ESTATE OF ARNULFO SISON, REPRESENTED BY VICENTE P. SISON AND ESTELA SISON, PETITIONER, NATIONAL LABOR RELATIONS COMMISSION, SOFIA ANASTACIO, RUBIO LIBUTON, SALLY HENTAPA, MELANI...

Ponente: VELOSO, J.

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VELOSO, J.:

The Case

Assailed by petitioner Estate of Arnulfo Sison, in this Petition for Certiorari[1] which was filed under Rule 65 of the Rules of Court, are the Resolutions dated August 23, 2010[2] and November 22, 2010[3] which the National Labor Relations Commission ("NLRC") rendered in NLRC LAC No. 12-003414-09 (NLRC RAB IV CASE NO. 08-00562-08-ORM; 08-00563-08-ORM and 08-00564-08-ORM), entitled "Sofia Anastacio, et al., Complainant-Appellee -versus- Roxas College, Inc./Arnulfo C. Sison, Estela P. Sison and Buenaflor Sison Yason, Respondents-Appellants, the dispositive portions of which read:

(1) Resolution dated August 23, 2010:

> "WHEREFORE, premises considered, the instant Appeal is hereby DISMISSED for not having been perfected.
>
> SO ORDERED."[4] (emphasis supplied)

and

(2) Resolution dated November 22, 2010:

> "WHEREFORE, premises considered, the respondents' Motion for Reconsideration is GRANTED.
>
> However, the instant appeal is DISMISSED for lack of merit. Accordingly, the Decision appealed from is AFFIRMED in toto.
>
> SO ORDERED."[5] (emphasis supplied)

The Antecedent Facts

Giving Us insight on what this case is all about is the 29 October 2009 Decision of Labor Arbiter Michaela A. Lontoc, viz.:

> "This is a complaint for non-payment of salaries and separation pay filed by eleven (11) employees of Roxas College, Inc., with the corollary prayer for recovery of moral, exemplary and actual damages. With the exception of Sofia G. Anastacio, the rest of the complainants further charged respondents with illegal dismissal.
>
> In the mandatory conference held on 15 December 2008, parties agreed to amicably settle the dispute over complainants' unpaid wages for March, April, May 2008 and agreed as follows:

- Complainants shall submit to respondents an individual statement declaring the respective amount of salary they each received for the months of March, April, May 2008. In case they have not received any, to indicate the amount they were supposed to receive;

- Respondents shall submit a summary of complainants' individual salary rate for the months herein claimed;

- Parties shall compare their respective records of paid and unpaid salaries. Respondents shall pay complainants whatever amount they both agree as have been unpaid;

- Any amount of salaries not agreed upon shall be submitted for litigation or further negotiation for settlement;

- Complainants shall grant respondents the period of up to June 2009 within which to decide the closure or resumption of respondent school's operation;

- In case of a decision to resume operation, complainants shall be reinstated to work as the business operations of respondents may require. In case of a decision to close and cease business operations, complainants shall be considered severed from their employment relations.

- Parties shall assess their respective position on complainants' claim for separation pay.

On 19 January 2009, parties appeared and declared their acquiescence to settle the matter of complainants' unpaid wages, thus:

- Respondents agreed to pay complainants on 30 January 2009 at the DOLE Office in Calapan, Oriental Mindoro, the following respective amounts:

a)

Yolanda B. Famero

:

P28,800.00;

b)

Surayda F. Gomez

:

P15,900.00;

c)

Rubio S. Libuton

:

P14,400.00;

d)

Hilario Q. Gabayno

:

P24,286.95;

e)

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Gregoria B.S. Abello

:

P30,286.95;

f)

Judy Ann S. Hernandez

:

P21,286.95;

g)

Angelita G. Mapano

:

P30,286.95;

h)

Antonio F. Roy

:

P19,158.24;

i)

Ten (10%) per cent of the total amount as attorney's fee.

- The foregoing complainants agreed to accept the aforesaid amounts in full satisfaction of their claim for unpaid wages. Complainants Sofia G. Anastacio, Melanie U. Foyo and Sally G. Hentapa acknowledged prior receipt to their full satisfaction of the unpaid wages they claimed herein;

- Parties agreed to conduct further dialogue on the issue of complainants' claim for separation pay;

- Within ten (10) days from 30 January 2009, parties shall submit proof of payments and receipt made to each complainant, together with a manifestation as to the negotiation or agreement on the settlement of the claim for separation pay. Failing in this respect, parties shall file their position paper on the issue of propriety/impropriety of granting separation pay to complainants no later than 09 February 2009.

With the voluntary payment by respondents of the claim for unpaid wages to the full satisfaction of complainants, the said cause of action was thereby withdrawn from the complaints. Thus, we limit our disposition on the matter of complainants' claim for separation pay.”[6]

In resolving the question of whether or not the private respondents are entitled to separation pay, the Arbiter held:

> “In fine, respondents deny liability for separation pay arguing that the closure of respondent school was brought about by serious financial losses. In case of closure or cessation of operations due to serious business losses or financial reverses, the same should be substantiated by competent evidence. Financial statements audited by independent external auditors constitute the normal method of proof of the profit and loss performance of a company. Not every loss incurred by a company justifies closure of business. To exempt an employer from the payment of separation pay, it must establish by sufficient and convincing evidence that the losses were serious, substantial and actual.

In the instant case, respondents attempted to justify their failure to present respondent school's financial reports on the ground that complainant Yolanda Famero, who was the School Cashier, absented herself and was nowhere to be found on the days they scheduled the examination of financial records of respondent school. They also claimed that complainant Sofia Anastacio, who was the School Registrar, failed to maintain a record of school enrollees. They furthered their justification by claiming that per opinion rendered by the external auditors they brought to Roxas College, Inc., its financial records could no longer be reconstructed.

Respondents cannot pass the buck of responsibility of lack or loss of records to herein complainants and the rest of the employees who continued working for respondent school during the eight (8) year period. It is well to remind respondents that the management and operation of respondent school was their duty and responsibility as owners, stockholders and officers. It was respondents' total neglect of this responsibility for eight (8) years that resulted in what Roxas College, Inc. has become today. To escape the lawful obligation of paying separation pay to the concerned employees by blaming them for the lack of financial and administrative records with which to establish respondent school's alleged serious financial distress is certainly immature and irresponsible.

Further, the financial standing of a business organization is not totally dependent on the record of money received and disbursed during a certain period. Respondent school's financial worth may also be established by its assets and liabilities. Respondents certainly should know the assets of the school, i.e., the school buildings and the land on which they stand, books in the library, desks, tables, chairs, blackboards, etc. The physical state of these assets, dilapidated, ruined, even if unusable, is immaterial. Their reduced value may be minimal but they are still assets even as junks. Respondent school's liabilities may consist of mortgage, unpaid employee benefits, unpaid taxes, etc. Clearly, it is not true that respondent school's net worth cannot be reconstructed. Its physical assets and liabilities are well-known to respondents. The records of ownership are with the respondents and with the Provincial Register of Deeds and Assessor's Office.

Thus, we take note: Except for the claim of separation pay by the complainants, which was consequent to respondent school's closure, complainants charged respondents with unpaid wages for three (3) months only, referring to the months of March, April and May 2008. No other wages and benefits were claimed by complainants. This presupposes that all other wages and benefits of complainants and the other employees have been fully paid as they fell due during the eight (8) year period that respondents claimed they had disassociated themselves from the operations of respondent school. Other than the three (3) months unpaid wages, it has not been shown that respondent school faces other financial and administrative problems.

We are, therefore, inclined to believe that the operation of respondent school was acceptably well during the eight (8) year period past. It appears that respondent school has met its obligations to all employees, i.e, the payment of their wages and benefits all throughout the eight (8) year period, except for the last three (3) months of March, April, May 2008. Respondents never alleged, much less proved that at any time during the eight (8) year period, they have advanced any amount to aid respondent school's operations. Neither was it shown that respondent school has any other existing liability and financial obligations to third parties and entities, incurred during the eight (8) year period. Clearly, respondent school for the eight (8) year period that elapsed, operated on its own. It was well-sufficient, paid its own bills and survived. Clearly, this kind of scenario is completely disparate with respondents' claim of serious financial losses.

Corollarily, we see no legal and factual basis with which to consider respondents exempted from the obligation of paying complainants their separation pay. As mandated by Article 283 of the Labor Code, each of the herein complainants is entitled to one-half (½) month's pay for every year of service as separation pay. On record is a summary of complainants' claims for unpaid salaries, showing the monthly salary of each complainant presented to respondents per agreement during the 19 January 2009 mandatory conference. Considering that respondents have accepted the same as true by paying the amounts therein claimed, we shall use the same as basis in computing the herein awarded separation pay. Thus:

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Date Hired Computation Amount

RAB-IV-08-00562-08

Sofia G. Anastacio June 1983 P6,600.00 x 25 years / 2 P82,500.00

RAB-IV-00563-08

Rubio S. Libuton August 1987 P4,800.00 x 21 years / 2 P50,400.00

Sally G. Hentapa June 1989 P5,100.00 x 19 years / 2 P48,450.00

Melanie U. Foyo June 2002 P4,600.00 x 6 years / 2 P13,800.00

Yolanda B. Famero September 1989 P9,600.00 x 19 years / 2 P91,200.00

Surayda F. Gomez June 1973 P5,200.00 x 35 years / 2 P91,000.00

RAB-IV-00564-08

Hilario Q. Gabayno June 1991 P8,095.65 x 17 years / 2 P68,813.02

Gregoria B.S. Abello July 1979 P10,095.00 x 29 years / 2 P146,377.50

Angelita G. Mapano June 1979 P10,095.00 x 29 years / 2 P146,377.50

Antonio F. Roy June 1997 P6,386.08 x 11 years / 2 P35, 123.44

Judy Ann S. Hernandez June 1996 P7,095.65 x 12 years / 2 P42,473.90

Respondents deny complainants' claim for actual, moral, exemplary damages and attorney's fee, claiming that the same have been waived by complainants during the mandatory conference when they agreed to limit the remaining issue for dispute on the propriety/impropriety of the grant of separation pay.

We do not agree. Waiver of rights has to be expressed, it cannot be implied from the action or inaction of the persons waiving it.

'It must be underscored that a waiver to be valid and effective must be couched in clear and unequivocal terms which leave no doubt as to the intention of a party to give up a right or benefit which legally pertains to them.'"[7]

However, instead of limiting herself to private respondents' claim of separation pay, the Arbiter proceeded to discuss the need of awarding private respondents nominal damages, explaining:

"On the other hand, we recognize that respondents indeed failed to comply with the requisite notice of closure or cessation of business operation pursuant to Article 283 of the Labor Code. While not pleaded as a cause of action, it is appropriate that damages for the failure of respondents to comply with the mandatory procedural due process be adjudicated against them so as not to render the law and the rules senseless. In labor cases, nominal damages are usually granted to vindicate or recognize the employee's right to procedural due process

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> which was violated by the employer. Nominal damages are adjudicated in order that a right of the employees to prior notice which was violated or invaded by respondents, be vindicated or recognized and not for the purpose of indemnifying them for any loss suffered.
>
> 'The violation of the petitioners' right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. Considering the prevailing circumstances in the case at bar, we deem it proper to fix it at P30,000.00. We believe this form of damages would serve to deter employees from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its implementing rules.'

Corollary, considering the prevailing circumstances in these cases, we award to complainants nominal damages in the amount of P20,000.00 each."[8]

So with the need to award private respondents' attorney's fee, viz.:

> "As to complainants' claim for attorney's fee raised only in their position paper, we are guided by the following pronouncement of the Supreme Court:
>
> 'It is settled that in actions for recovery of wages or where an employee was forced to litigate and has incurred expenses to protect his rights and interests, even if not so claimed, an award of attorney's fees equivalent to ten (10%) of the total award is legally and morally justifiable.'

Thus, and considering that respondents have recognized the rate of ten (10%) percent as a lawful and valid rate of attorney's fee when they satisfied complainants' unpaid wages, we grant to complainants the amount equivalent to ten (10%) percent of the total monetary awards herein granted as additional attorney's fee."[9] (italics supplied)

Hence, the Arbiter's disposing the consolidated cases below, viz.:

> "WHEREFORE, complainants' claim for separation pay is GRANTED and respondents Roxas College, Inc., Arnulfo Sison and Estela Sison are directed to pay complainants, jointly and severally, the following:
>
> - Separation Pay in the total amount of P816,615.36, distributed as follows:
>
> Amount
>
> RAB IV-08-00562-08
>
> Sofia G. Anastacio
>
> P82,500.00
>
> RAB IV-08-00563-08
>
> Rubio S. Libuton
>
> P50,400.00
>
> Sally G. Hentapa
>
> P48,450.00
>
> Melanie U. Foyo
>
> P13,800.00
>
> Yolanda B. Famero

P91,200.00

Surayda F. Gomez

P91,000.00

RAB IV-08-00564-08

Hilario Q. Gabayno

P68,813.02

Gregoria B.S. Abello

P146,377.50

Angelita G. Mapano

P146,377.50

Antonio F. Roy

P35,123.44

Judy Ann S. Hernandez

P42,573.90

- Nominal damages in the amount of P20,000.00 for each of the complainants;

- Attorney's fee in the amount equivalent to ten (10%) of the total monetary awards herein granted.

SO DECIDED.”[10] (emphasis supplied)

On December 4, 2009, Spouses Arnulfo C. Sison and Estela P. Sison (“Spouses Sison”) appealed from the Arbiter's 29 October 2009 Decision.[11]

On August 23, 2010, the NLRC promulgated its first assailed Resolution which dismissed the appeal of Spouses Sison “for not having been perfected”. The NLRC opined that while they “instituted a timely appeal from the (Arbiter's) decision accompanied by a Surety Bond in the amount equivalent to the judgment award”, the Spouses Sison “failed to submit the indemnity agreement between the employer-appellant and bonding company as required by Section 6, Rule VI of the NLRC('s) New Rules of Procedure, as amended xxx”.

When, as part of their motion for reconsideration, they submitted on September 15, 2010, the “lacking requirement”,[12] the NLRC reinstated the appeal of Spouses Sison. However, as it proceeded to resolve said appeal on its merits, the NLRC, on November 22, 2010, promulgated its second assailed Resolution dismissing the appeal of Spouses Sison. And, while it granted the motion for reconsideration of Spouses Sison and proceeded to affirm only the award of separation pay, it however contradictorily dismissed the subject appeal and “AFFIRMED in toto” the appealed decision.

Hence, this petition.

Issues

The petitioner raised for Our resolution the issues of:

> “A. Whether Roxas College, Inc., can still be held liable for claims of separation pay in a complaint filed on August 20, 2008 or more than 8 years after its corporate life had expired on July 24, 2000.

B. Whether petitioners can be held responsible or liable for separation pay notwithstanding that they had no participation in the operation of Roxas College, and it was in fact complainants who continued and controlled the unwarranted operation of the said Roxas College after the latter's corporate life expired.

C. Whether petitioners had any obligation to file a notice of closure to the Department of Education and the Department of Labor and Employment.

D. Assuming that Roxas College, Inc., or petitioners can be deemed involved in the operation of the school, whether substantial evidence had been shown by petitioners that the school was bankrupt and had actually shutdown.

E. Whether the fact that complainants have control of financial, enrollment and other records of the school, and/or have failed to prepare or maintain said records, or failed to disclose, justify a conclusion that the school was in fact bankrupt.

F. Whether an award on matters that had been already subject of settlement can still be a subject of another award."[13]

In fine, what We shall resolve is the question of whether or not the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it rendered its assailed resolutions dated August 23, 2010 and November 22, 2010.

Our Ruling

This Court's determination of whether or not the NLRC gravely abused its discretion in rendering the assailed resolutions rests on how it disposed petitioner's appeal from the Labor Arbiter's 29 October 2009 Decision.

In hindsight, the dispositive portion of the Arbiter's decision reads as follows:

"WHEREFORE, complainants' claim for separation pay is GRANTED and respondents Roxas College, Inc., Arnulfo Sison and Estela Sison are directed to pay complainants, jointly and severally, the following:

- Separation Pay in the total amount of P816,615.36, distributed as follows:

Amount

RAB IV-08-00562-08 Sofia G. Anastacio P82,500.00

RAB IV-08-00563-08 Rubio S. Libuton P50,400.00

Sally G. Hentapa P48,450.00

Melanie U. Foyo P13,800.00

Yolanda B. Famero P91,200.00

Surayda F. Gomez P91,000.00

RAB IV-08-00564-08 Hilario Q. Gabayno P68,813.02

Gregoria B.S. Abello P146,377.50

Angelita G. Mapano P146,377.50

Antonio F. Roy P35,123.44

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- Nominal damages in the amount of P20,000.00 for each of the complainants;

- Attorney's fee in the amount equivalent to ten (10%) of the total monetary awards herein granted.

SO DECIDED."[14] (emphasis supplied)

Note that only "Roxas College, Inc., Arnulfo Sison and Estela Sison" were "directed to pay complainants, jointly and severally": "Separation Pay in the total amount of P816,615.36 xxx"; 2. Nominal damages in the amount of P20,000.00 for each of the complainants; 3. Attorney's fee in the amount equivalent to ten (10%) of the total monetary awards herein granted" (emphasis supplied).

On 04 December 2009, then respondents Arnulfo C. Sison and Estela P. Sison filed "Appellants' Joint Notice And Memorandum of Appeal".[15] On grounds therein discussed, the appellants "prayed that the Decision of the Honorable Arbiter be set aside and the complaints be dismissed for lack of merit. Other reliefs just and equitable are likewise prayed for".[16]

Initially, on August 23, 2010, the NLRC dismissed the appeal "for not having been perfected".[17] The NLRC explained that while the appeal was timely filed, the appellants however "failed to submit the indemnity agreements between the employer-appellant and bonding company as required by Section 6, Rule VI of the NLRC New Rules of Procedure, as amended xxx".

On appellants' motion for reconsideration, the appeal was reinstated in the NLRC's November 22, 2010 resolution as "(o)n September 15, 2010, respondents submitted the lacking requirement". However, as it proceeded to rule on its merits, the NLRC held:

> "On appeal, respondents argue that Roxas College, Inc. no longer existed when the complaint was filed, thus, jurisdiction was not validly taken over it. The teachers' computations of their pay and length of service should not be considered as evidence because respondents were not given any chance to controvert them. Moreover, the respondent school incurred huge losses, and the teachers took upon themselves to run the affairs of the school but they mismanaged it. Thus, complainants are not entitled to separation pay, and individual respondents cannot be held liable solidarily with Roxas College, Inc.
>
> After a careful review of the respondents' arguments, We find the appeal devoid of merit.
>
> There is no question that Roxas College, Inc., despite the fact that its corporate life was not renewed upon expiration, continued to operate. Upon the expiration of a corporate life, the law grants a 3-year period to wind up its corporate affairs. In this case, respondents are required to report to the Department of Education, which directly supervises it and the Bureau of Internal Revenue of the termination of its existence, the subsequent disposal of its assets and payment of the taxes due thereon. But nothing was mentioned by the respondents on this matter. They allowed to continue its operations, without a valid registration, thus, it is considered as a 'de facto' corporation.
>
> Respondents claim that the teachers themselves operated the school, collected the tuition fees from the students and paid the school's expenses. Since the time Arnulfo fell ill, he lived with his son Vicente in Quezon City. He could no longer manage the affairs of the school because of his medical condition.
>
> We are not convinced.
>
> Respondent Buenaflor P. Sison-Yason, a daughter, in her position paper, admits that she resides in Bagumbayan, Roxas, Oriental Mindoro, exactly the place where the school is located (p. 130, Records).
>
> While she denies being a corporate officer, director or even a stockholder, it is incredible for her to let the school be run by employees, and never interfered in the operations of the school. The fact that complainants impleaded her as a respondent in this case is a proof that she was part of management during the absence of her

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> father. It is hard to believe that she would just watch the employees taking control of the affairs of their school of thirty (35) years. Clearly, such an allegation is an attempt to escape from liability, easily passing the blame of mismanagement unto the employees.
>
> The Supreme Court, in the case of Gudez vs. NLRC, G.R. No. 83023, March 22, 1990, 183 SCRA 644 has ruled that 'when the company ceased to operate, the officers, particularly the president, may be held liable for the payment of the employees' claims'.
>
> Therefore, in the instant case, the individual respondents must be held jointly and severally liable for the separation pay of the complainants. The term 'employer' includes any person acting in the interest of the principal employer, directly or indirectly.
>
> There is no dispute that respondents paid complainants' unpaid salaries at the DOLE Office in Calapan, Oriental Mindoro. Thus, respondents cannot doubt their employment with the school.
>
> In their pro-forma complaints, complainants indicated their first day of employment. Respondents questioned the accuracy of the dates. Given ample time, and considering that the records are in respondents' custody and control, they could have readily proffered evidence to dispute the same. But they failed to do so. Thus, this Commission can only consider the said dates.
>
> Neither can respondents assert that complainants are not entitled to separation pay. We agree that Article 283 of the Labor Code exempts an employer from payment of separation pay in case of serious losses. However, except for their allegations, not a single iota of evidence was presented that indeed the respondent school was suffering from serious losses. It is settled that it is incumbent upon the employer to prove that it incurred losses. Failure to do so means that the claim of losses is untrue.
>
> It is a basic rule in evidence that each party must prove his affirmative allegation. While technical rules are not followed in the NLRC, this does not mean that rules on proving allegations are entirely dispensed with. Bare allegations are not enough, these must be supported by substantial evidence at the very least. (Mcleod vs. NLRC, et al., G.R. No. 146667, January 23, 2007).
>
> Given the above considerations, the Labor Arbiter did not err in finding respondents liable for payment of separation pay.
>
> WHEREFORE, premises considered, the respondents' Motion for Reconsideration is GRANTED.
>
> However, the instant appeal is DISMISSED for lack of merit. Accordingly, the Decision appealed from is AFFIRMED in toto.
>
> SO ORDERED.”[18] (emphasis supplied)

We quoted lengthily the ratio decidendi of the assailed November 22, 2010 resolution to emphasize that said resolution provided no basis in holding petitioner solidarily liable to the separation pay, nominal damages and attorney's fee as awarded in the Labor Arbiter's October 29, 2009 Decision.

The NLRC, in the aforequoted portion of its November 22, 2010 resolution opined that even if she denies it, “(r)espondent Buenaflor P. Sison-Yason”, the daughter of Arnulfo C. Sison and Estela P. Sison, is the responsible “corporate officer, director, or even a stockholder” of employer Roxas College, Inc. who managed the school “during the absence of her father”. Relying on a cited jurisprudence – “Gudez vs. NLRC, G.R. No. 83023, March 22, 1990, 183 SCRA 644 xxx that 'when the company ceased to operate, the officers xxx may be held liable for the payment of the employees' claims”, it then proceeded to conclude that Buenaflor P. Sison-Yason “must be held jointly and severally liable for the separation pay of the complainants. The term 'employer' includes any person acting in the interest of the principal employer, directly, or indirectly”.[19]

The problem is, the Arbiter's 29 October 2009 Decision limited the solidary liability on the awarded separation pay, nominal damages, and attorney's fees to “Roxas College, Inc., Arnulfo Sison and Estela Sison”. The Arbiter never held Buenaflor P. Sison-Yason solidarily liable to the questioned awards.

Such “square peg, round hole” ruling already demands Our granting the instant petition of petitioner “Estate of Arnulfo Sison”. The NLRC's factual admission that it was not Arnulfo Sison who managed Roxas College, Inc. is enough basis for this Court to absolve his estate from the monetary liabilities that were awarded below.

WHEREFORE, the petition is GRANTED. The complaint below is DISMISSED insofar as concerns the Estate of Arnulfo Sison.

SO ORDERED.

Lantion, and Antonio-Valenzuela, JJ., concur.

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[1] Rollo, pp. 3-32.

[2] Ibid., pp. 34-38.

[3] Ibid., pp. 40-45.

[4] Rollo, p. 37.

[5] Ibid., p. 44.

[6] Rollo, pp. 116-118.

[7] Rollo, pp. 126-130.

[8] Rollo, pp. 131-132.

[9] Rollo, p. 133.

[10] Ibid., p. 135.

[11] Rollo, pp. 91-113.

[12] Ibid., p. 40.

[13] Rollo, pp. 15-16.

[14] Note 10, supra.

[15] Rollo. pp. 91-113.

[16] Ibid., p. 112.

[17] Ibid., p. 37.

[18] Rollo, pp. 42-44.

[19] Rollo, p. 43.

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