

SPOUSES BERNARDO MERCADER AND FLORINA M. MERCADER, AND DR. JUAN Y. MADERAZO, PETITIONERS, VS. DEVELOPMENT BANK OF THE PHILIPPINES (CEBU BRANCH), GELACIO, FELIPE, OSMUNDO ALL SUR...

G.R. No. 130699. May 12, 2000

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

In this petition for review, petitioners spouses Florina Maderazo-Mercader and Bernardo Mercader (hereafter MERCADERs) and Juan Y. Maderazo impugn the Court of Appeals' 5 February 1997 decision in CA-GR-CV No. 21846[1] ordering them to deliver the possession of Lot No. 2985 to the Development Bank of the Philippines, Cebu Branch (hereafter DBP) without right of reimbursements for the improvements introduced thereon, and the 13 August 1997 resolution denying the motion for reconsideration. Said decision and resolution reversed and set aside the 6 September 1988 decision[2] of the Regional Trial Court of Cebu, Branch 15, in Civil Case No. R-18521.[3]

Civil Case No. R-18521 was for specific performance filed on 28 September 1979. In their complaint,[4] the MERCADERs alleged that:

- (1) In 1966, Juan Maderazo applied for a loan at the DBP secured by interior Lots Nos. 2993 and 2994 (Talisay-Minglanilla estate);
- (2) The DPB required Maderazo to construct a five (5) -meter wide road right of way over the adjoining Lot No. 2985;
- (3) The DBP approved Maderazo's loan application upon his submission of a copy of the lease contract for a right of way over the adjoining Lot No. 2985;
- (4) The lease contract for the right of way was for a twenty-year period commencing on 20 October 1966 which Maderazo executed with the spouses Gelacio and Vicenta Manreal, then the registered owners of Lot No. 2985;
- (5) Maderazo expended P10,000 for the construction of the five (5) - meter right of way;
- (6) This lease contract was however not registered for Gelacio Manreal's failure, "for one reason or another," to deliver the Certificate of Title (TCT) of Lot No. 2985 to Maderazo;
- (7) About nine years later or on 6 January 1976, Maderazo's children, the spouses Florina Maderazo-Mercader and Bernardo Mercader executed a contract of lease with the Manreals for a period of twenty years and four months over the remaining portion of Lot No. 2985;
- (8) Despite repeated requests for the delivery of the TCT of Lot No. 2985 for the purpose of annotating the lease contract, the Manreals, "for one reason or another," failed to do so; however, the Manreals assured the

Mercaders "not to worry since nothing will go wrong";

(9) Believing in the Manreals' assurances, Bernardo Mercader intensively cultivated Lot No. 2985, "planted in good faith 600 calamansi fruit trees, fenced the lot with barbed wires, constructed canals and drainages, spent wages for several farm workers and introduced several improvements including a vegetable garden - all in the sum of not less than P25,000";

(10) The MERCADERS subsequently discovered that the reason why the Manreals failed to deliver the TCT of Lot No. 2985 [now registered in the names of spouses Felipe and Florentina Manreal, children of Gelacio and Vicenta Manreal] was because they offered said lot including the improvements introduced by the former thereon as "collateral" for a P150,000 deep-sea fishing loan with the DBP;

(11) That despite the lack of registration and/or annotation of the respective interests of the MERCADERS on the TCT over Lot No. 2985, the DBP knew and should know of their existence considering the several ocular inspection and investigation conducted over the property; the DBP's actual knowledge of these unregistered interests has the effect of registration.[5]

Since the Manreals defaulted in the payment of their obligation to the DBP, and that the latter had taken steps to foreclose Lot No. 2985 including all the improvements thereon, the MERCADERS prayed among others, for the DBP to "respect their interests by excluding these from the foreclosure proceedings, or if the foreclosure takes place, declare the same null and void or in the alternative, order the DBP to reimburse them the cost of the improvements and loss of expected income amounting to P210,000 for the duration of the unexpired term of their respective contracts." The MERCADERS also prayed for the annotation of their interests in the TCT of Lot No. 2985.

In their answer, the Manreals only admitted the existence of the two unregistered contracts of lease and the calamansi trees planted on Lot No. 2985. They then denied any knowledge or information sufficient to form a belief on the other allegations of the MERCADERS. They then claimed that Felipe Manreal informed Juan Maderazo of the intention to offer as security Lot No. 2985 for the deep sea-fishing loan with the DBP. They also justified their inability to present to the MERCADERS the TCT over Lot No. 2985 on the fact that at the time the latter were soliciting the title's delivery, it was still in the hands of the lawyer who was preparing the Extrajudicial Settlement and Partition of the Estate left by the deceased Vicenta Manreal. The Manreals then prayed for the dismissal of the complaint for being utterly groundless.[6]

In its answer, the DBP admitted:

(1) the loan of spouses Juan and Juana Maderazo; and

(2) the deep-sea fishing loan of spouses Felipe and Florentina Manreal which was secured among others, by a first mortgage over Lot No. 2985 evidenced by a TCT already registered in their names, free from any lien or encumbrance.

It denied any knowledge or information of: (1) any flaw or infirmity in the TCT over Lot No. 2985; (2) any interest in Lot No. 2985 other than and adverse to the spouses Felipe and Florentina Manreal as registered owners and mortgagors; and (3) the existence of the lease contract for right of way over a portion of Lot No. 2985 because it was not registered and that the spouses Gelacio and Vicenta Manreal were not the ones who mortgaged said Lot No. 2985 to the DBP but their children, the spouses Felipe and Florentina Manreal.

The DBP maintained that the alleged unregistered interests of the MERCADERS did not and could not bind the DBP per Art. 1648 of the Civil Code[7] and Section 64 of Act 496.[8] It then prayed for the dismissal of the complaint for being premature and for lack of cause of action as it never dealt with Gelacio Manreal and there was as yet no foreclosure. Besides, the DBP was a mortgagee in good faith.[9]

In the meantime or on 26 November 1979, Lot No. 2985 was sold, among the other mortgaged lots, on public auction to the DBP as the highest bidder.[10]

During the pre-trial stage, the trial court acknowledged the possibility of a compromise agreement, gave time to the parties to study their proposals and counterproposals and ordered the documents pertinent thereto deemed parts of the record of the case.[11] Orders were further issued "giving the parties more time to continue with their negotiations and re-setting the hearing of the case." [12] Several communications were thereafter exchanged, to wit:

(1) a letter dated 24 June 1981 wherein the MERCADERS proposed that Maderazo's contract of lease for right of way be registered, and respect be accorded to the contract of lease the MERCADERS executed with the Manreals, or as an alternative allow the MERCADERS to purchase Lot No. 2985 on installment basis at the price of P6.00 per square meter;[13]

(2) a letter dated 22 July 1982 wherein the DBP through its Manager (Mr. Manuel Roa) offered the MERCADERS three options by which they could amicably settle subject to the approval of the Board of Governors of the Bank to wit:[14]

a. First Option - Sale

P96,200.00 - Purchase price

19,200.00 - Down payment

77,000.00 - Balance payable in 10 years at 15% interest per annum

1, 242.28 - Monthly amortization

b. Second Option - Lease-Purchase

P132,598.84 - Consideration

1,105.00 - Monthly lease-purchase for 10 years

c. Third Option - Lease

P14,430.00 - Equivalent to 15% annual interest of P96,200

1,202.50 - Monthly lease

(3) a letter dated 18 November 1982 whereby the MERCADERS chose option 2 (lease-purchase);[15]

(4) a letter dated 23 November 1982 whereby the MERCADERS informed the DBP's Manager that they were "depositing P3,315.00 with the bank" pursuant to said Manager's proposal that a three-month advance payment should be deposited while the MERCADERS await the final decision of the bank on the proposed settlement.[16]

The DBP issued an official receipt for the payment of P3,315 as "earnest money, deposit to purchase lot 2985." [17]

With this development, on 9 December 1982, the trial court directed the parties to submit "their compromise agreement which required the approval of the Board of Governors." [18]

The DBP and the MERCADERS thereafter again exchanged a series of correspondences. In his 13 January 1983 letter to the DBP (through Mr. Ruben Carpio), Bernardo Mercader requested for a grace period in the payment of the amortization for the lease-purchase option.[19] In response, the DBP wrote a letter dated 19 January 1983 informing Bernardo Mercader that it had already "prepared [its] recommendation to the head office, xxx rejected

the request for a grace period but informed [him] to respond soon or visit the bank for a possible conference." [20] Bernardo Mercader replied through a letter dated 5 October 1983 reiterating his accord to the lease-purchase option but suggesting this time that the amortization be paid on a quarterly basis. [21] In its 29 February 1984 letter, the DBP "noted" Mercader's suggestion as "counter-proposals or counter-offers which [it find un]acceptable and made dimmer the realization of [their] mutual desire for an early amicable settlement." The DBP reasoned that "the original conditions packaged in [its] proposal [were] no longer applicable" considering that the market value of the property increased. [22]

With this, the trial court ordered the termination of the pre-trial and set the case for hearing in its 18 September 1995 order, thus:

As manifested by the plaintiffs, they have already agreed with the defendant bank that they will pay the property at P132, 598 payable in ten (10) years in quarterly basis. However, the counsel of defendant manifested that it was only a proposal. The plaintiff spouses requested for a longer period of fifteen (15) years which the bank did not agree.

The only issue[s] to be resolved in this case are as follows:

1. Whether the plaintiff [are] entitled to specific performance of said agreement;
2. Whether the defendant bank can be compelled to recognize the lease contract entered into between the spouses plaintiff Bernardo Mercader and Gelacio Manreal; and
3. Whether the foreclosure proceedings of the contract between the defendant bank is null and void.

The pre-trial in this case is already closed and terminated. [23]

On 7 November 1985, the MERCADERS filed a Supplemental Pleading insisting the consummation of the lease-purchase option with the payment of the earnest money. [24] The DBP filed its Opposition to the Supplemental Pleading. [25]

Trial proceeded with the parties presenting evidence tending to establish their respective allegations. On 29 May 1987, the trial court ordered the Manreals dropped from the case. The MERCADERS offered no objection.

In its decision of 6 September 1988, the trial court reiterated the three issues ascertained in the pre-trial order and resolved all of them in favor of the MERCADERS. On the first issue, the trial court found that the "DBP had unnecessarily and unjustifiably made xxx [Bernardo] Mercader understand that his second option [lease-purchase] would be more or less approved, except that the approval will come from Manila." [26] Anent the second issue, the trial court also believed "quite firmly" that the "DBP could not have escaped having a foreknowledge of the existence of the prior unrecorded lease" as the "possession and cultivation of Bernardo Mercader xxx [was] a matter of open, notorious and public knowledge in the area." In resolving the third issue, the court first acknowledged that it is a "court of equity and not merely a court of law" and the "DBP is not authorized to keep real propert[y] longer than ten years or so;" then the court "required [the] DBP to set aside the area affected by the prior unregistered lease, known to [it], when [it] accepted the mortgage." [27] It then decreed as follows:

WHEREFORE, finding the preponderance of evidence to be in favor of plaintiffs, judgment is hereby rendered as follows:

- 1) ordering the defendant DBP and its successors-in-interest to respect and preserve the Contracts of Lease between the Manreals and the Mercaders until December 31, 1994;
- 2) ordering the DBP to exclude from the foreclosure proceedings the rights of the plaintiffs as covered by the Contract of Lease;

- 3) requiring the defendant DBP to cause the annotation of the Contracts of Lease of plaintiffs on TCT No. T-40396 of xxx Lot No. 2985 xxx and amend Entry No. 4980-V-14-D-B, by excluding the improvements of Mercader as guarantee or collateral for defendant Felipe Manreal's deep-sea fishing loan;
- 4) ordering the DBP to execute the deed of sale subject to the approval of the Manila Office of the DBP as to the mode of payment, there being no agreement thereon;
- 5) requiring the defendant DBP to pay attorney's fees of P5,000, for making it necessary for the plaintiffs to litigate, in order to protect their rights to the Lease Contract with the Manreals and to compel DBP to act on the proposals of Mercader as promised by DBP.[28]

On appeal, the Court of Appeals found that the trial court erred in treating the lease-purchase option as a controversial issue considering that it was "outside the parties' pleadings." But invoking the Supreme Court's decision in *Castro v. Court of Appeals*[29] in that "the improvements introduced [into the mortgaged property] are to be considered so incorporated [in the mortgage] only if so owned by the mortgagor," the Court of Appeals declared that the improvements introduced on Lot No. 2985 had been improperly included in the foreclosure sale since they were not owned by the mortgagors. But since the improvements were already included in the foreclosure sale and the MERCADERS continued the possession and collection of income from the lot, the Court of Appeals, as already earlier adverted to, reversed and set aside the appealed judgment. It entered a new one declaring that the MERCADERS were not entitled to any compensation from the DBP. It also ordered the MERCADERS to immediately turn over the possession of Lot No. 2985 to the DBP.[30]

In this petition for review, the MERCADERS assert that in issuing the challenged decision, the Court of Appeals contravened Section 4, Rule 20 and Section 5, Rule 10 of the Rules of Court by holding that the trial court should not have taken cognizance of the lease-purchase option as a controversial issue since it was not raised in the pleadings. They maintain that the trial court correctly took cognizance of the lease-purchase option because it was part and parcel of the pre-trial stages, the determination of which will prevent future litigation thereon. They also pray that in the event of a favorable judgment, this Court should refer the case back to the Court of Appeals for a determination of whether the trial court erred in finding that the lease-purchase option was already consummated.

For its part, the DBP contends that the MERCADERS raise questions of facts which are not reviewable on appeal and that it had opposed and objected to in and at all stages of the trial, all attempts by the MERCADERS to introduce evidence on the lease-purchase option.

This Court agrees with the MERCADERS and finds that the Court of Appeals erred in disregarding as material the lease-purchase option on the ground that it was not raised in the pleadings. If the Court of Appeals adverts to the lack of reference to the lease-purchase option in the initiatory pleadings, this can be simply explained by the fact that the trial court only took cognizance thereof when it became an integral component of the pre-trial proceedings. That is why the lease-purchase option was included firstly, in the pre-trial order as one of the issues to be resolved at trial and secondly, in the supplemental pleading subsequently filed by the MERCADERS on 7 November 1985.[31] As a supplemental pleading, it served to aver supervening facts which were then not ripe for judicial relief when the original pleading was filed. As such, it was meant to supply deficiencies in aid of the original pleading, and not to dispense with the latter.[32] Hence, it was patently erroneous for the Court of Appeals to pronounce that the lease-purchase option was not raised in the pleadings. The DBP was even quite aware and knowledgeable of the supplemental pleading because it filed an opposition thereto.[33]

The records however reveal that the trial court did not promptly rule on the motion to admit the supplemental pleading. And during trial, the trial court also failed to rule on the prompt objection interposed by the DBP's counsel to the MERCADERS' introduction of evidence relative to said lease-purchase option. But undisputed is

the trial court's eventual admission in open court of the MERCADERS' supplemental pleading, thus:

ATTY. GARLITOS

Probably, I did not make myself quite clear, Your honor. What I mean is during the pre-trial stage the parties were encourage to negotiate for a settlement. So they made an offer to DBP and DBP gave them an option.

COURT

Those three options and chose the second one.

ATTY. GARLITOS

We interposed an objection on this option, Your Honor, because any evidence which will be presented or which transpired during the pre-trial is objectionable. So we interposed an objection to prevent the witness from testifying on transactions which were referred to while the parties were negotiating during the pre-trial stage.

ATTY. MERCADER

I wish to correct counsel. Records will show that there was no objection on what transpired during the pre-trial. As a matter of fact the pre-trial order is very material to the case. There is a pre-trial that such an offer and three options made by DBP, and that plaintiff selected the second option and that he deposited earnest money with the bank.

COURT

In other words there is no supplemental complaint.

ATTY. GARLITOS

It is good that they brought that out because we had an opposition and this is what I am referring to.

COURT

What is your opposition, the price agreed upon?

ATTY. GARLITOS

We objected to the filing of the supplemental complaint and to all evidence presented in regard to that supplemental complaint.

COURT

It's too late now for you to make an objection. This supplemental pleading has been admitted by the court. That has become final.

ATTY. GARLITOS.

There is no showing that it has been admitted by the court.

COURT

It has been admitted by the court.[34] (Emphasis supplied)

The records also show that not only did the DBP's counsel began to rigorously cross-examine Bernardo Mercader on the lease-purchase option, he also subjected his witness Mr. Ruben Carpio, then Chief of the Collection Department, DBP to an intensive direct examination covering said subject matter.[35] He also offered as evidence the DBP's letter indicating the three options to the MERCADERS as Exhibit "1" and the lease-purchase option contained therein as Exhibit "1-A." [36]

The DBP is undoubtedly estopped from questioning the trial court's inclusion of the lease-purchase option as a controversial issue. This action of the trial court finds anchor on Section 4, Rule 20 of the Rules of Court which reads:

Section 4. Record of pre-trial results. -- After the pre-trial the court shall make an order which recites the

action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered. Such order shall limit the issues for trial to those not disposed of by admissions or agreements of counsel and when entered controls the subsequent course of the action, unless modified before trial to prevent manifest injustice.

Indeed, the pre-trial is primarily intended to make certain that all issues necessary to the disposition of a case are properly raised. The purpose is to obviate the element of surprise, hence, the parties are expected to disclose at the pre-trial conference all issues of law and fact which they intend to raise at the trial, except such as may involve privileged or impeaching matter.[37] In the case at bar, the pre-trial order included as integral to the complete adjudication of the case the issue of whether the MERCADERS can demand specific performance from the DBP relative to the lease-purchase option. Thus, the element of surprise that the provision on pre-trial attempts to preclude was satisfied. The surprise factor was further eliminated, as already earlier mentioned and merely to reiterate here, with the DBP's (1) motion to oppose the supplemental pleading, (2) objection to the introduction of evidence connected thereto, (3) later information from the trial court of its definitive ruling admitting the supplemental pleading, (4) own introduction of evidence related thereto, and finally, by its (5) intensive participation in the direct and cross-examination of witnesses whose testimonies included said topic. In any case, the filing and consequent admission of the supplemental pleading by the trial court validated the issues embraced in the pre-trial order.

Assuming arguendo that the MERCADERS failed to file the supplemental pleading, evidence relative to the lease-purchase option may be legitimately admitted by the trial court in conformity with Section 5, Rule 10 of the Rules of Court which states:

Section 5. Amendment to conform to or authorize presentation of evidence. -- When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects, as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence. (emphasis supplied)

This provision envisions two scenarios -- first, when evidence is introduced on an issue not alleged in the pleadings and no objection was interjected and second, when evidence is offered again, on an issue not alleged in the pleadings but this time an objection was interpolated. We are concerned with the second scenario. In *Co Tiamco v. Diaz*, the Court held that "when evidence is offered on a matter not alleged in the pleadings, the court may admit it even against the objection of the adverse party, where the latter fails to satisfy the court that the admission of the evidence would prejudice him in maintaining his defense upon the merits, and the court may grant him a continuance to enable him to meet the new situation created by the evidence. Of course, the court, before allowing the evidence, as a matter of formality, should allow an amendment of the pleading, xxx And, furthermore, where the failure to order an amendment does not appear to have caused surprise or prejudice to the objecting party, it may be allowed as a harmless error. Well-known is the rule that departures from procedure may be forgiven where they do not appear to have impaired the substantial rights of the parties." [38]

More recently, in *Bank of America v. American Realty Corporation* [39] citing *Talisay-Silay Milling Co., Inc. v. Asociacion de Agricultores de Talisay-Silay, Inc.*, [40] the Court reinforces the *Co Tiamco* ruling on the application of Section 5, Rule 10 of the Rules of Court in this wise:

The failure of a party to amend a pleading to conform to the evidence adduced during trial does not preclude adjudication by the court on the basis of such evidence which may embody new issues not raised in the pleadings. x x x Although, the pleading may not have been amended to conform to the evidence submitted during trial, judgment may nonetheless be rendered, not simply on the basis of the issues alleged but also on the issues discussed and the assertions of fact proved in the course of the trial. The court may treat the pleading as if it had been amended to conform to the evidence, although it had not been actually amended. xxx Clearly, a court may rule and render judgment on the basis of the evidence before it even though the relevant pleading had not been previously amended, so long as no surprise or prejudice is thereby caused to the adverse party. Put a little differently, so long as the basic requirements of fair play had been met, as where the litigants were given full opportunity to support their respective contentions and to object to or refute each other's evidence, the court may validly treat the pleadings as if they had been amended to conform to the evidence and proceed to adjudicate on the basis of all the evidence before it.

As already enunciated, the DBP was not and would not be prejudiced by the incorporation of the lease-purchase option as one of the controverted issues. Moreover, it had been afforded ample opportunity to refute and object to the evidence germane thereto, thus, the rudiments of fair play had been properly observed. Jurissc

Since we agree with the MERCADERS' contention that the Court of Appeals contravened Section 4, Rule 20 and Section 5, Rule 10 of the Rules of Court in promulgating the questioned decision, we have to grant their prayer to refer the matter back to said court for a determination of the question of whether the lease-purchase option was already consummated and for a complete ascertainment of the rights and obligations of the parties.

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the instant petition is GRANTED DUE COURSE and the 5 February 1997 judgment and 13 August 1995 resolution of the Court of Appeals in CA-GR-CV No. 21846 are hereby SET ASIDE. The case is REFERRED BACK to the Court of Appeals for a determination of whether the lease-purchase option was consummated with the end view of ascertaining the rights and obligations of the parties.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

[1] Per Gutierrez, A., J., with Purisima, F. and Vasquez, Jr., C. JJ., concurring. Rollo, 19-32.

[2] Per Judge German G. Lee, Jr.

[3] Entitled Spouses Bernardo Mercader and Florina M. Mercader, and Dr. Juan Y. Maderazo v. Development Bank of the Philippines (Cebu Branch), FELIPE, GELACIO, OSMUNDO, all surnamed MANREAL, and Rufina Manreal vda. de Abalo.

[4] Original Record (OR), 1-7.

[5] OR, 2-7.

[6] OR, 28-31.

[7] Every lease of real estate may be recorded in the Registry of Property. Unless a lease is recorded, it shall not be binding upon third persons.

[8] Sec. 64. Lease of registered land shall be registered in the manner provided in section fifty-two of this Act, in lieu of recording. A lessee's duplicate certificate may be issued to the lessee upon his request subject to the provisions hereinbefore made in regard to a mortgagee's duplicate certificate, as far as the same are applicable. (The issuance of mortgagee's or lessee's duplicate copy has been done away with under Sec. 60 of P.D. 1529)

[9] OR, 17-19.

[10] See Sheriff's Certificate of Sale, Exh. "9," OR, 328.

- [11] See RTC order dated 24 July 1981, OR, 64.
- [12] Order dated 29 April 1982, OR, 98; See also the orders issued on 30 June 1982, OR, 111; 11 August 1982, OR, 114; 30 September 1982, OR, 119; 15 October 1982, OR, 126; 16 November 1982, OR, 131; 14 March 1985, OR, 173.
- [13] OR, 61-62.
- [14] Id., 22, 178.
- [15] Id., 179.
- [16] Id., 180.
- [17] OR, 181.
- [18] Id., 134.
- [19] Id., 188.
- [20] Id., 189.
- [21] Id., 190.
- [22] Rollo, 191.
- [23] Rollo, 160.
- [24] See OR, 204-205.
- [25] Id., 209-210.
- [26] Rollo, 157.
- [27] Rollo, 157-159.
- [28] Id., 159.
- [29] 250 SCRA 661, 665-666 [1995].
- [30] Rollo, 30-31.
- [31] See OR, 204-205.
- [32] See *Shoemart, Inc. v. Court of Appeals*, 190 SCRA 189, 196 [1990] citing *Pasay City Government v. CFI of Manila*, Br. X, 132 SCRA 156 [1984]; *British Traders' Insurance Co., Ltd. v. Commissioner of Internal Revenue*, 13 SCRA 719 [1965].
- [33] See OR, 209-210.
- [34] TSN, 27 March 1987, 55-58.
- [35] See TSN, 13 May 1987, 3-29.
- [36] TSN, 7 April 1987, 4.
- [37] See *De la Paz v. Panis*, 245 SCRA 242, 248-249 [1995], citing *Permanent Concrete Products, Inc. v. Teodoro*, 26 SCRA 332, 336 [1968].
- [38] 75 Phil. 672, 679-680 [1946] citing *Alonso v. Villamor*, 16 Phil., 315; *Banco Español Filipino v. Palanca*, 37 Phil. 921.
- [39] G.R. No. 133876, 29 December 1999.
- [40] 247 SCRA 375, 377-378 [1995]; See also *Northern Cement Corporation v. Intermediate Appellate Court*, 158 SCRA 408, 417 [1988]; *Cruz v. Court of Appeals*, 192 SCRA 209, 222-223 [1990]; *Jacinto v. Court of Appeals*, 198 SCRA 211, 217-218 [1991]; *Pilapil v. Court of Appeals*, 216 SCRA 33, 49 [1992]; *Universal Motors Corporation v. Court of Appeals*, 205 SCRA 449, 456 [1992].

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