

**ROBERTO G. ALARCON, PETITIONER, VS. THE COURT OF APPEALS
AND BIENVENIDO JUANI, RESPONDENTS.***G.R. No. 126802. January 28, 2000*

Ponente: KAPUNAN, J.

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Assailed in the instant petition for review on certiorari is the decision of the Court of Appeals penned in Pilipino[1] setting aside the Partial Decision rendered by the Regional Trial Court, Third Judicial Region, Malolos, Bulacan, Branch 22, in Civil Case No. 8245-M.

On June 17, 1985, herein petitioner, Roberto Alarcon, filed a complaint for the annulment of a deed of sale with damages against Bienvenido Juani, Edgardo Sulit and Virginia Baluyot as defendants.

In his complaint docketed as Civil Case No. 8245-M, petitioner alleged that sometime in 1976, before he went to Brunei in order to work, he left with his father, Tomas Alarcon, a Special Power of Attorney to administer, mortgage or sell his properties in Baliwag, Bulacan, among them Lot 878-B-1-A (LRC) psd 312453 situated in Barangay Tangos, Baliwag, Bulacan and covered by TCT No. 279065. Upon his return from Brunei, he found out that on the strength of the aforementioned special power of attorney, a portion of the land containing an area of 2,500 square meters was sold to Bienvenido Juani, Edgardo Sulit and Virginia Baluyot pursuant to a "Kasulatan ng Bilihang Tuluyan ng Bahagi ng Lupa" allegedly executed by his father, Tomas Alarcon on March 27, 1985 for a nominal consideration of P5,000.00. The defendants were able to register the sale, cancel the title of Roberto Alarcon and to have new certificates of title issued in the names of Bienvenido Juani, Edgardo Sulit and Virginia Baluyot over the respective portions sold to them.[2]

Petitioner prayed for the nullification of the sale contending that: (1) his father's signature on the Deed of Sale was forged; (2) there was no consideration of the sale; and (3) his father had no more authority to sell the land since the special power of attorney had already been earlier revoked, specifically, on June 9, 1984.[3] Further, it was also discovered that the signature of the notary public who allegedly attested said sale was falsified.

In their answer,[4] Bienvenido Juani and Virginia Baluyot averred that Juani had been the tiller-occupant for almost 10 years of the land covered by TCT No. 279065 with an area of 10,000 square meters owned by Roberto Alarcon for almost 10 years now. He was allegedly lured by Tomas Alarcon as the attorney-in-fact of his son to give up his right as tiller of the land in exchange of ownership of a parcel of land with an area of 2,500 square meters. After much contemplation, he acceded to the prodding of Tomas Alarcon and signed an agreement with him, denominated as "Kasunduan ng Pagbibili," where it was provided that Tomas Alarcon had a Special Power of Attorney to sell the parcel of land with an area of 2,500 square meters to Bienvenido Juani. Eventually, a Final Deed of Sale was executed on March 27, 1985 confirming said transaction. Thereafter, Juani sold 1,000 square meters of the 2,500 square meters to Virginia Baluyot and 500 sq. meters to Edgardo Sulit. They then engaged the services of Notary Public Carmen Gonzales to facilitate the transfer of titles to them. Finally, the defendants further alleged that Juani was never aware of the revocation of the Special Power of Attorney granted to Tomas

Alarcon.

On July 10, 1985, Virginia Baluyot also filed a third-party complaint against Notary Public Carmen Gonzales for allegedly altering the deed of sale without her knowledge and permission for purposes of securing the TCTs in defendants' names.

On July 12, 1985, Juani filed a Third-Party Complaint[5] against Tomas Alarcon charging him of having employed a fraudulent scheme in depriving the former of possession of the land.

After all the issues were joined, the trial court set the case for pre-trial conference on June 3, 1986 which was continued on August 1, 1986.

During the pre-trial conference, the parties represented by their counsel made some admissions of facts. On the basis thereof, on August 1, 1986, the trial judge rendered a partial decision which reads:

PARTIAL DECISION

During the pre-trial of this case on August 1, 1986, all the parties and their respective counsel appeared and made the following admissions of facts:

- That the document of sale or "Kasulatan Ng Bilihang Tuluyan Ng Bahagi Ng Lupa" (Annex "C" of the complaint) purportedly executed by Tomas L. Alarcon, as attorney-in-fact of his son Roberto Alarcon (the plaintiff herein), on March 27, 1985 over some portions of the land in question in favor of the defendants Bienvenido Juani (1,000 sq.m.), Edgardo Sulit (500 sq.m.) and Virginia Baluyot (1,000 sq.m.) or a total of 2,500 sq.m., is a forged document (which is subject of a pending criminal case);

- That it is that forged document of sale which was registered with the Register of Deeds of Malolos, Bulacan on May 27, 1985; and

- That after the registration of that forged document, the defendants Juani, Sulit and Baluyot were issued Transfer Certificates of Titles Nos. T-294353 (Annex "E" of the complaint), T-294354 (Annex "F" of the complaint), and T-294355 (Annex "G" of the complaint) respectively.

On the basis of the foregoing facts admitted by all the parties, it is very clear that the aforesaid document of sale or "Kasulatan Ng Bilihang Tuluyan Ng Bahagi Ng Lupa" purportedly executed on March 27, 1985 is void ab initio for being a forgery. And, therefore, the three separate titles (TCT Nos. T-294353, T-294354 and T-294355) issued respectively in favor of defendants Juani, Sulit and Baluyot on the basis of that forged document are null and void and should be cancelled.

In view therefore of the foregoing, judgment is hereby rendered:

- Declaring the document of sale or "Kasulatan Ng Bilihang Tuluyan Ng Bahagi Ng Lupa" purportedly executed on March 27, 1985 by Tomas L. Alarcon, as attorney-in-fact of Roberto Alarcon, in favor of the defendants Juani, Sulit and Baluyot void ab initio;

- Declaring Transfer Certificates of Titles Nos. T-294353, T-294354 and T-294355 issued respectively in the names of Bienvenido Juani, Edgardo Sulit and Virginia Baluyot null and void; and

- Ordering the Register of Deeds of Malolos, Bulacan to cancel the aforesaid certificates of titles.

SO ORDERED

Malolos, Bulacan, August 1, 1986

(SGD.) BRAULIO S. DAYDAY

Judge.[6]

On September 26, 1986, the trial court issued its pre-trial order,[7] to wit:

During the pre-trial of this case conducted on June 3, 1986 and August 1, 1986, all the parties and their respective counsels appeared. There was no amicable settlement reached by the parties. Thus, they proceeded to state their respective contentions and to make some admissions of facts. And on the basis of the admissions made by the parties, the court rendered a partial decision on August 1, 1986 after which the issues remaining to be resolved are the following:

I. Issue of Law

- Whether or not the deed of sale of a portion (2,500 sq. m.) of a parcel of land (10,000 sq. m.) belonging to plaintiff Roberto G. Alarcon (covered by Transfer Certificate of Title No. T-279065) executed by third-party defendant Tomas L. Alarcon, as attorney-in-fact of the plaintiff, in favor of defendant Bienvenido Juani on March 27, 1985 is legal and valid.

II. Issues of Fact

- Whether or not third-party defendant Tomas Alarcon had still authority to act for and in behalf of plaintiff Roberto Alarcon when the former executed the aforesaid deed of sale in favor of defendant Bienvenido Juani; and

- Whether or not Tomas Alarcon had complete control of his mental faculties when he executed the said deed of sale on March 27, 1985 in favor of defendant Bienvenido Juani.

With the statement of the foregoing issues, the pre-trial is now deemed closed and terminated. The parties are hereby given fifteen (15) days from receipt of the pre-trial order within which to have it set aside or modified to prevent manifest injustice.

The trial of this case shall proceed on October 7, 28 and 29 and November 6, 1996 at 8:30 o'clock in the morning. The parties are all notified of the next assignment.[8]

On August 8, 1990 petitioner moved for the execution of the Partial Decision considering that no motion for reconsideration or appeal was filed therefrom. At the same time, for the purpose of ending litigation of the case, petitioner offered to drop his claim for damages against the defendants if they were also willing to waive their claims against him and his father. Upon the opposition of defendant Baluyot, the trial court denied petitioner's motion.

On January 24, 1991, the trial court issued an Order, dismissing the complaint as against Juani and the latter's counterclaim against the plaintiff (herein petitioner), the pertinent portion of which reads:

At today's scheduled hearing for the initial reception of plaintiff's evidence, Atty. Sesonando Manuel, Jr. counsel for the plaintiff, reiterated his previous motion to have this case dismiss (sic) with respect to the defendants who are willing to dismiss their counterclaim. Atty. Rosalino Barican, counsel for defendant Buenvenido Juani manifested that he has no objection to have his counterclaim dismissed without prejudice, to effect the partial decision which is with his conformity. The complaint against Bienvenido Juani and his counterclaim is hereby DISMISSED. The Court will proceed with this case only with respect to defendants Virginia Baluyot and Edgardo Sulit. xxx[9]

On August 19, 1991, the trial court issued an order granting petitioner's motion for a writ of execution of the Partial Decision.

For failure of the defendants to interpose an appeal from the Partial Decision, the same became final and

executory. However, the judgment could not be executed because the defendants allegedly refused to surrender their respective Owner's Duplicate of Transfer Certificates of Title issued to them by the Register of Deeds.

On April 17, 1995, herein private respondent Bienvenido Juani filed with the Court of Appeals a petition for the annulment of the Partial Decision rendered by the trial court

After hearing the case, the Court of Appeals on October 16, 1996 handed down a decision^[10] granting the petition and setting aside the Partial Decision of the regional trial court, as well as its Order, dated January 24, 1991, dismissing the "counterclaim" and the Order, dated August 19, 1991 granting the Motion for Execution of the said Partial Decision. Its decision was anchored on its finding that the Partial Decision was vitiated by extrinsic fraud. Respondent court directed that the case be remanded to the court of origin for further proceedings. The dispositive portion of the decision states:

DAHIL DITO, batay sa masusing pagaaral sa mga tala at patibay na nasa hukumang ito ay ipinapasiya na ang petisyon ay ipinahihintulot at pinapayagan, at tuloy iniuutos na pawalang saysay ang parsyal desisyon na siyang pinagmulan ng lahat ng kaguluhang ito at gayon din ang "order" ng hukuman sa ibaba na may petsa Enero 24, 1991, kasali na ang "writ of execution" na may petsa Agosto 19, 1991 upang mapawalang bisa ang lahat ng bunga ng kahoy na may lason.

Gayon din, iniuutos sa hukumang pinagmulan ng asunto na kailangang magkaroon ng panibagong paglilitis ang kaso ni Bienvenido Juani laban kay Tomas Alarcon.^[11]

Thus, petitioner now comes to this Court raising two (2) main issues, to wit:

(1)

whether or not the petition for annulment of judgment instituted before the Court of Appeals was filed on time; and

(2)

whether or not there was extrinsic or collateral fraud attendant in the case which would justify the setting aside of the Partial Decision of the trial court.

The Court of Appeals found that extrinsic fraud was attendant in the instant case. It considered the fact that Juani, being unlettered, was not apprised of the proceedings held in the trial court. While it is true that he had lawyers representing him in court, the appellate court opined that he did not understand the proceedings in the trial court, much less the admissions made in the pre-trial conference that the Deed of Sale which was made as the basis for the issuance of titles in favor of Juani, Baluyot and Sulit was a forgery. Under such circumstances, he was allegedly deprived of the parcel of land which he was in possession prior to the controversy.

Anent the issue of prescription, the Court of Appeals justified its ruling by citing the instance where Juani's counsel agreed to dismiss his counterclaim when there was really no counterclaim to speak of since what was actually filed was a third-party complaint against Tomas Alarcon, the father of herein petitioner. The dismissal of the "counterclaim"^[12] was granted in an Order, dated January 24, 1991. Since Juani was allegedly deprived of his day in court, the respondent court considered the reckoning point of counting the prescriptive period to be April 10, 1995, when Juani's wife personally received a copy of said order, and not February 5, 1991,^[13] which is the date of receipt of Juani's counsel of record. Thus, according to the Court of Appeals, the petition to annul the Partial Decision instituted on April 17, 1995 was filed within the four-year period from the discovery of fraud as prescribed by law.

We find for petitioner.

The governing rule in the case at bar is Rule 47 of the New Rules on Civil Procedure which provides:

SEC. 1. Coverage.- This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. (n)

SEC. 2. Grounds for annulment.- The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief. (n)

SEC. 3. Period for filing action.- If based on extrinsic fraud, the action must be filed within four (4) years from its discovery; and if based on lack of jurisdiction, before it is barred by laches or estoppel. (n).

Fraud is extrinsic when it is employed to deprive a party of his day in court, thereby preventing him from asserting his right to property. Fraud is regarded as extrinsic where it prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured.[14] In the case at bar, it cannot be argued that there was extrinsic fraud since Juani was not deprived from having a trial.

Expectedly, ordinary laymen may not be knowledgeable about the intricacies of the law which is the reason why lawyers are retained to make the battle in court fair and square. And when a party retains the services of a lawyer, he is bound by his counsel's decisions regarding the conduct of the case. This is true especially where he does not complain against the manner his counsel handles the case.[15] The general rule is that the client is bound by the mistakes of his counsel, save when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court.[16] This was not particularly attendant in the case at bar.

In this connection, it may be stressed, contrary to the Court of Appeals' assertion, that Juani was properly represented by counsel.[17] The Partial Decision itself states that: "x x x (d)uring the pre-trial of the case conducted on June 3, 1986 and August 1, 1986, all the parties and their respective counsels appeared. x x x." Also, the transcript of the stenographic notes of the hearing conducted on June 3, 1986 would show that Juani, together with defendant Baluyot, was represented by counsel, Atty. Venancio Reyes. A reading of the TSN of the pre-trial would also reveal that Atty. Reyes was not in any way remiss of his duties in protecting the interests of his clients. Documents/evidence were presented, objections/denials for lack of knowledge were interposed and admissions were properly made. In all of the scheduled hearings before the trial court, Juani was always represented by counsel.

Thus, it was error for the respondent court to conclude that extrinsic fraud was attendant in the instant case as to deprive private respondent his day in court.

Moreover, an action based on fraud must be filed within four (4) years from discovery thereof. In the present case, the partial decision which is sought to be annulled was rendered on August 1, 1986. The petition to annul the judgment was filed on April 17, 1995 or nine (9) years after its rendition.

It must be noted that what was filed before the Court of Appeals was an action to annul a judgment and not an action or motion questioning the order of the trial court. Said judgment (which was rendered in 1986) had long become final and executory before the petition for the annulment was instituted as no appeal or motion for reconsideration was filed. It is not correct to conclude that the alleged extrinsic fraud referred to by the respondent court was discovered only in 1995 considering that Juani was very well represented by a competent lawyer who must have certainly apprised him of the developments of the case. In fact, the defendants were very much aware

of the trial court's disposition which was the reason why they constantly refused to surrender their TCTs or re-convey the land to petitioner.

The bare fact is that the Partial Decision was rendered after the parties and their counsels entered into a stipulation of facts. Here, it was admitted that the document or the deed of sale which was made the basis for the issuance of titles in the names of Bienvenido Juani, Virginia Baluyot and Edgardo Sulit was falsified. The deed of sale executed by Tomas Alarcon was a forgery considering that: (a) the signature of Tomas Alarcon was false; (b) the monetary consideration was unconscionably low; and (c) the signature of the notary public attesting to the sale was also forged. The TSN reads:

APPEARANCES:

ATTY. SISENANDO MANUEL – Counsel for the Plaintiff

ATTY. VENANCIO REYES – Counsel for the Defendants Juani and Baluyot

ATTY. LEOPOLDO STA. MARIA – Counsel for the Defendants Gonzales and Sulit

xxx

ATTY. MANUEL

Well, our proposal Your Honor, is just very simple. Ordered the defendants in all we can do to reconvey back the title of the property in question to the plaintiff Tomas Alarcon, Your Honor. Because it is contention that the basis of the acquisition of the property by the third defendant is based on a forged document based on their jurisprudence. They cannot acquired any right allegedly conveyed by the vendor.

COURT

How many documents are involved in this alleged... (interrupted).

ATTY. MANUEL

Only one document, Your Honor. In so far as plaintiff is concerned only one document.

COURT

That was allegedly forged.

ATTY. MANUEL

Yes, Your Honor.

COURT

And this document conveyed the whole parcel of land to the defendants.

ATTY. MANUEL

A part of the whole parcel of land to the third defendant, Your Honor.

COURT

Only a part.

ATTY. MANUEL

Yes, Your Honor, only one. Defendant acquired 500 square meter. The other defendant 1,000 square meters each.

COURT

What is the total area?

ATTY. MANUEL

10,000 sq. m., Your Honor.

COURT

Now, the area allegedly sold is how much?

ATTY. REYES

2,500 sq. m., Your Honor.

COURT

This is the whole area allegedly sold?

ATTY. MANUEL

Yes, Your Honor.

COURT

This is now the area which the plaintiff seeks to recover from the defendants.

ATTY. MANUEL

Yes, Your Honor.

COURT

And your contention is that this alleged sale in favor of the defendant is a forgery?

ATTY. MANUEL

Yes, Your Honor.

COURT

Now, your proposal for settlement is.

ATTY. MANUEL

Just to reconvey to us the real property as proven separately by three titles because on the basis of this furious (sic) evidence they were able to have a title issued in their favor. Three titles one title for each of the defendants, Your Honor.

xxx

COURT

And you will not anymore claim.

ATTY. MANUEL

Any damages, Your Honor.

COURT

Just this reconveyance?

ATTY. MANUEL

Yes, Your Honor.

xxx.

COURT

How many documents of sale are there?

ATTY. REYES

There are at least two documents of sale, Your Honor. The problem lies in the fact, Your Honor, the genuine deed of sale was not the document used in the registration of the property to my client. The genuine sale and another document according to the plaintiff was forged and made used for purposes of the registration of the land in question.

COURT

So, what was registered was the forged document of sale.

ATTY. MANUEL

Yes, Your Honor, they admitted it was a forged document.

COURT

When you said that there is a genuine, meaning to say that there is not a genuine, is it not.

ATTY. REYES

Yes, Your Honor, but according as to the execution of this document we have on our hand.

COURT

Yes, so this genuine document of sale was not the alleged forged document that was registered and finally conveyed this portion of the land in favor of the defendant.

ATTY. MANUEL

On the alleged genuine deed of sale we questioned impugn the due execution of that document.

COURT

The one that was registered.

ATTY. MANUEL

The one that was alluded to by the counsel not the one registered. The one registered is admittedly a forged document.

COURT

So you are now appealing or impugning the genuineness of this other documents?

ATTY. MANUEL

Yes, Your Honor.

COURT

So you are now impugning two documents which are to be forged, that's what you mean.

ATTY. MANUEL

That's what in the pleadings, Your Honor, but in our complaint our actionable document is the forged deed of absolute sale that was registered.

COURT

But in the defense of the defendants which mentioned another documents you are now impugning to the genuineness did you make a reply to that?

ATTY. MANUEL

We made a reply, we made extensive and exhaustive reply to that, Your Honor.

COURT

So on the part of the plaintiff this two documents now are forged so that this document would never have conveyed.

xxx.

ATTY. MANUEL

The second document is now the basis of registration of the three defendants in a separate title in their favor. It is admitted to be a forged document. It was not signed by Mr. Tomas Alarcon.

COURT

The one used in getting separate title.

ATTY. MANUEL

It was not even notarized. The notary public, Atty. Adelino Rama, informed us, Your Honor, he did not notarize.

COURT

I thought it was the first document that was registered.

ATTY. MANUEL

The forged document.

ATTY. REYES

The first document was the genuine document, Your Honor. Then the second document is the alleged to be forged which are registered in the Register of Deeds. That is why the separate title was issued.

xxx.

COURT

What is the date of the first document which is the genuine.

ATTY. REYES

The first document dated March 27, 1985 , Your Honor.

COURT

And the second document.

ATTY. STA. MARIA

Just the same, they just duplicated.

COURT

The same date.

ATTY. STA. MARIA

Yes, Your Honor. They utilized the same book, Your Honor, book number, series number, page number.

COURT

And this defendants Juani and Baluyot are relying on the first document.

ATTY. REYES

Yes, Your Honor

COURT

Not on the second document.

ATTY. REYES

Not on the second, but we have no hand in the preparation of that second document, Your Honor.

COURT

But you acquired separate title from this second document.

ATTY. REYES

Yes, Your Honor. That's why one of the third party defendant is impleaded in our third party complaint Gonzales. Because the registration of this document was entrusted by Virginia Baluyot to Gonzales for purposes of working it out with the Register of Deeds, instead of using with the document entrusted to her which are then the genuine document, it appears now that another document was executed by Gonzales, hence, the problem now in this case Gonzales used the document my client entrusted to her for purposes of registration. A genuine document could have been registered. That was not the fact why ... (interrupted)

xxx.

ATTY. MANUEL

With due respect to Atty. Sta. Maria the perusal of this answer really show that he found that the document is forged documents only he closed back the association of having committed unfortunate to Virginia Baluyot.

ATTY. STA. MARIA

I do not know that document before, Your Honor, only later when there was an investigation in the Fiscal's Office that I learned that the document considering that I have seen he first document.

COURT

So you admit now.

ATTY. STA. MARIA

Now, I admit that this is furious. (sic)

COURT

Titles were issued

ATTY. REYES

Right now, Your Honor.

COURT

Forged documents.

xxx.[18]

From the foregoing, the admissions were clearly made during the pre-trial conference and, therefore, conclusive upon the parties making it. The purpose of entering into a stipulation of facts or admissions of facts is to expedite trial and to relieve the parties and the court, as well, of the costs of proving facts which will not be disputed on trial and the truth of which can be ascertained by reasonable inquiry.[19]

The rules have made mandatory that a pre-trial should first be conducted before hearing any case. The parties themselves are required to attend or their representative with written authority from them in order to arrive at a possible amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and documents.[20] All of the matters taken up during the pre-trial, including the stipulation of facts and the admissions made by the parties are required to be recorded in a pre-trial order.[21]

On the basis of the clear admissions made by the parties in the case, the Partial Decision was rendered. Juani cannot now claim that he was denied his day in court when judgment was rendered on the basis of their (Juani, Baluyot and Sulit) counsels' admissions. Since it was patent that the deed of sale was a forgery, no parcel of land was transferred to the vendees. Thus, the TCTs which Juani, Baluyot and Sulit obtained pursuant to said deed of sale were null and void. Respondent court, therefore, committed a reversible error in giving due course to the petition filed before it, the same not being based on extrinsic fraud and, moreover, it was barred by prescription.

WHEREFORE, the petition is GRANTED. The decision of the Court of Appeals is REVERSED and the Partial Decision rendered by the Regional Trial Court on August 1, 1986 is REINSTATED.

SO ORDERED.

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

[1] Exhibit "A," CA Rollo, pp. 14-24.

- [2] TCT No. 294353, TCT No. 294354, TCT No. 294355, respectively.
- [3] Exhibit "D," CA Rollo, p. 14.
- [4] Exhibit "E," CA Rollo, pp. 19-23.
- [5] Exhibit "F," CA Rollo, pp. 25-29.
- [6] CA Rollo, pp. 51-52.
- [7] Exhibit "I," CA Rollo, pp. 32-33.
- [8] Ibid.
- [9] Exhibit "I," CA Rollo, p. 44.
- [10] CA Rollo, pp. 36-47.
- [11] Id., at 47.
- [12] Which should be a Third-Party Complaint.
- [13] Rollo, p. 40.
- [14] See *Heirs of Manuel A. Roxas v. Court of Appeals*, 270 SCRA 309 (1997)
- [15] *Tenebro v. Court of Appeals*, 275 SCRA 81 (1997)
- [16] *Legarda v. Court of Appeals*, 280 SCRA 642 (1997)
- [17] Exhibit "H," Records, p. 31.
- [18] TSN, June 3, 1986, pp. 119, 125-128, 130-133, 138-139, 140-142, 152-153.
- [19] *Concrete Aggregates v. CA*, 266 SCRA 88 (1987)
- [20] Section 4, Rule 18, RULES OF COURT.
- [21] Section 7, *supra*.

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