PHILIPPINE NATIONAL BANK, PETITIONER, VS. COURT OF APPEALS AND REMINGTON INDUSTRIAL SALES CORPORATION, RESPONDENTS.

G.R. No. 122710. October 12, 2001

Ponente: PARDO, J.

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PARDO, J.:

The Case

The case is an appeal via certiorari from the decision of the Court of Appeals[1] affirming the decision of the trial court sentencing petitioner Philippine National Bank (PNB), the Development Bank of the Philippines, Marinduque Mining and Industrial Corporation (MMIC), Nonoc Mining and Industrial Corporation, Maricalum Mining Corporation, Island Cement Corporation and Asset Privatization Trust, to pay jointly and severally the sum of P920,755.95, representing the principal obligation of Marinduque Mining and Industrial Corporation (MMIC) to Remington Industrial Sales Corporation (Remington), including the stipulated interest as of June 22, 1984, plus ten (10%) per cent surcharge per annum by way of penalty, until fully paid, the sum equivalent to 10% of the amount due as attorneys' fees and costs.

The Facts

The facts, as found by the Court of Appeals, are as follows:

> "On August 1, 1984, the plaintiff[2] filed (with the Regional Trial Court, Branch 19, Manila)[3] a complaint for sum of money with damages against the Marinduque Mining and Industrial Corporation for unpaid purchases of construction materials and other merchandise covering the period from July 16, 1982 to October 4, 1983, in the sum of P921,755.95; interest at the rate of 18% per annum; the sum equivalent to 25% of the amount of the claim as attorney's fees, and the costs of the suit. (pages 1-4, Vol. I of the Records).
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> "On September 7, 1984, said complaint was amended to include the Philippine National Bank and the Development Bank of the Philippines as co-defendants in view of the foreclosure by the latter of the real and chattel mortgages on the real and personal properties, chattels, mining claims, machineries, equipment and other assets of the Marinduque Mining and Industrial Corporation. The amended complaint also prayed for the issuance of a writ of preliminary injunction to enjoin the sale of "defendant MMIC's Sipalay Copper Mines in Negros; the Gagacy Copper Mines in Samar, and the Antipolo Cement Plant which auction would more than wipeout whatever worth defendant MMIC's assets which ultimately (sic) be prejudicial to the rights and interests" of plaintiff (appellee). (pages 179-185, Vol. I of the Records).
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> "Then again, on September 13, 1984, a second amended complaint was filed to include as additional defendant the Nonoc Mining and Industrial Corporation, a corporation organized by the Philippine National Bank and the Development Bank of the Philippines, it being the assignee of all real and personal properties, chattels, machineries, equipment and all other assets of the Marinduque Mining & Industrial Corporation at its Nonoc nickle factory in Surigao del Norte, which were foreclosed and acquired by the two banks. (pages 172-178, Vol. I of the Records).

"On March 26, 1986, with leave of court, the plaintiff (appellee) filed a third amended complaint including the Maricalum Mining Corporation and Island Cement Corporation as co-defendants, alleging therein that the properties, real and personal, chattels, machineries, equipment and all other assets of the Marinduque Mining & Industrial Corporation at Sipalay, Negros Occidental, mining projects at Rizal Province, which were foreclosed by the Philippine National Bank and Development Bank of the Philippines were transferred to MMC and ICC. (pages 329-339, Vol. I of the Records).

"The plaintiff (appellee), in said pleading, asserted that "defendants, PNB, DBP, MMIC, NMIC, Maricalum and Island Cement must be treated in law as one and the same entity by disregarding the veil of corporate fication, at least as far as plaintiff Remington Industrial Sales Corporation is concerned," on account of any or all of the following reasons:

"1. Co-defendants NMIC, Maricalum and Island Cement which are newly created entities are practically owned wholly by defendants PNB and DBP, and managed by their officers, aside from the fact that the aforesaid co-defendants NMIC, Maricalum and Island Cement were organized in such a hurry and in such suspicious circumstances by co-defendants PNB and DBP after the supposed extra-judicial foreclosure of MMIC's assets as to make their supposed projects assets, machineries and equipment which were originally owned by co-defendant MMIC beyond the reach of creditors of the latter.

"2. The personnel, key offices and rank-and-file workers and employees of co-defendants NMIC, Maricalum and Island Cement creations of co-defendants PNB and DBP were the personnel of co-defendant MMIC such that x x x practically there has only been a change of name for all legal purpose and intents.

"3. The places of business not to mention the mining claims and project premises of co-defendants NMIC, Maricalum and Island Cement likewise used to be the places of business, mining claims and project premises of co-defendant MMIC as to make the aforesaid co-defendant MMIC, Maricalum and Island Cement mere adjuncts and subsidiaries of co-defendants PNB and DBP, and subject to their control and management.

"On top of everything, co-defendants PNB, DBP, NMIC, Maricalum and Island Cement being all corporations created by the government in the pursuit of business ventures should not be allowed to ignore, x x x or obliterate with impunity nay illegally, the financial obligations of x x x MMIC whose operations co-defendants PNB and DBP had highly financed before the alleged extra-judicial foreclosure of defendant MMIC's assets, machineries and equipment to the extent that major policies of co-defendant MMIC were being decided upon by co-defendants PNB and DBP as major financiers who were represented in its board of directors forming part of the majority thereof which through the alleged extra-judicial foreclosure culminated in a complete takeover by co-defendants PNB and DBP bringing about the organization of their co-defendants NMIC, Maricalum and Island Cement to which were transferred all the assets, machineries and pieces of equipment of co-defendant MMIC used in its nickel mining project in Surigao del Norte, copper mining operation in Sipalay, Negros Occidental and cement factory in Antipolo, Rizal to the prejudice of creditors of co-defendant MMIC such as plaintiff Remington Industrial Sales Corporation whose stockholders, officers and rank-and-file workers in the legitimate pursuit of its business activities, invested considerable time, sweat and private money to supply, among others, co-defendant MMIC with some of its vital needs for its operation, which co-defendant MMIC during the time of the transactions material to this case became x x x co-defendants PNB and DBP's instrumentality, business conduit, alter ego, agency (sic), subsidiary or auxiliary corporation, by virtue of which it becomes doubly necessary to disregard the corporation fiction that co-defendants PNB, DBP, MMIC, NMIC, Maricalum and Island Cement, six (6) distinct and separate entities, when in fact and in law, they should be treated as one and the same at least as far as plaintiff's transactions with co-defendant MMIC are concerned, so as not to defeat public convenience, justify wrong, subvert justice, protect fraud or confuse legitimate issues involving creditors such as plaintiff, a fact which all defendants were as (sic) still are aware of during all the time material to the transactions subject of this case. (pages 335-337, Vol. I of the Records).

"On May 13, 1986, defendants PNB, Nonoc Mining and Industrial Corporation (NONOC), Maricalum Mining

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Corporation (MARICALUM), and Island Cement Corporation (ISLAND) filed their "Answer to Third Amended Complaint and Counterclaim,"[4] alleging therein that "(n)owhere in the complaint is there any averment of facts by which answering defendants may be considered under obligation to the plaintiff, whether by law, contract, quasi-contract, delict, or quasi-delict, which are the only sources of obligations, and nowhere is there any averment in the complaint that such obligation is what is being enforced by court action.

"According to them:

"--The PNB and the DBP, as the joint highest bidder, acquired the MARINDUQUE assets that had been sold at the foreclosure sales.

"--The Nonoc Mining and Industrial Corporation (NONOC), the Maricalum Mining Corporation, and the Island Cement Corporation were organized and established in accordance with the Corporation Law and duly registered with the Securities and Exchange Commission.

"--The nickel mines plant in Nonoc Island, Surigao del Norte, and all appurtenances thereto which had been acquired by the PNB and the DBP on the foreclosure sale of said properties were sold to the Nonoc Mining and Industrial Corporation.

"--The copper mines plaint in Sipalay, Negros Occidental and all the appurtenances thereto which had been acquired by the PNB and the DBP at the foreclosure sales thereof were sold to Island Cement Corporation.

"--There is no truth to the allegation that x x x: the NONOC, the MARICALUM and the ISLAND CEMENT are under the complete control of the PNB and the DBP--the truth being that the former are themselves separate and distinct corporations, with identity and personality of their own, with their own boards of directors, with their own management organizations.

"--The allegation to the effect that their creation, organization, and establishment of the three named corporations were "maliciously designed to evade payment of obligations of defendant MMIC to creditors such as plaintiff," is completely bereft of any legal or factual basis. Simply put, said three (3) corporations were set up for the purpose of putting to good use their acquired assets rather than have them deteriorate to eventual uselessness by action of elements in a long course of time. The imputation of malicious intent in the establishment of said corporations is not only false and baseless, but also libelous and destructive of their good names and repute.

"The defendants (appellants PNB, DBP, NONOC, MARICALUM, ISLAND CEMENT and APT) opposed plaintiff's (respondent Remington's) claim that it enjoys "preference to defendant MMIC's properties for the unpaid price of the movables sold by the plaintiff to defendant MMIC over and above that of the claim by way of mortgage of defendants DBP and PNB and therefore the acquisition in its entirety by the latter defendants of defendant MMIC's properties without paying herein plaintiff is not in accord with law. (pages 333-334, Vol. I of the Records).

"On June 3, 1986, defendant DBP filed its Answer to Third Amended Complaint. (pages 5-14, Vol. II of the Records).

"On September 12, 1986, respondent Remington filed with the trial court an "Ex Parte Motion for Preliminary Attachment of co-defendant Marinduque Mining and Industrial Corporation's Properties,"[5] which was opposed by the defendants (appellants).

"On April 3, 1989, respondent Remington filed with the trial court a motion for leave to admit its fourth amended complaint (pages 1-3, Vol. III of the Records). In said fourth amended complaint, the Asset Privatization Trust was impleaded (pages 4-15, Vol. III of the Records). Said fourth amended complaint was admitted by the lower court in its order dated April 29, 1989. In impleading APT as one of the defendants, the plaintiff (appellee) cited the following grounds:

"1. Since the admission of the third amended complaint x x x Presidential Proclamation No. 50 dated December 8, 1986 took effect by virtue of which, the Asset Privatization Trust was created to take care among others, of the rehabilitation of the non-performing assets of the government owned or controlled corporations, and the disposition thereof;

"2. Pursuant to said Presidential Proclamation No. 50 the assets of Marinduque Mining and Industrial Corporation, Nonoc Mining and Industrial Corporation, Maricalum Mining Corporation and Island Cement Corporation, x x x have been transferred to the aforesaid Asset Privatization Trust x x x on June 5, 1987 as claimed by x x x PNB and DBP.

"3. Due to these subsequent developments x x x, which all took place after the admission of the third amended complaint, it is necessary now to include x x x the Asset Privatization Trust, the latter having become an indispensable and necessary party, in addition to the fact that all the more plaintiff has become uncertain against whom to ask for reliefs x x x.

"On June 14, 1989, defendant APT filed its answer (pages 217-223, Vol. III of the Records), alleging, inter alia, that the PNB and the DBP did not transfer and assign the properties of the NMIC, the MMC and the ICC in favor of the National Government or APT x x x what were actually transferred were the financial claims which the PNB and the DBP had against the NMIC, MMC and the ICC. Under paragraph 9 of the same answer, the APT stressed that:

"a) NMIC, MMC and ICC are private corporations duly organized and existing under and by virtue of Philippine laws and therefore, have separate and distinct personalities from each other, as well as from PNB, DBP and APT;

"b) The mere fact that the officers and employees of MMIC were re-hired by the x x x NMIC, MMC and ICC does not detract from the fact that there was indeed a change of ownership;

"c) Since there are three (3) separate mining claims situated in different areas, the same were transferred and assigned separately to NMIC, MMC and ICC. It is understandable, therefore, that NMIC, MMC and ICC have to maintain their respective places of business.

"d) The properties of MMIC which were foreclosed by PNB and DBP were never transferred to APT as evidenced by the Deeds of Transfer executed by PNB and DBP.

"On August 28, 1989, defendants PNB and DBP filed their separate reply to APT's answer (pages 314-315 and 317-319, Vol. III of the Records) denying APT's claim that what was transferred to the latter was merely the financial claims the banks had against the rest of their co-defendants.

"On January 30, 1990, defendant DBP (appellant) filed its memorandum (pages 456-463, Vol. III of the Records) raising as issues whether or not:

"1. plaintiff has preference over the unpaid price of the movables its sold to Marinduque Mining Industrial Corporation?

"2. the acquisition by PNB/DBP of the foreclosed assets of MMIC without first paying MMIC (sic) is illegal, or x x x, is DBP/PNB liable for the unpaid price of MMIC purchases with plaintiff?

"3. the disposition by DBP/PNB of those foreclosed assets was in fraud of creditors?

"4. the rest of the co-defendants are one and the same entity as DBP and PNB?

"On February 22, 1990, the plaintiff (appellee) filed its memorandum (pages 487-584, Vol. III of the Records) wherein it stressed that all the defendants (appellants) are jointly and severally liable to it (plaintiff-appellee) for the unpaid Marinduque Mining's account, relying on the doctrine of piercing the veil of corporate fiction. It

posited the "notion of distinct and separate legal personalities x x x can not be availed of by any of these defendant-entities, or by any corporation for that matter, to defeat public convenience nor to justify wrong, much less to protect fraud or confuse legitimate issues." The same holds true when one corporation is a mere dummy, adjunct, business conduit or a mere alter-ego of another, in which case that corporate fiction of separate and distinct legal personalities, simply will have to be disregarded and ignored." (page 540, Vol. III of the Records). It cited Article 19 of the New Civil Code on Human Relations. It tried to draw attention to the articles of incorporation of the Nonoc Mining, the Maricalum Mining and the Island Cement and the fact that they and PNB have one and the same lawyer, the Senior Vice-President and Chief Legal Counsel of the PNB thereby revealing the eloquent dominance of the PNB over the Nonoc Mining, the Maricalum Mining and the Island Cement, aside from their articles of incorporation. It emphasized the fact that the board of directors of the Marinduque Mining was dominated entirely by representatives of co-defendants PNB and DBP at the time the mortgage trust agreement was executed on July 13, 1981 and when the same was amended on April 27, 1984. It was contended that the mortgage agreement executed by Marinduque Mining in favor of the PNB and the DBP covering both real and personal properties "as well as assets of whatever kind, nature and description which co-defendant Marinduque Mining may subsequently acquire from date thereof" was done in fraud of creditors. It claimed that the execution of the agreements was simply like `taking everything, lock, stock and barrel, from one's left pocket to x x x to one's right pocket, the mortgagor x x x being without any control or voice of its own, perpetrated by mortgagees PNB and DBP x x x leaving nothing to other entities who might have just but unpaid and uncollected claims against the mortgagor, existing before or at the dates of the mortgage and of the amendment thereof." (page 553, Vol. III of the Records).

"It likewise assailed the mortgage agreement and the subsequent foreclosure inasmuch as, per Executive Order No. 81, the Development Bank of the Philippines had a capital stock only of P5 billion, while the Philippine National Bank had an authorized capital stock of only P2 billion per Presidential Decree No. 694--so that according to it `(W)ithin these capitalizations it was not only against public morals but x x x contrary to public policy, for these two (2) co-defendants, public financial institutions, to have granted credit accommodations in 1981 to Marinduque Mining of P4 billion from PNB and P2,200,000.00 from DBP." (page 559, Vol. III of the Records). It pointed out that `as of December 31, 1980 as shown by the general information sheet of Marinduque Mining x x x it had a total number of subscriptions of 49,815,679 shares. Even if the same is multiplied by P10.00 per share, the total amount subscribed x x x would at most amount of P498,156.00 x x x. And in all likelihood, DBP and PNB were both aware of other credit obligations of Marinduque Mining in favor of other parties existing prior to 1981 when the credit accommodations of a total amount of P6,200,000,000.00 x x x were granted by them to Marinduque Mining x x x." (pages 559-560, Vol. III of the Records).

"It attacked the transfers made by the PNB and the DBP in favor of their co-defendants for having been made under questionable and incredible circumstances. According to the plaintiff (appellee):

"--a deed of transfer x x x was allegedly executed by PNB and DBP in favor of Nonoc Mining, in which it was made to appear that Nonoc Mining, acquired all the rights, interest and properties of PNB and DBP, acquired from co-defendant Marinduque Mining, comprising the Nonoc nickel project of Marinduque Mining at Nonoc Island, Surigao del Norte for a consideration of P14,361,000,000.00 (Exhibit 13-PNB), and Nonoc Mining at the time had only an authorized capital stock of P100,000,000.00, P25,000,000.00 of which was the subscribed and paid-up capital (Exhibits BBBBB).

"--Maricalum Mining was made to appear on June 6, 1985 as a transferee x x x having allegedly acquired from PNB for a consideration of P325,800,000.00 all the rights, interest and participation of PNB over the properties of co-defendant Marinduque Mining located at Sipalay, Negros Occidental (Exhibit 14-PNB). Such transfer was allegedly made, even if Maricalum Mining organized and incorporated by PNB and DBP as their dummy on September 24, 1984 had only an authorized capital stock of P20,000,000.0o0 and a subscribed and paid-up capital of P5,000,000.00 (Exhibits FFFFF).

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"--Most questionable, incomprehensible and suspicious of all is the alleged acquisition by Island Cement of all the rights, interest and participation of PNB and DBP over the properties of Marinduque Mining located in Antipolo, Rizal comprising its cement plant division therein. The alleged deed of transfer which was to be produced x x x as promised by the counsel of PNB x x x was not actually produced and presented in evidence.

"--There has been no showing whatever that the transfer certificates of title over the properties of Marinduque Mining located in various part of the Philippines, such as Surigao del Norte. Negros Occidental, Samar and Rizal were transferred to PNB and DBP as the highest bidders in the extra-judicial foreclosure sales conducted in the four (4) provinces of Surigao del Norte, Negros Occidental, Samar and Rizal. x x x no showing whatever that the titles to the Marinduque Mining properties acquired by PNB and DBP and allegedly transferred by them to Nonoc Mining, Maricalum Mining and Island Cement, were transferred to the names of the latter, respectively." (pages 568-570, Vol. III of the Records).

"The plaintiff (appellee) also questioned PNB's transfer to the National Government and/or APT thusly:

"How can this Honorable Court give even a semblance of x x x belief to the alleged deed of transfer dated February 27, 1987 executed between the PNB and the National Government and/or Asset Privatization Trust (Exhibit 15-PNB) by which the latter allegedly acquired again, and also, all these Marinduque Mining properties, which had already been transferred supposedly to Nonoc Mining, Maricacalum Mining and Island Cement, by the same transferor PNB and DBP?" (page 571, Vol. III of the Records).

"The plaintiff (appellee) further described PNB's and DBP's incorporation of Nonoc Mining, Maricalum Mining and Island Cement as ultra vires, since the `Republic Act, Proclamations and Executive Orders issued relative to their existence' utterly fails to show that either or both the PNB and DBP are authorized by their respective Charters, to engage in mining." (pages 580-581, Vol. III of the Records).

"On February 28, 1990, defendant (appellant) APT filed its memorandum (pages 586-590, Vol. III of the Records) limiting the issues to: whether or not -

"1. plaintiff has preference over the properties of defendant MMIC for the unpaid price of the movables sold by plaintiff;

"2. plaintiff has preference over the unpaid price of the movables sold to MMIC;

"3. PNB, DBP and APT are liable for the unpaid price of MMIC's purchases." (page 587 of the same Record).

"On March 21, 1990, defendants PNB, NMIC, MMC and ICC (appellants) submitted their memorandum (pages 594-608, of the same Record) wherein they claimed that:

"a. Plaintiff has no cause of action against herein defendants;

"b. Defendants PNB and DBP did not become the universal successors of Marinduque when they foreclosed and subsequently acquired the mortgaged properties of the latter;

"c. Plaintiff does not enjoy the preferential rights provided under paragraph (3) of Art. 2241 of the New Civil Code;

"d. Herein defendants are entities separate and distinct from each other and governed by their respective Charter and/or Articles of Incorporation and By-laws; and

"e. Defendant PNB's rights and interest over the acquired assets of Marinduque were already transferred to the National Government." (page 599 of the same Record).

"On April 10, 1990, the lower court rendered a decision in favor of the plaintiff (appellee). On May 2, 1990 defendants Philippine National Bank, Nonoc Mining and Industrial Corporation, Maricalum Mining Corporation, and Island Cement Corporation filed with the trial court their "Notice of Appeal" (pages 643-644,

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> Vol. III of the Records), while defendant Development Bank of the Philippines filed its "Notice of Appeal" on May 8, 1990 (page 648 of the Record). Defendant Asset Privatization Trust, on the other hand, filed its "Notice of Appeal" on May 8, 1990 (page 650, Vol. III of the Records).

After due proceedings, on October 6, 1995, the Court of Appeals promulgated its decision, the dispositive portion of which reads:

> "WHEREFORE, premises considered, the appealed decision of the Regional Trial Court, Branch 19, in Manila in Civil Case No. 84-25858 is hereby AFFIRMED, with costs against the appellants."[6]

Hence, this petition.[7]

The Issue

The issue presented is whether the Philippine National Bank is liable to pay for unpaid goods and merchandise supplied by Remington Industrial Sales Corporation to Marinduque Mining and Industrial Corporation by way of sales on credit simply because the goods and merchandise were included in the foreclosure of Marinduque's property mortgaged to the Philippine National Bank.

The Court's Ruling

To start with, Remington's claim is for unpaid purchases of construction materials and other merchandise that it supplied to Marinduque during the period July 16, 1982 to October 4, 1983, in the sum of P921,755.95, plus interest at 18% per annum, 25% of the amount claimed as attorney's fees and costs. The claim was only against MMIC.

However, on August 31, 1984, PNB foreclosed its chattel and real estate mortgages on the property of MMIC constituted as security of its loans secured from the PNB. The foreclosure was an exercise of a legal right granted to PNB. The contract between Remington and MMIC was one of sale on credit which commenced July 16, 1982 to October 4, 1983. The goods and merchandise, subject of the sale were delivered to the MMIC. Remington was an unpaid seller.

When PNB foreclosed the assets of MMIC on August 31, 1984, the goods and merchandise sold by Remington to PNB were in the actual possession and control of MMIC and were included in the foreclosure sale. Remington, however, had relinquished ownership of the merchandise sold to MMIC and the fact the goods were delivered to MMIC transferred ownership over the same to the latter. Thus, MMIC's possession of the goods and merchandise was in the concept of owner and when the PNB foreclosed the mortgages on MMIC's property, real and personal, MMIC was the owner of the goods and merchandise sold to it on credit. The failure of MMIC to pay the purchase price of the goods does not ipso facto revert ownership of the goods to the seller unless the sale was first invalidated. PNB's act of including in its foreclosure the unpaid goods and merchandise sold to MMIC and which PNB acquired at the auction sale did not make PNB an obligor to pay for such unpaid goods. Consequently, Remington has no cause of action against PNB for recovery of the value of the goods and merchandise. PNB caused Remington no injury. The obligation to pay remains with MMIC. If there was any damage to Remington resulting from including the unpaid goods and merchandise in the foreclosure, it was damnum absque injuria.[8]

The Judgment

WHEREFORE, the Court REVERSES the decision of the Court of Appeals[9] and in lieu thereof, enters judgment DISMISSING the complaint of Remington Industrial Sales Corporation in Civil Case No. 84-25858, Regional Trial Court, Branch 19, Manila, as against defendants Philippine National Bank and Development Bank of the Philippines.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and Ynares-Santiago, JJ., concur.
Kapunan, J., on official leave.

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[1] In CA-G. R. CV No. 27720, promulgated on October 06, 1995. Petition, Annex "A", Rollo, pp. 48-66. Mabutas, Jr., J., ponente Valdez, Jr., and Brawner, JJ., concurring.

[2] Herein respondent Remington Industrial Sales Corporation.

[3] Docketed as Civil Case No. 84-25858.

[4] Ibid., pp. 535-549.

[5] Ibid., pp. 100-107.

[6] Petition, Annex "A", Rollo, pp. 48-66.

[7] Filed on December 1, 1995. Rollo, pp. 10-46. On June 23, 1999, we gave due course to the petition (Rollo, pp. 231-232).

[8] Gilchrist v. Cuddy, 29 Phil. 548 [1915]; Escano v. Court of Appeals, 100 SCRA 203 [1980]; Mijares v. Court of Appeals, 338 Phil. 274, 290 [1997]; Komatsu Industries (Phils.), Inc. v. Court of Appeals, 352 Phil. 440, 455 [1998].

[9] In CA-G. R. CV No. 27720, promulgated on October 6, 1995.

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