

**DOUGLAS F. ANAMA, PETITIONER, VS. COURT OF APPEALS,
PHILIPPINE SAVINGS BANK, SPS. TOMAS CO & #038; SATURNINA
BARIA AND REGISTER OF DEEDS, METRO MANILA, DISTRICT II,
RESPONDENTS.**

G.R. No. 128609. January 28, 2004

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TINGA, J.:

On March 24, 1973, petitioner Douglas Anama and private respondent Philippine Savings Bank (PSBank) entered into an agreement denominated as a Contract to Buy[1] whereby the latter agreed to sell to the former a parcel of land, together with the improvements thereon.[2] The property was previously owned by petitioner's parents, who mortgaged it to respondent Bank. Upon their failure to pay the loan extended to them by PSBank, the latter foreclosed on the property.

The salient provisions of the Contract to Buy are as follows:

- The BUYER shall purchase the property mentioned in the First Whereas Clause hereof and shall pay the sum of PESOS: ONE HUNDRED THIRTY FIVE THOUSAND (P135,000.00), Philippine Currency;
- The BUYER shall pay to the SELLER the amount of PESOS: THIRTY THOUSAND (P30,000.00) payable as follows:
 - (a) P5,000.00 upon signing of this Agreement;
 - (b) P5,000.00 on or before April 12, 1973; and
 - (c) P20,000.00 on or before April 30, 1973,

which all amounts shall be credited to the total purchase price mentioned in Paragraph No. 1 hereof upon execution of the necessary formal deed or deeds of conveyance.

- The BUYER shall apply from the SELLER a real estate mortgage loan in the sum of PESOS: ONE HUNDRED FIVE THOUSAND (P105,000.00), Philippine Currency, and the proceeds of this loan shall be used exclusively to pay the balance of the purchase price of ONE HUNDRED THIRTY FIVE THOUSAND (P135,000.00) PESOS; Provided, that the loan application shall be processed, subject to existing Central Bank circulars, rules, regulations and policies of the SELLER;

. . . .

- Should the BUYER fail to comply with any of the terms and conditions herein set forth or fail to pay any of the amounts mentioned in Paragraph No. 2 hereof, any and all amounts paid by the BUYER, pursuant to this Agreement, shall be forfeited automatically in favor of the SELLER without any need of demand or notice; Provided, However, that the SELLER hereby reserves the right to demand full payment of the agreed total purchase price instead of electing forfeiture and rescission, in which case, the balance of the purchase price shall bear interest from May 1, 1973 at the rate of one (1%) percent per month until fully paid; . . . [3]

Petitioner was able to pay the first and second installments on March 24, 1973 and April 13, 1973, respectively. However, when the third installment in the amount of P20,000.00 became due, petitioner failed to pay the same.

In a handwritten letter[4] dated July 5, 1974, petitioner's father, Felix Anama, asked respondent Bank for an extension of time to pay the balance and offered to make a deposit of P3,000.00 on the same savings account as a sign of good faith.

On February 22, 1975, petitioner paid respondent Bank the amount of P17,500.00.

On May 31, 1976, petitioner sent a letter to the Bank through Mr. Juanito dela Cruz, then the Vice-President of PSBank, promising to pay the balance in the sum of P20,000.00 on or before August 3, 1976.[5]

Subsequently, on November 25, 1976, petitioner again paid PSBank the sum of P15,208.34. This payment, as well as that of February 22, 1975, was taken from the account of petitioner's father Felix, who allegedly assigned his savings account under AC #11-200781-4 in favor of PSBank by means of withdrawal slips. Respondent Bank issued official receipts (Nos. 130561 and 148693)[6] indicating that these payments covered "penalty/interest charges" for the delay in the payment of the third installment.

On September 9, 1977, the Bank executed an Affidavit of Cancellation rescinding the contract.[7] Petitioner was then advised to vacate the premises. In addition, respondent Bank forfeited the payments made by petitioner, which were applied as rentals for the use of the property.[8]

Petitioner opposed the rescission of the Contract to Buy in a letter addressed to Mr. Juanito dela Cruz, then General Manager of PSBank dated October 6, 1977.[9] Petitioner wrote that he was led to believe that the Bank treated the deposits he made as payments on the Contract to Buy.

On November 6, 1978, PSBank sold the property to private respondent spouses Tomas Co and Saturnina Baria,[10] in whose favor Transfer Certificate of Title No. 14239[11] was subsequently issued.

Despite the sale to respondent spouses, the Bank on February 15, 1980, even prevented petitioner from making withdrawals from his father's account since the deposits were purportedly treated as payments under the contract.[12]

On March 1, 1982, petitioner filed a complaint before the Regional Trial Court (RTC) of Pasig against PSBank, spouses Baria and Co, and the Register of Deeds for Metro Manila, District II (Pasig, Metro Manila) for "Declaration of Nullity of Deed of Sale, Cancellation of Transfer Certificate of Title, and Specific Performance with Damages." [13]

After trial, the RTC issued an Order dated March 31, 1989 requiring the parties to file their respective memoranda:

The parties are given a period of thirty (30) days FROM THE COMPLETION OF ALL TRANSCRIPTS of stenographic notes taken in the proceedings to file their simultaneous memoranda, furnishing each other copy of their respective memorandum and all of them are given a period of fifteen (15) days from receipt of the respective memorandum to file a reply-memorandum. THEREAFTER, the case shall be deemed submitted for decision.[14]

On August 27, 1990, the RTC directed the completion of the transcript of stenographic notes (TSN):

Considering that the above-entitled case is now considered submitted for decision BUT CANNOT be decided with the absence of some transcripts of stenographic notes, stenographer Miss Celis P. Claravall of this branch is hereby ordered within thirty (30) days from today within which to submit her transcripts of the hearings held on January 30, 1987, July 10, 1987 and September 27, 1988.[15]

On June 19, 1991, the RTC noted a Motion for Early Resolution filed by respondent Bank. It attributed the delay in the resolution of the case to the incomplete transcript:

Submitted for Resolution is the “Motion for Early Resolution” filed by defendant Philippine Savings Bank.

It appears on record that the Court issued an Order dated August 27, 1990 to submit the lacking transcripts as the case COULD NOT BE decided without these transcripts. It is to be noted that this is an inherited case and before this Presiding Judge assumed office, the stenographic notes taken during the proceedings before his assumption have not been completed and submitted. It is only after his assumption that stenographers concerned were directed to complete and submit their transcripts and at present, only one (1) stenographer have (sic) not yet completed and submitted her transcripts. Although, the Court noted the herein motion, it is already in the process of resolving the merits of the case and a decision shall be rendered in due time.[16]

The incomplete TSN notwithstanding, the RTC on August 21, 1991 rendered a Decision [17] in favor of respondent Bank. It held that the Bank’s rescission of the contract was justified since petitioner failed to meet the terms of the Contract to Buy.

On September 12, 1991, petitioner filed a Notice of Appeal to which the RTC gave due course on October 8, 1991. The records of the case, however, could not be transmitted to the Court of Appeals because the transcript of January 30, 1987, covering the cross-examination of Atty. Raul Totañes, witness for respondent Bank, could not be produced. The stenographer who took down the testimony had already resigned and migrated to Australia.

Thus, on February 17, 1992 the RTC issued an Order inviting the parties to a conference to discuss the missing portion of the TSN:

In an Order dated October 8, 1991, the “Notice of Appeal” filed by plaintiff was given due course and the records of the case ordered elevated to the Court of Appeals for further proceedings.

However, the records could not be transmitted to the appellate court because of the unavailability of the transcript of stenographic notes taken on January 30, 1987. The records show that the Stenographer who took the stenographic notes failed to submit the transcripts and who is now abroad, residing permanently in Australia.

WHEREFORE, the Court is constrained to invite the parties for a conference on the matter on March 6, 1992 at 9:00 o’clock in the morning.

Notify counsel for all parties.[18]

On the day of the conference, the parties agreed to the retaking of the testimony of Atty. Totañes on June 2, 1992.

On August 14, 1992, petitioner, after receiving a copy of the TSN of Atty. Totañes’ retaken testimony, submitted his Memorandum in compliance with the previous RTC Order dated March 31, 1989. On the same date, he submitted a position paper claiming that the court’s decision was null and void. Petitioner argued that he was not permitted to submit his memorandum and was, therefore, deprived of due process.

In its Order dated September 30, 1992, the RTC declined to rule on the question of due process. It held that the issue was beyond its “competence” in light of the approval of petitioner’s notice of appeal:

All the incidents initiated by plaintiff after the retaking of the testimony on cross-examination of Raul Totañes seeking the reversal of the decision and/ or rendition of new decision would be outside the competence of this Court at this point in time. Suffice it to say, the Court had approved the notice of appeal of plaintiff which was filed within the reglamentary (sic) period. The only reason why the records have not been elevated to the Court of Appeals is on account of the said missing transcripts, which was finally retaken. There is therefore no more legal obstacle to the elevation of the records to the appellate court. All issues which plaintiff seeks to dispute

and the errors it is assigning can be properly addressed to the Court of Appeals.

WHEREFORE, in view of all the foregoing, and in conformance to the Order of October 8, 1992, let the entire records of the case together with all the evidence, oral and documentary, be elevated to the Court of Appeals for appropriate proceedings on appeal.

SO ORDERED.[19]

On June 17, 1996, the Court of Appeals dismissed the appeal for the failure of petitioner to make an assignment of errors in his Appellant's Brief. The Court of Appeals likewise held that petitioner was not denied due process when the RTC rendered its decision without his memorandum because:

It is our opinion that closing oral arguments of counsels and submission of memorandum are not essential parts of the trial process for their only province is to enlighten the court about the party's position and the evidence supporting it. The rule quoted above does not make it mandatory for a trial court to allow arguments or the filing of memoranda. Although they may in some instances be desirable they are not however indispensable so that their absence does not fatally impair the validity of the proceedings and the decision.[20]

Petitioner's Motion for Reconsideration was denied, prompting him to seek relief before this Court.

Petitioner initially faults the Court of Appeals for dismissing his appeal on the ground that his appellant's brief did not contain an assignment of errors.

The contention has merit. In *Luzon Stevedoring Corp. v. Court of Industrial Relations*, [21] this Court admitted a petition for certiorari notwithstanding the absence of an assignment of errors since the petition had substantially complied with the requirement of the Rules of Court:

Want of specific assignment of errors in appellant's brief (LEA), is one of the grounds for the dismissal of an appeal under Section 1(f), Rule 52, of the Rules of Court. This ground proved fatal in several cases for where no assignment of errors is made, no question may be considered by the appellate court (Section 5, Rule 53, now Section 7, Rule 51, Rules of Court). Substantial compliance with the requirements is however sufficient. The underlying reason for the rule is to point out to the court the specific part of the appealed judgment which the appellant seeks to controvert.

The assignment of errors embodied in LEA's petition for certiorari, the statement of the issues in its amended petition and the clear discussion of the points in issue in its brief have accomplished the task of informing this Court which part of the decision of the Court of Industrial Relations is sought to be reviewed. LEA's appeal in L-18681 ought not therefore to be dismissed, as urged by LUZON, merely for the so-called lack of an assignment of errors in LEA's brief. Pleadings, as well as remedial laws, should be construed liberally, in order that the litigants may have ample opportunity to prove their respective claims, and that a possible denial of substantial justice, due to legal technicalities, may be avoided.[22]

In the present case, the Appellant's Brief contains an enumeration of "Appellant's Arguments," followed by an extensive discussion pointing to evidence to support petitioner's theory that he had paid respondent Bank the third installment and that the Bank had waived its right to rescind the contract. Preceding that is a lengthy exposition explaining why the Decision of the RTC was void for failure to observe due process. These portions of the brief fulfill the purpose of an assignment of errors for it sufficiently informs the appellate court of the alleged errors committed by the trial court in its decision, including the manner of its rendition.

"Although the brief of the appellant is not a literal compliance with the rules of the court, nor is it a work of art from a professional point of view, still," this Court held in *Santos v. Rivera*, [23] "we do not believe the departure from the prescribed practice has been so radical as to call for a dismissal of the case." [24]

Petitioner maintains that he was denied due process when the trial court proceeded to decide the case, first, without the judge taking down notes and, second, without waiting for his memorandum.

Petitioner claims that during the retaking on June 2, 1992 of Atty. Totañes' testimony, Judge Alfredo C. Flores, Presiding Judge of the RTC, uttered statements confirming that he was unaware of the contents of the original testimony taken on January 30, 1987:

COURT:

There is no problem on the records that is now existing it is only on the transcripts, the records that was not transcribed, that's the problem, so how can we solve that.

ATTY. DADIOS:

We did as far as this existing t.s.n. which are certified original testimony of the witness, we will adopt. . .

COURT:

It is adopted, it is there, because if that is your position, if you will require that to be adopted and as you said it is not adopted, then he can cover many points you are implying that the counsel should adopt that so that he can limit. . .

ATTY. DADIOS:

Because, your honor, according to the last proceedings on record, that counsel has no further cross-examine . . .

COURT:

The former direct examination, he can ask other matters, then if they were already taken up then you can object. You are opening the gates on new matters, the problem here is just to reproduce the testimony of this witness on cross-examination that were not transcribed, how can we do that, nobody can say, that's why . . .
.[25]

Petitioner theorizes that when Judge Flores declared that "nobody can say" what the missing transcript were all about, he in effect admitted that he was ignorant of the material aspects of the testimony and that he failed to take down his own notes purportedly in contravention of this Court's directive in *Balagot v. Opinion*:^[26]

The period within which to decide a case should be reckoned from the date a case was submitted for decision. A delay on the transcription of stenographic notes cannot be considered a valid reason for the delay in rendering judgment in a case. Precisely, judges are directed to take down notes of salient portions of the hearing and proceed in the preparation of decisions without waiting for the transcript of stenographic notes. Furthermore, we have already ruled that with or without the transcribed stenographic notes, the 90 day period for deciding cases should be adhered to.^[27]

Petitioner has taken Judge Flores' statements out of context. The Judge's utterances should be interpreted in light of the purpose for which the retaking of Atty. Totañes' testimony was conducted, which was merely to complete the transcript so it may be elevated to the Court of Appeals. Thus, when Judge Flores said that "nobody can say," he was merely emphasizing that the counsel's questions and the witness' answers cannot be reproduced verbatim.

The questioned remarks of the Judge cannot definitely be taken to mean that he did not know what took place at the earlier proceeding. At the very least, Judge Flores would have some notion of the facts yielded by the cross-examination. The Rules of Court establishes an order in the examination of a witness. That order, quite logically, prescribes that the witness' cross-examination by the opponent be preceded by a direct examination of the proponent.^[28] The Rules further define the purpose and extent of the cross-examination. The witness may be

cross-examined only as to any matters stated in the direct examination, or connected therewith, as well as all important facts bearing upon the issue.[29]

In this case, Atty. Totañes testified on direct examination on the contents of the Contract to Buy and the effect of the Bank's acceptance of the payments made by petitioner on February 22, 1975 and November 25, 1976. The transcript of his testimony formed part of the record. Naturally, the Judge would have an idea of what was taken up on the succeeding cross-examination, which under the Rules could only be matters stated in the direct examination, or connected therewith, or important facts bearing upon the issue of rescission. More importantly, Judge Flores himself heard the cross-examination of Atty. Totañes. It cannot be successfully argued, therefore, that the Judge was completely ignorant of what transpired during that part of the trial.

Petitioner also misconstrues this Court's ruling in *Balagot*, supra. The gist of that ruling, echoed in numerous cases,[30] is that a judge cannot plead the lack of the TSN to excuse delay in the rendition of judgment. Thus, judges are advised to take down notes during the trial. *Balagot* and similar cases did not make note-taking mandatory upon judges, who may, at their own risk, choose not to take down notes. In the event the stenographic notes are not transcribed and, as a result, the judge incurs delay in rendering judgment, he faces administrative sanction - not for failure to take down notes but for delay in the rendition of judgment.

Petitioner also claims that by deciding the case without his memorandum, the trial court did not afford him the opportunity to argue his case and thus denied him due process. He stresses that it was Judge Flores himself who issued the Order instructing the parties to submit their respective memoranda within thirty (30) days from the completion of the transcript.

Petitioner's argument has no basis. The 1964 Rules of Court, the procedure then applicable, did not require the filing of memoranda. Rule 30 thereof provided:

SECTION 1. Order of trial. - Subject to the provisions of section 2 of Rule 31, and unless the judge, for special reasons, otherwise directs, the order of trial shall be as follows:

....

(g) When the evidence is concluded, unless the parties agreed to submit the case without argument, the plaintiff or his counsel may make the opening argument, the defendant, the third-party defendant, and fourth, etc., party, or their respective counsel, may follow successively, and the plaintiff or his counsel may conclude the argument. Two counsel may, if desired, be heard, upon each side, but in the order herein prescribed.

....

Administrative Circular No. 28 dated July 3, 1989 on the submission of memoranda describes the nature of the requirement. "As a general rule," it states, "the submission of memoranda is not mandatory or required as a matter of course but shall be left to the sound discretion of the court. A memorandum may not be filed unless required or allowed by the court."

Even under the 1997 Revised Rules on Civil Procedure, the requirement to file memoranda is likewise optional upon the trial court. Rule 30 on trials states:

SEC 5. Order of trial. - Subject to the provisions of section 2 of Rule 31, and unless the court, for special reasons otherwise directs, the trial shall proceed as follows:

....

(g) Upon admission of the evidence, the case shall be deemed submitted for decision, unless the court directs the parties to argue or to submit their respective memoranda or any further pleadings.

The rationale for the foregoing rules is that a memorandum is merely a device to help the court in rendering its decision, the primary basis of which should be the evidence presented. Thus, in the case of *Sps. Montecer v. Court of Appeals*, [31] this Court held that the CFI may not dismiss the appeal of the petitioner solely on the basis of the party's failure to file his memorandum because:

Non-submission of memoranda is not part of the trial nor is the memorandum itself essential, much less indispensable pleading before a case may be submitted for decision. As it is merely intended to aid the court in the rendition of the decision in accordance with law and evidence - which even in its absence the court can do on the basis of the judge's personal notes and the records of the case - non-submission thereof has invariably been considered a waiver of the privilege.[32]

In support of his contention that a memorandum is required, petitioner cites the work of Supreme Court Justice Jose Y. Feria (Ret.) stating that, under the Revised Rules on Civil Procedure:

Oral Argument is no longer a matter of right after the admission of evidence. The court has the discretion to direct the parties to argue orally or to submit memoranda.[33]

Petitioner's argument is grounded on a gross misreading of the above excerpt. What Justice Feria clearly refers to as no longer a matter of right under the 1997 Revised Rules on Civil Procedure is the hearing of oral arguments, not the filing of memoranda.

It is true that Judge Flores himself asked the parties to submit their respective memoranda. Nevertheless, the rendition of judgment despite the absence thereof does not constitute a denial of due process. Since, whether under the old or new Rules on Civil Procedure, it is in the court's discretion to order the parties to submit memoranda, it is also within its discretion to revoke such order. Thus, there is nothing unusual in the action of the trial court. Perhaps, Judge Flores realized that he had a sufficient grasp of the evidence and the issues to enable him to resolve the case, rendering the memoranda unnecessary. In such case, the trial court is simply deemed to have dispensed with the memoranda that it had previously required.

The essence of due process is a reasonable opportunity to be heard and submit evidence in support of one's defense. What the law proscribes, therefore, is the lack of opportunity to be heard.[34] As long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process.[35] It is beyond dispute that petitioner participated in the trial. He was able to adduce evidence in his behalf and given the opportunity to refute those of private respondents. Clearly, petitioner cannot complain that he was deprived of due process.

Under the Contract to Buy, petitioner was supposed to pay respondent Bank the amount of P20,000.00 covering the third installment on or before April 30, 1973. Petitioner was not able to pay said amount on the date stipulated. However, he made payments in the amount of P17,500.00 on February 22, 1975 and P15,208.34 on November 25, 1976. On the face of the official receipts covering these amounts appear the words "penalties/interest charges." Petitioner insists, though, that he made arrangements with the lawyers of the bank that these words were to be considered mere "typographical errors" and that the amounts reflected as payments covering the third installment.

The amounts covered by the subject receipts cannot be considered payments for the third installment. The contract states that where the Bank exercises the right to demand full payment of the agreed total purchase price, the balance of the purchase price shall bear interest from May 1, 1973 at the rate of one percent (1%) per month until fully paid. As petitioner failed to pay the third installment, petitioner was liable to pay respondent Bank such interest. The accumulated interest from 1 May 1973 to 22 February 1975 amounted to P26,250.00 or much more than what petitioner paid on the latter date. It may be safely assumed, therefore, that respondent Bank first applied the payments represented by the subject receipts to the interest due. Under Article 1253 of the New Civil Code, if

the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered.

Petitioner has not, other than by his bare and self-serving allegations, established that the receipts were issued for payments constituting the third installment. In a letter dated May 31, 1976, petitioner's father even offered to pay respondent Bank the balance of P20,000.00 on or before August 31, 1976. If it is true that the payment of P17,500.00 made on February 22, 1975 (per Official Receipt No. 130561) covered part of the installment, then only the remaining balance of P2,500.00 was due respondent Bank. Yet petitioner still offered to pay the entire amount of P20,000.00 after allegedly having made the P17,500.00 payment to cover part of the third installment.

Petitioner also claims that he had an agreement with the Bank's lawyers that the deposits made by petitioner's father in his account were to be considered as payments in satisfaction of the third installment. Petitioner, however, has not proven by a preponderance of evidence that he and the Bank had agreed to resort to a "debit memo" scheme to pay the sum due.

As petitioner failed to pay the third installment, respondent was entitled to rescind the Contract to Buy. The contract provides the Bank two options in the event that petitioner fails to pay any of the installments. This was either (1) to rescind the contract outright and forfeit all amounts paid by the petitioner, or (2) to demand the satisfaction of the contract and insist on the full payment of the total price. After petitioner repeatedly failed to pay the third installment, the Bank again chose to exercise the first option.

Petitioner submits, though, that the bank waived its right to rescind since it allowed petitioner-extensions to pay the third installment. In support of his contention, petitioner invokes *Pilipinas Bank v. Intermediate Appellate Court*,^[36] where this Court held that an unmistakable intention to relinquish the right of rescission exists where the injured party grants numerous extensions to the other party to the contract.

Assuming that the Bank indeed granted petitioner extensions to pay the last installment, such grants did not preclude rescission of the contract. Failure on the part of petitioner to pay within the extension granted constituted delay and, therefore, another breach of the contract, again giving rise to respondent Bank's right to rescind.

Viewed in another light, the Contract to Buy is actually a contract to sell whereby the vendor reserves ownership of the property and is not to pass until full payment. Such payments as a positive suspensive condition, the failure of which is not a breach but simply an event that prevents the obligation of the vendor to convey title from acquiring binding force.^[37] Since ownership of the subject property was not to pass to petitioner until full payment of the purchase price, his failure to pay on the date stipulated, or in the extension granted, prevented the obligation for the Bank to pass title to the property to him from arising.^[38] Be it noted that as of April 30, 1973 which was the deadline for the last installment, the balance of the principal stood at P125,000.00.

However viewed, respondent Bank could validly sell the property to respondent spouses. The right of respondent Bank to sell the property being unequivocal, petitioner's claims of bad faith on the part of respondent spouses have been rendered irrelevant.

WHEREFORE, the petition is DENIED for lack of merit.

SO ORDERED.

Quisumbing, Austria-Martinez, and Callejo, Sr., JJ., concur.
Puno, (Chairman), J., no part.

[1] Exhibit A. Also Exhibit 1.

[2] The property with an area of 527.5 sq. m., is located at 114 R. Lagmay St., San Juan, Metro Manila, and is covered by Transfer Certificate Title No. 301276 in the name of respondent Bank.

[3] Records, p. 9.

[4] Exhibit 9.

[5] Exhibits 6 and 6-a.

[6] Exhibits 4 and 5.

[7] Exhibit E. Also Exhibit 7.

[8] Exhibit 7.

[9] Exhibit F.

[10] Exhibit H.

[11] Exhibit J.

[12] Exhibit G.

[13] Docketed as Civil Case No. 44940.

[14] Records, Vol. II, p. 212.

[15] Records, Vol. II, p. 218.

[16] Records, Vol. II, p. 221.

[17] Records, Vol. II, pp. 235-236. The dispositive portion of the trial court's decision reads:

Verily, the plaintiff is bereft of any legal or equitable right to compel the conveyance in his favor by the defendant Bank of the realty in dispute. A fortiori, the sale in favor of the Spouses Saturnina Baria and Tomas Co cannot be nullified. Necessarily, Transfer Certificate of Title No. 14329 of the Registry of Deeds of Metro Manila, District II must be maintained.

WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered dismissing plaintiff's complaint, with costs.

For lack of sufficient and factual basis, all counterclaims are likewise dismissed.

SO ORDERED.

[18] Records, Vol. II, p. 241.

[19] Records, Vol. II, pp. 413 - 414.

[20] CA Rollo, p. 317. The CA decision was penned by Justice Hilarion L. Aquino with Justices Jainal B. Rasul and Hector L. Hofileña, concurring.

[21] 122 Phil. 1037 (1965).

[22] Id., p. 1048.

[23] 28 Phil. 513 (1914).

[24] *Id.*, p. 516.

[25] TSN, p. 4, June 2, 1992. Underscoring supplied.

[26] A.M. No. MTJ-90-439, March 20, 1991, 195 SCRA 429.

[27] *Id.*, at 432. Underscoring supplied.

[28] RULES OF COURT, rule 132, sec. 4 (a) and (b).

[29] *Id.*, sec. 6.

[30] E.g., *Re: Problem of Delays in Cases before the Sandiganbayan*, A.M. No. 00-8-05-SC, November 28, 2001, 370 SCRA 658; *Castillo v. Cortes*, A.M. No. RTJ-93-1082, July 25, 1994, 234 SCRA 398; *Tauro v. Colet*, A.M. No. RTJ-99-1434, April 29, 1999, 306 SCRA 340; *Celino v. Abrogar*, A.M. No. RTJ-95-1317, June 27, 1995, 245 SCRA 304; *Re: Judge Danilo M. Tenerife*, A.M. No. 94-5-42-MTC, March 20, 1996, 255 SCRA 184.

[31] 368 Phil. 121 (1999).

[32] *Cases Submitted for Decision before Retired Judge Maximo A. Sevellano, Jr.*, RTC - Br. 53, Manila, A.M. No. 99-7-250-RTC, April 5, 2000, 329 SCRA 637, citing *Salvador v. Salamanca*, A.M. No. R-177-MTJ, September 24, 1986, 144 SCRA 276.

[33] *Rollo*, p. 411.

[34] *Kuizon v. Desierto*, G.R. Nos. 140619-24, March 9, 2001, 354 SCRA 158.

[35] *Philhouse Development Corporation v. Consolidated Orix Leasing and Finance Corporation*, G.R. No. 135287, April 4, 2001, 356 SCRA 281.

[36] No. L-67881, June 30, 1987, 151 SCRA 546.

[37] See *Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc.*, No. L-25885, January 31, 1972, 43 SCRA 93, citing *Manuel v. Rodriguez*, 109 Phil. 1(1960). Also *Rillo v. Court of Appeals*, G.R. No. 125347, June 19, 1997, 274 SCRA 461.

[38] See *Padilla v. Paredes*, G.R. No. 128474, March 17, 2000, 328 SCRA 434.

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