

EDITHA M. MIJARES AND GLICERIO T. MIJARES, PETITIONERS, VS. COURT OF APPEALS AND METRO DRUG, INC., RESPONDENTS.

G.R. No. 113558. April 18, 1997

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This petition for review on certiorari seeks the reversal of (1) the August 31, 1992 Decision^[1] of the Court of Appeals which set aside the decision of the Regional Trial Court of Manila, Branch 46,^[2] and (2) the January 10, 1994 Resolution of the Court of Appeals denying the Motion for Reconsideration of its decision.

In its Complaint dated May 2, 1988 filed before the Manila Regional Trial Court, herein private respondent, Metro Drug, Inc., alleged that herein petitioners, spouses Editha Mijares and Glicerio T. Mijares, while doing business under the style "Aklan Drug," purchased and received from Metro Drug various products the total value of which amounted to P32,034.42.^[3] Despite Metro Drug's repeated demands however, petitioners have failed and have refused to pay said amount.^[4] Metro Drug thus prayed that the Regional Trial Court render judgment:

- (a) Ordering the defendants to pay, jointly and severally, the plaintiff the sum of P32,034.42 with interest thereon of 1% a month from February, 1986 until fully paid;
- (b) Ordering the defendants to pay, jointly and severally, the plaintiff the sum equivalent to 25% of the amount claimed in this suit as and for attorney's fees;
- (c) Ordering the defendants to pay, jointly and severally, the costs of this suit.^[5]

In their "Answer With Compulsory Counterclaim," petitioners qualified Metro Drug's allegation that they were doing business under the style "Aklan Drug," claiming that the same "is a sole proprietorship in the name of defendant Editha M. Mijares."^[6] The petitioners denied the rest of Metro Drug's allegations. They likewise interposed a counterclaim for malicious prosecution and prayed that judgment be rendered:

- A. Dismissing the Complaint in toto for utter lack of merit; and
- B. Ordering plaintiff to pay defendants as follows:

1. The sum of P200,000.00 each, or such other sum as the Honorable Court may determine, as and by way of moral damages;
2. The sum of P25,000.00 as and by way of attorney's fees, plus all expenses of suit as may be proven in the course of trial.^[7]

On March 8, 1991, the trial court rendered its Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the defendants. The Complaint is ordered dismissed and the plaintiff is ordered to pay the defendants the sum of

P30,000.00 for moral damages

P10,000.00 as attorney's fees

and to pay the costs of suit.

SO ORDERED.[8]

The factual findings of the trial court are as follows:

Dioscoro Lamenta, salesman/collector of Metro Manila Drug Inc. visits plaintiff's customers once a week, book orders for pharmaceutical products and insure that orders are received by customers. He also collects the value of goods within 30 days after delivery to customers. The defendants as owners of Aklan Drug had been buying pharmaceutical products from Metro Drug since 1976. They (defendants) had good record with the plaintiff. However, there were eight (8) charge/sales invoices (Exhs. A to H) which became a source of some misunderstanding between the parties.

It appears that Editha Mijares, aside from being the operator of Aklan Drug, was also an officer of the Ospital ng Maynila Consumers Cooperative, Inc. It was an employees' cooperative and she was its pharmacist and manager. Ospital ng Maynila Cooperative became a concessionaire of a small area right inside the hospital compound and it operated a drugstore under its Certificate of Registration dated November 15, 1985 (Exh. 13). Obviously, Ospital ng Maynila Cooperative had some transactions with the plaintiff as supplier of pharmaceutical products. Subsequently, the Board of Directors of the Cooperative decided to dissolve it and stopped its operations. Operations stopped in October 1986. In a letter dated October 23, 1986, Solomon Silverio, Jr. offered to lease from the City of Manila, thru the Mayor, the site previously occupied by the Cooperative. The offer having been accepted, a Contract of Lease (Exh. 1) was entered into between the City of Manila as Lessor and Solomon Silverio, Jr. as Lessee effective November 1, 1986.

Thereafter, Solomon Silverio as the new lessee, put up a drugstore on the same area occupied by the Cooperative.

On November 26, 1986, delivery of pharmaceutical products was made by plaintiff thru Dioscoro Lamenta, to the said store. It was covered by Exhibit A. In 1987, on seven other occasions, particularly on

March 6, 1987

March 11, 1987

July 29, 1987

July 30, 1987

August 3, 1987

August 11, 1987

August 24, 1987

more deliveries of pharmaceutical products were made in the same place by the plaintiff. From the first to the seventh deliveries (Exhs. A to G) they were received by Luz Espares. The 8th delivery (Exh. H) was received by Hilda Rodrigona. These two were never the employees of the defendants.

The total value of these eight (8) deliveries under charge invoices is in the sum of P32,034.42.

In partial payment of these receivables, plaintiff received Check No. 264292 (Exh. J) dated November 27, 1987. It was paid to Lamenta, when the latter went to the store in the compound of the Ospital ng Maynila to collect. It was drawn by Solomon Silverio, Jr. which check was under the account name Farmacia delos Remedios under Account No. 202-830126-2 in the amount of P14,180.46. Metro Drug deposited said check

with the FEBTC in its account on December 3, 1987. On December 4, 1987, it received a notice from the bank that the check was returned to it on the ground of insufficient fund.

On April 4, 1988, plaintiff filed a telegram (Exh. K) addressed to Aklan Drug at 1711 Zamora St., Pandacan Manila, demanding full redemption of the dishonored check and full payment of outstanding account for P27,938.06. About 4 to 5 days after the telegram was sent, Lamenta was able to talk to Editha Mijares who directed him to a certain Solomon Silverio to collect the amount. He asked why as she was the owner of Aklan Drug. But he was told by Editha that Silverio is the one managing the store.

Lamenta felt that as salesman/collector of the plaintiff, he has limited duties. He felt he has no duty to check who is the owner of the drugstore to whom he delivers the drugs. Hence in this case, that he went to the store to collect and was given a check in that store is enough. He did not care whoever was in that store. So when he was told in his office that the check paid to him bounced, he went back to that drugstore, to inform them of the dishonor, without even recalling to whom he gave said information. Based on such limiting attitude, he has always perceived Editha Mijares as a debtor of the plaintiff.

Editha Mijares and her husband do not acknowledged at all that they have any outstanding account with the plaintiff. Defendant Glicerio Mijares, as a doctor, never had anything to do with the drugstore of his wife. It was only Editha Mijares who operates and manages the Aklan Drug located at 1711 Zamora St., Pandacan, Manila (Exhs. 2 and 2-A.) And as far as Editha is concerned, she never ordered the drugs Lamenta brought to the Ospital ng Maynila on November 26, 1986 and in 1987 which are covered by the charge/sale invoices (Exh. A to H). Neither has she, nor her employees, received them. Luz Espares and Hilda Rodrigona who received the goods in question from Lamenta are not her employees.

While Editha Mijares has dealt with the plaintiff, but it was always only thru Lamenta that they transacted business. And all her purchases were paid for. In fact, plaintiff acknowledges that defendants paid all accounts incurred except the claim herein.

When Lamenta tried to collect from Editha Mijares for the disputed claim, Editha Mijares referred him to Mr. Silverio as the new operator and concessionaire of the drugstore. She informed him verbally that they have no more business inside the Ospital ng Maynila as the cooperative drugstore has already stopped operations. Despite said verbal notice, the demand telegram addressed to Aklan Drug was still sent to Editha Mijares. On Lamenta's follow-up of said telegram, Editha Mijares again directed Lamenta to see Solomon Silverio, the new owner of the drugstore. In fact on a certain occasion, Lamenta told Mijares "nasabihan ko na, bahala na sila" obviously referring to the information he gave Metro Drug that Editha Mijares is no longer running the drugstore at the Ospital ng Maynila.[9]

On the basis of the above findings, the trial court concluded that:

x x x it is clear that the products covered by plaintiff's Exh. A to H inclusive, were not purchased by, nor delivered to, nor received by the defendants. As a consequence, defendants are not liable to plaintiff for the sums indicated in Exh. A to H inclusive [10]

On appeal by Metro Drug, the Court of Appeals reversed the decision of the Regional Trial Court ratiocinating that:

DEFENDANTS-APPELLEES, however, want to convince Us of certain details unknown to the plaintiff-appellant's representative Dioscoro Lamenta that the cooperative has already been dissolved or that the operation of the cooperative drugstore has already been terminated, and that there was a new lease which paved the way for the entry into the picture of a certain Solomon Silverio, Jr., in order to avoid liability. But the undeniable and un rebutted fact is that appellant's representative Dioscoro Lamenta had been delivering pharmaceuticals to the drugstore of the appellees from 1976-1986. There were no significant changes in operational or personnel scheme as well as the use of the old credit line. In fine, the delivery of the

pharmaceuticals was with the consent of the defendants as owners of the drugstore. The defendants' contention that Luz Espares and Hilda Rodrigona were no longer employed with the cooperative drugstore owned by the defendants cannot absolve defendants from liability on appellant's claim.

TO repeat the basic liability of the defendants-appellees, it should be made clear that this proceeds from the obligation arising from the purchase by the appellee and receipt of the pharmaceuticals delivered by the appellant. This delivery was precipitated by the appellees' order of the merchandise. The appellees' order of the merchandise and the appellant's agreement to deliver, as in fact it delivered said merchandise, constitutes a contract of sale which is perfected (Art. 1475, NCC; Warner vs. Inza, 43 Phil. 404).[11]

Not satisfied with the decision of the Court of Appeals, petitioners came to this Court by way of petition for review, alleging that:

I. THE COURT OF APPEALS ERRED IN REVERSING AND SETTING ASIDE THE DECISION DATED MARCH 8, 1991 OF THE TRIAL COURT.

II. THE COURT OF APPEALS ERRED IN CONCLUDING THAT THE MERCHANDISE COVERED BY EXHIBITS A TO H WERE PURCHASED BY, DELIVERED TO, AND RECEIVED BY PETITIONERS.

III. THE COURT OF APPEALS ERRED IN ORDERING PETITIONERS TO PAY RESPONDENT THE SUM OF P32,034.43 WITH INTEREST THEREON OF 1% A MONTH FROM FEBRUARY 1986 UNTIL FULLY PAID; TO PAY SUM EQUIVALENT TO 25% OF THE AMOUNT CLAIMED AS ATTORNEY'S FEES; AND TO PAY THE COSTS OF SUIT. [12]

We give due course to the petition.

As a general rule, the findings of fact of the Court of Appeals are binding upon this Court. The rule, however, is not absolute, and jurisprudence has carved out several exceptions. Among these are when the findings of the Court of Appeals are contrary to those of the trial court.[13]

In the case at bar, the evidence as found by the trial court conclusively shows that by October 1986, Editha Mijares was no longer involved in the operation of the drugstore. On November 1, 1986, a certain Solomon Silverio, Jr. put up an entirely distinct drugstore, as the new lessee of the area. It was this same Solomon Silverio, Jr. who drew the bouncing check in partial payment of the pharmaceutical products.

The only evidence alluding to petitioners' ownership of the drugstore is Dioscoro Lamenta's testimony, to wit:

Q

You stated that that drug store located at Ospital Ng Maynila has no sign [identifying the store as Aklan Drug]?

A

I did not notice any sign, Sir.

Q

But you know for a fact that this drug-store is an extension owned and operating by the defendant?

A

Yes, Sir.[14]

Lamenta, however, did not explain how he reached such a conclusion.

On the other hand, petitioner Editha Mijares testified that the drugstore was currently owned by Solomon Silverio, not by petitioners:

Q

Plaintiff's witness, in the person of Mr. Lamenta, testified that the pharmaceutical products covered by Exhibits A to H were delivered to a drugstore situated at the Ospital ng Maynila Compound. Do you know if such or if there is such a drugstore in the Ospital Ng Maynila compound in November, 1986? Would you know if there was a drugstore inside the Ospital Ng Maynila Compound?

A

I have a knowledge that there is a drugstore there but I don't have any knowledge of the delivery or the transaction between Metro Drug and the drugstore located in the compound of the Ospital ng Maynila.

Q

Would you know the owner of the drugstore inside the compound of Ospital ng Maynila?

A

Mr. Silverio.

Q

Can you please give us the full name of Mr. Silverio, if you know?

A

Solomon Silverio.

Q

Was he the owner?

A

He was the concessionaire of the new drugstore.

Q

What is the name of the new drugstore?

A

Farmacia delos Remedios.[15]

To support Mrs. Mijares' testimony regarding the new concession operating in the Hospital, petitioners presented in evidence a "CONTRACT OF LEASE"[16] involving a building "erected on the City lot occupied by the Hospital ng Maynila" which the lessee offered to lease "as site for a drugstore." Said contract was executed on the "1 th (sic) day of November, 1986" by the City of Manila, represented by then Acting Mayor Gemiliano C. Lopez, Jr., as Lessor, and Solomon G. Silverio, Jr., "who is doing business under the business name and style of FARMACIA DE LOS REMEDIOS," as Lessee.

Moreover, it may be noted that the check[17] received by Metro Drug in partial payment of the pharmaceutical products was drawn by Solomon Silverio under the account name of Farmacia de los Remedios.

We find the above testimony and documents more than sufficient to overcome Dioscoro Lamenta's uncorroborated testimony that petitioners were the owners of the subject drugstore. The decision of the Court of Appeals holding petitioners liable to Metro Drug has therefore no leg to stand on.

Private respondent nonetheless faults petitioners for failing to inform its "salesman/collector Dioscoro Lamenta about the alleged change of ownership or management of the drugstore inside the Ospital ng Maynila when the questioned deliveries were made." Private respondent also cites certain statements allegedly made by Mrs. Mijares assuring Lamenta that the amount claimed would be paid. These circumstances construed in relation to the parties' past transactions dating back to 1976, the use of the old credit line, and the continuity of the operational scheme -- the last two being attributed to petitioners -- supposedly led private respondent's salesman/collector to believe that petitioners were the owners of the subject drugstore. "If petitioners did not actively operate by themselves said drugstore," contends private respondent, "they at the very least represented themselves as such." In short, private respondent pleads estoppel on the part of the petitioners.

We are not persuaded.

In *Kalalo vs. Luz*,^[18] we held that:

As related to the party claiming the estoppel, the essential elements are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance, in good faith, upon the conduct or statements of the party to be estopped; and (3) action or inaction based thereon of such character as to change the position or status of the party claiming the estoppel, to his injury, detriment or prejudice.^[19]

The first element, as related to the party claiming estoppel, is conspicuously absent in this case. Contrary to Metro Drug's allegations, Mrs. Mijares testified that she did inform Metro Drug salesman/collector Dioscoro Lamenta of the change of ownership or management of the drug store, thus:

Q.

Mr. Lamenta testified that he went to see you to follow up the letter of demand or telegram, what did you do? Were you able to meet with Dr. Lamenta?

A

Yes, I did.

Q

What transpire during that meeting?

A

He asked me to pay that account but I referred him to Solomon Silverio who is now the owner of the Farmacia delos Remedios.

Q

Did you tell him to collect from Mr. Silverio?

A

Yes, I did tell him that we have no business anymore there as the cooperative drugstore stopped operation.

Q

You said that the Ospital ng Maynila Employees Cooperative who was the concessionaire of the drugstore in

which you were the pharmacist and manager was dissolved sometime in September and October 1986 and considering that the drugstore ceased to operate, did you had the occasion to talk to Mr. Lamenta about the cessation of the business operation of the drugstore?

A

I told him that we are no longer connected anymore with said drugstore and that any collectibles should be collected from Mr. Silverio because we are no longer transacting business there. And, in fact, if my memory serves me right, I told him already that . . .

ATTY. BASCONCILLO:I object the answer. She is already narrating.

COURT:Allowed.

A.

Somebody is already awarded the concession to that drugstore. I know that they have a knowledge of the discontinuance of the Cooperative's Drugstore and he told me that he has notified the office already.

COURT:When you were quoting: "And he told me that he has notified the office already," to whom do you refer when you say "he"?

Q

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Q

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ATTY. BASCONCILLO:

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COURT:

Allowed.

A

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COURT:

When you were quoting: "And he told me that he has notified the office already," to whom do you refer when you say "he"?

A

Mr. Lamenta has notified the office and he stated further that: "Nasabihan ko na sila. Bahala na sila."

ATTY. QUIMPO:

Q

When you say "sila" to whom are you refer-

A

Metro Drug.[20]

Assuming that Mrs. Mijares never conveyed such information to Metro Drug's salesman/collector and that petitioners were indeed responsible for the acts attributed to them by private respondent, estoppel would still be unavailing against petitioners. The first element as related to the party claiming estoppel not only requires that there be lack of knowledge on the part of the party invoking estoppel but also "the means of knowledge of the truth as to the facts in question."

One who claims the benefit of an estoppel on the ground that he has been misled by the representations of another must not have been misled through his own want of reasonable care and circumspection. A lack of diligence by a party claiming an estoppel is generally fatal. If the party conducts himself with careless indifference to means of information reasonably at hand, or ignores highly suspicious circumstances, he may not invoke the doctrine of estoppel. Good faith is generally regarded as requiring the exercise of reasonable diligence to learn the truth, and accordingly estoppel is denied where the party claiming it was put on inquiry as to the truth and had available means for ascertaining it, at least where actual fraud has not been practised on the party claiming the estoppel x x x [21]

Private respondent's salesman/collector Dioscoro Lamenta testified thus:

COURT:

Clarificatory question.

Q

Mr. Witness, you tell the Court that after the telegram, was sent by Mijares, about four (4) or five (5) days

thereafter, you saw Mijares, the question is, when were told by Mijares that the one managing the store is already a certain Solomon Silverio, and that you should collect the account from Solomon Silverio. When you were going still to her store within the compound of Ospital Ng Maynila, did it not occur to you to make some inquiries about this Solomon Silverio, who has handed this check and who is managing the drugstore?

A

I made inquiries, Your Honor.

Q

In this check which marked Exhibit J, which was handed to you, the account name is very clear that it is Farmacia delos Remedios, in the course of the transaction that Metro Drugs have with Mijares, was there any occasion for the defendant to issue check in the name of Farmacia delos Remedios?

A

That check was issued within the drugstore.

Q

I am only asking, when you were still dealing with Editha Mijares from 1986, was there any occasion when Editha Mijares and husband issue a check in the account of Farmacia delos Remedios?

A

None, Your Honor.

Q

Was this check drawn in your presence, this check marked Exhibit J?

A

I cannot remember, Your Honor, when I went there they already handed to me

Q

Considering that Metro Drugs is in business, was there any occasion for Metro Drugs to check from the office of domestic and bureau . . . who is the owner of Farmacia delos Remedios, considering that Exhibit J is very clear?

A

I cannot remember of the result of my inquiry.

Q

You testified to the Court that Editha Mijares told you explicitly that you have to collect from Solomon Silverio. Considering that Editha Mijares told you that you would collect the amount you are trying to collect from her to Solomon Silverio, and being already armed with the check marked Exhibit J, did it not occur to you or your company to verify, considering that it is already at least denial of liability, did you or your company?

A

There was, we did something.

Q

What did you do?

A

I went to the domestic to check who was the real owner.

Q

You did not check about Farmacia delos Remedios, which is the very check your company is claiming?

A

I did some inquiries regarding Farmacia delos Remedios, but I cannot remember the result.[22]

As the trial court astutely observed, (1) Mrs. Mijares' instructions to Dioscoro Lamenta to collect from Solomon Silverio and (2) the subsequent receipt by private respondent of the check drawn in the account of Farmacia de los Reyes [and, may we add, (3) the abrupt failure and refusal of petitioners to pay a relatively measly sum of P32,034.42 notwithstanding their good credit history] constituted highly suspicious circumstances which should have prompted private respondent to inquire with the proper government agency as to the true ownership of the subject drugstore — as its salesman/collector in fact did. How Dioscoro Lamenta could forget such an important piece of information or why he did not bother to retrieve the forgotten information is beyond our comprehension. What is clear to us, though, is that private respondent cannot invoke estoppel against petitioners. Dioscoro Lamenta's testimony shows that not only did private respondent have the means of knowledge to ascertain the truth regarding the ownership of the drugstore but that it actually availed of such means. Estoppel is a shield against injustice; a party invoking its protection should not be allowed to use the same to conceal his or her own lack of diligence.

It is evident, therefore, that private respondent was barking up the wrong tree when it sought to hold petitioners liable for the value of the pharmaceutical products delivered at the drugstore in question. The evidence clearly shows that petitioners were not the owners of said drugstore when the deliveries were made. Hence, no meeting of the minds between them and private respondent could have taken place; no contract of sale could have arisen.[23] The absence of any privity of relations between the parties at the time of the deliveries precludes any cause of action in favor of private respondent against petitioners. The Regional Trial Court therefore did not err when it dismissed private respondent's complaint against petitioners.

The trial court however erred when it awarded moral damages in favor of petitioners. Petitioners have failed to show that private respondent was motivated by bad faith when it instituted the action for collection below. In *China Banking Corporation vs. Court of Appeals*,[24] we held that:

x x x Malicious prosecution, both in criminal and civil cases, requires the presence of two elements, to wit: a) malice; and b) absence of probable cause. Moreover, there must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person, and that it was initiated deliberately knowing that the charge was false and baseless (*Manila Gas Corporation v. Court of Appeals*, 100 SCRA 602 [1980]). Hence, mere filing of a suit does not render a person liable for malicious prosecution should he be unsuccessful, for the law could not have meant to impose a penalty on the right to litigate (*Ponce v. Legaspi*, 208 SCRA 377 [1992]; *Saba v. Court of Appeals*, 189 SCRA 50 [1990]); *Rubio v. Court of Appeals*, 141 SCRA 488 [1986]). Settled in our jurisprudence is the rule that moral damages cannot be recovered from a person who has filed a complaint against another in good faith, or without malice or bad faith (*Philippine National Bank v. Court of Appeals*, 159 SCRA 433 [1988]; *R & B Surety and Insurance v. Intermediate Appellate Court*, 129 SCRA 736 [1984]). If damage results from the filing of the complaint, it is *damnum absque injuria* (*Ilocos Norte Electrical Company v. Court of Appeals*, 179 SCRA 5 [1989]).

For the same reasons, the award for attorney's fees and expenses of litigation must likewise be deleted.[25]

WHEREFORE, the petition is hereby GRANTED, and the Decision of August 31, 1992 and the Resolution of January 10, 1994 of the Court of Appeals are REVERSED and SET ASIDE. The Decision of the Regional Trial Court of Manila dated March 8, 1991 is hereby REINSTATED but only insofar as it dismisses Metro Drug's complaint.

SO ORDERED.

Padilla, Bellosillo, and Vitug, JJ., concur.

Hermosisima, Jr., J., on leave.

[1] Penned by Jainal D. Rasul, J.; Emeterio C. Cui and Segundino G. Chua, JJ., concurring.

[2] Presided by Judge Teresita Dy-Liacco Flores.

[3] Original Records, p. 1.

[4] Ibid.

[5] Id., at 2.

[6] Id., at 18.

[7] Id., at 20.

[8] Rollo, p. 20.

[9] Id., at 17-19.

[10] Id., at 19.

[11] Id., at 24-25.

[12] Id., at 8.

[13] Cuizon vs. Court of Appeals, G.R. No. 102096, August 22, 1996, citing Floro vs. Llenado, G.R. No. 75723, June 2, 1995. The other exceptions are: (1) when the inference made is manifestly mistaken, absurd, or impossible; (2) when there is grave abuse of discretion; (3) when the finding is grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) when the findings of facts are conflicting; (6) when the Court of Appeals in making its findings went beyond the issues of the case and the same is contrary to the admissions of both the appellant and appellee; (7) when the findings of facts are conclusions without citations of specific evidence on which they are based; and (8) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which if properly considered would justify a different conclusion; (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion.

[14] TSN, June 28, 1990, pp. 24-25.

[15] TSN, 27 July 1990, pp. 9-11.

[16] Exhibit "1."

[17] Exhibit "J."

[18] 34 SCRA 337 (1970); citing 28 Am Jur 2d Estoppel § 35.

[19] On the other hand, the essential elements in relation to the party sought to be estopped are: (1) conduct amounting to false representation or concealment of material facts, or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intent, or at least expectation that this conduct shall be acted upon by, or at least influence, the other party; and (3) knowledge, actual or constructive, of the real facts. (Kalalo vs. Luz, *supra*.)

[20] TSN, July 27, 1990, pp. 14-18; underscoring supplied.

[21] 28 Am Jur 2d Estoppel § 80; citations omitted.

[22] TSN, June 28, 1990, pp. 25-28; underscoring supplied.

[23] See Article 1305, Civil Code.

[24] 231 SCRA 472 (1994).

[25] See *De La Peña vs. Court of Appeals*, 231 SCRA 456 (1994).

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