

BANGKO SILANGAN DEVELOPMENT BANK, PETITIONER, VS. COURT OF APPEALS, JUDGE PABLO D. ATIENZA, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 14, REGIONAL TRIAL COURT, FOURTH JUDICIA...

G.R. No. 110480. June 29, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Challenged in this petition for review on certiorari is the Decision[1] dated February 26, 1993 of the Court of Appeals in CA-G.R. No. SP-29659 which affirmed the Resolution[2] dated September 10, 1992 of the Regional Trial Court of Batangas, Branch 14, Nasugbu, Batangas in Civil Case No. 221. The said Regional Trial Court (RTC) denied the motion to dismiss filed by petitioner Bangko Silangan Development Bank (BSDB), Nasugbu Branch, Batangas.

The motion to dismiss was based on the ground of *litis pendentia* allegedly arising from the same controversy, subject of Civil Case No. 91-56185, then pending before the Regional Trial Court of Manila.

The antecedent facts are as follows:

Private respondent Leonida Umandal-Bausas had been maintaining Savings Account No. 04-3652 as depositor of petitioner BSDB, Nasugbu Branch, Batangas since 1985. As of April 1990, she had Fifteen Thousand Pesos (P15,000.00) deposited under her Savings Account No. 04-3652. On April 23, 1990, respondent Leonida Umandal-Bausas attempted to withdraw Five Thousand Pesos (P5,000.00) from that savings account but, to her surprise, the bank teller told her that the withdrawal could not be done because her brother, Antonio Umandal, had already withdrawn on April 16, 1990 the amount of Fifteen Thousand Pesos (P15,000.00) allegedly with her written authorization and that her remaining balance was only Eight Hundred Pesos (P800.00). Respondent Bausas then inquired about the withdrawal slip and found that the signatures appearing thereon were not hers and neither that of her brother.[3]

Dismayed by the turn of events, respondent Bausas sought the assistance of a family friend, Edmundo Villadolid, who was then the President-Manager of the Rural Bank of Nasugbu, Batangas. On the following day, Villadolid sent petitioner BSDB a letter, dated April 24, 1990, together with an affidavit executed by respondent Bausas. In substance, Villadolid in his letter, informed petitioner BSDB of the "sad experience" of respondent Bausas, a daughter of his kumadre, whose savings passbook had since been withheld by the petitioner bank which allowed the withdrawal of the amount of Fifteen Thousand Pesos (P15,000.00) from her savings account without verifying whether the withdrawal was duly authorized by respondent Bausas. Claiming that the withdrawal smacked of "foul play" and "dubious exercise of unwarranted banking operation", Villadolid warned the petitioner bank that he would be constrained to elevate the matter to "higher authorities" should there be no "reasonable and convincing results at the earliest (sic) possible".[4]

Upon receipt of the letter, petitioner BSDB caused an investigation on the matter through its auditor, Benedicto I. Ramirez. On May 4, 1990, Ramirez submitted a report, a portion of which reads:

"Savings ledger No. 3652 under the name Leonida B. Umandal shows a FIFTEEN THOUSAND PESO (P15,000.00) withdrawal made last April 16. Said withdrawal is evidenced by a withdrawal slip bearing the signatures of both the depositor, Leonida B. Umandal and her representative, Antonio Umandal, which are genuine. Both Leonida B. Umandal and her brother Antonio Umandal, who dropped by to complaint (sic) sometime after April 22, 1990, denied having signed said withdrawal slip as per statements gathered from the officers and staff of Nasugbu Branch. Said withdrawal was processed in accordance with the standard operating procedure." [5]

Subsequently, on May 15, 1990, Villadolid requested the Central Bank of the Philippines to intervene and conduct an investigation on petitioner BSDB's banking operations on account of the petitioner bank's "indifference" in the conduct of its investigation on the unauthorized withdrawal from respondent Bausas' savings account. This was subsequently referred by the Central Bank to petitioner BSDB's Head Office in Batangas City.

On May 31, 1990, Villadolid wrote petitioner BSDB another letter, a copy of which was furnished the Central Bank. He reminded the petitioner bank that it had been forty-five (45) days since the failed withdrawal and that, notwithstanding the attempt of respondent Bausas' father to thresh out the matter with Sofronio Comia, petitioner bank's officer-in-charge, no "concrete results and/or remedies" has been arrived at. He warned that if, within five (5) days, the petitioner bank would continue its "insulting treatment" on the matter, respondent Bausas would be constrained to hire the services of a lawyer in order that the proper charges would be filed against the petitioner bank. [6]

In a letter dated June 6, 1990, petitioner BSDB, through Alberto Buquid, informed respondent Bausas that the investigation it had conducted on the matter revealed that on April 16, 1990, her brother, Antonio Umandal, bearing her passbook under Savings Account No. 04-3652 and the withdrawal slip to which her signature was affixed, withdrew the amount of Fifteen Thousand Pesos (P15,000.00). The petitioner bank asserted that it observed the usual procedure in bank transactions - it made the proper verification, posted the withdrawal on the passbook and the bank ledger, and approved the withdrawal. [7]

As a result of that information, respondent Bausas sought the help of the National Bureau of Investigation (NBI) in Region IV, Batangas City. After an investigation, a case was filed with the Office of the Provincial Prosecutor of Batangas on February 21, 1993 and docketed therein as Investigation Slip (I.S.) No. 91-37. [8]

It appears that respondent Bausas sought another venue for airing her complaint - the press. Thus, in the September 17, 1990 issue of the People's Journal Tonight, the following headline appeared: "Bank Money Withdrawn w/o. Depositor's Knowledge". [9] Aside from that publication, respondent Bausas and Villadolid reproduced by xerox machine the said news item and posted the xerox copies in conspicuous places within the municipal hall of Nasugbu.

Aggrieved, on February 22, 1991, petitioner BSDB filed in the RTC of Manila a complaint for damages [10] against respondent Bausas, Villadolid, the Philippine Journalists, Inc., Zacarias Nuguid, Jr. (publisher), Alfredo M. Marquez (managing editor), Franklin Cabaluna (news editor), Benjamin Ayllon (city editor) and Raul S. Beltran (reporter). Docketed as Civil Case No. 91-56185 in the RTC of Manila, Branch 24, the complaint alleged that the "series of publications" were "clearly defamatory and libelous", and that the publication constituted the crime defined and penalized under Article 353 of the Revised Penal Code that damaged the "goodwill, integrity and good reputation" of the 21-year old bank. [11] Petitioner BSDB prayed for compensatory damages of One Hundred Thousand Pesos (P100,000.00), moral damages of One Million Five Hundred Thousand Pesos

(P1,500,000.00), exemplary damages of Seven Hundred Thousand Pesos (P700,000.00), and attorney's fees of Two Hundred Thousand Pesos (P200,000.00).

In their answer with compulsory counterclaim,[12] In Civil Case No. 91-56185 respondent Bausas and Villadolid alleged that the withdrawal slip was a forgery and that Villadolid's actions were moved by a "sense of moral duty" to respondent Bausas and her family. They raised lack of actual malice as a defense and interposed a compulsory counterclaim for One Million Pesos (P1,000,000.00) in moral damages, Two Hundred Fifty Thousand Pesos (P250,000.00) in litigation expenses and other damages, Five Hundred Thousand Pesos (P500,000.00) in exemplary damages, and Fifty Thousand Pesos (P50,000.00) plus Two Thousand Pesos (P2,000.00) per appearance as attorney's fees.

While Civil Case No.91-56185 was pending in the RTC of Manila, or on February 13, 1992, respondent Bausas, joined by her husband Ricardo, filed Civil Case No. 221, a complaint for a sum of money, with damages, against petitioner BSDB before the RTC of Batangas, Branch 14 in Nasugbu, Batangas. The complaint specifically prayed that petitioner BSDB be ordered to pay them (a) Fifteen Thousand Pesos (P15,000.00) "plus whatever balance" remained of her deposit, including accrued interests thereon; (b) Twenty Thousand Pesos (P20,000.00) as litigation expenses and/or damages; and (c) Ten Thousand Pesos (P10,000.00) as attorney's fees plus One Thousand Pesos (P1,000.00) per hearing attended by their lawyer.[13]

Instead of filing a responsive pleading to the complaint, petitioner BSDB filed a motion to dismiss,[14] alleging that (a) there was another action pending between the same parties for the same case (sic); (b) the action caused the splitting of the cause of action raised in the answer and counterclaim in Civil Case No. 91-56185; (c) the action violated the principle of multiplicity of suits, and; (d) the filing of the complaint constituted forum-shopping.

On September 10, 1982, the RTC of Batangas[15] issued a Resolution[16] denying the motion to dismiss.

Petitioner BSDB then filed a motion for reconsideration[17] which the RTC of Batangas, however, denied in an Order[18] dated November 19, 1992.

Petitioner BSDB elevated the matter to the Court of Appeals via a petition for certiorari, prohibition and mandamus,[19] seeking the reversal of the said Resolution and Order of the RTC of Batangas.

On February 26, 1993, the Court of Appeals rendered the now assailed Decision dismissing petitioner BSDB's petition for certiorari, prohibition and mandamus and upholding the denial of its motion to dismiss Civil Case No. 221.[20] The appellate court held that an order denying a motion to dismiss, being interlocutory, cannot be the subject of a petition for certiorari.

Besides, the principle of *litis pendentia* invoked by petitioner BSDB is not applicable to the case at bar. The appellate court correctly found and declared that:

"In the present case, while concededly, certain pieces of evidence may be identical (to) both Civil Case No. 91-56185 and Civil Case No. 221, it cannot be said however, that exactly the same evidence will support the decisions in both. In Civil Case No. 91-56185 pending before the Regional Trial Court of Manila, the issues raised are (1) whether the publication in the September 17, 1990 issue of the People's Journal Tonight is false and libelous and the action is directed, not only against private respondent Leonida Umandal-Bausas but also against the publisher and editorial staff of the publication concerned; and (2) whether Leonida Umandal-Bausas acted with malice in causing the posting of xerox copies of said publication at conspicuous places at the Municipal Building of Nasugbu, Batangas. In Civil Case No. 221, however, the primary issue, shown (sic) of unessential trimmings, is whether or not petitioner Bank could be held liable to Leonida Umandal-Bausas for the withdrawal from her savings account in the amount of P15,000.00.

Private respondent Bausas did not invoke as a permissive counterclaim in Civil Case No. 91-56185, that petitioner indemnify her of her savings deposit which she claims to have been withdrawn by someone else without her authority.

We therefore rule that the court a quo did not commit an abuse of discretion in denying petitioner's motion to dismiss in Civil Case No. 221 on the ground of *litis pendentia*." [21]

Petitioner BSDB's motion for reconsideration [22] thereof was denied in a Resolution, [23] dated June 7, 1993, of the appellate court.

Hence, the instant petition wherein petitioner BSDB raises the following assignment of errors:

I

THE RESPONDENT COURT ERRED WHEN IT HELD THAT THE PETITION FOR CERTIORARI, PROHIBITION AND MANDAMUS SEEKING TO NULLIFY AND SET ASIDE THE ORDER OF THE RESPONDENT JUDGE DENYING PETITIONER'S MOTION TO DISMISS "DOES NOT FALL WITHIN THE AMBIT OF THE EXCEPTION" TO THE GENERAL RULE THAT AN ORDER DENYING A MOTION TO DISMISS IS NOT AN INTERLOCUTORY ORDER AND CANNOT BE THE SUBJECT OF A PETITION FOR CERTIORARI.

II

THE RESPONDENT COURT COMMITTED AN ERROR REVIEWABLE ON APPEAL BY CERTIORARI WHEN IT DENIED DUE COURSE TO THE PETITION AND TO HAVE DISMISSED THE SAME BECAUSE OF ITS FINDING THAT THERE IS NO *LITIS PENDENTIA* BETWEEN CIVIL CASE NO. 221 AND CIVIL CASE NO. 91-56185.

Petitioner argues that respondent RTC of Batangas acted without or in excess of jurisdiction or was guilty of grave abuse of discretion when it refused to dismiss Civil Case No. 221 despite the pendency of Civil Case No. 91-56185 in the RTC of Manila. It insists that *litis pendentia* barred the proceedings in Civil Case No. 221 because the special and affirmative defenses raised by respondent Bausas in Civil Case No. 91-56185 are really the same cause of action which she relied upon in Civil Case No. 221. For that matter, it claimed that respondent trial court abetted the possibility of conflicting decisions between two (2) co-equal and coordinate courts that may in the end sow confusion and chaos that would take years to untangle and settle. [24]

Private respondent, on the other hand, counters that an order denying a motion to dismiss is interlocutory, and hence, cannot be the subject of a petition for certiorari. She claims that the remedy of petitioner bank should be to proceed with the trial and, in the event of an adverse decision, interpose an appeal to the proper forum.

As regards petitioner's claim of *litis pendentia*, respondent Bausas contends that the issue in Civil Case No. 91-56185 is whether or not she and Villadolid acted with malice in publishing the allegedly libelous letters so as to warrant their liability for damages whereas the issue in Civil Case No. 221 which is an action for collection of a sum of money, is whether or not there was an unauthorized withdrawal of her savings deposit that would warrant the petitioner's liability therefor.

The petition, not being meritorious, the same should be, as it is hereby, denied.

The petition for certiorari, prohibition and mandamus interposed by petitioner before the Court of Appeals is not the proper remedy to question the denial of its motion to dismiss in Civil Case No. 221. The Resolution and Order of the RTC of Batangas denying the motion to dismiss are merely interlocutory. An interlocutory order does not terminate nor finally dispose of the case, but leaves something to be done by the court before the case is finally

decided on the merits.[25] It is always under the control of the court and may be modified or rescinded upon sufficient grounds shown at any time before final judgment. This proceeds from the court's inherent power to control its process and orders so as to make them conformable to law and justice. The only limitation is that the judge cannot act with grave abuse of discretion, or that no injustice results thereby.[26] These limitations were not transgressed by the trial court in the case at bar when it denied the petitioner's motion to dismiss. The alleged "chaos and confusion" arising from conflicting decisions that petitioner purportedly seeks to avert by the dismissal of Civil Case No. 221 are actually far-fetched and contrived considering that any adverse decision of the CTA can be made the subject of a proper appeal.

Our recent ruling in *España, Sr. vs. Court of Appeals*[27] applies to the case at bar, to wit:

"We find occasion here to state the rule, once more, that an order denying a motion to dismiss is merely interlocutory and therefore not appealable, nor can it be the subject of a petition for review on certiorari. Such order may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. The ordinary procedure to be followed in that event is to file an answer, go to trial, and if the decision is adverse, reiterate the issue on appeal from the final judgment. This is exactly what petitioner should have done in this case after his prayer for the dismissal of Civil Case No. 21-88 was denied by the trial court. Although the special civil action for certiorari may be availed of in case there is grave abuse of discretion or lack of jurisdiction on the part of the lower court, that vitiating error is indubitably not present in the instant case."

Moreover, *litis pendentia* as a ground for the dismissal of a civil action refers to a situation wherein another action is pending between the same parties for the same cause of action and that the second action becomes unnecessary and vexatious.[28] More particularly, it must conform to the following requisites: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity with respect to the two (2) preceding particulars in the two (2) cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.[29]

The trial court was correct when it opined that -

"xxx[T]here has never been any allegation in the answer that would tend to show that the herein plaintiff intended to collect her deposit of P15,000.00 from the defendant-bank which is the subject matter of the instant complaint. Even the complaint above-cited filed in the Regional Trial Court of Manila, the same solely deals on the alleged damages suffered by the defendant-bank, Bangko Silangan Development Bank in the alleged publication. On ground No. 2, the court finds that the counterclaim interposed by the plaintiff in the instant case in Civil Case No. 91-51685 before the Regional Trial Court of Manila is solely for moral damages, litigation expenses; attorney's fees and exemplary damages. Nothing about the claim for the reimbursement or release of the P15,000.00, subject matter of the instant case is ever made therein.

Since the instant case is entirely different from the case now pending before the court of Regional Trial Court of Manila, the court views that there is no such multiplicity of suits."[30]

Clearly, the issue in Civil Case No. 221 is whether or not petitioner was negligent in validating the withdrawal slip and the alleged authority to withdraw of respondent Bausas' brother so that it could be held responsible for the amount withdrawn. Basically, that case is a collection suit founded on a contract of bank deposit.

On the other hand, the issue in Civil Case No. 91-51685 is whether or not the alleged publications of the incident made by respondent Bausas and Villadolid are defamatory so as to warrant petitioner's entitlement to damages.

What is essential in *litis pendentia* is the identity and similarity of the issues under consideration.[31] There being no similarity of issues in Civil Cases No. 91-51685 and 221, the filing of the latter case was not barred by *litis*

pendentia.

There is neither identity of rights asserted and reliefs sought by the parties in the two (2) cases. Petitioner asserts its right to be compensated for alleged damage to its goodwill and reputation in Civil Case No. 91-56185 of the RTC of Manila. Respondent Bausas, on the other hand, asserts her right to be reimbursed the amount illegally withdrawn from her savings bank account in Civil Case No. 221 of the RTC of Batangas. As to the reliefs sought, while both petitioner and respondent Bausas seek damages, the reasons for such reliefs prayed for are divergent. Thus, there is no identity of causes of action in the two (2) cases.

The test to determine identity of causes of action is to ascertain whether the same evidence necessary to sustain the second cause of action is sufficient to authorize a recovery in the first, even if the form or nature of the two (2) actions are different from each other. If the same facts or evidence would sustain both, the two (2) actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action; otherwise, it is not. This method has been considered the most accurate test as to whether a former judgment is a bar in subsequent proceedings between the same parties. It has even been designated as infallible.[32]

While it is true that the two (2) cases are founded on practically the same set of facts, as correctly observed by the Court of Appeals, it cannot be said that exactly the same evidence are needed to prove the causes of action in both cases. Thus, in Civil Case No. 91-56185 of the RTC of Manila, the evidence needed to prove that petitioner sustained damage to its reputation and goodwill is not the same evidence needed in Civil Case No. 221 of the RTC of Batangas to prove the allegation that a substantial amount of respondent Bausas' bank deposit in petitioner's bank was illegally withdrawn without her consent or authority. The RTC of Batangas and the Court of Appeals, therefore, did not abuse their discretion in denying petitioner's motion to dismiss which was based on the ground of *litis pendentia*.

The petitioner's contention that private respondent is guilty of forum-shopping must likewise fail.

Forum-shopping is "the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum other than by appeal or special civil action of certiorari, or the institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court might look with favor upon the party." [33] Where the elements of *litis pendentia* are not present or where a final judgment in one case will not amount to *res judicata* in the other, [34] there is no forum-shopping. In the case at bar, there is no forum shopping, inasmuch as earlier discussed, the cause of action in Civil Case No. 91-56185 is separate and distinct from the cause of action in Civil Case No. 221.

WHEREFORE, the instant petition for review on certiorari is hereby DENIED for lack of merit. The challenged Decision of the Court of Appeals is AFFIRMED; and the Regional Trial Court of Batangas, Branch 14, Nasugbu, Batangas, is hereby directed to proceed with dispatch to resolve Civil Case No. 221.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Penned by Associate Justice Ricardo P. Galvez and concurred in by Associate Justices Manuel N. Herrera and Asaali S. Isnani, Rollo, pp. 124-130.

[2] Rollo, pp. 67-69.

[3] Rollo, pp. 56-57.

[4] Rollo, pp. 30-31.

[5] Rollo, p. 31.

[6] Rollo, pp. 33-34.

[7] Rollo, p. 34.

[8] Rollo, p. 44.

[9] The full text of this news item reads:

"BANK MONEY WITHDRAWN W/O.DEPOSITOR'S KNOWLEDGE

"A MIDWIFE from Nasugbu, Batangas is seeking the help of the National Bureau of Investigation (NBI) in the recovery of her cash deposit from a development bank in the town which she claimed was withdrawn without her knowledge.

Nasugbu resident Leonida Umandal-Bausas, 32, married, said the missing amount is part of her savings in her municipality's Bangko Silangan Development Bank branch which she has patronized since she was a student.

The savings have amounted to P15,000.00, which Bausa said she planned to withdraw last April 23. But to her surprise, she was told by a teller that she has only P800 left in her savings account No. 3652.

The teller told Bausas -who has also sought the help of the Central Bank -that her brother, Antonio Umandal, withdrew P15,000.00 last April 16, allegedly with her written authorization.

Bausas said she started patronizing the bank, which has branches in several Batangas towns, in 1985. She said her passbook was allegedly withheld by the bank management, supposedly to 'facilitate the transfer of deposit entries.'

In 1988, Bausas was allegedly told by the bank management that her passbook was missing. For unknown reasons, she was made to execute an affidavit of loss - when she was not the one who lost the passbook - and was shown a new passbook which, like the first one, was not given to her but also withheld by the bank.

Suspecting nothing amiss, Bausas continued depositing her hard-earned savings with the bank, which she said never informed her how much money she has saved.

She admitted she was mistaken in not 'bothering to check' how much savings she had, as reflected in her supposed passbook, because' she thought that her money was in safe hands.'

Assisting her family, Edmundo Villadolid, president-manager of the Rural Bank of Nasugbu, sought the arbitration of the Central Bank, which referred Bausas' complaint to Bangko Silangan's head office in Batangas City.

In his capacity as a close friend of her father, Loreto Umandal, a Nasugbu businessman dealing in glass windows, Villadolid also wrote a separate letter to Bangko Silangan to complain against the illegal withdrawal of money from Bausas' bank account.

In a letter to Bausas, Alberto Buquid, special assistant to the president of Bangko Silangan, said that Villadolid's letter was "improperly written in your behalf giving rise to suspicion that the act complained of may be ill-motivated.'

Buquid said that 'we have conducted an investigation on the matter and we positively found out that on April 16, 1990, your brother Antonio Umandal, armed with your savings passbook No. 04-3652 and withdrawal slip bearing your signature and authorization to withdraw, received the proceeds of your savings deposit in the amount of P15,000.00 from our bank.'

'Just like other transactions, proper verification, posting of the withdrawal on the passbook and in our ledger and approval of the withdrawal were accordingly observed.' Buquid said.

But Bausas said it was highly impossible for her brother to withdraw the amount using her passbook, because 'in the first place, it is with the bank.'

Claiming that her deposits were only reflected in temporary receipts given to her by the bank's solicitors, Bausas also averred that the signature appearing on the alleged withdrawal slip was entirely different from her own.

In a separate sworn statement, her brother Antonio also denied that his supposed signature on the withdrawal slip with Bausas' alleged authorization was his. Besides, Antonio said, he was with his father and several employees (sic) fixing the jalousies and screen windows of the house of Ofelia Oriondo, on Salvadea St. in Nasugbu, on the day he supposedly withdrew the money from Bangko Silangan.

His statements were corroborated by Oriondo himself, who also executed an affidavit certifying the presence of Antonio Umandal and his father in her residence last April 16.

In seeking the NBI's assistance, Bausas said she specifically asking Director Alfredo Lim to send handwriting experts to Nasugbu to authenticate the signatures on the supposed withdrawal slip, which she said "Bangko Silangan has refused to show to her." (Rollo, pp. 35-37).

[10] Rollo, pp. 29-40.

[11] Rollo, pp. 35-38.

[12] Rollo, pp. 41-47.

[13] Rollo, pp. 56-59.

[14] Rollo, pp. 60-66.

[15] Presided by Acting Judge Pablo D. Atienza.

[16] Rollo, pp. 67-69.

[17] Rollo, pp. 70-76.

[18] Rollo, p. 89.

[19] Rollo, pp. 90-106.

[20] Rollo, pp. 124-130.

[21] Rollo, p. 442.

[22] Rollo, pp. 131-139.

[23] Rollo, p. 149.

[24] Rollo, p. 16.

[25] *Philgreen Trading Construction Corporation v. Court of Appeals*, 271 SCRA 719, 726-727 (1997).

[26] *Ley Construction and Development Corporation, et al. v. Union Bank of the Philippines*, G.R. No. 133801, June 27, 2000.

[27] 268 SCRA 511, 515-516 (1997).

[28] University Physicians Services, Inc. v. CA, 324 SCRA 52, 61-62 (2000).

[29] Melo v. Court of Appeals, 318 SCRA 94, 100 (1999).

[30] Rollo, pp. 68-69.

[31] Mariscal v. Court of Appeals, 311 SCRA 51, 55.(1999).

[32] Vda. de Cruz v. Carriaga, Jr., 174 SCRA 330, 342 (1989).

[33] Marina Properties Corporation v.. Court of Appeals, 355 Phil. 705, 719 (1998).

[34] Cruz v. Court of Appeals, 309 SCRA 714, 722 (1999).

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