

**EUGENIA RAMONAL CODOY, AND MANUEL RAMONAL,
PETITIONERS, VS. EVANGELINE R. CALUGAY, JOSEPHINE SALCEDO,
AND EUFEMIA PATIGAS, RESPONDENTS.**

G.R. No. 123486. August 12, 1999

Ponente: PARDO, J.

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PARDO, J.:

Before us is a petition for review on certiorari of the decision of the Court of Appeals[1] and its resolution denying reconsideration, ruling:

"Upon the unrebutted testimony of appellant Evangeline Calugay and witness Matilde Ramonal Binanay, the authenticity of testators holographic will has been established and the handwriting and signature therein (exhibit S) are hers, enough to probate said will. Reversal of the judgment appealed from and the probate of the holographic will in question be called for. The rule is that after plaintiff has completed presentation of his evidence and the defendant files a motion for judgment on demurrer to evidence on the ground that upon the facts and the law plaintiff has shown no right to relief, if the motion is granted and the order to dismissal is reversed on appeal, the movant loses his right to present evidence in his behalf (Sec. 1 Rule 35 Revised Rules of Court). Judgment may, therefore, be rendered for appellant in the instant case.

"Wherefore, the order appealed from is REVERSED and judgment rendered allowing the probate of the holographic will of the testator Matilde Seño Vda. de Ramonal."[2]

The facts are as follows:

On April 6, 1990, Evangeline Calugay, Josephine Salcedo and Eufemia Patigas, devisees and legatees of the holographic will of the deceased Matilde Seño Vda. de Ramonal, filed with the Regional Trial Court, Misamis Oriental, Branch 18, a petition[3] for probate of the holographic will of the deceased, who died on January 16, 1990.

In the petition, respondents claimed that the deceased Matilde Seño Vda. de Ramonal, was of sound and disposing mind when she executed the will on August 30, 1978, that there was no fraud, undue influence, and duress employed in the person of the testator, and the will was written voluntarily.

The assessed value of the decedent's property, including all real and personal property was about P400,000.00, at the time of her death.[4]

On June 28, 1990, Eugenia Ramonal Codoy and Manuel Ramonal filed an opposition[5] to the petition for probate, alleging that the holographic will was a forgery and that the same is even illegible. This gives an impression that a "third hand" of an interested party other than the "true hand" of Matilde Seño Vda. de Ramonal executed the holographic will.

Petitioners argued that the repeated dates incorporated or appearing on the will after every disposition is out of the ordinary. If the deceased was the one who executed the will, and was not forced, the dates and the signature

should appear at the bottom after the dispositions, as regularly done and not after every disposition. And assuming that the holographic will is in the handwriting of the deceased, it was procured by undue and improper pressure and influence on the part of the beneficiaries, or through fraud and trickery.

Respondents presented six (6) witnesses and various documentary evidence. Petitioners instead of presenting their evidence, filed a demurrer[6] to evidence, claiming that respondents failed to establish sufficient factual and legal basis for the probate of the holographic will of the deceased Matilde Seño Vda. de Ramonal.

On November 26, 1990, the lower Court issued an order, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing consideration, the Demurrer to Evidence having being well taken, same is granted, and the petition for probate of the document (Exhibit "S") on the purported Holographic Will of the late Matilde Seño Vda. de Ramonal, is denied for insufficiency of evidence and lack of merits." [7]

On December 12, 1990, respondents filed a notice of appeal,[8] and in support of their appeal, the respondents once again reiterated the testimony of the following witnesses, namely: (1) Augusto Neri; (2) Generosa Senon; (3) Matilde Ramonal Binanay; (4) Teresita Vedad; (5) Fiscal Rodolfo Waga; and (6) Evangeline Calugay.

To have a clear understanding of the testimonies of the witnesses, we recite an account of their testimonies.

Augusto Neri, Clerk of Court, Court of First Instance of Misamis Oriental, where the special proceedings for the probate of the holographic will of the deceased was filed. He produced and identified the records of the case. The documents presented bear the signature of the deceased, Matilde Seño Vda. de Ramonal, for the purpose of laying the basis for comparison of the handwriting of the testatrix, with the writing treated or admitted as genuine by the party against whom the evidence is offered.

Generosa Senon, election registrar of Cagayan de Oro, was presented to produce and identify the voter's affidavit of the decedent. However, the voters' affidavit was not produced for the same was already destroyed and no longer available.

Matilde Ramonal Binanay, testified that the deceased Matilde Seño Vda. de Ramonal was her aunt, and that after the death of Matilde's husband, the latter lived with her in her parent's house for eleven (11) years, from 1958 to 1969. During those eleven (11) years of close association with the deceased, she acquired familiarity with her signature and handwriting as she used to accompany her (deceased Matilde Seño Vda. de Ramonal) in collecting rentals from her various tenants of commercial buildings, and the deceased always issued receipts. In addition to this, she (witness Matilde Binanay) assisted the deceased in posting the records of the accounts, and carried personal letters of the deceased to her creditors.

Matilde Ramonal Binanay further testified that at the time of the death of Matilde Vda. de Ramonal, she left a holographic will dated August 30, 1978, which was personally and entirely written, dated and signed, by the deceased and that all the dispositions therein, the dates, and the signatures in said will, were that of the deceased.

Fiscal Rodolfo Waga testified that before he was appointed City Fiscal of Cagayan de Oro, he was a practicing lawyer, and handled all the pleadings and documents signed by the deceased in connection with the intestate proceedings of her late husband, as a result of which he is familiar with the handwriting of the latter. He testified that the signature appearing in the holographic will was similar to that of the deceased, Matilde Seño Vda. de Ramonal, but he can not be sure.

The fifth witness presented was Mrs. Teresita Vedad, an employee of the Department of Environment and Natural Resources, Region 10. She testified that she processed the application of the deceased for pasture permit and was familiar with the signature of the deceased, since the deceased signed documents in her presence, when the latter

was applying for pasture permit.

Finally, Evangeline Calugay, one of the respondents, testified that she had lived with the deceased since birth, and was in fact adopted by the latter. That after a long period of time she became familiar with the signature of the deceased. She testified that the signature appearing in the holographic will is the true and genuine signature of Matilde Seño Vda. de Ramonal.

The holographic will which was written in Visayan, is translated in English as follows:

"Instruction

"August 30, 1978

"1. My share at Cogon, Raminal Street, for Evangeline Calugay.

"(Sgd) Matilde Vda de Ramonal

"August 30, 1978

"2. Josefina Salcedo must be given 1,500 square meters at Pinikitan Street.

"(Sgd) Matilde Vda de Ramonal

"August 30, 1978

"3. My jewelry's shall be divided among:

"1. Eufemia Patigas

"2. Josefina Salcedo

"3. Evangeline Calugay

"(Sgd)Matilde Vda de Ramonal

"August 30, 1978

"4. I bequeath my one (1) hectare land at Mandumol, Indahag to Evangeline R. Calugay

"(Sgd) Matilde Vda de Ramonal

"August 30, 1978

"5. Give the 2,500 Square Meters at Sta. Cruz Ramonal Village in favor of Evangeline R. Calugay, Helen must continue with the Sta. Cruz, once I am no longer around.

"(Sgd) Matilde Vda de Ramonal

"August 30, 1978

"6. Bury me where my husband Justo is ever buried.

"(Sgd) Matilde Vda de Ramonal

"August 30,1978

"Gene and Manuel:

"Follow my instruction in order that I will rest peacefully.

"Mama

"Matilde Vda de Ramonal

On October 9, 1995, the Court of Appeals, rendered decision[9] ruling that the appeal was meritorious. Citing the decision in the case of *Azaola vs. Singson*, 109 Phil. 102, penned by Mr. Justice J. B. L. Reyes, a recognized authority in civil law, the Court of Appeals held:

"x x x even if the genuineness of the holographic will were contested, we are of the opinion that Article 811 of our present civil code can not be interpreted as to require the compulsory presentation of three witnesses to identify the handwriting of the testator, under penalty of having the probate denied. Since no witness may have been present at the execution of the holographic will, none being required by law (art. 810, new civil code), it becomes obvious that the existence of witnesses possessing the requisite qualifications is a matter beyond the control of the proponent. For it is not merely a question of finding and producing any three witnesses; they must be witnesses "who know the handwriting and signature of the testator" and who can declare (truthfully, of course, even if the law does not express) "that the will and the signature are in the handwriting of the testator." There may be no available witness acquainted with the testator's hand; or even if so familiarized, the witness may be unwilling to give a positive opinion. Compliance with the rule of paragraph 1 of article 811 may thus become an impossibility. That is evidently the reason why the second paragraph of article 811 prescribes that--

"in the absence of any competent witness referred to in the preceding paragraph, and if the court deems it necessary, expert testimony may be resorted to."

"As can be seen, the law foresees the possibility that no qualified witness may be found (or what amounts to the same thing, that no competent witness may be willing to testify to the authenticity of the will), and provides for resort to expert evidence to supply the deficiency.

"It may be true that the rule of this article (requiring that three witnesses be presented if the will is contested and only one if no contest is had) was derived from the rule established for ordinary testaments (CF *Cabang vs. Delfinado*, 45 PHIL 291; *Tolentino v. Francisco*, 57 PHIL 742). But it can not be ignored that the requirement can be considered mandatory only in case of ordinary testaments, precisely because the presence of at least three witnesses at the execution of ordinary wills is made by law essential to their validity (Art. 805). Where the will is holographic, no witness need be present (art.10), and the rule requiring production of three witnesses must be deemed merely permissive if absurd results are to be avoided.

"Again, under Art.811, the resort to expert evidence is conditioned by the words "if the court deem it necessary", which reveal that what the law deems essential is that the court should be convinced of the will's authenticity. Where the prescribed number of witnesses is produced and the court is convinced by their testimony that the will is genuine, it may consider it unnecessary to call for expert evidence. On the other hand, if no competent witness is available, or none of those produced is convincing, the court may still, and in fact it should resort to handwriting experts. The duty of the court, in fine, is to exhaust all available lines of inquiry, for the state is as much interested as the proponent that the true intention of the testator be carried into effect.

"Paraphrasing *Azaola vs. Singson*, even if the genuineness of the holographic will were contested, Article 811 of the civil code cannot be interpreted as to require the compulsory presentation of three witnesses to identify the handwriting of the testator, under penalty of the having the probate denied. No witness need be present in the execution of the holographic will. And the rule requiring the production of three witnesses is merely permissive. What the law deems essential is that the court is convinced of the authenticity of the will. Its duty is to exhaust all available lines of inquiry, for the state is as much interested in the proponent that the true intention of the testator be carried into effect. And because the law leaves it to the trial court to decide if experts are still needed, no unfavorable inference can be drawn from a party's failure to offer expert evidence, until and unless the court expresses dissatisfaction with the testimony of the lay witnesses.[10]

According to the Court of Appeals, Evangeline Calugay, Matilde Ramonal Binanay and other witnesses definitely and in no uncertain terms testified that the handwriting and signature in the holographic will were those of the testator herself.

Thus, upon the un rebutted testimony of appellant Evangeline Calugay and witness Matilde Ramonal Binanay, the Court of Appeals sustained the authenticity of the holographic will and the handwriting and signature therein, and allowed the will to probate.

Hence, this petition.

The petitioners raise the following issues:

(1)

Whether or not the ruling of the case of *Azaola vs. Singson*, 109 Phil. 102, relied upon by the respondent Court of Appeals, was applicable to the case.

(2)

Whether or not the Court of Appeals erred in holding that private respondents had been able to present credible evidence to prove that the date, text, and signature on the holographic will were written entirely in the hand of the testatrix.

(3)

Whether or not the Court of Appeals erred in not analyzing the signatures in the holographic will of Matilde Señor Vda. de Ramonal.

In this petition, the petitioners ask whether the provisions of Article 811 of the Civil Code are permissive or mandatory. The article provides, as a requirement for the probate of a contested holographic will, that at least three witnesses explicitly declare that the signature in the will is the genuine signature of the testator.

We are convinced, based on the language used, that Article 811 of the Civil Code is mandatory. The word "shall" connotes a mandatory order. We have ruled that "shall" in a statute commonly denotes an imperative obligation and is inconsistent with the idea of discretion and that the presumption is that the word "shall," when used in a statute is mandatory."^[11]

Laws are enacted to achieve a goal intended and to guide against an evil or mischief that aims to prevent. In the case at bar, the goal to achieve is to give effect to the wishes of the deceased and the evil to be prevented is the possibility that unscrupulous individuals who for their benefit will employ means to defeat the wishes of the testator.

So, we believe that the paramount consideration in the present petition is to determine the true intent of the deceased. An exhaustive and objective consideration of the evidence is imperative to establish the true intent of the testator.

It will be noted that not all the witnesses presented by the respondents testified explicitly that they were familiar with the handwriting of the testator. In the case of Augusto Neri, clerk of court, Court of First Instance, Misamis Oriental, he merely identified the record of Special Proceedings No. 427 before said court. He was not presented to declare explicitly that the signature appearing in the holographic was that of the deceased.

Generosa E. Senon, the election registrar of Cagayan de Oro City, was presented to identify the signature of the deceased in the voters' affidavit, which was not even produced as it was no longer available.

Matilde Ramonal Binanay, on the other hand, testified that:

Q.

And you said for eleven (11) years Matilde Vda de Ramonal resided with your parents at Pinikitan, Cagayan de Oro City. Would you tell the court what was your occupation or how did Matilde Vda de Ramonal keep herself busy that time?

A. Collecting rentals.

Q. From where?

A. From the land rentals and commercial buildings at Pabayo-Gomez streets.[12]

x x x

Q. Who sometime accompany her?

A. I sometimes accompany her

Q. In collecting rentals does she issue receipts?

A. Yes, sir.[13]

x x x

Q. Showing to you the receipt dated 23 October 1979, is this the one you are referring to as one of the receipts which she issued to them?

A. Yes, sir.

Q. Now there is that signature of Matilde vda. De Ramonal, whose signature is that Mrs. Binanay?

A.

Matilde vda. De Ramonal.

Q.

Why do you say that that is a signature of Matilde vda. De Ramonal?

A. I am familiar with her signature.

Q. Now, you tell the court Mrs. Binanay, whether you know Matilde vda de Ramonal kept records of the accounts of her tenants?

A.

Yes, sir.

Q. Why do you say so?

A. Because we sometimes post a record of accounts in behalf of Matilde Vda. De Ramonal.

Q. How is this record of accounts made? How is this reflected?

A. In handwritten.[14]

x x x

Q.

In addition to collection of rentals, posting records of accounts of tenants and deed of sale which you said what else did you do to acquire familiarity of the signature of Matilde Vda De Ramonal?

A. Posting records.

Q. Aside from that?

A. Carrying letters.

Q. Letters of whom?

A. Matilde

Q.

To whom?

A.

To her creditors.[15]

x x x

Q. You testified that at the time of her death she left a will. I am showing to you a document with its title

"tugon" is this the document you are referring to?

A. Yes, sir.

Q.

Showing to you this exhibit "S", there is that handwritten "tugon", whose handwriting is this?

A. My aunt.

Q. Why do you say this is the handwriting of your aunt?

A. Because I am familiar with her signature.[16]

What Ms. Binanay saw were pre-prepared receipts and letters of the deceased, which she either mailed or gave to her tenants. She did not declare that she saw the deceased sign a document or write a note.

Further, during the cross-examination, the counsel for petitioners elicited the fact that the will was not found in the personal belongings of the deceased but was in the possession of Ms. Binanay. She testified that:

Q. Mrs. Binanay, when you were asked by counsel for the petitioners if the late Matilde Seno vda de Ramonal left a will you said, yes?

A. Yes, sir.

Q. Who was in possession of that will?

A. I.

Q.

Since when did you have the possession of the will?

A. It was in my mother's possession.

Q. So, it was not in your possession?

A. Sorry, yes.

Q. And when did you come into possession since as you said this was originally in the possession of your mother?

A. 1985.[17]

x x x

Q. Now, Mrs. Binanay was there any particular reason why your mother left that will to you and therefore you have that in your possession?

A. It was not given to me by my mother, I took that in the aparador when she died.

Q. After taking that document you kept it with you?

A. I presented it to the fiscal.

Q. For what purpose?

A. Just to seek advice.

Q. Advice of what?

A. About the will.[18]

In her testimony it was also evident that Ms. Binanay kept the fact about the will from petitioners, the legally adopted children of the deceased. Such actions put in issue her motive of keeping the will a secret to petitioners and revealing it only after the death of Matilde Seño Vda. de Ramonal.

In the testimony of Ms. Binanay, the following were established:

Q. Now, in 1978 Matilde Seno Vda de Ramonal was not yet a sickly person is that correct?

A. Yes, sir.

Q. She was up and about and was still uprightly and she could walk agilely and she could go to her building to collect rentals, is that correct?

A.

Yes, sir.[19]

x x x

Q. Now, let us go to the third signature of Matilde Ramonal. Do you know that there are retracings in the word Vda.?

A. Yes, a little. The letter L is continuous.

Q. And also in Matilde the letter L is continued to letter D?

A. Yes, sir.

Q. Again the third signature of Matilde Vda de Ramonal the letter L in Matilde is continued towards letter D.

A. Yes, sir.

Q. And there is a retracing in the word Vda.?

A. Yes, sir.[20]

x x x

Q.

Now, that was 1979, remember one year after the alleged holographic will. Now, you identified a document marked as Exhibit R. This is dated January 8, 1978 which is only about eight months from August 30, 1978. Do you notice that the signature Matilde Vda de Ramonal is beautifully written and legible?

A.

Yes, sir the handwriting shows that she was very exhausted.

Q. You just say that she was very exhausted while that in 1978 she was healthy was not sickly and she was agile. Now, you said she was exhausted?

A. In writing.

Q. How did you know that she was exhausted when you were not present and you just tried to explain yourself out because of the apparent inconsistencies?

A. That was I think. (sic)

Q.

Now, you already observed this signature dated 1978, the same year as the alleged holographic will. In exhibit I, you will notice that there is no retracing; there is no hesitancy and the signature was written on a fluid movement. x x x And in fact, the name Eufemia R. Patigas here refers to one of the petitioners?

A. Yes, sir.

Q.

You will also notice Mrs. Binanay that it is not only with the questioned signature appearing in the alleged holographic will marked as Exhibit X but in the handwriting themselves, here you will notice the hesitancy and tremors, do you notice that?

A. Yes, sir.[21]

Evangeline Calugay declared that the holographic will was written, dated and signed in the handwriting of the testator. She testified that:

Q.

You testified that you stayed with the house of the spouses Matilde and Justo Ramonal for the period of 22 years. Could you tell the court the services if any which you rendered to Matilde Ramonal?

A. During my stay I used to go with her to the church, to the market and then to her transactions.

Q. What else? What services that you rendered?

A. After my college days I assisted her in going to the bank, paying taxes and to her lawyer.

Q. What was your purpose of going to her lawyer?

A.

I used to be her personal driver.

Q. In the course of your stay for 22 years did you acquire familiarity of the handwriting of Matilde Vda de Ramonal?

A. Yes, sir.

Q. How come that you acquired familiarity?

A. Because I lived with her since birth.[22]

x x x

Q.

Now, I am showing to you Exhibit S which is captioned "tugon" dated Agosto 30, 1978 there is a signature here below item No. 1, will you tell this court whose signature is this?

A. Yes, sir, that is her signature.

Q. Why do you say that is her signature?

A. I am familiar with her signature.[23]

So, the only reason that Evangeline can give as to why she was familiar with the handwriting of the deceased was because she lived with her since birth. She never declared that she saw the deceased write a note or sign a document.

The former lawyer of the deceased, Fiscal Waga, testified that:

Q. Do you know Matilde Vda de Ramonal?

A. Yes, sir I know her because she is my godmother the husband is my godfather. Actually I am related to the husband by consanguinity.

Q.

Can you tell the name of the husband?

A. The late husband is Justo Ramonal.[24]

x x x

Q. Can you tell this court whether the spouses Justo Ramonal and Matilde Ramonal have legitimate children?

A. As far as I know they have no legitimate children.[25]

x x x

Q. You said after becoming a lawyer you practice your profession? Where?

A.

Here in Cagayan de Oro City.

Q. Do you have services rendered with the deceased Matilde vda de Ramonal?

A. I assisted her in terminating the partition, of properties.

Q. When you said assisted, you acted as her counsel? Any sort of counsel as in what case is that, Fiscal?

A. It is about the project partition to terminate the property, which was under the court before.[26]

x x x

Q.

Appearing in special proceeding no. 427 is the amended inventory which is marked as exhibit N of the estate of Justo Ramonal and there appears a signature over the type written word Matilde vda de Ramonal, whose signature is this?

A. That is the signature of Matilde Vda de Ramonal.

Q. Also in exhibit n-3, whose signature is this?

A. This one here that is the signature of Mrs. Matilde vda de Ramonal.[27]

x x x

Q.

Aside from attending as counsel in that Special Proceeding Case No. 427 what were the other assistance wherein you were rendering professional service to the deceased Matilde Vda de Ramonal?

A.

I can not remember if I have assisted her in other matters but if there are documents to show that I have assisted then I can recall.[28]

x x x

Q.

Now, I am showing to you exhibit S which is titled "tugon", kindly go over this document, Fiscal Waga and tell the court whether you are familiar with the handwriting contained in that document marked as exhibit "S"?

A. I am not familiar with the handwriting.

Q. This one, Matilde Vda de Ramonal, whose signature is this?

A. I think this signature here it seems to be the signature of Mrs. Matilde vda de Ramonal.

Q. Now, in item No. 2 there is that signature here of Matilde Vda de Ramonal, can you tell the court whose signature is this?

A. Well, that is similar to that signature appearing in the project of partition.

Q. Also in item no. 3 there is that signature Matilde Vda de Ramonal, can you tell the court whose signature is that?

A. As I said, this signature also seems to be the signature of Matilde vda de Ramonal.

Q. Why do you say that?

A. Because there is a similarity in the way it is being written.

Q. How about this signature in item no. 4, can you tell the court whose signature is this?

A. The same is true with the signature in item no. 4. It seems that they are similar.[29]

x x x

Q. Mr. Prosecutor, I heard you when you said that the signature of Matilde Vda de Ramonal Appearing in exhibit S seems to be the signature of Matilde vda de Ramonal?

A. Yes, it is similar to the project of partition.

Q.

So you are not definite that this is the signature of Matilde vda de Ramonal. You are merely supposing that it seems to be her signature because it is similar to the signature of the project of partition which you have made?

A. That is true.[30]

From the testimonies of these witnesses, the Court of Appeals allowed the will to probate and disregard the requirement of three witnesses in case of contested holographic will, citing the decision in *Azaola vs. Singson*,[31] ruling that the requirement is merely directory and not mandatory.

In the case of *Ajero vs. Court of Appeals*,[32] we said that "the object of the solemnities surrounding the execution of wills is to close the door against bad faith and fraud, to avoid substitution of wills and testaments and to guaranty their truth and authenticity. Therefore, the laws on this subject should be interpreted in such a way as to attain these primordial ends. But, on the other hand, also one must not lose sight of the fact that it is not the object of the law to restrain and curtail the exercise of the right to make a will."

However, we cannot eliminate the possibility of a false document being adjudged as the will of the testator, which is why if the holographic will is contested, that law requires three witnesses to declare that the will was in the handwriting of the deceased.

The will was found not in the personal belongings of the deceased but with one of the respondents, who kept it even before the death of the deceased. In the testimony of Ms. Binanay, she revealed that the will was in her possession as early as 1985, or five years before the death of the deceased.

There was no opportunity for an expert to compare the signature and the handwriting of the deceased with other documents signed and executed by her during her lifetime. The only chance at comparison was during the cross-examination of Ms. Binanay when the lawyer of petitioners asked Ms. Binanay to compare the documents which contained the signature of the deceased with that of the holographic will and she is not a handwriting expert. Even the former lawyer of the deceased expressed doubts as to the authenticity of the signature in the holographic will.

A visual examination of the holographic will convince us that the strokes are different when compared with other documents written by the testator. The signature of the testator in some of the disposition is not readable. There

were uneven strokes, retracing and erasures on the will.

Comparing the signature in the holographic will dated August 30, 1978,[33] and the signatures in several documents such as the application letter for pasture permit dated December 30, 1980,[34] and a letter dated June 16, 1978,[35] the strokes are different. In the letters, there are continuous flows of the strokes, evidencing that there is no hesitation in writing unlike that of the holographic will. We, therefore, cannot be certain that the holographic will was in the handwriting by the deceased.

IN VIEW WHEREOF, the decision appealed from is SET ASIDE. The records are ordered remanded to the court of origin with instructions to allow petitioners to adduce evidence in support of their opposition to the probate of the holographic will of the deceased Matilde Seño Vda. de Ramonal.

No costs.

SO ORDERED.

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

[1] In CA-G.R. CV No. 31365, promulgated on October 9, 1995, Justice Pedro A. Ramirez, ponente, Justices Angelina Sandoval Gutierrez and Conrado M. Vasquez, Jr., concurring, CA Rollo, pp. 83-92.

[2] Decision, Court of Appeals Records, pp. 83-93.

[3] Original Records, Petition, pp. 1-7.

[4] Ibid., p. 4.

[5] Original Record, Opposition, pp. 13-17.

[6] Demurrer to Evidence, pp. 140-155, October 13, 1990.

[7] Original Records, Order, p. 192.

[8] Ibid., Notice of Appeal (November 29, 1990), p. 194.

[9] Court of Appeals Rollo, Decision, pp. 83-92.

[10] Ibid.

[11] Pioneer Texturing Corporation vs. National Labor Relations Commission, 280 SCRA 806 [1997]; see also Director of Lands vs. Court of Appeals, 276 SCRA 276 [1997]; Cecilleville Realty and Service Corporation vs. Court of Appeals, 278 SCRA 819 [1997]; Baranda vs. Gustilo, 165 SCRA 757 [1988].

[12] TSN, September 5, 1990, p. 23.

[13] Ibid., p. 24.

[14] TSN, September 5, 1990, pp. 24-26.

[15] Ibid., pp. 28-29.

[16] TSN, September 5, 1990, pp. 28-29.

[17] TSN, September 5, 1990, p. 48.

[18] TSN, September 5, 1990, p.49.

- [19] TSN, p. 62.
- [20] TSN, pp. 58-59.
- [21] TSN, pp. 64-66.
- [22] TSN, September 27, 1990, pp. 145-147.
- [23] TSN, p. 148.
- [24] TSN, September 6, 1990, p. 74.
- [25] Ibid
- [26] TSN, September 6, 1990, pp. 76-77.
- [27] Ibid.
- [28] TSN, September 6, 1990, pp. 79-80.
- [29] TSN, pp. 80-82.
- [30] TSN, September 6, 1990, pp. 83-84.
- [31] Supra.

[32] 236 SCRA 489 [1994].

- [33] Original Record, Exhibit "S", p. 101.
- [34] Ibid., Exhibit "T", p. 103.
- [35] Ibid., Exhibit "V", p. 105.

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