintiff Godofredo Frenilla, as follows:

i.

To pay defendants Architect Norman F. De Guzman and Dr. Alvin Hipolito the amount of TWO HUNDRED THOUSAND PESOS (P200,000.00) each by way of moral damages for the vexatious suit filed;

ii.

To pay defendants Architect Norman F. De Guzman and Dr. Alvin Hipolito the amount of ONE HUNDRED THOUSAND PESOS (P100,000.00) each by way of exemplary damages to set an example for the public good;

iii.

To pay defendants Architect Norman F. De Guzman and Dr. Alvin Hipolito for litigating this unfounded suit by way of attorney's fees in the same amount of ONE HUNDRED THOUSAND PESOS (P100,000.00) each; and

iv.

To pay the costs of suit.

Necessarily, the same Complaint for Specific Performance is DISMISSED insofar as defaulting defendants Nelia Minas, Romeo Martin and Margie Luna are concerned.

SO ORDERED.

The trial court explained why it dismissed the complaint, viz:

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The Complaint for Specific Performance relied on Articles 1167-1723 of the New Civil Code to pound on an architect's obligation to finish and remedy the alleged defective construction of a building which apparently caused cracks and damages to the adjacent apartment duplex until the building itself was said to have sunk to the ground. xxx

Plaintiff, however, miserably failed to establish his case by a preponderance of evidence to call for the application of the afore-quoted Articles.

After a factual asseveration of the circumstances of the case, it is quite odd why the Complaint was filed in the first place.

Plaintiff Godofredo Frenilla alluded to Architect Norman F. De Guzman as the "architect-on-record" in the construction of the building, having "signed and sealed (the) plans and specifications" of the same xxx. This, however, barely mirrors what appears to have actually transpired.

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The fact remains unrefuted, however, that Architect De Guzman was not the one who eventually supervised the over-all construction of the building. As Architect De Guzman himself alleged, his obligation was limited to having designed the Building Plans and General Specifications. He was not hired by Godofredo Frenilla as Supervising Architect as the latter refused to pay for his supervision fee. He was neither hired as the contractor for the project. As it appeared, Godofredo Frenilla has not hired a licensed contractor but directly administered and supervised the construction of the building. To serve his own end, Godofredo Frenilla retained a Project Manager in the person of Sonny Papa who simply carried out all his orders and directives xxx.

Godofredo Frenilla seemed to have laid his own master plan to the building's construction and soon sparked a series of disagreements with Architect De Guzman. It was perceptible, therefore, that Architect De Guzman would soon bail out from the project. But as testified to by Project Manager Sonny Papa, Godofredo Frenilla made deviations and unauthorized changes in the implementation of precautionary measures which Architect De Guzman prescribed.

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Plaintiff would rather persist in pinpointing responsibility to Architect De Guzman but this Court is not impressed.

Engr. Nicanor Macapagal was presented as a witness to substantiate plaintiff's cause of action. But none could be made out from his testimony. Initially hired by the plaintiff as a consultant, Engr. Macapagal was supposed to examine the General Specifications laid by Architect De Guzman for the building and its construction. Later, Engr. Macapagal was hired as the Project Engineer for the construction of the building. xxx

On the witness stand, Engr. Macapagal could only comment that the General Specifications made by Architect De Guzman for the building was in accordance with the general provisions of the National Building Code xxx.

He did not specify on any defects or shortcomings in any of its provisions. What Engr. Macapagal found defective was the construction itself in the foundation of the building xxx He remains vague nonetheless whether Architect De Guzman has anything to do with this. xxx

xxx

Plaintiff has presented no evidence that Architect De Guzman ultimately agreed to render contractual work or supervision work in the construction of the building. As Architect De Guzman claimed, plaintiff did not want to pay supervision fee in this regard; hence, no mutual concession was reached. Neither was it established that Architect De Guzman was contracted to be the sole Contractor for the construction of the building. What rather appeared was that Architect De Guzman was willing enough to monitor the progress of the construction and render advise to Project Manager Sonny Papa, all in goodwill to a neighbor, but this did not ostensibly last long.

Under such factual backdrop, therefore, it cannot be said that Architect De Guzman was bound to undertake the construction of the building for the plaintiff. Whether he has been obliged to construct the building for the plaintiff, the answer lies in the negative.

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Did plaintiff, therefore, have a cause of action against Architect De Guzman to demand the enforcement of Articles 1167 and 1723 of the New Civil Code?

In the ultimate assessment, the present action is a mere chase in the wind. Plaintiff's evidence failed to establish the concomitant obligations of Architect De Guzman in the actual construction of the building. The purported defects in the building plans and general specifications have not even been specified.

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Appellant's motion for reconsideration[15] was denied under Order[16] dated January 11, 2013.

Appellant now faults the trial court for dismissing his complaint despite the alleged overabundance of evidence against De Guzman. Appellant argues: (1) The trial court relied so much on the testimonies of Sonny Papa and appellee De Guzman despite the accepted principle that testimonial evidence is the lowest class of evidence that may be presented in court. Too, the respective testimonies of De Guzman and Sonny Papa should not be believed because they were uncorroborated and self-serving, and contradicting in many respects such as when De Guzman claimed that appellant caused the damage to the building while Sonny Papa testified that it was the inherent defects in the foundation of Hipolito's house that caused it; (2) By affixing his signature on the General Specifications Proposal, De Guzman undertook to be responsible over the construction of the building; and (3) De Guzman is liable as "architect-of-record" who "signed and sealed" the plans and specifications[17] under Republic Act 9266, or the Architecture Law.

De Guzman avers in his Brief[18]: (1) The assailed decision was duly supported by facts, evidence, law, and jurisprudence; (2) Appellant failed to present any building construction contract proving that he actually undertook to construct a building for appellant. Appellant erroneously claimed that the approved "General Specifications for the Proposed Five-Storey Residential Building" was the contract itself for the building construction, when it was only one of several architectural documents attached to the construction contract. An independent contract for construction of structure or building is required to establish a contractual relation between the parties; and (3) As architect who designed the building, his obligation was limited to the design and approval of the pertinent general specifications for the proposed building and related architectural documents.

De Guzman maintains that a contract for construction of structure or building is a written agreement indicating

one party as the owner, and the other party, as the licensed contractor. It specifies the building or structure to be constructed by the contractor, documents to be attached to the Construction Contract such as the General Specifications, complete Architectural and Engineering Plans, Bill of Quantities, Cost Estimate, Stipulations on Terms and Conditions, Contract Price and what it covers or includes, escalation clause or prohibition thereof, provisions on additions and costs, time of completion, provisions on liquidated damages, “force majeure” stipulations, payment schedules, warranties and responsibilities of the contractor, agreement on indemnification and other pertinent matters that may be agreed upon by the parties.[19]

Hipolito, on the other hand, argues: (1) The appeal should be dismissed insofar as he is concerned because appellant made no mention of him or of relevant portions in the decision pertaining to his counterclaim; and (2) Appellant's basis for suing De Guzman was the alleged contractual relationship between them, while he was only impleaded in the case as an unwilling co-plaintiff. The Decision, thus, must be separately reviewed, the disposition with respect to De Guzman should not be intertwined with the trial court's award in his (Hipolito) favor.

The appeal lacks merit.

To begin with, it is not correct to state that the trial court merely relied on the alleged contradicting testimonies of De Guzman and Sonny Papa. The assailed decision discussed the testimonies not only of De Guzman and Papa but also those of witnesses Nicanor Macapagal and Rosalia Tolentino. Record also shows that the trial court actually passed upon all documentary evidence submitted by appellant himself on one hand, and appellees De Guzman and Hipolito on the other, including the Soil Investigation Report,[20] Structural Design & Design Criteria,[21] General Specification,[22] Architect's Perspective, copy of the logbook,[23] photographs of the construction site and the building itself,[24] Affidavits of Sonny Papa, Alvin Hipolito,[25] Nicanor Macapagal, & Norman de Guzman,[26] Notice of Work Stoppage[27], Building Permit,[28] receipts, and other documents. In fine, the trial court used the ample evidence on record in arriving at a just decision in this case.

This brings us to the core issue: To what extent may appellee De Guzman be made liable as architect insofar as the construction of appellant's structure is concerned?

The pertinent laws governing liabilities of architects for their engagement as such are the Civil Code, specifically Article 1723, and RA 9266, otherwise known as Architecture Law of 2004.

Article 1723 provides:

Art. 1723. The engineer or architect who drew up the plans and specifications for a building is liable for damages if within fifteen years from the completion of the structure, the same should collapse by reason of a defect in those plans and specifications, or due to the defects in the ground. The contractor is likewise responsible for the damages if the edifice falls, within the same period, on account of defects in the construction, or the use of materials of inferior quality furnished by him, or due to any violation of the terms of the contract. If the engineer or architect supervises the construction, he shall be solidarily liable with the contractor. (Emphasis supplied).

Acceptance of the building, after completion, does not imply waiver of any of the causes of action by reason of any defect mentioned in the preceding paragraph.

The action must be brought within ten years following the collapse of the building.

RA 9266, on the other hand, defines the different responsibilities and liabilities of an architect based on his actual participation in a given project. RA 9266 defines an “Architect-of-Record” as one directly and professionally responsible for the total design of the project for the client and who shall assume the civil liability for the plans,

specifications, and contract documents he has signed and sealed; an “Architect-in-charge of Construction” is one directly and professionally responsible and liable for the construction supervision of the project; and a “Consulting Architect” is one professionally and academically qualified, with exceptional or recognized expertise or specialization in any branch of architecture.

Based on Article 1723 and RA 9266, an architect may be held responsible for the defects or damage caused to a structure if it could be proved that his design or plan caused the defect or damage. His liability may also arise for defects or damage occasioned by the actual construction which he supervised.

Here, appellant alleges that De Guzman was the “architect-of-record” of his five-storey building along Instruccion Street, Sampaloc, Manila. As such, De Guzman was allegedly responsible for damages caused by the plans, specifications, and contract documents he signed and sealed.

It is elementary that he who alleges the affirmative of the issue has the burden of proof. And if appellant upon whom rests the burden of proving his cause of action fails to show in a satisfactory manner the facts upon which he bases his claim, appellees are under no obligation to prove their exception or defense.[29] Thus, for a finding of liability, appellant must prove that the plans and specifications prepared by De Guzman were defective in any respect and were the cause of the alleged damage to appellant's building and adjacent properties. Notably, appellant simply relied on his bare claim that De Guzman was liable as architect-of-record, albeit these plans and specifications were actually found to be in accord with architectural standards and were even approved by the Office of the Building Official. Indeed, not even appellant's own witnesses were able to establish any defect in the plans and specifications prepared by De Guzman. As aptly held by the trial court:

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On the witness stand, Engr. Macapagal could only comment that the General Specifications made by Architect De Guzman for the building was in accordance with the general provisions of the National Building Code xx. He did not specify on any defects or shortcomings in any of its provisions.

xxx

Appellant's assertion that by signing the general plans and specifications, De Guzman also bound himself to supervise the construction of the building, is, at best, non sequitur. A General Specification contains in detail the method, materials, and other technical data pertaining to the construction. A construction contract, on the other hand, is the agreement providing for the contract price, commencement and termination of the project, and such other terms governing the parties' respective obligations and liabilities for breach thereof. They are two different things and the existence of one does not mean the existence of the other.

But even assuming arguendo that De Guzman bound himself to supervise the construction, appellant failed to prove that De Guzman actually supervised the building construction. Sonny Papa, appellant's project manager, himself admitted that he carried out appellant's own orders, in relation to the construction, because appellant himself took over its supervision. Thus, appellant himself, in fact, was the one who implemented the plan prepared by De Guzman including the purchase of construction materials and hiring of workers. Papa relevantly testified, viz:

ATTY. DE GUZMAN:

Q:

Now, do you know of your personal knowledge who was the contractor of Mr. Frenilla for the construction of

his residential building in 2006?

WITNESS:

A:

None, sir.

Q:

None. Mr. Frenilla have (sic) no contractor, who made the decisions in the construction of his building?

A:

Mr. Frenilla, sir, did (sic) the direct orders for...

Q:

Now, what were your functions as project manager?

A:

I see to it that I carried out all the orders of Mr. Frenilla regarding the preparations of the work schedule and I report to him the accomplishments, sir.

Q:

Okay. Who hired the workers for the construction project of Mr. Frenilla?

WITNESS:

A:

It was Mr. Frenilla, himself, sir.

ATTY. DE GUZMAN:

Q:

And who pay (sic) their wages?

A:

Also Mr. Frenilla, sir.

xxx

ATTY. DE GUZMAN:

Q:

In the construction of the project, of course, there were materials to be used and we called them construction materials, who purchase (sic)?

WITNESS:

A:

Mr. Frenilla, sir. xxx[30]

Appellant also deviated from the plans and specifications drawn up by De Guzman. In the construction logbook, De Guzman recommended a piece-meal excavation system for foundation to avoid soil erosion.[31] Appellant did not follow this as he instead allowed the use of a backhoe for digging. His niece and building caretaker, Rosalia Tolentino said:

COURT:

Q:

Who excavated the property?

A:

At first, the laborers were supposed to start to dig, but later on, they decided by using a back hole (backhoe) and they were also asked to dig there, Your Honor.[32]

Witness Papa corroborated this, thus:

ATTY. DE GUZMAN:

Q:

Okay. Prior to the construction of the building was there any preparation on the land that you made?

WITNESS:

A: I made an excavation, sir.

Q: Who ordered the excavation?

A: Mr. Frenilla, sir.

Q: Okay. In the process of excavation, did you use any heavy equipment?

A: Yes, sir.

Q: And who ordered the use of the heavy equipment?

A: Mr. Frenilla orders (sic), sir.[33]

Neither did appellant give due consideration to the Soil Investigation Report indicating that the subsurface soil at the proposed construction site consisted of “medium to heavy loose to loose sandy silt and soft to medium stiff silty clay”, and recommending that “isolated spread footings, strip footings or mat” be used to support the structure, and the footing chosen must be embedded by at least “20.0 meters below ground surface”.[34] Engr. Macapagal, appellant's project consultant, testified that based on the building photos shown to him, the excavation was only 3 meter deep, viz:

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COURT:

Q: How deep is the excavation? That is the question of fact.

WITNESS:

A: According to the owners, “sinabi nila sa'kin” only three (3) meters then, as per soil investigation, recommendation, the putting(footing) shall be invent it (sic) least twenty (20) meters below the ground surface.[35]

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Surely, appellant had only himself to blame for whatever damage was caused to his building and neighboring structures. Having directed the course of construction, deviating from the architectural plan, appellant cannot pass the blame on De Guzman who merely prepared the architectural plan but took no part in the actual construction itself. Appellant, concededly, may act in accord with what, in his judgment, may be most beneficial to him under given circumstances. But such exercise must not be in contravention of the rights of others, or result in an impairment of his obligations. To hold otherwise would be to countenance acts reeling of bad faith. One must bear in silence any loss suffered if one had wrought that loss upon himself. Otherwise, bad faith would be rewarded, instead of being punished.[36]

As for appellee Hipolito, he correctly argued that appellant did not mention anything pertaining to the trial court's grant of Hipolito's counterclaim. Indeed, it is a recognized principle that courts would consider only errors which

have been stated in the assignment of errors and properly argued in the brief.[37] For this reason, the trial court's decision in favor of Hipolito is deemed unchallenged and should not be disturbed, as well.

ACCORDINGLY, the appeal is DENIED, and the Decision dated November 19, 2012, AFFIRMED.

SO ORDERED.

Castillo, (Chairperson) and Barrios[*], JJ., concur.

[*]Per Office Order No. 243-19-ABR dated May 23, 2014.

[1] Record, Vol. III, pp. 1107-1123.

[2] Id., pp. 2-9.

[3] Record, Vol. 1, p. 29.

[4] Id., p. 30

[5] Record, Vol. 1, pp. 91-99.

[6] Record, Vol. I, pp. 110-114.

[7] Record, Vol.1, pp. 199-200.

[8] Id., pp. 180-182. Later amended, pp. pp. 192-194.

[9] Id., pp. 202-204.

[10] Id., pp. 206-207.

[11] Id., pp 213-215.

[12] Id., pp. 223-234; pp. 236-238.

[13] Id., pp. 246-249.

[14] Record, Vol. III, pp. 1107-1123.

[15] Record, Vol. III, pp. 1128-1136

[16] Id., pp. 1153-1154.

[17] (2) xxx

(a) "Architect-of-record" means the architect registered and licensed under this Act, who is directly and professionally responsible for the total design of the project for the client and who shall assume the civil liability for the plans, specifications, and contract documents he/she has signed and sealed; xxx

[18] Rollo, pp. 59-97.

[19] Rollo, p. 84.

[20] Record, pp. 644-653.

[21] Record, Vol. II, pp. 626-643.

[22] Id., pp. 606-621.

[23] Record, Vol. III, pp. 1224-1225.

[24] Record, Vol. II, pp. 656-659.

[25] Id., 1021-1023.

[26] Id., pp. 896-927.

[27] Id., p. 625.

[28] Id., p. 655.

[29] Vicente Adriano vs. Alice Tanco, et al. G. R. No. 168164, July 5, 2010.

[30] TSN, August 17, 2010, Record, Vol II, pp. 741-743.

[31] Exh. "5-B" Record, Vol. III, p. 1225

[32] Record, Vol. I, p 557.

[33] TSN, August 17, 2010, Record, Vol. II, p. 744.

[34] Record, Vol. III, p. 1184.

[35] Record, Vol. I, p. 418.

[36] Equatorial Realty Development, Inc., vs. Mayfair Theater, Inc. G.R. No. 133879, November 21, 2001.

[37] Radio Communications of the Philippines, Inc., vs. NLRC, G.R. No. 101181-84 June 22, 1992.

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