

EDUARDO M. COJUANGCO JR., PETITIONER VS. COURT OF APPEALS, THE PHILIPPINE CHARITY SWEEPSTAKES OFFICE AND FERNANDO O. CARRASCOSO JR., RESPONDENTS.

G.R. No. 119398. July 02, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

To hold public officers personally liable for moral and exemplary damages and for attorney's fees for acts done in the performance of official functions, the plaintiff must prove that these officers exhibited acts characterized by evident bad faith, malice, or gross negligence. But even if their acts had not been so tainted, public officers may still be held liable for nominal damages if they had violated the plaintiff's constitutional rights.

The Case

Before us is a Petition for Review under Rule 45 of the Rules of Court seeking to set aside the Decision[1] of the Court of Appeals[2] in CA-GR CV No. 39252 promulgated on September 9, 1994. The assailed Decision reversed the Regional Trial Court (RTC) of Manila, Branch 2, in Civil Case No. 91-55873, which disposed of the controversy in favor of herein petitioner in the following manner:[3]

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering them, jointly and severally the following:

ON THE FIRST CAUSE OF ACTION

- To pay P143,000.00 plus interest thereon from March 26, 1986 until complete payment thereof;
- To pay P28,000.00 plus interest thereon [from] June 8, 1986 until complete payment thereof;
- To pay P142,700.00 plus interest thereon from July 10, 1987 until complete payment thereof;
- To pay P70,000.00 plus interest thereon from February 1, 1987 until complete payment thereof;
- To pay P140,000.00 plus interest thereon from March 22, 1987 until complete payment thereof;
- To pay P28,000.00 plus interest thereon from April 26, 1987 until complete payment thereof;
- To pay P14,000.00 plus interest thereon from May 17, 1987 until complete payment thereof;
- To pay P140,000.00 plus interest thereon from August 9, 1987 until complete payment thereof;
- To pay P174,000.00 plus interest thereon from December 13, 1987 until complete payment thereof;
- To pay P140,000.00 plus interest thereon from September 18, 1988 until complete payment thereof;
- All income derived from the foregoing amounts.

ON THE SECOND CAUSE OF ACTION

Ordering defendant Fernando O. Carrascoso the following:

- To pay moral damages in the amount of One Hundred Thousand Pesos (P100,000.00);
- To pay exemplary damages in the amount of Twenty Thousand Pesos (P20,000.00);
- To pay attorney's fees in the amount of Thirty Thousand Pesos (P30,000.00);
- To pay the costs of suit.

The counterclaim is ordered dismissed, for lack of merit.

SO ORDERED."

In a Resolution[4] dated March 7, 1995, Respondent Court denied petitioner's Motion for Reconsideration.

The Facts

The following is the Court of Appeals' undisputed narration of the facts:

"Plaintiff [herein petitioner] is a known businessman-sportsman owning several racehorses which he entered in the sweepstakes races between the periods covering March 6, 1986 to September 18, 1989. Several of his horses won the races on various dates, landing first, second or third places, respectively, and winning prizes together with the 30% due for trainer/grooms which are itemized as follows:

Date

Place

Stake Horse Winner

Racewinning Prize Claims

30% Due Training Grooms

Net Amount Withheld by

PCSO

03/25/86

1st

Hansuyen

200,000.00

57,000.00

143,000.00

06/08/86

2nd

Stronghold

40,000.00

12,000.00

28,000.00

07/10/86

1st

Kahala

200,000.00

57,300.00

142,700.00

02/01/87

1st

Devil's Brew

100,000.00

30,000.00

70,000.00

03/22/87

1st

Time to Explode

200,000.00

60,000.00

140,000.00

04/26/87

3rd

Stormy Petril

40,000.00

12,000.00

28,000.00

05/17/87

1st

Starring Role

20,000.00

6,000.00

14,000.00

08/09/87

1st

Star Studded

200,000.00

60,000.00

140,000.00

12/13/87

2nd

Charade

250,000.00

75,000.00

174,000.00

09/18/88

1st

Hair Trigger

200,000.00

60,000.00

140,000.00

TOTAL

1,450,000.00

429,300.00

1,020,700.00

[Herein petitioner] sent letters of demand (Exhibits `A,' dated July 3, 1986; `B' dated August 18, 1986; and `C,' dated September 11, 1990) to the defendants [herein private respondents] for the collection of the prizes due him. And [herein private respondents] consistently replied (Exhibits 2 and 3) that the demanded prizes are being withheld on advice of Commissioner Ramon A. Diaz of the Presidential Commission on Good Government. Finally on January 30, 1991, this case was filed before the Regional Trial Court of Manila. But before receipt of the summons on February 7, 1991, Presidential Commission on Good Government advi[s]ed defendants that `it poses no more objection to the remittance of the prize winnings' (Exh. 6) to [herein petitioner]. Immediately, this was communicated to Atty. Estelito Mendoza by [Private Respondent Fernando] Carrascoso [Jr.]."[5]

As culled from the pleadings of the parties, Atty. Estelito P. Mendoza, petitioner's counsel, refused to accept the prizes at this point, reasoning that the matter had already been brought to court.

Ruling of the Trial Court

The trial court ruled that Respondent Philippine Charity Sweepstakes Office (PCSO) and its then chairman, Respondent Fernando O. Carrascoso Jr., had no authority to withhold the subject racehorse winnings of petitioner, since no writ of sequestration therefor had been issued by the Presidential Commission on Good Government (PCGG). It held that it was Carrascoso's unwarranted personal initiative not to release the prizes. Having been a previous longtime associate of petitioner in his horse racing and breeding activities, he had supposedly been aware that petitioner's winning horses were not ill-gotten. The trial court held that, by not paying the winnings, Carrascoso had acted in bad faith amounting to the persecution and harassment of petitioner and his family.[6] It thus ordered the PCSO and Carrascoso to pay in solidum petitioner's claimed winnings plus interests. It further ordered Carrascoso to pay moral and exemplary damages, attorney's fees and costs of suit.

While the case was pending with the Court of Appeals, petitioner moved for the partial execution pending appeal of the RTC judgment, praying for the payment of the principal amount of his prize winnings. Private respondents posed no objection thereto and manifested their readiness to release the amount prayed for. Hence, the trial court issued on February 14, 1992, an Order[7] for the issuance of a writ of execution in the amount of P1,020,700. Accordingly, on May 20, 1992, Respondent PCSO delivered the amount to petitioner.

Ruling of the Court of Appeals

Before the appellate court, herein private respondents assigned the following errors:[8]

"I

THE COURT A QUO ERRED IN HOLDING THAT DEFENDANTS-APPELLANTS ACTED IN BAD FAITH IN WITHHOLDING PLAINTIFF-APPELLEE[S] PRIZE[S];

II.

THE COURT A QUO ERRED [IN] AWARDING MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES IN FAVOR OF PLAINTIFF-APPELLEE."

In reversing the trial court's finding of bad faith on the part of Carrascoso, the Court of Appeals held that the former PCSO chairman was merely carrying out the instruction of the PCGG in regard to the prize winnings of petitioner. It noted that, at the time, the scope of the sequestration of the properties of former President Ferdinand E. Marcos and his cronies was not well-defined. Respondent Court explained:[9]

"xxx Under those equivocalities, defendant Carrascoso could not be faulted in asking further instructions from the PCGG, the official government agency on the matter, on what to do with the prize winnings of the [petitioner], and more so, to obey the instructions subsequently given. The actions taken may be a hard blow on [petitioner] but defendant Carrascoso had no alternative. It was the safest he could do in order to protect public interest, act within the powers of his position and serve the public demands then prevailing. More importantly, it was the surest way to avoid a possible complaint for neglect of duty or misfeasance of office or an anti-graft case against him."

The Court of Appeals also noted that the following actuations of Carrascoso negated bad faith: (1) he promptly replied to petitioner's demand for the release of his prizes, citing PCGG's instruction to withhold payment thereof; (2) upon PCGG's subsequent advice to release petitioner's winnings, he immediately informed petitioner thereof; and (3) he interposed no objection to the partial execution, pending appeal, of the RTC decision. Respondent Court finally disposed as follows:[10]

"IN VIEW OF ALL THE FOREGOING, the judgment appealed from is REVERSED and SET ASIDE and a new one entered DISMISSING this case. No pronouncement as to costs."

On September 29, 1994, petitioner filed a Motion for Reconsideration, which was denied on March 7, 1995. Hence, this petition.[11]

Issues

Petitioner asks this Court to resolve the following issues:

"a. Whether the Court of Appeals had jurisdiction over the appeal of respondent Philippine Charity Sweepstakes Office (PCSO);

"b. Whether the appeal of respondent Carrascoso, Jr. should have been dismissed for his failure to file an appeal brief;

"c. Whether the Court of Appeals had jurisdiction to review and reverse the judgment on a cause of action which was not appealed from by the respondents;

"d. Whether the award for damages against respondent Carrascoso, Jr. is warranted by evidence and the law." [12]

Being related, the first two issues will be discussed jointly.

The Court's Ruling

The petition is partly meritorious.

First and Second Issues:

Effect of PCSO's Appeal Brief

Petitioner contends that the appeal filed by the PCSO before Respondent Court of Appeals should have been dismissed outright. The appealed RTC decision ruled on two causes of action: (1) a judgment against both PCSO and Carrascoso to jointly and severally pay petitioner his winnings plus interest and income; and (2) a judgment against Carrascoso alone for moral and exemplary damages, as well as attorney's fees and costs. The PCSO, through the Office of the Government Corporate Counsel (OGCC), appealed only the second item: "the impropriety of the award of damages xxx." This appealed portion, however, condemned only Carrascoso, not the PCSO. Technically, petitioner claims, PCSO could not have appealed the second portion of the RTC Decision which ruled against Carrascoso only, and not against the government corporation.

Petitioner further avers that Carrascoso failed to file his own appeal brief; accordingly, his appeal should have been dismissed. The PCSO brief, he submits, could not have inured to the benefit of Carrascoso, because the latter was no longer chairman of that office at the time the brief was filed and, hence, could no longer be represented by the OGCC.

On the other hand, respondents aver that the withholding of petitioner's racehorse winnings by Respondent Carrascoso occurred during the latter's incumbency as PCSO chairman. According to him, he had honestly believed that it was within the scope of his authority not to release said winnings, in view of then President Corazon C. Aquino's Executive Order No. 2 (EO 2), in which she decreed the following:

"(1) Freeze all assets and properties in the Philippines in which former President Marcos and/or his wife, Mrs. Imelda Romualdez Marcos, their close friends, subordinates, business associates, dummies, agents, or nominees have any interest or participation;

"(2) Prohibit any person from transferring, conveying, encumbering or otherwise depleting or concealing such assets and properties or from assisting or taking part in their transfer, encumbrance, concealment, or dissipation, under pain of such penalties as are prescribed by law."

Moreover, he argues that he sought the advice of the PCGG as to the nature of the subject racehorse winnings, and

he was told that they were part of petitioner's sequestered properties. Under these circumstances and in his belief that said winnings were fruits of petitioner's ill-gotten properties, he deemed it his duty to withhold them. The chairman of the PCSO, he adds, is empowered by law to order the withholding of prize winnings.

The representation of the OGCC on behalf of the PCSO and Mr. Carrascoso is pursuant to its basic function to "act as the principal law office of all government-owned or controlled corporations, their subsidiaries, other corporate offsprings and government acquired asset corporations and xxx [to] exercise control and supervision over all legal departments or divisions maintained separately and such powers and functions as are now or may hereafter be provided by law." [13] The OGCC was therefore duty-bound to defend the PCSO because the latter, under its charter, [14] is a government-owned corporation. The government counsel's representation extends to the concerned government functionary's officers when the issue involves the latter's official acts or duties. [15]

Granting that upon his separation from the government, Carrascoso ceased to be entitled to the legal services of the government corporate counsel, this development does not automatically revoke or render ineffective his notice of appeal of the trial court's Decision. The filing of an appellant's brief is not an absolute requirement for the perfection of an appeal. [16] Besides, when noncompliance with the Rules of Court is not intended for delay or does not prejudice the adverse party, the dismissal of an appeal on a mere technicality may be stayed and the court may, at its sound discretion, exercise its equity jurisdiction. [17] The emerging trend in our jurisprudence is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. [18]

What is important is that Respondent Carrascoso filed his notice of appeal on time and that his counsel before the lower court, who was presumed to have continued representing him on appeal, [19] had filed an appeal brief on his behalf. The Manifestation of Carrascoso before the Court of Appeals that he intended to hire the services of another counsel and to file his own brief did not ipso facto effect a change of counsel under the existing rules of procedure. The former counsel must first file a formal petition withdrawing his appearance with the client's consent, and the newly appointed attorney should formally enter his appearance before the appellate court with notice to the adverse party. [20] But other than Carrascoso's manifestation of his intention to hire a counsel of his own, the requisites for a change of counsel were not fully complied with. Nevertheless, as stated earlier, even an effective change of attorney will not abrogate the pleadings filed before the court by the former counsel.

All in all, we hold that the appellate court committed no reversible error in not dismissing the appeal, since this matter was addressed to its sound discretion, and since such discretion was exercised reasonably in accordance with the doctrine that cases should, as much as possible, be decided on their merits.

Third Issue:

Scope of the Appeal

Before Respondent Court

Petitioner is correct in asserting that the entire RTC judgment was not appealed to Respondent Court of Appeals. The errors assigned in the appellants' Brief, as quoted earlier, attacked only the trial court's (1) conclusion that "defendants-appellants acted in bad faith" and (2) award of damages in favor of herein petitioner. In short, only those parts relating to the second cause of action could be reviewed by the CA.

Respondent Court could not therefore reverse and set aside the RTC Decision in its entirety and dismiss the original Complaint without trampling upon the rights that had accrued to the petitioner from the unappealed portion of the Decision. It is well-settled that only the errors assigned and properly argued in the brief, and those necessarily related thereto, may be considered by the appellate court in resolving an appeal in a civil case. [21] The appellate court has no power to resolve unassigned errors, except those that affect the court's jurisdiction over the

subject matter and those that are plain or clerical errors.[22]

Having said that, we note, however, that Respondent Court in its Decision effectively recognized the confines of the appeal, as it stated at the outset that "this appeal shall be limited to the damages awarded in the [RTC] decision other than the claims for race winning prizes." [23] The dispositive portion of the Decision must be understood together with the aforequoted statement that categorically defined the scope of Respondent Court's review. Consequently, what the assailed Decision "reversed and set aside" was only that part of the appealed judgment finding bad faith on the part of herein Private Respondent Carrascoso and awarding damages to herein petitioner. It did not annul the trial court's order for Respondent PCSO to pay Petitioner Cojuangco his racehorse winnings, because this Order had never been assigned as an error sought to be corrected.

On the contrary, Respondent PCSO had probably never intended to further object to the payment, as it so manifested before the trial court [24] in answer to Petitioner Cojuangco's Motion [25] for the partial execution of the judgment. In fact, on May 20, 1992, PCSO willingly and readily paid the petitioner the principal amount of P1,020,700 in accordance with the writ of execution issued by the trial court on February 14, 1992. [26] Obviously and plainly, the RTC judgment, insofar as it related to the first cause of action, had become final and no longer subject to appeal.

In any event, the Court of Appeals' discussion regarding the indispensability of the PCGG as a party-litigant to the instant case was not pivotal to its reversal of the appealed trial court Decision. It merely mentioned that the non-joinder of the PCGG made the Complaint vulnerable or susceptible to dismissal. It did not rule that it was the very ground, or at least one of the legal grounds, it relied upon in setting aside the appealed judgment. It could not have legally done so anyway, because the PCGG's role in the controversy, if any, had never been an issue before the trial court. Well-settled is the doctrine that no question, issue or argument will be entertained on appeal unless it has been raised in the court a quo. [27]

The aforementioned discussion should therefore be construed only in light of the previous paragraphs relating to Respondent Carrascoso's good faith which, the appellate court surmised, was indicated by his reliance on PCGG's statements that the subject prize winnings of Petitioner Cojuangco were part of the sequestered properties. In other words, Respondent Court's view that the non-inclusion of PCGG as a party made the Complaint dismissible was a mere aside that did not prejudice petitioner.

Fourth Issue:

Damages

Petitioner insists that the Court of Appeals erred in reversing the trial court's finding that Respondent Carrascoso acted in bad faith in withholding his winnings. We do not think so.

Bad faith does not simply connote bad judgment or simple negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a known duty due to some motive or interest or ill will that partakes of the nature of fraud. [28]

We do not believe that the above judicially settled nature of bad faith characterized the questioned acts of Respondent Carrascoso. On the contrary, we believe that there is sufficient evidence on record to support Respondent Court's conclusion that he did not act in bad faith. It reasoned, and we quote with approval: [29]

"A close examination of the June 10, 1986 letter of defendant Carrascoso to Jovito Salonga, then Chairman of the Presidential Commission on Good Government, readily display uncertainties in the mind of Chairman Carrascoso as to the extent of the sequestration against the properties of the plaintiff. In the said letter (Exhibit `1') the first prize for the March 16, 1986 draw and the second prize for the June 8, 1986 draw, were, in the meantime, being withheld to `avoid any possible violation of your sequestration order on the matter' because

while he is aware of the sequestration order issued against the properties of defendant Eduardo Cojuangco, he is not aware of the extent and coverage thereof. It was for that reason that, in the same letter, defendant Carrascoso requested for a clarification whether the prizes are covered by the order and if it is in the affirmative, for instructions on the proper disposal of the two (2) prizes taking into account the shares of the trainer and the groom.

"Correspondingly, in a letter dated June 13, 1986 (Exhibit 2) PCGG Commissioner Ramon A. Diaz authorized the payment to the trainer and the groom but instructed the withholding of the amounts due plaintiff Eduardo Cojuangco. This piece of evidence should be understood and appreciated in the light of the circumstances prevailing at the time. PCGG was just a newly born legal creation and 'sequestration' was a novel remedy which even legal luminaries were not sure as to the actual procedure, the correct approach and the manner how the powers of the said newly created office should be exercised and the remedy of sequestration properly implemented without violating due process of law. To the mind of their newly installed power, the immediate concern is to take over and freeze all properties of former President Ferdinand E. Marcos, his immediate families, close associates and cronies. There is no denying that plaintiff is a very close political and business associate of the former President. Under those equivocalities, defendant Carrascoso could not be faulted in asking further instructions from the PCGG, the official government agency on the matter, on what to do with the prize winnings of the plaintiff, and more so, to obey the instructions subsequently given. The actions taken may be a hard blow on plaintiff but defendant Carrascoso had no alternative. It was the safest he could do in order to protect public interest, act within the powers of his position and serve the public demands then prevailing. More importantly, it was the surest way to avoid a possible complaint for neglect of duty or misfeasance of office or an anti-graft case against him.

xxx xxx xxx

"Moreover, the finding of bad faith against defendant Carrascoso is overshadowed by the evidences showing his good faith. He was just recently appointed chairman of the PCGG when he received the first demand for the collection of the prize for the March 16, 1986 race which he promptly answered saying he was under instructions by the PCGG to withhold such payment. But the moment he received the go signal from the PCGG that the prize winnings of plaintiff Cojuangco could already be released, he immediately informed the latter thereof, interposed no objection to the execution pending appeal relative thereto, in fact, actually paid off all the winnings due the plaintiff. xxx"

Carrascoso's decision to withhold petitioner's winnings could not be characterized as arbitrary or whimsical, or even the product of ill will or malice. He had particularly sought from PCGG a clarification of the extent and coverage of the sequestration order issued against the properties of petitioner.[30] He had acted upon the PCGG's statement that the subject prizes were part of those covered by the sequestration order and its instruction "to hold in a proper bank deposits [sic] earning interest the amount due Mr. Cojuangco." [31] Besides, EO 2 had just been issued by then President Aquino, "freez[ing] all assets and properties in the Philippines [of] former President Marcos and/or his wife, xxx their close friends, subordinates, business associates, xxx"; and enjoining the "transfer, encumbrance, concealment, or dissipation [thereof], under pain of such penalties as prescribed by law." It cannot, therefore, be said that Respondent Carrascoso, who relied upon these issuances, acted with malice or bad faith.

The extant rule is that a public officer shall not be liable by way of moral and exemplary damages for acts done in the performance of official duties, unless there is a clear showing of bad faith, malice or gross negligence.[32] Attorney's fees and expenses of litigation cannot be imposed either, in the absence of a clear showing of any of the grounds provided therefor under the Civil Code.[33] The trial court's award of these kinds of damages must perforce be deleted, as ruled by the Court of Appeals.

Nevertheless, this Court agrees with the petitioner and the trial court that Respondent Carrascoso may still be held

liable under Article 32 of the Civil Code, which provides:

"Art. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

xxx xxx xxx

(6) The right against deprivation of property without due process of law;

xxx xxx xxx

In *Aberca v. Ver*,^[34] this Court explained the nature and the purpose of this article as follows:

"It is obvious that the purpose of the above codal provision is to provide a sanction to the deeply cherished rights and freedoms enshrined in the Constitution. Its message is clear; no man may seek to violate those sacred rights with impunity. In times of great upheaval or of social and political stress, when the temptation is strongest to yield -- borrowing the words of Chief Justice Claudio Teehankee -- to the law of force rather than the force of law, it is necessary to remind ourselves that certain basic rights and liberties are immutable and cannot be sacrificed to the transient needs or imperious demands of the ruling power. The rule of law must prevail, or else liberty will perish. Our commitment to democratic principles and to the rule of law compels us to reject the view which reduces law to nothing but the expression of the will of the predominant power in the community. `Democracy cannot be a reign of progress, of liberty, of justice, unless the law is respected by him who makes it and by him for whom it is made. Now this respect implies a maximum of faith, a minimum of idealism. On going to the bottom of the matter, we discover that life demands of us a certain residuum of sentiment which is not derived from reason, but which reason nevertheless controls.'"^[35]

Under the aforecited article, it is not necessary that the public officer acted with malice or bad faith.^[36] To be liable, it is enough that there was a violation of the constitutional rights of petitioner, even on the pretext of justifiable motives or good faith in the performance of one's duties.^[37]

We hold that petitioner's right to the use of his property was unduly impeded. While Respondent Carrascoso may have relied upon the PCGG's instructions, he could have further sought the specific legal basis therefor. A little exercise of prudence would have disclosed that there was no writ issued specifically for the sequestration of the racehorse winnings of petitioner. There was apparently no record of any such writ covering his racehorses either. The issuance of a sequestration order requires the showing of a *prima facie* case and due regard for the requirements of due process.^[38] The withholding of the prize winnings of petitioner without a properly issued sequestration order clearly spoke of a violation of his property rights without due process of law.

Article 2221 of the Civil Code authorizes the award of nominal damages to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, not for indemnifying the plaintiff for any loss suffered.^[39] The court may also award nominal damages in every case where a property right has been invaded.^[40] The amount of such damages is addressed to the sound discretion of the court, with the relevant circumstances taken into account.^[41]

WHEREFORE, the petition is hereby partially GRANTED. The assailed Decision, as herein clarified, is AFFIRMED with the MODIFICATION that Private Respondent Fernando O. Carrascoso Jr. is ORDERED TO PAY petitioner nominal damages in the amount of fifty thousand pesos (P50,000). No pronouncement as to costs.

SO ORDERED.

Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

Romero, J., on official business abroad.

[1] Rollo, pp. 59-68.

[2] Fourteenth Division composed of J. Conrado Vasquez Jr. (ponente), with JJ. Jorge S. Imperial (chairman) and Pacita Cañizares-Nye (member) concurring.

[3] Rollo, pp. 59-60.

[4] Rollo, p. 70.

[5] Assailed Decision, p. 4; Rollo, p. 59.

[6] Rollo, pp. 63-65.

[7] Ibid., p. 78.

[8] Ibid., p. 61.

[9] Assailed Decision, p. 8; Rollo, p. 66.

[10] Ibid., pp. 10 & 68.

[11] This case was deemed submitted for resolution on December 21, 1998, upon receipt by this Court of Private Respondent Carrascoso's Memorandum. The memos of the other parties had been received earlier.

[12] Petitioner's Memorandum, p. 10.

[13] § 10, Chap. 3, Title III, Book IV of EO 292. Administrative Order No. 130 dated May 19, 1994, further provides:

"Section 1. All legal matters pertaining to government-owned or controlled corporations, their subsidiaries, other corporate offsprings and government acquired asset corporations (hereinafter collectively referred to as `GOCCs') shall be exclusively referred to and handled by the Office of the Government Corporate Counsel xxx."

See also *Confederation of Unions in Government Corporations and Offices v. Subido*, 32 SCRA 394, April 30, 1970.

[14] RA 1169, as amended.

[15] Cf. *Alinsug v. RTC Br. 8, San Carlos City*, 225 SCRA 553, August 23, 1993, in which the Court enumerated incidents when a government official may secure the services of a private counsel.

[16] See *People v. Manambit*, 271 SCRA 344, April 18, 1997; *Farolan v. Court of Appeals*, 241 SCRA 176, February 7, 1995; *Labitad v. Court of Appeals*, 246 SCRA 434, July 17, 1995.

[17] *Parañaque Kings Enterprises, Inc. v. Court of Appeals*, 268 SCRA 727, 738, February 26, 1997.

[18] *Dela Rosa v. Court of Appeals*, 280 SCRA 444, 455, October 10, 1997.

[19] § 22, Rule 138, Rules of Court.

[20] §§ 22 & 26, *ibid.* *Bernardo v. Court of Appeals*, 275 SCRA 413, July 14, 1997; *Nacuray v. NLRC*, 270 SCRA 9, March 18, 1997.

[21] *Solid Homes, Inc. v. Court of Appeals*, 275 SCRA 267, July 8, 1997; *Garrido v. Court of Appeals*, 236 SCRA 450, September 14, 1994.

[22] *Bella v. Court of Appeals*, 279 SCRA 497, September 26, 1997.

[23] *Assailed Decision*, p. 3; *Rollo*, p. 61.

[24] See Manifestations dated February 4 and May 25, 1992; *Rollo*, pp. 76 & 80.

[25] *Rollo*, p. 71.

[26] *Ibid.*, p. 78.

[27] *Mendoza v. Court of Appeals*, 274 SCRA 527, June 20, 1997.

[28] *Commissioner of Internal Revenue v. Court of Appeals*, 267 SCRA 557, February 6, 1997; *Ford Philippines, Inc. v. Court of Appeals*, 267 SCRA 320, February 3, 1997.

[29] *Assailed Decision*, pp. 7-9; *Rollo*, pp. 65-67.

[30] Letter of the PCSO chairman to the PCGG dated June 10, 1986; records, p. 26.

[31] Reply of the PCGG dated June 13, 1986; records, p. 28.

[32] § 38 (1), Chap. 9, Book I, Administrative Code of 1987. *Suarez v. Commission on Audit*, GR No. 131077, August 7, 1998; *Yulo v. Civil Service Commission*, 219 SCRA 470, March 3, 1993; *Orocio v. Commission on Audit*, 213 SCRA 109, August 31, 1992; *Chavez v. Sandiganbayan*, 193 SCRA 282, January 24, 1991; *Ynot v. IAC*, 148 SCRA 659, March 20, 1987.

[33] Article 2208 of the Civil Code allows the recovery of attorney's fees and expenses of litigation only in the following instances:

"(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable xxx."

[34] 160 SCRA 590, 601, April 15, 1988; per Yap, J.

[35] *Ibid.*, quoting Joseph Charmont, *French Legal Philosophy*, 1921 ed., pp. 72-73.

[36] Arturo M. Tolentino, *Civil Code of the Philippines. Commentaries and Jurisprudence*, Vol. I, 1990 ed., pp. 129-130. See also Jose C. Vitug, *Compendium of Civil Law and Jurisprudence*, 1993 ed., p. 22.

[37]Lim v. Ponce de Leon, 66 SCRA 299, 309, August 29, 1975; citing Dean Jorge Bocobo, chairman of the Code Commission, The Lawyers' Journal, Vol. XVI, No. 5, p. 258 (May 31, 1951). See also Better Buildings, Inc. v. NLRC, 283 SCRA 242, December 15, 1997.

[38]BASECO v. PCGG, 150 SCRA 181, 215-216, May 27, 1987.

[39] Areola v. Court of Appeals, 236 SCRA 643, 654, September 22, 1994; Citytrust Banking Corporation v. IAC, 232 SCRA 559, 565, May 27, 1994; Sumalpong v. Court of Appeals, 268 SCRA 764, 775, February 26, 1997; Better Buildings v. NLRC, supra.

[40]Art. 2222, Civil Code.

[41]Art. 2216, *ibid.*41

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