

**THE CITY OF CEBU, PETITIONER, VS. HEIRS OF CANDIDO RUBI,
NAMELY: MARIA J. RUBI, LINA RUBI BONOAN, HILDA RUBI BORRES,
SYLVIA RUBI MACACHOR, RESPONDENTS.**

G.R. No. 128579. April 29, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is a petition for review on Certiorari under Rule 45 of the Rules of Court seeking to set aside the Decision of the Court of Appeals[1] dated October 2, 1996 and the Order denying the Motion for Reconsideration[2] dated February 7, 1997 in CA-G.R. CV No. 40098 entitled Heirs of Candido Rubi, et. al. vs. Mayor Tomas R. Osmeña, et. al.

The following antecedents stated in the decision of the Court of Appeals are undisputed:

"Candido Rubi was a lessor (sic) from the Province of Cebu of a parcel of land identified as Lot 1141 of the Banilad Estate containing an area of THIRTY THREE THOUSAND ONE HUNDRED EIGHTY EIGHT (33,188) square meters, more or less, covered by Transfer Certificate of Title No. RT-5513 (Exh. A).

Paragraph 7 of the contract of lease provides that the lessee shall use the leased premises for residential and agricultural purposes only and pursuant to this stipulation, Candido Rubi introduced various improvements, among which is a residential building constructed in 1961 where he and his family resided up to the time of his death in 1983.

In 1964, the Province of Cebu conveyed by way of donation to the City of Cebu two hundred and ten (210) lots among which was Lot 1141 leased to Candido Rubi.

On March 4, 1965, the City Council of Cebu enacted Ordinance No. 522 (Exh. D) authorizing the City Mayor to sell at public auction the 210 province-owned lots donated to defendant City of Cebu, among which was Lot 1141.

Among the conditions set forth in Ordinance No. 522 (see par. C) was that "if the lot is leased, the lessee...shall be given the right to equal the highest bid on the date of the public bidding and if he so equals the highest bid, he shall be awarded the sale."

On August 5, 1965 after the public bidding held on the same day, the bidding committee wrote Candido Rubi advising him that the highest bid for Lot 1141 was submitted by Mr. Miguel Kho in the amount of P104,556.00 and that since he "stated" that he is the actual occupant and "going" to equal the highest bid, he is advised to deposit with the City Treasurer 5% of P104,556.00 as earnest money and an additional 15% as downpayment, after which the corresponding contract of sale will be entered into between him and the City on August 9, 1965 (Exh. E.).

A day after the bidding, however, on August 6, 1965, a writ of preliminary injunction was issued in Civil Case 238-BC filed by the province of Cebu to recover the donated lots, enjoining the City of Cebu from selling or otherwise disposing any of the 210 lots donated by the province (Lot 1141 included).

On July 15, 1974, on the basis of a compromise agreement entered into in Civil Case No. 238-BC, Lot No. 1141, among others, was adjudicated to defendant City of Cebu. By this time, Lot 1141 had already been subdivided into Lots 1141-A, 1141-B, 1141-C and 1141-D, the last the lot subject of the case, containing an area of 11,779 square meters where the house of Candido Rubi stands.

On September 19, 1974, the City Council of Cebu through Resolution No. 1747, authorized the City Mayor to advertise the sale of Lots 1141-A and 1141-D (Exh. L).

At the public bidding held on October 1, 1974, there was no bidder for Lot 1141-D (Exh. M-1).

On January 30, 1976, Candido Rubi paid the amount of P4,500.00 under OR No. 9876421 as bidder's cash bond for Lot No. 1141-D (Exh. N).

On February 3, 1976, Candido Rubi wrote the City Mayor of Cebu stating that he was one of the bidders of Lots 1141-B, 1141-C and 1141-D in a bidding held January 30, 1976 at 10:00 a.m. at the Office of the City Mayor and that as lessee of Lot No. 1141-D he is exercising his option of equaling the highest bid price at P10.00 per square meter on the area that is on level ground and P8.00 per square meter on the remaining area (Exh. O).

On March 2, 1976, the Committee on Award awarded "Lot 1141-D consisting of 11,934 square meters at P10.00 per square meter" to Candido Rubi (Exh. P).

On March 9, 1976, Mayor Eulogio E. Borres furnished Candido Rubi a copy of the award and instructed him to make the necessary payment for the land in order that the deed of sale may be executed in his favor (Exh. Q).

On April 7, 1976, the City Appraisal Committee, acting upon the 1st Indorsement dated April 6, 1976 of the City Mayor indorsing Candido Rubi's letter dated February 3, 1976 (Exh. O) resolved to appraise a portion of Lot No. 1141-D containing an area of 6,423 square meters at P10.00 per square meter and the lower area containing an area of 5511 square meters, more or less, at P8.00 per square meter" (Exh. T).

On April 23, 1976, Mayor Eulogio Borres again wrote Candido Rubi furnishing him a copy of Resolution No. 7 of the City Appraisal Committee and advising him to pay for the lot within 15 days from receipt thereof (Exh. U).

On May 11, 1976, Candido Rubi wrote the City Mayor a letter reading:

"By reason of circumstances beyond my control, I regret to inform you that I am unable to complete the payment for Lot 1141-D as required by your office. For this reason I most respectfully request that I be given an extension of time within which to make the said payment" (Exh. V.).

In a 2nd Indorsement, dated December 23, 1980, the City Administrator referred to the City Attorney "for comment and/or legal advice" all pertinent correspondence relative to the purchase of Lot 1141-D by Candido Rubi "considering that as per documents submitted, Mr. Rubi has not fully paid the total purchase price of the herein-mentioned lot" (Exh. X).

In a 3rd Indorsement, dated January 6, 1981, the City Attorney replied to the City Administrator's 2nd Indorsement stating that there appears to be no legal impediment to the request of Mr. Rubi, however, per the charter of the City of Cebu, the City Mayor must be clothed with the corresponding authority from the Sangguniang Panglunsod to sell Lot 1141-D to Candido Rubi at the price approved by the Committee on Award per Resolution No. 7 of the City Appraisal Committee dated April 7, 1976 (Exh. Y).

Candido Rubi died on February 17, 1983, survived by his wife, Maria J. Rubi, and children Lina Rubi Bonoan, Hilda Rubi Borres and Sylvia Machacor, plaintiffs in the case.

On May 17, 1989, plaintiffs filed the complaint at bench for specific performance (Record, p. 1). On the same

day, plaintiffs tendered the amount of P103,818.00 to the City Treasurer of Cebu City (Exh. 9) and on June 28, 1989, consigned the amount with the Clerk of Court (Exhs. AA, AA-1 to AA-4).

On January 17, 1991, the court a quo rendered the appealed decision dismissing the complaint and "declaring the defendant to have been released of its obligation to sell the property to the plaintiffs under the terms and conditions of the award in 1976, stating:

"The Court believes, and so holds, that the contract between the parties was a mere contract to sell on the part of the defendant City of Cebu in which the full payment of the price was a positive suspensive condition. Since the latter condition was not met, the seller's obligation to deliver and transfer ownership of the property never vested.

'The acceptance of a unilateral promise to sell must be plain, clear and unconditional. Therefore, if there is a qualified acceptance, with terms different from the offer, there is no acceptance, and there is no perfected sale.' (Beaumont vs. Prieto 41 Phil 670)

"As there was no absolute acceptance on the part of Candido Rubi of the terms of the Award, nor of the condition of the City acting through the City Mayor, to pay for the property within the period provided, the transaction between the parties never ripened into a contract of sale. There was no perfected contract of sale. Consequently, the defendant cannot be compelled to execute the necessary documents of conveyance to the plaintiffs." (Decision, pp. 8-9; Rollo, pp. 60-61)"[3]

The Court of Appeals reversed the court a quo. It ruled that there was a perfected contract of sale but Candido Rubi was not able to make payments thereunder due to circumstances beyond his control. Such failure of the buyer to pay within a fixed period does not, by itself, bar the transfer of ownership or possession, much less dissolve the contract of sale; in the sale of an immovable under Article 1592 of the Civil Code, the vendee is allowed to pay for the purchase price so long as no demand has been made for rescission judicially or by a notarial act. The Court added that the fact that the obligation was already substantially performed in good faith militates against the unilateral extinguishment/rescission claimed by the City of Cebu.[4]

In seeking the reversal of the Court of Appeals' decision, the petitioner assigns the following errors:

- THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN CONSIDERING AND DECLARING THAT THERE WAS A PERFECTED CONTRACT OF SALE BY AND BETWEEN CANDIDO RUBI AND THE CITY OF CEBU OVER LOT NO. 1141-D.
- THAT EVEN CONCEDED GRATIA ARGUMENTI THAT A CONTRACT OF SALE WAS PERFECTED BY MERE REASON OF THE AWARD OF SALE GRANTED IN FAVOR OF CANDIDO RUBI, RESPONDENTS' LATE PREDECESSOR-IN-INTEREST, THE HONORABLE COURT OF APPEALS NEVERTHELESS SERIOUSLY ERRED IN NOT CONSIDERING THAT SAID CANDIDO RUBI, WAS GUILTY OF UNREASONABLE DELAY AND/OR LACHES IN COMPLYING WITH THE CONDITIONS OF THE AWARD.
- EVEN ASSUMING THAT THERE WAS A PERFECTED CONTRACT OF SALE, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN DECLARING THAT THERE WAS NO AUTOMATIC RESCISSION OF THE CONTRACT, NOTWITHSTANDING RESPONDENTS' FAILURE TO PAY THE PRICE AT THE TIME AGREED UPON.
- THAT IT IS PATENTLY ERRONEOUS FOR THE HONORABLE COURT OF APPEALS TO ORDER HEREIN PETITIONER CITY OF CEBU TO EXECUTE THE NECESSARY DEED OF CONVEYANCE WITHOUT ORDERING RESPONDENTS TO PAY LEGAL INTEREST ON THE PURCHASE PRICE RECKONED FROM THE DATE OF AWARD IN 1976 UNTIL ITS CONSIGNATION IN 1989.

The petitioner reiterates its position that the contract entered into by the petitioner and Candido Rubi was a contract to sell and the failure of Rubi to make payment caused the automatic rescission of the obligation. Petitioner bases its claim on two grounds:

- that title to the property remained with the petitioner, City of Cebu, before the necessary payment of the purchase price of the lot in question was made by the respondents; and
- that there was no written contract which makes the contract unenforceable under the statute of frauds.[5]

Petitioner also avers that even if the contract was indeed a contract of sale, the respondents were guilty of laches in exercising and enforcing their rights.[6]

On the other hand, respondents maintain that the contract entered into by the City and Rubi was a contract of sale. They argue that a contract of sale can be perfected without a written document since a contract of sale is a consensual contract, and since it is a contract of sale, respondents could still tender payment of the purchase price because no demand to rescind the contract was made by the petitioner, citing Article 1592 of the Civil Code. They also assert that there was no delay in the performance of the obligation by the respondents since the City impliedly granted Rubi an extension of time to pay the purchase price.[7]

We agree with the Court of Appeals that there was a perfected contract of sale between the parties. A contract of sale is a consensual contract and is perfected at the moment there is a meeting of the minds upon the thing which is the object of the contract and upon the price. From that moment, the parties may reciprocally demand performance subject to the provisions of the law governing the form of contracts.[8] The elements of a valid contract of sale under Article 1458 of the Civil Code are (1) consent or meeting of the minds; (2) determinate subject matter; and (3) price certain in money or its equivalent.[9] All three elements are present in the transaction between the City of Cebu and Candido Rubi. On February 3, 1976, Candido Rubi wrote the City Mayor that he was one of the bidders of Lot 1141-D in a bidding held on January 30, 1976 and that he was exercising his option of equaling the highest bid price of P10.00 per square meter for the area containing 6,423 square meters and P8.00 per square meter for the area containing 5,511 square meters. The acceptance by the city was conveyed in the letter of Mayor Eulogio Borres informing Rubi of the resolution of the Appraisal Committee appraising Lot 1141-D at P10.00 for the area of 6,423 square meters and P8.00 for the rest of the area consisting of 5,511 square meters and advising him to pay for the lot within 15 days from receipt thereof. There was a perfected agreement between the City of Cebu and Rubi whereby the City obligated itself to transfer the ownership of and deliver Lot 1141-D and Rubi to pay the price. The effect of an unqualified acceptance of the offer or proposal of the bidder is to perfect a contract, upon notice of the award to the bidder.[10] An agreement presupposes a meeting of the minds and when that point is reached in the negotiations between the parties intending to enter into a contract, the purported contract is deemed perfected and none of them may thereafter disengage himself therefrom without being liable to the other in an action for specific performance.[11]

The deed of sale was never formalized, and there is no document the terms of which may be interpreted to determine its legal significance, particularly whether the parties have entered into a contract of sale or a contract to sell.

However, there is nothing in the exchange of correspondence between the parties namely:

- Exhibit O - the letter of Candido Rubi addressed to the Mayor where he notified the Mayor that he was exercising his option of equaling the highest bid price over Lot No. 1141-D;
- Exhibit P - the award of the Committee on Awards awarding Lot 1141-D to Candido Rubi;
- Exhibit Q - the letter of Mayor Eulogio E. Borres to Rubi informing him to pay for Lot 1141-D;

- Exhibit T - the appraisal made by the City Appraisal Committee appraising the value of the lot to be P10.00 per square meter for the area containing 6,423 square meters and P8.00 per square meter for the area containing 5,511 square meters; and
- Exhibit U - the second letter of Mayor Borres again informing Rubi to pay for Lot 1141-D at the price appraised by the City Appraisal Committee.

taken together with the documents of record, from which it can reasonably be deduced that the parties intended to enter into a contract to sell, i.e., one whereby the prospective seller would explicitly reserve the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the full payment of the price, such payment being a positive suspensive condition, the failure of which is not considered a breach, casual or serious, but simply an event which prevented the obligation from acquiring any obligatory force.[12] A contract to sell is commonly entered into so as to protect the seller against a buyer who intends to buy the property in installments by withholding ownership over the property until the buyer effects full payment therefor.[13] In this case, the parties intended to enter into a contract of sale of Lot 1141-D for a cash price of P108,318.00 in one payment. The advertisement for bids for Lot 1141-D expressly stated that the "sale shall be for cash"[14] and Rubi's letter exercising the lessee's option to equal the bid offered a straight bid of P10.00 per square meter.[15] Mayor Borres' letter of March 9, 1976 informing Rubi of the award asked Rubi to make the necessary payment, stating that "This must be made before we have to execute the deed of sale in your favor and the title to the lot." [16]; and a subsequent letter dated April 23, 1976 requested Rubi "to pay the lot subject of (your) bid, within fifteen days from receipt hereof." [17] The assumption of both parties that the offer and acceptance was for a bid price in cash, not in staggered payments taken together with the fact that there was no expressed or apparent intent to reserve ownership over the lot until full payment was made leads to no other conclusion that Rubi and the City entered into a contract of sale.

As stated, no deed of sale was ever formalized but there was compliance with the requirements of the statute of frauds. Under this law,[18] an agreement for the sale of real property or of an interest thereon shall be unenforceable "unless the same or some note or memorandum thereof be in writing" and subscribed by the party charged or his agent. We hold that the exchange of written correspondence between the parties, earlier cited, constitutes sufficient writing to evidence the agreement for purposes of complying with the statute of frauds.

The next issue to be addressed is whether the failure of Rubi to pay the balance of the purchase price within fifteen days as directed by the City Mayor is fatal to his right to enforce the agreement and ask the City of Cebu to execute the deed of sale in his favor.

The rescission of a sale of an immovable property is specifically governed by Article 1592 of the New Civil Code which reads:

"In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term." [19]

It is not disputed that the City of Cebu did not give notice of rescission much less make a judicial or notarial demand for rescission. The only subsequent action taken by petitioner was to send to the respondents a "Formal Notice" dated March 4, 1989 ordering the latter to vacate the premises within fifteen days from receipt of notice for the reason that the occupancy of lot 1141-D is presumed to be illegal as the lot is still registered in the name of the City of Cebu.[20] This letter did not amount to a demand for rescission, as indeed there was no reference to the sale much less a declaration that the sale was being rescinded or abrogated from the beginning.[21] It was only when the City of Cebu filed its Answer on June 15, 1989 to the instant complaint for specific performance that the

city invoked "automatic rescission" and prayed for relief allowing it to rescind the contract.

Given that there was no valid demand for rescission made by the City of Cebu, was Rubi justified in not making full payment or tendering such payment of the price despite the long lapse of time since the award was made in his favor?

The Court notes that the vendee Rubi requested for an extension of time to pay as he was "prevented by circumstances beyond his control" from making payment within fifteen days from notice, but this request was not acted upon. Neither did Rubi follow up his request; he tendered payment only when he had filed this action for specific performance, which suit was filed only after he received notice from the petitioner to vacate the premises.

The petitioner admits in its pleadings[22] that an extension was impliedly given. However, we are not prepared to rule that an implied extension of time to pay the purchase price was granted when the City of Cebu did not act on Rubi's request for extension. The general rule is that an agreement to extend the time of payment, in order to be valid, must be for a definite time, although it seems that no precise date be fixed, it being sufficient that the time can readily be determined.[23]

We accordingly do not agree with the ruling of the Court of Appeals that the request for extension was granted by the City of Cebu, as shown by the "complete silence" on the part of the City of Cebu on Rubi's request for extension. The fact that the City did not act on the request for what amounts to an indefinite extension may be construed just as logically as a denial thereof.

Is the contract of sale still subsisting after the lapse of several years, during which time neither party took any action to enforce the contract. The City did not demand compliance or rescission and Rubi did not pursue enforcement. Petitioner's Amended Answer claims that Rubi was guilty of unreasonable delay and/or laches, as he brought his action for specific performance and tendered full payment of the price only in 1989. However, the City is no less guilty of neglect and delay in not reiterating its demand for payment within a reasonable period from the implied extension which it admittedly granted. Article 1592 allows the vendee to pay, even after the expiration of the period agreed upon, as long as no demand for rescission has been made either judicially or by notarial act, and it was incumbent upon the City to demand rescission. This conclusion also takes into account the fact that Rubi had made a partial payment, consisting of the bidder's cash bond which was accepted by the City, and also the consideration that the City was mindful of the need to protect the rights of the actual lessees to the lands formerly comprising the Friar Lands Estate having granted said lessees the right to match the offer of the highest bidder in the public auction. Rubi has been a lessee/occupant of the property since 1957, has introduced considerable improvements thereon consisting of a 90-meter road, a residential house, water pipes, and fruit trees[24] and has lived in the lot since 1961.[25] He was awarded Lot 1141-D not only once, but twice; the first time was in 1965, (which did not materialize because of the filing of Civil Case No. 238-BC and the injunction issued therein) and the second time in 1976. The respondents alleged in the Comment and this is not controverted in petitioner's reply, that:

"After Candido Rubi paid the City the sum of P4,500.00 representing partial payment of the bid price, he was advised that the balance will be payable as soon as the Sangguniang Panlungsod approves a resolution authorizing the City Mayor to sell Lot 1141-D at the price approved by the Committee on Awards.

After an unreasonable lapse of time without the resolution having been approved, Candido Rubi repeatedly inquired from the Sangguniang Panlungsod of Cebu City the reason for the delay.

The matter was endorsed to the Office of the City Attorney for legal opinion. On January 6, 1981, City Attorney Vicente Varela, Jr. rendered an opinion to the effect that the agreement between the City of Cebu and the late Candido Rubi was valid and binding notwithstanding the non-payment of the full consideration of the

sale (Exh. "Y").

In 1981, the Committee on Laws of the Sangguniang Panlungsod to which the matter was referred, found that all the legal requirements relative to the purchase of Lot 1141-D (Exh. "BB") was complied with and recommended the approval of a resolution authorizing the City Mayor to sign the deed of sale in favor of Candido Rubi (Exhibit "Z").[26]

Verily, Rubi has not slept on his rights. A finding of laches, which is an equitable doctrine and the application of which is controlled by equitable considerations,[27] against Rubi would not conform to law nor equity taking into account the factual milieu of this case.

With respect to the petitioner's claim that the Court of Appeals erred in not ordering respondents to pay interest due from the time of the award in 1976 until the time of the consignment of the balance of the purchase price in 1989, respondents aver that:

"petitioner did not raise the issue of interest in the Lower Court. Neither was the issue raised in their 'Appeal Brief' when the case was elevated to the Court of Appeals. It was only in the 'Motion for Reconsideration of the Decision of the Court of Appeals' that the issue of legal interest was raised for the first time as an alternative remedy."

Neither did petitioner refute the above allegation in its Brief. Rather it invokes "fairness and justice" in seeking payment of interest.

We find the plea unavailing. This Court has had occasion to rule that:

"xxx the issue of interest was never raised before and cannot be raised for the first time on appeal"[28]

"xxx petitioner is deemed to have waived such right for his failure to raise its violation before the trial court xxx In petitions under Rule 45, as distinguished from an ordinary appeal of criminal cases where the whole case is opened for review, the appeal is generally limited to the errors assigned by the petitioner. Issues not raised below cannot be pleaded for the first time on appeal".[29] (Italics supplied)

"Points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court as they cannot be raised for the first time on appeal. Basic considerations of due process impel this rule."[30] (Italics supplied)

In view of the foregoing, the petition is denied due course, and the Decision of the Court of Appeals appealed from is hereby AFFIRMED.

SO ORDERED.

Romero (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Seventh Division composed of the ponente, J. Eduardo G. Montenegro; and the members, J. Emeterio C. Cui (Chairman) and J. Jose C. De La Rama, concurring.

[2] J. Jinal D. Rasul replaced retired J. De La Rama.

[3] Decision of the Court of Appeals, pp. 1-7; Rollo, pp. 25-31.

[4] Decision of the Court of Appeals, pp. 12-14; Rollo pp. 36-38.

[5] Petition for Review, p. 10; Rollo, p. 16.

[6] Ibid.

[7] Answer to Petition for Review, pp. 7, 11-13; Rollo pp. 58, 62-64.

[8] Article 1475, Civil Code.

[9] Dignos vs. Court of Appeals 158 SCRA 375 at pp. 382-383 [1988].

[10] Valencia vs. RFC and Court of Appeals, 103 Phil. 444 at p. 450 [1958].

[11] Maharlika Publishing Corp. vs. Tagle, 142 SCRA 553 at pp. 564-565 [1986]; Central Bank of the Philippines vs. Court of Appeals, 63 SCRA 431 at pp. 446-447 [1975].

[12] Luzon Brokerage Co., Inc. vs. Maritime Building Co., Inc. 46 SCRA 381 at p. 387 [1972]; Rillo vs. Court of Appeals, 274 SCRA 461 at p. 467 [1997]; Coronel vs. Court of Appeals, 263 SCRA 15 at p. 28 [1996].

[13] Coronel vs. Court of Appeals, *supra*.

[14] Par. (2), Exhibit "J".

[15] Exhibit "O".

[16] Exhibit "Q".

[17] Exhibit "U".

[18] Article 1403(e), Civil Code.

[19] Article 1592 requiring demand by suit or notarial act in case the vendor wants to rescind does not apply to a contract to sell or promise to sell where title remains with the vendor until fulfillment of a positive condition such as full payment of the price [Roque vs. Lapuz, 96 SCRA 741 citing Manuel vs. Rodriguez 109 Phil.].

[20] Exhibit "7"

[21] Ocampo vs. Court of Appeals., 233 SCRA 551 at p. 561 [1994].

[22] Petition, p. 17; Amended Answer, par. 16.

[23] Pacific Asia Banking Corp. vs. Court of Appeals, 173 SCRA 102 at p. 113 [1989].

[24] Answer to Petition for Review, p. 3.

[25] Petition for Review, p. 15.

[26] Comment, pp. 5-6; Rollo, pp. 56-57.

[27] Jimenez vs. Fernandez, 184 SCRA 190 at p. 197 [1990].

[28] Canonizado vs. Ordonez-Benitez, 149 SCRA 555 at 560, [1987].

[29] Manalili vs. Court of Appeals, 280 SCRA 400 at p. 416 [1997] citing Manila Bay Club Corporation vs. Court of Appeals, 245 SCRA 715 at p. 729, [1995] & Chua vs. Court of Appeals, 206 SCRA 339 at p. 344-345, [1992] & Baquiran vs. Court of Appeals, 2 SCRA 873 at p. 877, [1961].

[30] Mendoza vs. Court of Appeals, 274 SCRA 527 at pp. 538-539, [1997].

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