RUBY L. TSAI, PETITIONER, VS. HON. COURT OF APPEALS, EVER TEXTILE MILLS, INC. AND MAMERTO R. VILLALUZ, RESPONDENTS.

G.R. No. 120098. October 02, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

These consolidated cases assail the decision[1] of the Court of Appeals in CA-G.R. CV No. 32986, affirming the decision[2] of the Regional Trial Court of Manila, Branch 7, in Civil Case No. 89-48265. Also assailed is respondent court's resolution denying petitioners' motion for reconsideration.

On November 26, 1975, respondent Ever Textile Mills, Inc. (EVERTEX) obtained a three million peso (P3,000,000.00) loan from petitioner Philippine Bank of Communications (PBCom). As security for the loan, EVERTEX executed in favor of PBCom, a deed of Real and Chattel Mortgage over the lot under TCT No. 372097, where its factory stands, and the chattels located therein as enumerated in a schedule attached to the mortgage contract. The pertinent portions of the Real and Chattel Mortgage are quoted below:

MORTGAGE

(REAL AND CHATTEL)

xxx

The MORTGAGOR(S) hereby transfer(s) and convey(s), by way of First Mortgage, to the MORTGAGEE, xxx certain parcel(s) of land, together with all the buildings and improvements now existing or which may hereafter exist thereon, situated in xxx.

"Annex A"

(Real and Chattel Mortgage executed by Ever Textile Mills in favor of PBCommunications - continued)

LIST OF MACHINERIES & EQUIPMENT

A.

Forty Eight (48) units of Vayrow Knitting Machines-Tompkins made in Hongkong:

Serial Numbers

Size of Machines

xxx

B.

Sixteen (16) sets of Vayrow Knitting Machines made in Taiwan.

xxx

C.

Two (2) Circular Knitting Machines made in West Germany.

xxx

D.

Four (4) Winding Machines.

xxx

SCHEDULE "A"

I.

TCT # 372097 - RIZAL

xxx

II.

Any and all buildings and improvements now existing or hereafter to exist on the above-mentioned lot.

III.

MACHINERIES & EQUIPMENT situated, located and/or installed on the above-mentioned lot located at xxx

(a)

Forty eight sets (48) Vayrow Knitting Machines xxx

(b)

Sixteen sets (16) Vayrow Knitting Machines xxx

(c)

Two (2) Circular Knitting Machines xxx

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(d)

Two (2) Winding Machines xxx

(e)

Two (2) Winding Machines xxx

IV

Any and all replacements, substitutions, additions, increases and accretions to above properties.

xxx[3]

On April 23, 1979, PBCom granted a second loan of P3,356,000.00 to EVERTEX. The loan was secured by a Chattel Mortgage over personal properties enumerated in a list attached thereto. These listed properties were similar to those listed in Annex A of the first mortgage deed.

After April 23, 1979, the date of the execution of the second mortgage mentioned above, EVERTEX purchased various machines and equipments.

On November 19, 1982, due to business reverses, EVERTEX filed insolvency proceedings docketed as SP Proc. No. LP-3091-P before the defunct Court of First Instance of Pasay City, Branch XXVIII. The CFI issued an order on November 24, 1982 declaring the corporation insolvent. All its assets were taken into the custody of the Insolvency Court, including the collateral, real and personal, securing the two mortgages as abovementioned.

In the meantime, upon EVERTEX's failure to meet its obligation to PBCom, the latter commenced extrajudicial foreclosure proceedings against EVERTEX under Act 3135, otherwise known as "An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real Estate Mortgages" and Act 1506 or "The Chattel Mortgage Law". A Notice of Sheriff's Sale was issued on December 1, 1982.

On December 15, 1982, the first public auction was held where petitioner PBCom emerged as the highest bidder and a Certificate of Sale was issued in its favor on the same date. On December 23, 1982, another public auction was held and again, PBCom was the highest bidder. The sheriff issued a Certificate of Sale on the same day.

On March 7, 1984, PBCom consolidated its ownership over the lot and all the properties in it. In November 1986, it leased the entire factory premises to petitioner Ruby L. Tsai for P50,000.00 a month. On May 3, 1988, PBCom sold the factory, lock, stock and barrel to Tsai for P9,000,000.00, including the contested machineries.

On March 16, 1989, EVERTEX filed a complaint for annulment of sale, reconveyance, and damages with the Regional Trial Court against PBCom, alleging inter alia that the extrajudicial foreclosure of subject mortgage was in violation of the Insolvency Law. EVERTEX claimed that no rights having been transmitted to PBCom over the assets of insolvent EVERTEX, therefore Tsai acquired no rights over such assets sold to her, and should reconvey the assets.

Further, EVERTEX averred that PBCom, without any legal or factual basis, appropriated the contested properties, which were not included in the Real and Chattel Mortgage of November 26, 1975 nor in the Chattel Mortgage of April 23, 1979, and neither were those properties included in the Notice of Sheriff's Sale dated December 1, 1982 and Certificate of Sale dated December 15, 1982.

The disputed properties, which were valued at P4,000,000.00, are: 14 Interlock Circular Knitting Machines, 1 Jet Drying Equipment, 1 Dryer Equipment, 1 Raisin Equipment and 1 Heatset Equipment.

The RTC found that the lease and sale of said personal properties were irregular and illegal because they were not duly foreclosed nor sold at the December 15, 1982 auction sale since these were not included in the schedules attached to the mortgage contracts. The trial court decreed:

> WHEREFORE, judgment is hereby rendered in favor of plaintiff corporation and against the defendants:
>
> 1. Ordering the annulment of the sale executed by defendant Philippine Bank of Communications in favor of defendant Ruby L. Tsai on May 3, 1988 insofar as it affects the personal properties listed in par. 9 of the complaint, and their return to the plaintiff corporation through its assignee, plaintiff Mamerto R. Villaluz, for disposition by the Insolvency Court, to be done within ten (10) days from finality of this decision;
>
> 2. Ordering the defendants to pay jointly and severally the plaintiff corporation the sum of P5,200,000.00 as compensation for the use and possession of the properties in question from November 1986 to February 1991 and P100,000.00 every month thereafter, with interest thereon at the legal rate per annum until full payment;
>
> 3. Ordering the defendants to pay jointly and severally the plaintiff corporation the sum of P50,000.00 as and for attorney's fees and expenses of litigation;
>
> 4. Ordering the defendants to pay jointly and severally the plaintiff corporation the sum of P200,000.00 by way of exemplary damages;
>
> 5. Ordering the dismissal of the counterclaim of the defendants; and
>
> 6. Ordering the defendants to proportionately pay the costs of suit.
>
> SO ORDERED.[4]

Dissatisfied, both PBCom and Tsai appealed to the Court of Appeals, which issued its decision dated August 31, 1994, the dispositive portion of which reads:

> WHEREFORE, except for the deletion therefrom of the award for exemplary damages, and reduction of the actual damages, from P100,000.00 to P20,000.00 per month, from November 1986 until subject personal properties are restored to appellees, the judgment appealed from is hereby AFFIRMED, in all other respects. No pronouncement as to costs.[5]

Motion for reconsideration of the above decision having been denied in the resolution of April 28, 1995, PBCom and Tsai filed their separate petitions for review with this Court.

In G.R. No. 120098, petitioner Tsai ascribed the following errors to the respondent court:

> I
>
> THE HONORABLE COURT OF APPEALS (SECOND DIVISION) ERRED IN EFFECT MAKING A CONTRACT FOR THE PARTIES BY TREATING THE 1981 ACQUIRED MACHINERIES AS CHATTELS INSTEAD OF REAL PROPERTIES WITHIN THEIR EARLIER 1975 DEED OF REAL AND CHATTEL MORTGAGE OR 1979 DEED OF CHATTEL MORTGAGE.
>
> II
>
> THE HONORABLE COURT OF APPEALS (SECOND DIVISION) ERRED IN HOLDING THAT THE DISPUTED 1981 MACHINERIES ARE NOT REAL PROPERTIES DEEMED PART OF THE MORTGAGE - DESPITE THE CLEAR IMPORT OF THE EVIDENCE AND APPLICABLE RULINGS OF THE SUPREME COURT.
>
> III

THE HONORABLE COURT OF APPEALS (SECOND DIVISION) ERRED IN DEEMING PETITIONER A PURCHASER IN BAD FAITH.

IV

THE HONORABLE COURT OF APPEALS (SECOND DIVISION) ERRED IN ASSESSING PETITIONER ACTUAL DAMAGES, ATTORNEY'S FEES AND EXPENSES OF LITIGATION - FOR WANT OF VALID FACTUAL AND LEGAL BASIS.

V

THE HONORABLE COURT OF APPEALS (SECOND DIVISION) ERRED IN HOLDING AGAINST PETITIONER'S ARGUMENTS ON PRESCRIPTION AND LACHES.[6]

In G.R. No. 120109, PBCom raised the following issues:

I.

DID THE COURT OF APPEALS VALIDLY DECREE THE MACHINERIES LISTED UNDER PARAGRAPH 9 OF THE COMPLAINT BELOW AS PERSONAL PROPERTY OUTSIDE OF THE 1975 DEED OF REAL ESTATE MORTGAGE AND EXCLUDED THEM FROM THE REAL PROPERTY EXTRAJUDICIALLY FORECLOSED BY PBCOM DESPITE THE PROVISION IN THE 1975 DEED THAT ALL AFTER-ACQUIRED PROPERTIES DURING THE LIFETIME OF THE MORTGAGE SHALL FORM PART THEREOF, AND DESPITE THE UNDISPUTED FACT THAT SAID MACHINERIES ARE BIG AND HEAVY, BOLTED OR CEMENTED ON THE REAL PROPERTY MORTGAGED BY EVER TEXTILE MILLS TO PBCOM, AND WERE ASSESSED FOR REAL ESTATE TAX PURPOSES?

II.

CAN PBCOM, WHO TOOK POSSESSION OF THE MACHINERIES IN QUESTION IN GOOD FAITH, EXTENDED CREDIT FACILITIES TO EVER TEXTILE MILLS WHICH AS OF 1982 TOTALLED P9,547,095.28, WHO HAD SPENT FOR MAINTENANCE AND SECURITY ON THE DISPUTED MACHINERIES AND HAD TO PAY ALL THE BACK TAXES OF EVER TEXTILE MILLS BE LEGALLY COMPELLED TO RETURN TO EVER THE SAID MACHINERIES OR IN LIEU THEREOF BE ASSESSED DAMAGES. IS THAT SITUATION TANTAMOUNT TO A CASE OF UNJUST ENRICHMENT?[7]

The principal issue, in our view, is whether or not the inclusion of the questioned properties in the foreclosed properties is proper. The secondary issue is whether or not the sale of these properties to petitioner Ruby Tsai is valid.

For her part, Tsai avers that the Court of Appeals in effect made a contract for the parties by treating the 1981 acquired units of machinery as chattels instead of real properties within their earlier 1975 deed of Real and Chattel Mortgage or 1979 deed of Chattel Mortgage.[8] Additionally, Tsai argues that respondent court erred in holding that the disputed 1981 machineries are not real properties.[9] Finally, she contends that the Court of Appeals erred in holding against petitioner's arguments on prescription and laches[10] and in assessing petitioner actual damages, attorney's fees and expenses of litigation, for want of valid factual and legal basis.[11]

Essentially, PBCom contends that respondent court erred in affirming the lower court's judgment decreeing that the pieces of machinery in dispute were not duly foreclosed and could not be legally leased nor sold to Ruby Tsai. It further argued that the Court of Appeals' pronouncement that the pieces of machinery in question were personal properties have no factual and legal basis. Finally, it asserts that the Court of Appeals erred in assessing damages and attorney's fees against PBCom.

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In opposition, private respondents argue that the controverted units of machinery are not "real properties" but chattels, and, therefore, they were not part of the foreclosed real properties, rendering the lease and the subsequent sale thereof to Tsai a nullity.[12]

Considering the assigned errors and the arguments of the parties, we find the petitions devoid of merit and ought to be denied.

Well settled is the rule that the jurisdiction of the Supreme Court in a petition for review on certiorari under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are devoid of support by the evidence on record or the assailed judgment is based on misapprehension of facts.[13] This rule is applied more stringently when the findings of fact of the RTC is affirmed by the Court of Appeals.[14]

The following are the facts as found by the RTC and affirmed by the Court of Appeals that are decisive of the issues: (1) the "controverted machineries" are not covered by, or included in, either of the two mortgages, the Real Estate and Chattel Mortgage, and the pure Chattel Mortgage; (2) the said machineries were not included in the list of properties appended to the Notice of Sale, and neither were they included in the Sheriff's Notice of Sale of the foreclosed properties.[15]

Petitioners contend that the nature of the disputed machineries, i.e., that they were heavy, bolted or cemented on the real property mortgaged by EVERTEX to PBCom, make them ipso facto immovable under Article 415 (3) and (5) of the New Civil Code. This assertion, however, does not settle the issue. Mere nuts and bolts do not foreclose the controversy. We have to look at the parties' intent.

While it is true that the controverted properties appear to be immobile, a perusal of the contract of Real and Chattel Mortgage executed by the parties herein gives us a contrary indication. In the case at bar, both the trial and the appellate courts reached the same finding that the true intention of PBCOM and the owner, EVERTEX, is to treat machinery and equipment as chattels. The pertinent portion of respondent appellate court's ruling is quoted below:

> As stressed upon by appellees, appellant bank treated the machineries as chattels; never as real properties. Indeed, the 1975 mortgage contract, which was actually real and chattel mortgage, militates against appellants' posture. It should be noted that the printed form used by appellant bank was mainly for real estate mortgages. But reflective of the true intention of appellant PBCOM and appellee EVERTEX was the typing in capital letters, immediately following the printed caption of mortgage, of the phrase "real and chattel." So also, the "machineries and equipment" in the printed form of the bank had to be inserted in the blank space of the printed contract and connected with the word "building" by typewritten slash marks. Now, then, if the machineries in question were contemplated to be included in the real estate mortgage, there would have been no necessity to ink a chattel mortgage specifically mentioning as part III of Schedule A a listing of the machineries covered thereby. It would have sufficed to list them as immovables in the Deed of Real Estate Mortgage of the land and building involved.
>
> As regards the 1979 contract, the intention of the parties is clear and beyond question. It refers solely to chattels. The inventory list of the mortgaged properties is an itemization of sixty-three (63) individually described machineries while the schedule listed only machines and 2,996,880.50 worth of finished cotton fabrics and natural cotton fabrics.[16]

In the absence of any showing that this conclusion is baseless, erroneous or uncorroborated by the evidence on record, we find no compelling reason to depart therefrom.

Too, assuming arguendo that the properties in question are immovable by nature, nothing detracts the parties from

treating it as chattels to secure an obligation under the principle of estoppel. As far back as Navarro v. Pineda, 9 SCRA 631 (1963), an immovable may be considered a personal property if there is a stipulation as when it is used as security in the payment of an obligation where a chattel mortgage is executed over it, as in the case at bar.

In the instant case, the parties herein: (1) executed a contract styled as "Real Estate Mortgage and Chattel Mortgage," instead of just "Real Estate Mortgage" if indeed their intention is to treat all properties included therein as immovable, and (2) attached to the said contract a separate "LIST OF MACHINERIES & EQUIPMENT". These facts, taken together, evince the conclusion that the parties' intention is to treat these units of machinery as chattels. A fortiori, the contested after-acquired properties, which are of the same description as the units enumerated under the title "LIST OF MACHINERIES & EQUIPMENT," must also be treated as chattels.

Accordingly, we find no reversible error in the respondent appellate court's ruling that inasmuch as the subject mortgages were intended by the parties to involve chattels, insofar as equipment and machinery were concerned, the Chattel Mortgage Law applies, which provides in Section 7 thereof that: "a chattel mortgage shall be deemed to cover only the property described therein and not like or substituted property thereafter acquired by the mortgagor and placed in the same depository as the property originally mortgaged, anything in the mortgage to the contrary notwithstanding."

And, since the disputed machineries were acquired in 1981 and could not have been involved in the 1975 or 1979 chattel mortgages, it was consequently an error on the part of the Sheriff to include subject machineries with the properties enumerated in said chattel mortgages.

As the auction sale of the subject properties to PBCom is void, no valid title passed in its favor. Consequently, the sale thereof to Tsai is also a nullity under the elementary principle of nemo dat quod non habet, one cannot give what one does not have.[17]

Petitioner Tsai also argued that assuming that PBCom's title over the contested properties is a nullity, she is nevertheless a purchaser in good faith and for value who now has a better right than EVERTEX.

To the contrary, however, are the factual findings and conclusions of the trial court that she is not a purchaser in good faith. Well-settled is the rule that the person who asserts the status of a purchaser in good faith and for value has the burden of proving such assertion.[18] Petitioner Tsai failed to discharge this burden persuasively.

Moreover, a purchaser in good faith and for value is one who buys the property of another without notice that some other person has a right to or interest in such property and pays a full and fair price for the same, at the time of purchase, or before he has notice of the claims or interest of some other person in the property.[19] Records reveal, however, that when Tsai purchased the controverted properties, she knew of respondent's claim thereon. As borne out by the records, she received the letter of respondent's counsel, apprising her of respondent's claim, dated February 27, 1987.[20] She replied thereto on March 9, 1987.[21] Despite her knowledge of respondent's claim, she proceeded to buy the contested units of machinery on May 3, 1988. Thus, the RTC did not err in finding that she was not a purchaser in good faith.

Petitioner Tsai's defense of indefeasibility of Torrens Title of the lot where the disputed properties are located is equally unavailing. This defense refers to sale of lands and not to sale of properties situated therein. Likewise, the mere fact that the lot where the factory and the disputed properties stand is in PBCom's name does not automatically make PBCom the owner of everything found therein, especially in view of EVERTEX's letter to Tsai enunciating its claim.

Finally, petitioners' defense of prescription and laches is less than convincing. We find no cogent reason to disturb

the consistent findings of both courts below that the case for the reconveyance of the disputed properties was filed within the reglementary period. Here, in our view, the doctrine of laches does not apply. Note that upon petitioners' adamant refusal to heed EVERTEX's claim, respondent company immediately filed an action to recover possession and ownership of the disputed properties. There is no evidence showing any failure or neglect on its part, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier. The doctrine of stale demands would apply only where by reason of the lapse of time, it would be inequitable to allow a party to enforce his legal rights. Moreover, except for very strong reasons, this Court is not disposed to apply the doctrine of laches to prejudice or defeat the rights of an owner.[22]

As to the award of damages, the contested damages are the actual compensation, representing rentals for the contested units of machinery, the exemplary damages, and attorney's fees.

As regards said actual compensation, the RTC awarded P100,000.00 corresponding to the unpaid rentals of the contested properties based on the testimony of John Chua, who testified that the P100,000.00 was based on the accepted practice in banking and finance, business and investments that the rental price must take into account the cost of money used to buy them. The Court of Appeals did not give full credence to Chua's projection and reduced the award to P20,000.00.

Basic is the rule that to recover actual damages, the amount of loss must not only be capable of proof but must actually be proven with reasonable degree of certainty, premised upon competent proof or best evidence obtainable of the actual amount thereof.[23] However, the allegations of respondent company as to the amount of unrealized rentals due them as actual damages remain mere assertions unsupported by documents and other competent evidence. In determining actual damages, the court cannot rely on mere assertions, speculations, conjectures or guesswork but must depend on competent proof and on the best evidence obtainable regarding the actual amount of loss.[24] However, we are not prepared to disregard the following dispositions of the respondent appellate court:

> ... In the award of actual damages under scrutiny, there is nothing on record warranting the said award of P5,200,000.00, representing monthly rental income of P100,000.00 from November 1986 to February 1991, and the additional award of P100,000.00 per month thereafter.
>
> As pointed out by appellants, the testimonial evidence, consisting of the testimonies of Jonh (sic) Chua and Mamerto Villaluz, is shy of what is necessary to substantiate the actual damages allegedly sustained by appellees, by way of unrealized rental income of subject machineries and equipments.
>
> The testimony of John Cua (sic) is nothing but an opinion or projection based on what is claimed to be a practice in business and industry. But such a testimony cannot serve as the sole basis for assessing the actual damages complained of. What is more, there is no showing that had appellant Tsai not taken possession of the machineries and equipments in question, somebody was willing and ready to rent the same for P100,000.00 a month.
>
> x x x
>
> Then, too, even assuming arguendo that the said machineries and equipments could have generated a rental income of P30,000.00 a month, as projected by witness Mamerto Villaluz, the same would have been a gross income. Therefrom should be deducted or removed, expenses for maintenance and repairs. ... Therefore, in the determination of the actual damages or unrealized rental income sued upon, there is a good basis to calculate that at least four months in a year, the machineries in dispute would have been idle due to absence of a lessee or while being repaired. In the light of the foregoing rationalization and computation, We believe that a net unrealized rental income of P20,000.00 a month, since November 1986, is more realistic and fair.[25]

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As to exemplary damages, the RTC awarded P200,000.00 to EVERTEX which the Court of Appeals deleted. But according to the CA, there was no clear showing that petitioners acted malevolently, wantonly and oppressively. The evidence, however, shows otherwise.

It is a requisite to award exemplary damages that the wrongful act must be accompanied by bad faith,[26] and the guilty acted in a wanton, fraudulent, oppressive, reckless or malevolent manner.[27] As previously stressed, petitioner Tsai's act of purchasing the controverted properties despite her knowledge of EVERTEX's claim was oppressive and subjected the already insolvent respondent to gross disadvantage. Petitioner PBCom also received the same letters of Atty. Villaluz, responding thereto on March 24, 1987.[28] Thus, PBCom's act of taking all the properties found in the factory of the financially handicapped respondent, including those properties not covered by or included in the mortgages, is equally oppressive and tainted with bad faith. Thus, we are in agreement with the RTC that an award of exemplary damages is proper.

The amount of P200,000.00 for exemplary damages is, however, excessive. Article 2216 of the Civil Code provides that no proof of pecuniary loss is necessary for the adjudication of exemplary damages, their assessment being left to the discretion of the court in accordance with the circumstances of each case.[29] While the imposition of exemplary damages is justified in this case, equity calls for its reduction. In Inhelder Corporation v. Court of Appeals, G.R. No. L-52358, 122 SCRA 576, 585, (May 30, 1983), we laid down the rule that judicial discretion granted to the courts in the assessment of damages must always be exercised with balanced restraint and measured objectivity. Thus, here the award of exemplary damages by way of example for the public good should be reduced to P100,000.00.

By the same token, attorney's fees and other expenses of litigation may be recovered when exemplary damages are awarded.[30] In our view, RTC's award of P50,000.00 as attorney's fees and expenses of litigation is reasonable, given the circumstances in these cases.

WHEREFORE, the petitions are DENIED. The assailed decision and resolution of the Court of Appeals in CA-G.R. CV No. 32986 are AFFIRMED WITH MODIFICATIONS. Petitioners Philippine Bank of Communications and Ruby L. Tsai are hereby ordered to pay jointly and severally Ever Textile Mills, Inc. the following: (1) P20,000.00 per month, as compensation for the use and possession of the properties in question from November 1986[31] until subject personal properties are restored to respondent corporation; (2) P100,000.00 by way of exemplary damages, and (3) P50,000.00 as attorney's fees and litigation expenses. Costs against petitioners.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] Rollo, G.R. No. 120109, pp. 23-45.

[2] Id. at 23-24.

[3] Folder of Exhibits, pp. 5-12.

[4] Rollo, G.R. No. 120109, pp. 23-24.

[5] Id. at 45.

[6] Rollo, G.R. No. 120098, pp. 23-25.

[7] Rollo, G.R. No. 120109, pp. 9-10.

[8] Rollo, G.R. No. 120098, p. 25.

[9] Id. at 33.

[10] Id. at 49.

[11] Id. at 44.

[12] Id. at 133.

[13] Congregation of the Religious of the Virgin Mary v. Court of Appeals, 291 SCRA 385, 391-392 (1998).

[14] Manlapaz vs. Court of Appeals, 147 SCRA 236, 239 (1987).

[15] Rollo, G.R. No. 120109, pp. 62-63.

[16] Rollo, G.R. No. 120098, pp. 68-69.

[17] Segura vs. Segura, 165 SCRA 368, 375 (1988); Noel vs. Court of Appeals, G.R. No. 59550, 240 SCRA 78, 88 (1995).

[18] Mathay v. Court of Appeals, 295 SCRA 556, 575 (1998).

[19] Diaz-Duarte vs. Ong, 298 SCRA 388, 397 (1998).

[20] Exhibit "U", Folder of Exhibits, p. 64.

[21] Exhibit "V", Id. at 66.

[22] Noel vs. Court of Appeals, 240 SCRA 78, 90 (1995).

[23] Ace Haulers Corporation v. CA, et al., G.R. No127934, August 23, 2000, p. 11.

[24] Barzaga vs. Court of Appeals, 268 SCRA 105, 113-114 (1997).

[25] Rollo, G.R. No. 120109, pp. 43-44.

[26] "J" Marketing Corp. vs. Sia, Jr., 285 SCRA 580, 583-584 (1998).

[27] Cervantes vs. Court of Appeals, 304 SCRA 25, 33 (1997).

[28] Exhibit "X", Folder of Exhibits, p. 69.

[29] Art. 2216. Civil Code. No proof of pecuniary loss is necessary in order that moral, nominal, temperate, liquidated or exemplary damages may be adjudicated. The assessment of such damages, except liquidated ones, is left to the discretion of the court, according to the circumstances of each case.

[30] Vital-Gozon v. Court of Appeals, 292 SCRA 124, 147 (1998).

[31] The time when PBCom leased the disputed properties to Tsai. CA Rollo, p. 34.

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