

## **SIMEON G. NEPOMUCENO, PLAINTIFFS-APPELLANTS, VS. CALIXTO SAÑADO, AND SIX JOHN DOES, DEFENDANTS-APPELLEES.**

Ponente: PEREZ, J.

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### **PEREZ, J.:**

Assailed in this appeal is the 21 January 2010 Decision[1] rendered by the Regional Trial Court, Branch 24, Zamboanga-Sibugay, Ninth Judicial Region, in Civil Case No. I-176 for Damages filed by plaintiff-appellant Simeon Nepomuceno (Nepomuceno) against defendants-appellees Calixto Sañado (Sañado) and six John Does.

The 21 January 2010 Decision[2] disposed as follows:

WHEREFORE, in view of the foregoing considerations, plaintiff's complaint is hereby DISMISSED for lack of cause of action, with costs against plaintiff.

Defendant's counterclaim is hereby dismissed for lack of evidence.

IT IS SO ORDERED.

### **The Antecedents**

This appeal is but an offshoot of Civil Case No. 2085[3] filed by appellee Sañado against appellant Nepomuceno and Edgar Chu (Chu) for Recovery of Possession and Damages before the Regional Trial Court Branch 18, Pagadian City filed on July 17, 1981.

The facts are as found in G.R. No. 108338[4] denying review of the Decision of the Court of Appeals, 13th Division, in CA-G.R. CV No. 23165[5].

The antecedent proceedings show that after trial on the merits, the RTC Branch 18 on 19 June 1989 rendered a Decision[6] in Civil Case No. 2085 in favor of appellee as follows:

WHEREFORE, IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered in favor of the plaintiff and against the defendants:

1. Ordering defendants jointly to restore possession and control of the fishpond area in question to the plaintiff;
2. Declaring the Waiver of All Rights, Interests and Participations over a Fish Pond Area (Part) Exhibit (B) executed by defendant Nepomuceno in favor of the defendant Edgar Chu as null and void;
3. Ordering defendant Simeon Nepomuceno to pay the share of plaintiff in the amount of P168,000.00 covering the period of four years from February 19, 1975 to February 19, 1979, with only eight (8) hectares considered to be productive;
4. Ordering defendants to jointly pay plaintiff the rentals of the fishpond area in question at a reasonable rate of P25,000.00 per annum reckoned from February 19, 1979 up to the time the same fishpond area shall have been duly restored to the possession of plaintiff;
5. Ordering defendants to jointly and severally pay plaintiff the sum of P100,000.00 as attorney's fees, and

6. To pay the costs.

Dissatisfied with the decision, appellant together with Chu filed and perfected his appeal before the 13[th] Division of the Court of Appeals which was docketed as CA-G.R. CV No. 23165. The records disclose that Chu's appeal was dismissed by the 13[th] Division for failure to file an appellant's brief.[7]

In a Decision dated September 11, 1992, the Court of Appeals, 13[th] Division affirmed the Decision of the trial court in Civil Case No. 2085 with modifications, but partially reversed it "insofar as it ordered defendants [Nepomuceno and Chu] jointly to restore possession and control of the fishpond area in question to the plaintiff [Sañado]", fully disposing as follows:[8]

WHEREFORE, premises considered, judgment is hereby rendered:

(a) Affirming the judgment appealed from with modification as follows:

1. Ordering and sentencing defendant-appellant Simeon G. Nepomuceno to pay the share of plaintiff-appellee in the amount of P168,000.00 covering the period of four (4) years from February 19, 1975 to February 19, 1979 with only eight (8) hectares considered to be productive;
2. Ordering defendant-appellant Simeon G. Nepomuceno to pay the reasonable rental of the fishpond area in question from February 20, 1979 to March 20, 1980 in the amount of P25,000.00;
3. Ordering and sentencing defendant-appellant Simeon G. Nepomuceno and Defendant Edgar Chu to jointly pay plaintiff-appellee the reasonable rentals of the fishpond area in question at the rate of P25,000.00 per annum from March 21, 1980 to January 2, 1985;
4. Ordering and sentencing defendant-appellant Simeon G. Nepomuceno and defendant Edgar J. Chu to jointly and severally pay plaintiff-appellee the sum of P100,000.00 as attorney's fees;
5. Ordering and sentencing defendant-appellant Simeon G. Nepomuceno and defendant Edgar J. Chu to pay the costs; and

(b) reversing the decision appealed from insofar as it ordered "defendants jointly to restore possession and control of the fishpond area in question to the plaintiff.

SO ORDERED.

Earlier, in view of the dismissal of Chu's appeal, Sañado filed a Motion for Execution before the RTC Branch 18 with respect to Chu. On 3 June 1991, the RTC Branch 18 issued a Writ of Execution<sup>9</sup> in favor of Sañado which pertinently decreed as follows:

TO:

Sheriff Alfonso V. Demoni Regional Trial Court, Branch 13, Pagadian City

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WHEREAS, the aforementioned decision has been appealed by the defendants to the Honorable Court of Appeals, Manila and the latter Court issued a MINUTE RESOLUTION on April 24, 1991, with respect to defendant Edgar Chu only, which had become final and executory on February 21, 1991, as shown on the partial Entry of Judgment rendered by said Court, dispositive part of which read as follows:

".... the appeal of defendant-appellant Edgar Chu is hereby DISMISSED for failure to file appellant's brief pursuant to Sect. 1 (f), Rule 50 of the Rules of Court. The appeal of the other appellant shall proceed."

WHEREAS, on May 31, 1991, plaintiff thru Counsel filed with this Court a Motion for Execution, and said motion was resolved by this Court in its Order dated June 3, 1991, dispositive part of which read as follows:

“Finding the grounds relied upon by counsel for the plaintiff in the aforesaid motion for execution to be well-founded, the same is hereby GRANTED. Let writ of execution issue.

SO ORDERED.”

NOW THEREFORE, you are hereby directed to proceed to Monching, Siay, Zamboanga del Sur, and enforce the foregoing writ of execution by way of ejecting Edgar Chu and /or all persons acting for and in his behalf found within the fishpond area in question at Monching, Siay, Zamboanga del Sur, and restore to actual possession and control the said plaintiff Calixto Sanado on said fishpond area by virtue of the foregoing writ, and to make your return of service within 60 days from receipt hereof, thru proper indorsement.

WITNESS MY HAND AND SEAL of this Court this 3[rd] day of June 1991, at Pagadian City, Philippines.

SO ORDERED.

Clothed by the Writ of Execution, appellee and six John Does on June 4, 1991 entered Fishpond No. 4 and harvested the tiger prawns inside the pond.[10]

As already stated, the Court of Appeals, 13th Division later rendered a Decision on the then pending appeal of Nepomuceno and Chu on September 11, 1992[11], which was subsequently brought to the Supreme Court for review on questions of law in G.R. No. 108338.[12]

While G.R. No. 108338 was pending, Nepomuceno filed a suit for Damages on 27 May 1997 against Sañado and six John Does before the Regional Trial Court, Branch 24, Ipil, Zamboanga del Sur[13] based on the alleged wrongful execution of the Writ of Execution dated 3 June 1991. This case is the subject of the present appeal.

In his Complaint,[14] Nepomuceno declared that he was in actual possession of the fishponds subject of Civil Case No. 2085, including Fishpond No. 4. He averred that on 4 June 1991, Sañado and six John Does illegally entered the pond and harvested 2,500 kilos worth of fully grown tiger prawns valued at P800,000.00 without legal basis or authority.[15]

Nepomuceno alleged that the Writ of Execution issued by the RTC Branch 18 in Civil Case No. 2085 was directed only against his co-defendant Chu, not him, and that the fishpond, specifically Fishpond No. 4, was not part or subject of the writ of execution. Thus, appellant alleged that the harvesting of the tiger prawns was illegal and caused him damages.[16]

In addition, Nepomuceno stated that on 14 June 1991, a Writ of Preliminary Mandatory Injunction[17] was issued by the Court of Appeals in CA G.R. CV No. 23165 restoring possession of the fishpond in his favor.

In Answer[18] to the complaint, Sañado countered that he was granted possession of the fishpond by virtue of the 4 June 1991 Writ of Execution issued by the RTC Branch 18 in Civil Case No. 2085.

Sañado claimed no damages could have resulted from the enforcement of the writ as the subject fishpond, including Fishpond No. 4 had always been in the possession of Chu not Nepomuceno in view of the Waiver of Rights and Interests the latter executed in favor of Chu.[19]

Sañado concluded that since the Writ of Execution was issued against Chu, whose appeal had been dismissed by the Court of Appeals and as to whom the Decision dated June 19, 1989 of the RTC, Branch 18, Pagadian City had already become final and executory, there could have been no conflict when he took possession of the same from Chu as directed in the writ.[20]

Sañado then quoted pertinent portions of the Court of Appeal's Decision in CA-G.R. CV No. 23165 that pointed to Chu's possession of the fishpond after Nepomuceno had transferred possession to the latter, as follows:

In fine, defendant Nepomuceno know(s) all along when he executed the waiver (Exh. "E") that the contract with the plaintiff had already expired. Hence, he had to pass the hat to co-defendant Chu who was self-minded, grabbed the opportunity and outrightly (sic) took possession of the fishpond in question without even informing the plaintiff about the waiver. [21]

During the trial, Nepomuceno presented Oscar Oligado (Oligado), the Legal Officer of the Department of Agriculture, Region 9.[22] Oligado averred that on 5 July 1991, he inspected and took pictures of Fishpond No. 4 to inspect and assess the damages.

Oligado observed that the water in Fishpond No. 4 had already been drained and that the wooden gate to control the water had already been destroyed.[23] Oligado assessed the harvested tiger prawns inside Fishpond No. 4 to be valued at P882,000.00 and the damage to the wooden gate at P20,000.00.[24]

As established, Oligado performed the same upon the behest of Nepomuceno's counsel.[25]

On 11 August 2005, Nepomuceno testified that he had always been in possession of the contested fishponds and that Chu possessed the same only for a very brief period sometime in 1989.<sup>26</sup> Nepomuceno explained that he did not oppose the 3 June 1991 Writ of Execution issued by the RTC Branch 18 as he was not a party to the same.<sup>27</sup>

Nepomuceno then presented his employee Raul Ecot (Ecot), who identified Sañado and six unidentified persons as those responsible for harvesting the tiger prawns inside Fishpond No. 4 on 4 June 1991.[28]

For his part, Sañado testified but his testimony largely covered matters that do not join issues with the allegations of Nepomuceno involving the harvesting of the tiger prawns in Fishpond No. 4.

Sañado instead narrated that a couple of years after the decision in Civil Case No. 2085, Nepomuceno, on an alleged fabricated charge, filed Civil Case No. 3441 before the MTCC, Branch 4, Zamboanga City for Collection of Sum of Money, wherein Sañado was ordered to pay, among others, the amount of P14,000.00.[29]

Sañado then presented Julie S. Elago, the Clerk of Court of the MTCC, Branch 4, Zamboanga City, who authenticated the judgment among others in Civil Case No. 3441.[30]

On 21 January 2010, the RTC, Branch 24, rendered the present appealed Decision[31] dismissing the Nepomuceno's complaint as follows:

Perusing plaintiff's evidence, the Court finds that his claim is unmeritorious, on the following considerations:

The first thing to consider is the fact that plaintiff admitted that he filed this case allegedly as the owner and possessor of the fishpond to seek damages caused by the unlawful entry and taking of the fishpond products thereon by the defendant and his men on July 4, 2003. (sic)

However, also by his own admission, in that Civil Case No. 2085 filed against him by Sañado for recovery of possession of the subject fishpond, he was ordered by the Court of Appeals to relinquish possession of the same to Sañado. This admission is buttressed by the testimony of the defendant Sañado himself that he was restored to the possession of the subject fishpond by virtue of the Writ of Execution dated June 3, 1991 and enforced by the Sheriff of the issuing court. In fact, plaintiff himself admitted that he filed this case for damages because of the said writ of execution which actually placed defendant Sañado in possession of the subject fishpond.

Defendant's act of entering the fishpond subject of the case and gathering fishpond products on June 4, 1991 was by Virtue of the Writ of Execution which restored him to possession of the fishpond, therefore lawful, and

the complainant is without cause of action.

Undeterred by the dismissal of the complaint, Nepomuceno raises the following issues in this appeal:

I

THE TRIAL COURT GRIEVOUSLY ERRED IN HOLDING THAT IN CIVIL CASE NO. 2085 FILED AGAINST HIM BY SAÑADO (sic) HE WAS ORDERED BY THE COURT OF APPEALS TO RELINQUISH POSSESSION OF THE SUBJECT FISHPOND TO SAÑADO;

II

THE TRIAL COURT GRIEVOUSLY ERRED IN HOLDING THAT APPELLEE'S ACT OF ENTERING THE FISHPOND SUBJECT OF THE CASE AND GATHERING FISHPOND PRODUCTS ON JUNE 4, 1991 WAS BY VIRTUE OF THE WRIT OF EXECUTION WHICH RESTORED HIM TO THE POSSESSION OF THE FISHPOND;

III

THE TRIAL COURT COMMITTED GRAVE ERROR AND INJUSTICE DISMISSING APPELLANT'S COMPLAINT FOR LACK OF CAUSE OF ACTION.

#### The Court's Ruling

In this appeal, appellant Nepomuceno principally contends that the lower court erred in dismissing his complaint for damages insisting that the Writ of Execution issued by the RTC Branch 18 was only against Chu, whose appeal had been dismissed by the Court of Appeals for failure to file an appellant's brief, and could not have affected his rights as possessor of the contested fishpond.

To bolster his claim for damages, Nepomuceno harps on the fact that the Court of Appeals on 11 September 1992 in C.A. G.R. CV No. 23165 even reversed the Decision of the RTC Branch 18 in so far as it ordered him to restore possession and control of the fishpond in favor of Sañado. Nepomuceno likewise insists, the Court of Appeals as early as 14 June 1991 issued a Writ of Preliminary Mandatory Injunction restoring in his favor the possession of the fishpond.

We are not convinced.

The suit for damages in Civil Case No. I-176 centers around the alleged illegal harvesting by Sañado of the tiger prawns inside Fishpond No. 4. Sañado for his part, insist that he entered the same on 4 June 1991 under the color and authority of the 3 June 1991 Writ of Execution issued by the RTC Branch 18.

In the resolution of this appeal, the Court must necessarily consider the antecedent facts established and rendered immutable by the Decision of the Supreme Court in G.R. No. 108338 on 17 April 2001.

As held by the Supreme Court in G.R. No. 108338, Sañado tried but failed to execute the Decision dated 19 June 1989[32] in Civil Case No. 2085 rendered by the RTC Branch 18 before the appellate court during the pendency of C.A. G.R. CV No. 23165. Sañado however succeeded before the RTC, Branch 18 when the latter issued the 3 June 1991 Writ of Execution.

As culled from the facts established in G.R. No. 108338, the Supreme Court ruled:

In this light, petitioner maintains that on December 11, 1990, during the pendency of the appeal in Civil Case No. 2085, he filed with the appellate court a motion for execution pending appeal, stating that the appeal of Edgar J. Chu (who said to be the actual possessor of the area) had been dismissed. The appellate court denied the same. On May 21, 1991, petitioner filed another motion for issuance of writ of execution, claiming that the

Sheriff's Return of Service dated June 6, 1991 stated that "the restoration to and/or placement of plaintiff Sañado thereof on said fishpond area in controversy... are hereby considered complied with." Thereafter private respondent filed a petition for relief from judgment and/or execution which resulted in an Order dated June 7, 1991, restoring possession of the fishpond area to him. Petitioner then proceeded to mention that on June 11, 1991, private respondent filed with the appellate court an Ex parte Urgent Motion for Issuance of Writ of Preliminary Mandatory Injunction, alleging that the trial court has not yet issued the corresponding writ of preliminary mandatory injunction to restore private respondent to the possession of the fishpond area." (Emphasis supplied)

Thus, it appears very plainly that after being rebuffed by the Court of Appeals, Sañado astutely filed for and obtained a writ of execution on 3 June 1991 from the trial court and proceeded to enforce it.

While Nepomuceno was able to secure a Writ of Preliminary Mandatory Injunction in his favor from the 13<sup>th</sup> Division of the Court of Appeals on 14 June 1991 pending his appeal, this injunctive relief was eleven (11) days late counted from the Writ of Execution issued by the RTC on 3 June 1991,[33] and likewise, ten (10) days late from the time Sañado entered and harvested the tiger prawns inside the Fishpond on 4 June 1991.[34]

It would thus appear at first blush that at the time of the execution of the Decision dated June 19, 1989 on June 4, 1991 there was no legal impediment to the recovery by Sañado of possession of the contested fishponds.

Not so.

Again, as the Supreme Court found in G.R. No. 108338, "the trial court's decision of June 19, 1989 did not attain finality. It was appealed within the reglementary period by both Nepomuceno and Chu before the Court of Appeals, except that Chu's appeal was subsequently dismissed for failure to file an appellant's brief.[35]

This being so, it is hornbook rule that only a final and executory judgment can be executed. While it is true that execution pending appeal is allowed under Rule 39, Sec. 2, of the Rules of Court, this provision must be strictly construed, being an exception to the general rule and that the motion must be filed before the lower court loses jurisdiction over the case.

Section 2, Rule 39 provides:

(a) Execution of a judgment or a final order pending appeal. – On motion of the prevailing party with notice to the adverse party filed in the trial court which has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

In *Diesel Construction Company v. Jollibee Foods Corporation*,<sup>[36]</sup> the Supreme Court held that upon perfection of an appeal and transmittal of the records, a trial court loses jurisdiction over the case and may no longer grant a motion for, or issue a writ of execution. In this case, however, the records disclose that despite the perfection of Nepomuceno and Chu's appeal before the Court of Appeals, Sañado was able to obtain the 3 June 1991 writ of execution from the RTC Branch 18. To justify the execution, Sañado claims that the writ of execution was directed only against Chu, whose appeal was dismissed and against whom the June 19, 1989 Decision had thus become final. But it must be stressed that since the appeal has been perfected, and was at the time of execution already pending in the Court of Appeals, the RTC, Branch 18, Pagadian City had already lost jurisdiction to issue

the writ of execution, and subsequent proceedings taken by virtue of and by force of said writ are then null and void.

Apropos, thereto, Section 9, Rule 41 of the Rules of Court provides:

Section 9.

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In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

Thus, far, Sañado knew all along that the RTC, Branch 18 could no longer act on a motion for execution while C.A. G.R. CV No. 23165 was pending, as in fact he had twice attempted to have the same Decision dated June 19, 1989 executed by the Court of Appeals first by a Motion For Execution Pending Appeal[37] , and then after this was denied, a Motion for Issuance of Writ of Execution[38] claiming that the Sheriff had already restored him in possession of the contested fishponds thus the issue was *fait accompli*. Both times he failed.

Moreover, the Supreme Court has ruled with finality in G.R. No. 108338 that Sañado on July 31, 1989 had already lost any right of possession to the disputed fishponds after the Office of the President had revoked his fishpond license by reason of his violation of fisheries rules and the terms of his license. The Supreme Court found –

It is thus plain in the case at bar that the July 31, 1989 decision of the Office of the President is a substantial supervening event which drastically changed the circumstances of the parties to the subject fishpond lease agreement for to award the possession to petitioner is futile since he has lost the fishpond license. In point is our ruling in *Baluyot v. Guiao* (315 SCRA 396 [1997]) where he held that judgment is not confined to what appears on the face of the decision, but also covers those necessarily included therein or necessary thereto. For example, where the ownership of a parcel of land is decreed in the judgment, the delivery of the possession of the land should be considered included in the decision, it appearing that the defeated party's claim to the possession thereof is based on his claim of ownership. By analogy, the July 31, 1989 decision, is not confined to the validity of the cancellation of the Ministry of Agriculture and Food of petitioner's Fishpond Lease Agreement No. 3090 for violation of the terms thereof and/or the fisheries rules. The right to possess the subject fishpond area is necessarily included in the decision. The cancellation or revocation of petitioner's license necessarily eliminated his right to possess the same since the new license would then be the one to enjoy this right.

There can be no doubt whatsoever that by reason of this supervening event on July 31, 1989 Sañado had already lost completely any semblance of right to possess the contested fishponds both by final decisions of the executive department and the highest court of the land, and the finding of the RTC, Branch 24, Pagadian City anchoring its conclusion that Nepomuceno had no cause of action because the Court of Appeals had ordered Nepomuceno "to relinquish possession of the same to Sañado" ignored and completely disregarded not only the decision dated July 31, 1989 of the Office of the President cancelling Sañado's fishery license but also the final and immutable finding of the Supreme Court in G.R. No. 108338 that as of that date, the cancellation and revocation of Sañado's license eliminated his right to possess the fishponds and any order including that of the Court of Appeals in CA-G.R. CV No. 23165 restoring possession to Sañado is futile and serves no valid purpose, for which reason that disposition by the Court of Appeals was reversed.

And while it is true that the Decision in G.R. No. 108338 was rendered only in 17 April 2001, or several years after the wrongful execution was held on 4 June 1991, the loss of Sañado's right of possession is as held by the Supreme Court "a substantial supervening event which drastically changed the circumstances of the parties to the

subject fishpond lease agreement”, and the RTC, Branch 24, Zamboanga-Sibugay should have considered this judicially established fact when it rendered the appealed Decision dated January 21, 2010 and could not have simply ignored it. Inexplicably, it did, notwithstanding the fact that Nepomuceno, himself referred to events and incidents that transpired during the pendency of C.A. G.R. CV No. 23165 in his complaint, and that Sañado even presented as evidence the decision of the Supreme Court in G.R. No. 108338.

Having settled the issue of the illegality of the execution ordered by the RTC, Branch 18, Pagadian City, what remains to be resolved is the issue of whether Nepomuceno is entitled to his claims of damages in the complaint below.

The resolution of this issue hinges on whether Nepomuceno had lawful possession of Fishpond No. 4 when the unlawful writ of execution was enforced on June 4, 1991. We have carefully examined the factual findings both by the Supreme Court in G.R. No. 108338 and by the Court of Appeals, 13<sup>th</sup> Division, in C.A. GR. CV No. 23165, and fail to find any basis to support Nepomuceno’s claim that at the time of the wrongful execution he had a possessory right that was violated by Sañado.

On the contrary, We find that like Sañado, Nepomuceno had no lawful right of possession at the relevant time as to entitle him to the reliefs as sought in his complaint.

The Court of Appeals in C.A. GR. CV No. 23165 found as fact fully supported by the evidence the conclusion of the RTC, Branch 18, Pagadian City that “in the absence of another agreement between the contending parties for renewal of another four years as agreed upon in Exhibit “C-1”, the original contract of financing shall cease and terminate on February 19, 1979”.[39]

The only right that Nepomuceno retained after such time, and even after the cancellation or revocation of Fishpond Lease Agreement No. 3090 obtained by Sañado, is a preferential right to apply for the same lease in his own name. The Court of Appeals found:

As mentioned earlier, during the pendency of Civil Case No. 2085 with the lower court, order was issued by Minister Salvador H. Escudero III on January 2, 1985 cancelling Fishpond Lease Agreement NO. 3090 and forfeiting the improvements thereon in favor of the government, which was later considered to the extent that defendant-appellant Simeon G. Nepomuceno was given priority to apply for the area and that his improvements thereon are not to be considered forfeited in favor of the government.[40]

Indeed, these facts remained undisturbed by the Decision of the Supreme Court in G.R. No. 108338, and should thus be deemed conclusive between the same parties litigating the same cause.

Indeed, there is no evidence whatsoever in Civil Case No. I-176, except Nepomuceno’s bare and unproven claim, that he was in possession of the litigated fishponds when the sheriff and Sañado descended on the property and took over possession. It is likewise a fact that when Sañado sought a writ of execution in Civil Case No. 2085, Nepomuceno could have opposed the motion for execution as he was a party to that action or to even file a third party claim under Rule 39, Section 16 of the Rules of Court if he was truly convinced that his property was being subjected to wrongful execution. Other than saying that the motion was directed only at his co-defendant Chu, Nepomuceno has not given any credible explanation why unlike any vigilant third party protecting existing property interests he did not lift a finger when he still could. His omissions and lack of vigilance can only be taken to mean that he himself was doubtful as to the strength of his claims.

In view of the foregoing, this Court finds and so rules that the RTC, Branch 24, Zamboanga-Sibugay did not err in dismissing the complaint in Civil Case No. I-176 although it did so for the wrong reasons.

WHEREFORE, premises considered, the Appeal is hereby DENIED.

Accordingly, 21 January 2010 Decision rendered by the Regional Trial Court, Branch 24, Zamboanga, Sibugay in Civil Case No. I-176 dismissing the complaint is hereby AFFIRMED.

**SO ORDERED.**

Camello, J., Ch., and Inting JJ., concur.

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[1] Rollo, pp. 31-40.

[2] Id.

[3] See Exhibit “1” (Index of Exhibits) .

[4] “Calixto Sanado v. The Court of Appeals and Simeon Nepomuceno”(April 17, 2001).

[5] Penned by J. Edgardo G. Montenegro and concurred in by J. Gloria C. Paras and J. Regina G. Ordonez-Benitez.

[6] Id.

[7] Supra, note 5.

[8] Id.

[9] See Exhibit “5” (Index of Exhibits)

[10] See Complaint, Records, p. 2.

[11] Supra, note 5.

[12] Supra, note 4.

[13] Records, pp. 1-5.

[14] Id.

[15] Id.

[16] Id.

[17] See Exhibit “6” (Index of Exhibits)

[18] Records,pp. 16-32.

[19] Id. at 17.

[20] Id.

[21] Id.

[22] TSN , 18 September 2003, pp. 1-28.

[23] Id. at 10-12.

[24] Id. at 15.

[25] Id. at 19.

[26] TSN 11 August 2005, pp. 2-3

[27] Id. at 7.

[28] TSN , 26 May 2005, pp. 1-9.

[29] TSN, 25 October 2007, pp. 8-10.

[30] TSN, 18 February 2008, pp. 1-17.

[31] Rollo, pp. 31-40.

[32] Supra note 6.

[33] Supra, note 12.

[34] Supra, note 13.

[35] See Decision in G.R. No. 108338, p. 8 (Exhibit “3”) Index of Exhibits.

[36] G.R. No. 136805, 28 January 2000.

[37] See Decision, p. 9-10, G.R. No. 108338. (Exhibit “3”) Index of Exhibits.

[38] Id.

[39] See Decision CA-G.R. No. 23165, p. 12 Exhibit “F” (Index of Exhibits)

[40] Supra, note 5, p. 6.

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