

**ESPERANZA P. SUMULONG, REPRESENTED BY MARIO P. SUMULONG,
PETITIONER, VS. HON. COURT OF APPEALS AND INLAND
TRAILWAYS, INC., RESPONDENTS.**

G.R. No. 108817. May 10, 1994

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a petition for review on certiorari to set aside the decision[1] of the Court of Appeals of 28 January 1993 in CA-G.R. SP No. 27987[2] affirming the decision of Branch 51 of the Regional Trial Court (RTC) of Manila of 23 April 1992 in Civil Case No. 91-58122.[3] The RTC judgment had reversed the decision of Branch 9 of the Metropolitan Trial Court (MTC) of Manila of 3 June 1991[4] in Civil Case No. 132844-CV, a complaint denominated as one for forcible entry and entitled “Esperanza P. Sumulong vs. Inland Trailways, Inc. The dispositive portion of the MTC decision reads:

“WHEREFORE, judgment is hereby rendered:

1. Ordering Defendant and anyone acting in its behalf to vacate the premises located at M. Earnshaw Street, Sampaloc, Manila, covered by Transfer Certificate of Title Nos. 102994 and 102995;
2. To pay to Plaintiff reasonable compensation for the use of the premises at the rate of P70,000.00 a month starting from June, 1989 until it finally vacates the premises, deducting therefrom any and all amount heretofore advanced by Defendant to Plaintiff;
3. Ordering Defendant to pay to Plaintiff the sum of P5,000.00 as and for attorney’s fees; and
4. To pay the costs.”[5]

The MTC sustained the theory of plaintiff Esperanza P. Sumulong (hereinafter Sumulong) that the defendant (hereinafter INLAND) entered the premises “by stealth and strategy, since it has no sublease when it entered the premises and remained because it misrepresented itself as owned by Jopson and also because it asked to negotiate for a new lease.”[6] The MTC disregarded the defense of INLAND that the proper action should have been for unlawful detainer.[7]

On appeal to the RTC by INLAND (Civil Case No. 91-58122), the MTC decision was reversed. The RTC held that the MTC’s ruling “betrays a misapplication and/or misinterpretation of the law and jurisprudence on Forcible Entry,”[8] and that although Sumulong had constructive possession of the subject premises, she was, nevertheless, not in prior physical and actual possession thereof. The latter kind of possession is an essential element in forcible entry; accordingly, her action for forcible entry should fail. It concluded:

“Under the facts as established and the evidence adduced before the Court a quo, in relation to the applicable law and jurisprudence, the complaint for Forcible Entry as instituted cannot be sustained. Plaintiff’s assertion of its right to the possession of the subject properties may nevertheless be ventilated by way of another action,

not for Forcible Entry.”[9]

Hence, it ordered the dismissal of Civil Case No. 132844-CV.

Sumulong filed a petition for review with the respondent Court of Appeals which was docketed as CA-G.R. SP No. 27987.[10] Sumulong contended therein that the RTC seriously erred in holding that she had failed to establish prior physical possession of the subject premises despite overwhelming evidence to the contrary and in disregarding long established law and jurisprudence when it ordered the dismissal of the complaint for forcible entry.[11]

In its challenged Decision of 28 January 1993, the Court of Appeals affirmed the RTC decision on the ground that Sumulong failed to specifically aver in her complaint facts which would clearly show that her cause of action is for forcible entry. It held:

“Those pertinent allegations in the complaint as well as Mario Sumulong’s testimony are facts, intimate and intertwined, proving that private respondent’s entry, possession and occupation of the premises were upon the broad knowledge and acquiescence, if not express upon the implied permission of petitioner. And thus, the private respondent, is admittedly in the actual possession of the premises in question. All doubts should be resolved in his [sic] favor, it being the rule of law that the present possessor is to be preferred should a question arise regarding the fact of possession (Art. 539, NCC). We, therefore, find and so hold that petitioner failed to specifically aver in her complaint facts which would clearly show that her cause of action should be for forcible entry, well supporting the findings of the RTC that the petitioner has not shown that she has been deprived of the possession of the premises by force, intimidation, stealth, threat or strategy. On this basis, the complaint for forcible entry cannot be sustained on the ground of lack of cause of action and which should be dismissed on that ground (sec. 1-[g], Rule 16, Revised Rules of Court). To use the words in [S]arona vs. Villegas [22 SCRA 1257] the failure of a plaintiff to specifically aver in the complaint facts which would definitely show that plaintiff’s action is for forcible entry -- that defendant’s entry into the land is illegal -- ‘is not to be lightly treated.’ The reason and philosophy behind this rule, apart from the fact that there is distinct difference between the cause of action for forcible entry, on the one hand, and unlawful detainer, on the other hand, is that whatever may be the character of one’s prior possession, if he has in his favor priority of time, he has the security that entitles him to stay on the property until he is lawfully ejected by a person having a better right to such possession.”[12]

In the instant petition filed on 23 March 1993, Sumulong avers that the Court of Appeals gravely erred in holding that she has no cause of action for forcible entry against INLAND and asserts that she was the prior physical possessor of the premises in question and that INLAND’s intrusion, occupation, and possession of the subject premises were effected through stealth and strategy.[13] She argues that the prior possession for purposes of the action for forcible entry is not to be reckoned from June 1989 when INLAND first entered the premises, as held by the RTC and the Court of Appeals, but from November 1989, when she “successfully regained actual physical possession of the subject premises” from INLAND which “failed to resist the physical take-over and re-entry.”[14]

She further contends that the claim of INLAND that it had entered the property in June 1989 by virtue of an oral sublease contract between it and Jopson Management and Development Corp. (hereinafter Jopson), which was, allegedly, part of the consideration for the purchase by INLAND of the adjoining Jopson Supermarket, is untenable because the Deed of Sale executed by Jopson makes no stipulation regarding the sublease, and even granting arguendo that such sublease was made, it was void because the lessee-sublessor (Jopson) had no more authority to sublease it since the contract of lease in its favor had been cancelled and terminated in view of its abandonment of the premises. Moreover, pursuant to Section VIII of the Lease Contract, Jopson’s right to sublease refers only to the improvements it had introduced on the leased lots and not to the latter.

In its comment to the petition, INLAND maintains that the complaint in Civil Case No. 132844-CV shows that Sumulong has no cause of action for forcible entry, that Jopson did not abandon the leased premises, that Sumulong had no prior physical possession of the premises, and that INLAND did not employ stealth and strategy to gain possession thereof.

After the filing of the reply to the comment, this Court resolved to give due course to the petition and to require the parties to submit their memoranda,[15] which they subsequently did.

The chief issues for our resolution are (1) whether the complaint in Civil Case No. 132844-CV before the MTC fails to state a cause of action for forcible entry; and (2) assuming that it does not, whether it, in fact, contains sufficient allegations for unlawful detainer for which judgment may be rendered accordingly.

Settled is the rule that the lack of a cause of action, which is a ground for a motion to dismiss under Section 1(g), Rule 16 of the Rules of Court, must appear on the face of the complaint, i.e., it must be determined from the allegations of the complaint and from none other. A complaint should not be dismissed for insufficiency unless it appears clearly from the face of the complaint that the plaintiff is not entitled to any relief under any state of facts which could be proved within the facts alleged therein. Stated otherwise, though the allegations in the complaint are ambiguous, indefinite or uncertain but, nevertheless, a cause of action can, in any manner, be made out therefrom, and the plaintiff would be entitled to recover in any aspect of the facts or any combination of the facts alleged, if they were to be proved, then the motion to dismiss should be denied.[16]

When a defendant perceives that the complaint states no cause of action, the better procedure would be to file a motion to dismiss. If, however, none is filed, that defense may be pleaded as an affirmative defense in accordance with Section 5, Rule 16 of the Rules of Court. And, pursuant to Section 2 of Rule 9, even if it is not so pleaded, that defense is not deemed waived; it may be pleaded in a later pleading, if one is permitted, by motion for judgment on the pleadings, or at the trial on the merits. In the last instance, however, the motion shall be disposed of in the light of any evidence which may have been received.

Accordingly, the issues thus defined can only be properly resolved by an examination and evaluation of the allegations in the complaint in Civil Case No. 132844-CV of the MTC of Manila, whose subject matter involves two adjoining lots owned by Sumulong located along M. Earnshaw Street, Sampaloc, Manila, and covered by Transfer Certificates of Title Nos. 102994 and 102995. The pertinent paragraphs of the complaint read:

“4. On November 27, 1975, plaintiff, represented by her then attorney-in-fact, Juan Sumulong III, entered into a Contract of Lease with Jopson Management and Development Corporation (hereinafter ‘Jopson’), covering the premises set forth in TCT Nos. 102994 and 102995, thru its President, Mr. Hernan Jopson. The properties subject of the said Contract of Lease (which are also the properties subject of this complaint) adjoin the Jopson Supermarket owned and operated by Jopson, and were utilized by Jopson as parking lot and warehouse of goods/products sold in the supermarket. A copy of said Contract of Lease is hereto attached, marked as Annex “B,” and made an integral part hereof;

5. Pertinently, Section III of the Contract of Lease provides:

‘x x x If LESSEE shall at any time fail or neglect to perform or comply with any of the covenants, conditions or restrictions, stipulated, or if LESSEE shall become bankrupt or insolvent, or the LESSEE abandons the property or refuses to pay the rent for six (6) months, then, in any such cases, this lease contract shall become automatically terminated and cancelled, and premises subject of this lease shall be vacated peacefully by LESSEE for LESSOR to hold and enjoy henceforth. x x x Upon cancellation of this contract, LESSEE hereby grants to LESSOR the right to enter and take possession of the premises. x x x (Underscoring supplied).’

Likewise, paragraph two (2), Sec. VII of the Contract of Lease provides:

‘VII. ENTRY AND INSPECTION OF PROPERTY.

x x x

In case the premises shall be deserted or vacated before the expiration of this lease, the LESSOR shall have the right to enter the same, as agent of the LESSEE, without being liable for any prosecution of damages therefor, and the LESSOR shall have the option to re-let the same, as the agent of the LESSEE, and received the rent therefor to be applied in payment of the rentals and damages due hereunder, holding the LESSEE liable for any deficiency.’

6. Sometime in 1988, Jopson Supermarket (adjoining the leased premises) was beset with a strike by its laborers. Consequently, it ceased operations for about two (2) years;

7. Thereafter, in 1989, plaintiff’s representatives were informed through the print media, of the sale of Jopson’s business (supermarket) to Inland Supermarket;

8. Thus, upon her arrival from the United States in the second quarter of 1989, plaintiff instructed her representatives to inspect the leased premises adjoining Jopson Supermarket, pursuant to Section VII of the lease contract. True indeed, plaintiff discovered, after a series of inspections done by plaintiff’s representatives, that Jopson had vacated and deserted the leased premises covered under the Contract of Lease (Annex “B”). Even worse, plaintiff discovered that Jopson tolerated the illegal entry of defendant Inland Trailways into the property, without any valid agreement;

9. Accordingly, pursuant to Section III of the Contract of Lease, the plaintiff’s lease contract with Jopson was rendered automatically terminated and canceled. In November 1989, by virtue of Sections II and VII of the Contract of Lease, plaintiff through her attorney-in-fact, Mario P. Sumulong, took possession of the subject properties. Defendant Inland which was then occupying the subject properties, offered no resistance to the take over, since defendant Inland Trailways could not present any valid agreement granting it the right of possession over the subject properties. (It is noteworthy that alleged sublease procured by defendant Inland Trailways from Jopson was executed only on April 2, 1990.)

10. A couple of days later, defendant Inland Trailways misrepresented to plaintiff that Mr. Hernan Jopson is also the owner of Inland Supermarket, and that Jopson Supermarket had resumed operations under the name of Inland Supermarket. Because of defendant Inland Trailways’ misrepresentation, plaintiff was misled into accepting a check payment from defendant Inland Trailways. x x x

11. However, in December 1989, upon verification by plaintiff’s representatives, plaintiff discovered that Jopson does not have any interest in Inland Supermarket, or in Inland Trailways and that Jopson and Inland Supermarket/Inland Trailways have a totally different set of directors and stockholders. When confronted by plaintiff’s representative, defendant’s representatives admitted such fact, and further admitted that defendant Inland Trailways has no sub-lease agreement with Jopson. Worse, neither defendant Inland Trailways nor Inland Supermarket has any written contract with plaintiff;

12. Consequently, but still in December 1989, upon discovering the misrepresentation, plaintiff notified Jopson of the termination and cancellation of their lease contract, and took possession of the subject properties. Again, defendant Inland Trailways offered no resistance for lack of a valid agreement granting it the right of possession over the subject properties;

13. Thereafter, during the take over by the plaintiff, defendant Inland Trailways, through its representatives Riza Moises and Evelyn Castro, persuaded plaintiff’s representative Mario P. Sumulong, to grant defendant Inland Trailways the temporary use of the subject properties, pending negotiations for the lease of the premises. Anticipating in good faith that a lease contract would be finalized, plaintiff agreed to let defendant Inland Trailways occupy the subject properties. Negotiations were then held from February 1 to March 1, 1990;

14. However, due to defendant's insistence on an unreasonably low amount of the lease rental, plaintiff decided not to lease her properties to defendant Inland Trailways. This was made known to the defendant in a letter dated March 14, 1990 by plaintiff's son, Mario P. Sumulong. A copy of said letter is hereto attached, marked as Annex "D," and made an integral part hereof;

15. At the same time, to fully protect her interest, on March 14, 1990, plaintiff, thru her son Mario P. Sumulong, formally notified Jopson of the termination of the Contract of Lease due to abandonment of the leased premises. A copy of said letter is hereto attached, marked as Annex "E," and made an integral part hereof;

16. Likewise, on April 25, 1990, plaintiff, thru counsel, confirmed of such termination. A copy of said letter is hereto attached, marked as Annex "F," and made an integral part hereof;

17. However, on April 25, 1990, without plaintiff's knowledge, defendant Inland Trailways, through strategy and stealth, procured a sub-lease agreement from Jopson, despite the fact that plaintiff's lease contract with Jopson had earlier been terminated and cancelled. x x x It is significant that the monthly rental of ELEVEN THOUSAND (P11,000.00) PESOS for the sub-lease of the subject properties as contained in the sub-lease agreement, is grossly disproportionate to the prevailing rental rates of real properties in the area, and therefore show that the sub-lease agreement is a mere sham or ploy designed to enable defendant Inland Trailways to gain entry and possession of the subject properties without any valid lease contract with the plaintiff, and after plaintiff decided not to lease the subject properties to the defendant. Furthermore, it bears to emphasize that the sub-lease agreement was entered into only after Jopson had been served with the notice of termination of its lease contract with plaintiff, and only after defendant Inland Trailways was informed by plaintiff that she is not leasing her premises to defendant;

18. This alarming development compelled plaintiff, through her representatives, to take over the physical possession of the leased premises on April 4, 1990. However, on the night of April 4, 1990, defendant Inland Trailways again misrepresented to plaintiff that it was ready to finalize the appropriate lease contract with plaintiff. Such misrepresentation misled plaintiff into allowing defendant Inland Trailways once more to enter the subject properties;

19. However, after defendant Inland Trailways took possession of the subject properties, it maliciously refused to execute and enter into a lease contract with plaintiff, and failed to deliver the agreed monetary consideration for the temporary use of subject premises, or to peacefully return possession of the same;

20. Through such stealth and strategy, defendant Inland Trailways illegally deprived plaintiff of the possession of the subject properties to plaintiff's great damage and prejudice;

21. Except those times when plaintiff took over the subject properties for a while, defendant Inland Trailways has remained in illegal possession of the said premises, since June 1989, and, up to the present, still retains such possession thereof;

22. Despite repeated demands, defendant Inland Trailways refuses to vacate the subject properties' premises and to turn over the peaceful possession thereof to plaintiff, having repeatedly threatened to use 'goons,' the military, judges and senators to repel any attempt of plaintiff to peacefully enforce her right. A copy of counsel's latest demand letter to defendant dated April 25, 1990 is hereto attached, marked as Annex "H," and made an integral part hereof;

23. The reasonable rental value of said premises based on an estimated fair market value of P6,500.00 per square meter is EIGHTY THOUSAND PESOS (P80,000.00) a month;"[17]

Forcible entry and unlawful detainer are two distinct causes of action defined in Section 1, Rule 70 of the Rules of Court. In forcible entry, one is deprived of physical possession of any land or building by means of force,

intimidation, threat, strategy, or stealth. In unlawful detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied. In forcible entry, the possession is illegal from the beginning and the only issue is who has the prior possession de facto. In unlawful detainer, possession was originally lawful but became unlawful by the expiration or termination of the right to possess and the issue of rightful possession is the one decisive, for in such action, the defendant is the party in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession.[18]

Accordingly, in forcible entry, the plaintiff must allege in the complaint and prove that he was in prior physical possession of the property in litigation until he was deprived thereof by the defendant, but in unlawful detainer, the plaintiff need not have prior physical possession of the property,[19] or, otherwise stated, prior physical possession is not an indispensable requirement in an unlawful detainer case.[20]

The aforequoted allegations in the complaint of Sumulong indubitably show that she anchors her claim of prior physical possession on her peaceful take-over of the leased premises in November 1989 from INLAND who had been in possession thereof since June 1989 allegedly by virtue of an oral sublease contract. She overlooks, however, that as her allegations show, she allowed INLAND to re-occupy the premises in December 1989 when it misrepresented to her that Jopson was also its (INLAND's) owner. When it was ascertained that Jopson was not, she again re-took possession of the premises, only, thereafter, to allow again INLAND to temporarily re-occupy the premises because of its representation that it will negotiate with her a contract of lease in its favor. Such negotiations were undertaken from 1 February 1990 to 1 March 1990.

However, since the parties could not agree on the rate of rentals, and INLAND procured through "strategy and stealth" a sublease agreement from Jopson on 2 April 1990, Sumulong re-took the physical possession of the leased premises on 4 April 1990. However, on the night of the said date, INLAND misrepresented to her that it was ready to finalize the appropriate lease contract and because of that misrepresentation, INLAND was again able to re-occupy the premises. It is clear then that since Sumulong's first re-taking of possession in November 1989, INLAND was permitted to re-occupy the premises thrice.

The words strategy and stealth, as means of forcible entry, are used by Sumulong in paragraphs 17 and 20 of her complaint. They refer, however, to the procurement by INLAND of the sublease agreement on 2 April 1990 and its misrepresentation that it was ready to finalize the appropriate lease contract. Assuming them to be true, those acts hardly constitute either strategy or stealth as a means of forcible entry. "Strategy" in this regard could only mean machination or artifice and considering that the parties tangled for weeks to reach an agreement on the terms and conditions of a contract of lease, no such machination or artifice could be said to have been employed by INLAND. "Stealth," on the other hand, is defined as any secret, sly, or clandestine act to avoid discovery and to gain entrance into or remain within residence of another without permission.[21] The allegations then in paragraphs 17 and 20 of the complaint that INLAND employed "strategy" and "stealth" are conclusions which are not supported by the material operative facts averred in the complaint. On the contrary, they are negated by paragraph 21 which reads:

"21. Except those times when plaintiff took over the subject properties for a while, defendant Inland Trailways has remained in illegal possession of the said premises, since June 1989, and, up to the present, still retains such possession thereof." (Emphasis supplied).

This paragraph and Sumulong's allegations of strategy and stealth on 4 April 1990 also refute her argument that for purposes of determining prior physical possession, her retaking of the property in November 1989 should be the basis in determining her cause of action for forcible entry. It must be stated, however, that whatever illegality may have tainted INLAND's entry in June 1989 was removed by Sumulong's acceptance of rentals from

INLAND after her November 1989 take-over, even if such acceptance was thru the latter's misrepresentation that Jopson is also its owner. INLAND's succeeding acts of re-occupying the premises twice thereafter were tolerated by Sumulong for the reasons earlier adverted to. We thus agree with the RTC and the Court of Appeals that the complaint fails to show a cause of action for forcible entry. Neither was Sumulong able to prove it by her evidence, which on the contrary, established that she allowed INLAND to re-occupy the premises, not because of the claim of the latter of an oral sublease agreement and then of a written sublease agreement, but because of the allegation that Jopson is the owner of INLAND; that INLAND would negotiate for a formal lease contract; and that INLAND was ready to finalize the lease contract.

Also, from the allegations in the complaint, the nullity of the sublease agreement which INLAND allegedly obtained from Jopson on 2 April 1990 is beyond question. Jopson had no right to sublease the property since the contract of lease in its favor had already been automatically cancelled pursuant to Section III thereof and Jopson was properly notified of such automatic cancellation first in December 1989 and then on 14 March 1990. Neither party proved that Jopson protested the cancellation of the contract of lease. A sublessee can invoke no right superior to that of his sublessor.[22] Consequently, as correctly held by the MTC, "the written sublease was only resorted to by Defendant [INLAND] when the parties could not agree as to the terms of a new lease,"[23] which, however, the MTC erroneously considered as the act which constituted "stealth and strategy." [24]

Notwithstanding the foregoing, the complaint should not have been dismissed merely for its failure to state a cause of action for forcible entry, for although Sumulong has designated or denominated it in the caption as one for forcible entry, her allegations in the body thereof sufficiently establish a cause of action for unlawful detainer. Well-settled is the rule that what determines the nature of the action as well as the court which has jurisdiction over the case are the allegations in the complaint.[25] The cause of action in a complaint is not what the designation of the complaint states, but what the allegations in the body of the complaint define or describe. The designation or caption is not controlling, more than the allegations in the complaint themselves are, for it is not even an indispensable part of the complaint.[26] It is equally settled that in an action for unlawful detainer, an allegation that the defendant is unlawfully withholding possession from the plaintiff is deemed sufficient,[27] and a complaint for unlawful detainer is sufficient if it alleges that the withholding of possession or the refusal to vacate is unlawful without necessarily employing the terminology of the law.[28]

It is easily discernible from the allegations in the complaint that the re-occupation by INLAND of the premises in question in December 1989 -- after it was discovered that INLAND was not owned by Jopson -- was by virtue of Sumulong's tolerance because INLAND promised to negotiate for a contract of lease and consequently, its continuance in possession was conditioned on the execution of a lease contract. Possession by tolerance is lawful.[29] However, a person who occupies the land of another at the latter's tolerance or permission without any contract between them is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against him.[30] So here, as alleged in the complaint, when the negotiations for a lease contract fell through and Sumulong made "repeated demands"[31] for INLAND to vacate the Sumulong property but "defendant Inland Trailways refuse[d] to vacate the subject properties' premises and to turn over the peaceful possession thereof to plaintiff,"[32] INLAND's possession became unlawful. Such repeated demands for INLAND to vacate the property are sufficient compliance with the jurisdictional requirement of demand in an unlawful detainer case. In *Hautea vs. Magallon*,[33] we held that an allegation in an original complaint for illegal detainer that in spite of demands made by the plaintiff the defendants had refused to restore the land is considered sufficient compliance with the jurisdictional requirement of previous demand.

Accordingly, we rule that the allegations in the complaint in Civil Case No. 132844-CV adequately and

sufficiently establish a cause of action for unlawful detainer and that the prayer therein is equally appropriate for an action for unlawful detainer. The evidence summarized in the MTC's decision preponderantly supports that cause of action. A judgment then for unlawful detainer could be validly rendered in Civil Case No. 132844-CV and the dispositive portion of the MTC's decision therein is consistent with that for unlawful detainer, except that the fixed reasonable compensation for the use of the premises should only commence to run from December 1989 and not from June 1989.

WHEREFORE, the instant petition is GRANTED. The challenged decision of the Court of Appeals of 28 January 1993 in CA-G.R. SP No. 27987 and the decision of Branch 51 of the Regional Trial Court of Manila of 23 April 1992 in Civil Case No. 91-58122 are SET ASIDE while the decision of Branch 9 of the Metropolitan Trial Court of Manila of 3 June 1991 in Civil Case No. 132844-CV is REINSTATED, subject to the modification indicated above.

No pronouncement as to costs.

SO ORDERED.

Cruz, (Chairman), Bellosillo, Quiason, and Kapunan, JJ., concur.

[1] Annex "A" of Petition; Rollo, 9-26; 64-81. Per Associate Justice Artemon D. Luna, concurred in by Associate Justices Antonio M. Martinez and Ma. Alicia Austria-Martinez.

[2] Entitled "Esperanza P. Sumulong, represented by Mario P. Sumulong vs. Hon. Judge, Regional Trial Court of Manila, Branch 51 and Inland Trailways, Inc.."

[3] Annex "D" of Petition; Rollo, 96-98. Per Judge Rustico V. Panganiban.

[4] Annex "C" of Petition; Id., 93-95. Per Judge Pedro J. Callejo, Jr.

[5] Rollo, 94-95.

[6] Id., 94.

[7] Id.

[8] Id., 96.

[9] Rollo, 98.

[10] Annex "E" of Petition; Id., 99-117.

[11] Id., 107.

[12] Rollo, 23-24; 78-79.

[13] Id., 48; 51.

[14] Rollo, 49-51.

[15] Rollo, 180.

[16] 1 MANUEL V. MORAN, COMMENTS ON THE RULES OF COURT 490 (1979 ed.).

[17] Rollo, 83-89.

- [18] ????? MANUEL V. MORAN, COMMENTS ON THE RULES OF COURT 312 (1980 ed.).
- [19] Demamay vs. Court of Appeals, 186 SCRA 608, 612 [1990].
- [20] Pangilinan vs. Aguilar, 43 SCRA 136, 144 [1972].
- [21] Black's Law Dictionary, Fifth ed., 1267.
- [22] Heirs of Eugenio Sevilla, Inc. vs. Court of Appeals, 206 SCRA 559 [1992].
- [23] Rollo, 94.
- [24] Id.
- [25] Abrin vs. Campos, 203 SCRA 420 [1991]; Mariategui vs. Court of Appeals, 205 SCRA 337 [1992]; Abad vs. Court of First Instance, 206 SCRA 567 [1992]; Del Castillo vs. Aguinaldo, 212 SCRA 169 [1992]; Santos vs. Court of Appeals, 214 SCRA 162 [1992].
- [26] Feranil vs. Arcilla, 88 SCRA 770, 776 [1979].
- [27] Maddamu vs. Judge of Municipal Court of Manila, 74 Phil. 230 [1943].
- [28] Co Tiamco vs. Diaz, 75 Phil. 672, 685 [1946]; Valderrama Lumber Manufacturer's Co. vs. L.S. Sarmiento Co., 5 SCRA 287, 291 [1962]; Pangilinan vs. Aguilar, supra.
- [29] Prieto vs. Reyes, 14 SCRA 430, 432 [1965]; Pangilinan vs. Aguilar, supra.; Peran vs. Presiding Judge, 125 SCRA 78 [1983].
- [30] Yu vs. de Lara, 6 SCRA 785 [1962]; Pangilinan vs. Aguilar, supra.; Dakudao vs. Consolacion, 122 SCRA 877 [1983]; Banco de Oro Savings and Mortgage Bank vs. Court of Appeals, 182 SCRA 464 [1990].
- [31] Rollo, 89.
- [32] Id.
- [33] 12 SCRA 514 [1964]. See also Jakihaca vs. Aquino, 181 SCRA 67 [1990].

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