ALEXANDER G. ASUNCION, PETITIONER, VS. EDUARDO B. EVANGELISTA AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 133491. October 13, 1999

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for review of the Decision of the respondent Court of Appeals[1] rescinding the Memorandum of Agreement of the parties and assessing against the petitioner damages in the amount of P32,644,420.55.

These are the relevant facts.

Since 1970, private respondent has been operating a piggery on his landholdings in Barangay Loma de Gato, Marilao, Bulacan.[2] Until 1980, he operated the piggery under the trade name Embassy Farms as a single proprietorship.[3] In October 1981, private respondent, his wife, Epifania C. Evangelista, and three (3) others, namely, Angel L. Santos, Jr., Amando C. Martin and Teofilo J. Mesina, organized Embassy Farms, Inc. and registered it with the Securities and Exchange Commission.[4]

Private respondent was the majority stockholder of the corporation, with ninety percent (90%) of the shares in his name. He also served as its president and chief executive officer. Its principal office was established at the piggery facility that had been existing on the landholdings of private respondent in Barangay Loma de Gato, Marilao, Bulacan, consisting of about 104,447 sq. m.[5]

On September 9, 1980, private respondent borrowed five hundred thousand pesos (P500,000.00) from Paluwagan ng Bayan Savings and Loan Association to use as working capital for Embassy Farms. He executed a real estate mortgage on three of his properties in Barangay Loma de Gato, Marilao, Bulacan as security for the loan.[6]

On November 4, 1981, private respondent mortgaged ten (10) titles more in favor of PAIC Savings and Mortgage Bank, formerly First Summa Savings and Mortgage Bank, as security for a loan he obtained from it in the amount of one million seven hundred twelve thousand pesos (P1,712,000.00).[7]

On February 16, 1982, private respondent obtained another loan in the amount of eight hundred forty four thousand six hundred twenty five and seventy eight centavos (P844,625.78) from Mercator Finance Corporation. The loan was secured by a real estate mortgage[8] on five (5) other landholdings of private respondent, all situated in Bulacan. Private respondent obtained these personal loans to provide himself working capital to run the farm and sustain its operations. His aggregate debt exposure totaled three million fifty six thousand six hundred twenty five and seventy eight centavos (P3,056,625.78).

Private respondent defaulted in his loan payments. Of the PAIC loan that should have been paid on an equal quarterly amortization basis for three (3) years from October 31, 1981, eight (8) quarterly amortizations totaling one million five hundred one thousand nine hundred eighty eight and eight centavos (P1,501,988.08) fell due by January 12, 1984. Against this overdue amount, only two hundred eighty thousand seven hundred forty eight and fifty one centavos (P280,748.51) was remitted by private respondent.[9]

By June 1984, private respondent's aggregate debt had ballooned to almost six million pesos (P6,000,000.00)[10] in overdue principal payments, interests, penalties and other financial charges.

On August 2, 1984, petitioner and private respondent executed a Memorandum of Agreement containing the following terms and conditions:

> "MEMORANDUM OF AGREEMENT
>
> KNOW ALL MEN BY THESE PRESENTS:
>
> "This Memorandum of Agreement made and executed this ___ day of July, 1984, here in _____, Metro Manila, by and between -
>
> "ALEXANDER G. ASUNCION, of legal age, Filipino, married to Perlita Asuncion, and resident of No. 7 A. Lake Street, San Juan, Metro Manila, hereinafter referred to as AGA;
>
> "- and -
>
> "EDUARDO B. EVANGELISTA, of legal age, Filipino, married to Epifania C. Evangelista, and resident of No. 113 R. Terona Street, BF Homes, Paranaque, Metro Manila, hereinafter referred to as EBE.
>
> "WITNESSETH:
>
> "WHEREAS, EBE is the registered and absolute owner of nineteen (19) parcels of agricultural lands with an aggregate area of 104,447 square meters more or less, all situated in LOMA DE GATO, Marilao, Bulacan, hereinbelow enumerated by the covering certificates of title and the corresponding area as follows:
>
> "x x x
>
> "WHEREAS, EBE is likewise the controlling interest of 90% to 100% of the paid-in equity of EMBASSY FARMS, INC., which corporation is the registered owner of a piggery, situated in the above enumerated real properties, with stocks, equipment and facilities as shown in the inventory thereof as of July 4, 1984, hereto attached as Schedule "A" and made an integral part hereof;
>
> "WHEREAS, EBE has personal loans with the institutions herein below enumerated correspondingly with the amount of indebtedness, inclusive of interest, up to June 30, 1984:
>
> "a) PAIC BANK P2,758,968.49
>
> "b) PALUWAGAN SAVINGS BANK
>
> 1. CB-IBRD - P558,110.44
>
> 2. Comm'l loan - P835,863.76 1,393,974.20

"c) MERCATOR FINANCE CORP. 1,846,012.96

TOTAL P5,998,955.65

"WHEREAS, EBE has offered to AGA and the latter has accepted the transfer to him by EBE, of the whole of EBE's controlling interest in EMBASSY FARMS, INC. as well as all of his above enumerated parcels of real property together with any and all improvements thereon subject to the following terms and conditions:

"NOW, THEREFORE, for and in consideration of the foregoing, the parties herein agree as follows:

> "1) That EBE hereby cedes, transfers and conveys unto AGA all of his above enumerated parcels of real property together with any and all improvements thereon, and in connection with such transfer, hereby undertakes to execute, sign and deliver any and all documents appropriate for the same, either in favor of AGA

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or his nominees;

"2) That EBE hereby likewise cedes, transfers and conveys in a manner absolute and irrevocable any and all of his shares [of] stocks in the aforesaid EMBASSY FARMS, INC., outstanding [in] his name in the books of incorporation, as well as any and all rights, interests and participation in the said corporation by reason of such shares [of] stocks or otherwise, EBE shall, within a reasonable time, from signing hereof, cause to be so transferred to AGA or his nominee such shares of stocks in said corporation as are held on record by 3rd parties, until the total of such shares so transferred shall constitute 90% of the paid-in equity of said corporation;

"3) That upon signing hereof, AGA shall pay EBE the sum of P1,000,000.00 and the further amount of P500,000.00 within a period of 90 days from and after such signing;

"4) That AGA shall upon signing hereof, make available, as and for operating expenses of the farm or piggery the sum of P300,000.00 to be followed by amount of P300,000.00 within 30 days from such signing and 60 days thereafter, the amount of P150,000.00;

"5) AGA shall assume all of the aforestated obligations of EBE with the institution aforementioned and in connection therewith, he shall make available for payment to PALUWAGAN SAVINGS BANK, upon signing of this 'MEMORANDUM OF AGREEMENT', the amount of P100,000.00, representing 50% of the amount required by the said bank for the restructuring of the aforestated loan of EBE therewith;

"6) That also upon signing of these presents, AGA shall make available for payment to MERCATOR FINANCE CORPORATION the amount of P100,000.00 representing 50% of the amount required by the latter for restructuring of the aforesaid obligation to it of EBE;

"7) That upon signing of this agreement, EBE shall make available for payment to PALUWAGAN SAVINGS BANK the amount of P100,000.00 and the same amount to MERCATOR FINANCE CORPORATION corresponding to the other halves of the aforestated amount called for by the said institution in the preceding paragraphs 5 and 6 hereof;

"8) That upon signing hereof, EBE shall cause the turn-over to AGA of the effective control and management of the aforesaid piggery, from EMBASSY FARMS, over which EBE hereby warrants to have effective control up to and until such turnover to AGA;

"9) EBE hereby warrants not only free and marketable titles to the shares (of) stock of EMBASSY FARMS, INC. that he transfers hereby but also effective control, amounting to ownership of the other shares of stock of such corporation which are outstanding in the books of said corporation in the name of 3rd parties, which shares of stock he could always dispose of therefore [sic] any time and in any manner he may deem proper;

"10) EBE shall secure supplier's credit and feed ingredients, veterinary supplies, etc. up to P500,000.00 and over a period of three (3) months in order to be able to augment the effective operation of the farm;

"11) Within 90 days from signing of this agreement, AGA shall make available for the farm P250,000.00, payable to him within one year from and after the grant of the same, with stated interest of 24% per annum, the proceeds of which to be utilized exclusively for the operation of the farm;

"12) That within a reasonable time from signing of this agreement, AGA shall organize and register a corporation (thereafter referred to as new corporation) with authorized capital stock of exactly P10,000,000.00 with P1,000,000.00 worth of paid-in shares of stock thereof, to be allocated or assigned to EBE [sic] said corporation shall, upon its registration take over all the rights and liabilities of AGA hereunder saving the one stipulated in paragraph no. ___ hereof;

"13) On or before November 1984, AGA shall pay EBE P144,941.88 plus interest at 24% per annum in payment of the feed ingredients, mixed feeds and veterinary supplies mentioned in Schedule "A" which EBE

makes available to aforesaid piggery. He shall likewise reimburse to EBE on or before January 1985, the amount of P200,000.00 with interest at 24% per annum representing advances of the latter to PALUWAGAN SAVINGS BANK and MERCATOR FINANCE CORPORATION pursuant to paragraph 7 above;

"14) That in connection with the aforesaid P1,000,000.00 worth of shares [of] stock in the new corporation, stipulated above to be allocated or assigned to EBE, the parties hereby agree that within eighteen (18) months from and after such assignment or allotment, AGA shall acquire, at par, from EBE 50% thereof, with reservation to acquire the other 50% within a period of 30 months after such allotment, with premium of 50% of par value, if the commitments or targets mentioned in paragraph 17 herein shall have been met;

"15) That for the operation of the farm or piggery, the parties hereby agree that EBE shall serve as President and Chief Executive thereof, at a stated monthly salary of P15,000.00; Alberto M. Ladores as General Manager at P10,000.00 a month, V. Gregorio as Comptroller at P3,500.00 a month;

"16) The parties herein likewise agree to pay, when able, compensation to the following the amounts correspondingly indicated. Thus -

a) V.S. Abadia - Chairperson of the Board at P 10,000.00

b) A.G. Asuncion

c) V.M. de Vera

d) E. Ll. Umali

"17) Being senior operating officers of the farm, EBE and A.M. Ladores, shall submit to AGA, their respective position charter plans and programs for the farm for the next three (3) years, within 30 to 45 days after signing hereof, substantially in the form hereto attached as Schedule "B";

"18) That within the next three (3) months, an Agribusiness Management Company which includes a feedmilling operations shall be established. The officers thereof shall be Alexander G. Asuncion as Chairman, Vicente M. de Vera as Vice-Chairman, Edgardo Ll. Umali as Treasurer, Eduardo B. Evangelista as President and General Manager, and Alberto M. Ladores as Executive Vice-President. This management company shall be contracted for providing the over-all management of EMBASSY FARMS. EDUARDO B. EVANGELISTA and ALBERTO M. LADORES will have shares in the company and shall form the executive management team of said company, for which they will be remunerated in terms of salary and profit sharing.

"IN WITNESS WHEREOF, the parties have hereunto affixed their signatures this 2nd day of August, 1984.

(Sgd.) (Sgd.)

ALEXANDER G. ASUNCION EDUARDO B. EVANGELISTA

SIGNED IN THE PRESENCE OF:

(Sgd.) (Sgd.)

VIOLETA S. ABADIA ALBERTO M. LADORES

x x x".[11]

Upon the execution of the Memorandum of Agreement, petitioner paid private respondent one million pesos (P1,000,000.00) in compliance with paragraph 3 thereof. Although this was unreceipted, private respondent admitted receiving the same when he testified in open court.[12]

In further compliance with paragraph 3, petitioner paid to private respondent the amount of five hundred thousand pesos (P500,000.00) within a ninety-day (90) period in four (4) disbursements, to wit:

Date of Payment Voucher No. Actual Recipient Amount Paid of the Money

Aug. 15, 1984 3468[13]Victoria Gregorio P100,000.00

(for private respondent)

Aug. 23, 1984 3504[14]Victoria Gregorio P100,000.00

(for private respondent)

Aug. 29, 1984 3547[15]Victoria Gregorio P100,000.00

(for private respondent)

Sept. 26, 1984 3765[16]Private Respondent P200,000.00

Total P500,000.00

In compliance with paragraph 4 of the Memorandum of Agreement, petitioner paid private respondent three hundred thousand pesos (P300,000.00),[17] upon its signing on August 2, 1984.

The second installment, in the like amount of three hundred thousand pesos (P300,000.00) which became due between August 2, 1984 and September 2, 1984, was supposed to be remitted by petitioner to private respondent for the purpose of financing the operations of the piggery pursuant to the Memorandum. Instead, petitioner agreed to pay to PAIC Savings & Mortgage Bank the following amounts, to wit:

Date of Payment Voucher No. Actual Recipient Amount Paid of the Money

Aug. 8, 3224[18] PAIC Savings & 1984 Mortgage Bank P200,000.00[19]

Aug. 27, 3310[20] PAIC Savings and 1984 Mortgage Bank P100,000.00[21]

in order to facilitate the restructuring of private respondent's loans with said bank. It is significant to note that under the Memorandum of Agreement, petitioner agreed to shoulder only the loan restructuring fees required by Paluwagan ng Bayan Savings and Loan Association Bank and Mercator Finance Corporation.[22] Nonetheless, petitioner made the above payment in view of the letter of PAIC Savings & Mortgage Bank dated July 6, 1984 approving private respondent's request for the restructuring of his loan.

A third installment in the amount of one hundred fifty thousand pesos (P150,000.00) which was due between September 2, 1984 and November 2, 1984 was paid by petitioner to private respondent in the following tranches:

Date of Payment Voucher No. Actual Recipient Amount Paid of the Money

Sept. 19, 1984 DV No. 3707[23] Victoria Gregorio P 20,000.00

(for Embassy Farms)

Sept. 26, 1984 DV No. 3770[24] Private Respondent P 30,000.00

Oct. 16, 1984 DV No. 3878[25] Private Respondent P100,000.00

Aside from paying the aforesaid amount of three hundred thousand pesos (P300,000.00) to PAIC Savings & Mortgage Bank in compliance with paragraph 5 of the Memorandum of Agreement requiring petitioner to assume

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the loan obligations of private respondent, petitioner also paid four hundred thousand pesos (P400,000.00) in favor of Paluwagan ng Bayan Savings and Loan Association for the restructuring of private respondent's[26] loan and one hundred thousand pesos (P100,000.00)[27] for the restructuring of his loan with Mercator Finance Corporation.

In substantial compliance with paragraph 11 wherein petitioner was further obligated to provide credit in the amount of two hundred fifty thousand pesos (P250,000.00) to be exclusively spent for the operations of the piggery but payable to him within one (1) year from the grant thereof with stated interest of 24% per annum, petitioner made available two hundred thousand pesos (P200,000.00).[28]

Under paragraph 13, petitioner paid one hundred forty four thousand nine hundred forty one pesos and eighty eight centavos (P144,941.88) for feed ingredients, mixed feeds and veterinary supplies included in the inventory turned over by private respondent to petitioner. Petitioner made the payment in the following tranches:

Date of Payment Disbursement/ Cash Voucher Actual Recipient Amount Paid of the Money

March 28, 1985 DV No. 4760[29] private respondent P 37,000.00

July 30, 1985 DV No. 266[30] private respondent P 30,000.00

Aug. 9, 1985 DV No. 337[31] R. Tamaliga P 30,000.00

(for private respondent)

Aug. 16, 1985 DV No. 379[32] R. Tamaliga P 30,000.00

(for private respondent)

Aug. 23, 1985 DV No. 411[33] R. Tamaliga P 17,941.88

(for private respondent)

TOTAL P144,941.88

Over and above all the foregoing amounts paid by petitioner to private respondent in accordance with his undertakings under the Memorandum of Agreement, he also paid management bonuses to private respondent, Vicente M. de Vera and Edgardo Ll. Umali, in the amounts of fifty thousand pesos (P50,000.00), thirty thousand pesos (P30,000.00) and twenty thousand pesos (P20,000.00), respectively.[34] The total amount thus paid by petitioner to private respondent and invested in Embassy Farms, Inc. as of August 1985, or in a span of a year from the time that they executed the Memorandum of Agreement, was three million one hundred ninety four thousand nine hundred forty one and eighty eight centavos (P3,194,941.88).

For his part, private respondent was obligated under the Memorandum of Agreement to "execute, sign and deliver any and all documents" necessary for the transfer and conveyance of several parcels of land he owned but mortgaged with the banks and financial institutions and to "cede, transfer and convey in a manner absolute and irrevocable any and all of his shares of stocks in Embassy Farms, Inc." as well as "cause to be so transferred to petitioner or his nominee such shares of stock until they constitute 90% of the paid-in equity of said corporation"[35] By December 1985, however, more than a year after the signing of the Memorandum of Agreement, the landholdings of private respondent which were mortgaged to Paluwagan ng Bayan Savings and Loan Association, PAIC Savings and Mortgage Bank and Mercator Finance Corporation still remained titled in his name. Neither did he inform said mortgagees of the transfer of his lands. As to the shares of stock, it was incumbent upon private respondent to endorse and deliver them to petitioner so he could also have them transferred in his name, but private respondent never did. He refused to honor his obligations under the

Memorandum of Agreement and even countered with a demand letter of his own. He accused petitioner of having failed to restructure his loans with Paluwagan ng Bayan Savings and Loan Association, PAIC Savings and Mortgage Bank and Mercator Finance Corporation and blamed him for the foreclosure of his landholdings, including the piggery site of Embassy Farms, Inc.

On April 10, 1986, petitioner filed in the Regional Trial Court a complaint for rescission of the Memorandum of Agreement with a prayer for damages.[36]

On July 1, 1994, the trial court rendered judgment in favor of private respondent. It ruled:

> "The principal issue in this case is whether it is [petitioner] or [private respondent] who reneged on their obligations under the Memorandum of Agreement.
>
> "Based upon the pleadings and the evidence, it is clear that [petitioner] failed to comply with his undertaking under paragraph 5 of the Memorandum of Agreement to assume all of the obligations of [private respondent] with the PAIC Bank, the Paluwagan Savings Bank and the Mercator Finance Corporation amounting in the aggregate to P5,998,955.65. In addition [petitioner] also failed to comply with his obligations under paragraph 12 and 18 of the Agreement x x x.
>
> "x x x
>
> "The Memorandum of Agreement is essentially a contract of sale where [private respondent] agreed to sell his nineteen parcels of land and his shares in Embassy Farms, in consideration, among others, of the assumption by [petitioner] of [private respondent's] loans with three financial institutions. As a matter of law and practice, it is incumbent upon the vendee to first comply with his obligations under the contract of sale before he can demand performance by the vendor. In a contract of sale, the vendor is not required to deliver the thing sold until the price is paid. x x x
>
> "Consequently, since [petitioner], at the time of the commencement of the action, had admittedly not complied with his obligations under the Agreement, he had no right to demand compliance on the part of [private respondent] with the latter's obligations or to ask rescission with damages. If there is anybody who has the right to seek rescission and ask for damages, it is certainly [private respondent] - the injured party - who in fact has opted for rescission. Accordingly, the Court holds that [private respondent] is entitled to rescission of the Agreement.
>
> "x x x
>
> "Since it was [petitioner] who failed to perform his obligations as vendee under the Agreement and there is no showing that [private respondent] refused or was not in a position to comply with is own undertakings, the latter is entitled to recover damages. The evidence shows that [private respondent] actually formally demanded compliance by [petitioner] with his obligations in a letter dated January 31, 1986."[37] [Emphasis ours.]

The dispositive portion of the foregoing decision reads as follows:

> "WHEREFORE, this Court hereby declares the Memorandum of Agreement dated 2 August 1984 rescinded and of no further force and effect.
>
> "This Court likewise orders the payment by the plaintiff to the defendant of the following:
>
> "(1) P32,644,420.55 as actual or compensatory damages arising from the rescission of the Memorandum of Agreement with legal rate of interest at 6% per annum until fully paid;
>
> "(2) P887,300.00 for the repayment of the loan granted by the defendant to the plaintiff, with interest at the stipulated rate of 36% per annum until fully paid; and

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"(3) P100,000.00 as attorney's fees.

"No pronouncement as to costs.

"SO ORDERED."[38]

On July 12, 1994, a copy of the decision of the trial court was sent by registered mail to petitioner's counsel of record, Atty. Romeo Z. Comia.

However, unknown to petitioner, Atty. Comia died while the case was still pending in the trial court.

On August 25, 1994, private respondent filed in the trial court a Notice of Death of petitioner's counsel, with a request that a copy of its decision be personally served on petitioner.

On August 31, 1994, the trial court issued an Order stating that the registry receipt evidencing the mailing of a copy of its decision to petitioner did not bear any date. It nonetheless denied the motion of private respondent for personal service of a copy of its decision on petitioner.

On September 12, 1994, private respondent filed by registered mail a Motion for Execution.

On September 28, 1994, the trial court granted said motion.

On October 3, 1994, private respondent filed an Ex Parte Motion for Appointment of Special Sheriff. Accordingly, Deputy Sheriff Solminio de las Armas was appointed by the trial court.

On October 6, 1994, the trial court issued a writ of execution against petitioner.

On October 20, 1994, petitioner filed in the trial court a Notice of Appeal, Substitution of Counsel, and an Urgent Motion to Recall the Order of Execution and Quash the Writ of Execution.

On October 28, 1994, the trial court issued an Order suspending the execution of its decision.

On November 9, 1994, the trial court issued an Order stopping the execution proceedings and approving petitioner's appeal.

Both petitioner and private respondent repaired to the Court of Appeals. Petitioner prayed for the reversal of the decision of the trial court while private respondent assailed the last two orders of the trial court dated October 28 and November 9, 1994.

On February 2, 1998, respondent Court of Appeals affirmed the decision of the trial court and ordered its immediate execution. The orders dated October 28 and November 9, 1994 halting execution proceedings were nullified. The respondent Court of Appeals held, first, as concerns the undated registry receipt:

> "The rule that if no date appears in the registry receipt there is no period within which to reckon the fifteen-day reglementary period to appeal is however subject to waiver. The motion for a writ of execution and the corresponding order for the enforcement of the writ of execution were duly served upon [petitioner] yet he failed to question the irregularity before filing a notice of appeal."[39]

and second, as concerns the nature of the Memorandum of Agreement:

> "[Petitioner] contended that the MOA is actually a joint venture agreement.
>
> "x x x

"The element that there be mutual right of control is wanting in the MOA entered into between [petitioner] and [private respondent]. Under Condition No. 9, [private respondent] shall transfer the effective control, amounting

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to ownership of the Embassy Farms, Inc. to [petitioner]. The creation of a new company by [petitioner] under Conditions No. 12 and 15 wherein [private respondent] was to be appointed as President and Chief Executive does not partake of the nature of joint venture by [petitioner] as the absolute owner and [private respondent] who is to be remunerated only in terms of salaries and profit sharing, the later being a usual fringe benefit in private associations.

"Instead, the MOA is akin to a contract of sale as correctly held by the trial court x x x.

"x x x."[40]

On February 2, 1998, petitioner filed a Motion for Reconsideration of the foregoing decision.

On March 17, 1998, private respondent filed an Opposition thereto with an Ex-parte Motion for Issuance of a Writ of Attachment.

On April 17, 1998, respondent Court of Appeals issued a Resolution[41] denying petitioner's Motion for Reconsideration and noting private respondent's Ex-Parte Motion for Issuance of a Writ of Attachment.

Hence this petition raising the following issues:

> "1. WHETHER OR NOT THE JULY 1, 1994 DECISION OF THE REGIONAL TRIAL COURT WAS ALREADY FINAL AND EXECUTORY WHEN ASUNCION FILED HIS NOTICE OF APPEAL.
>
> "2. WHETHER OR NOT THE MEMORANDUM OF AGREEMENT EXECUTED BETWEEN ASUNCION AND EVANGELISTA WAS IN THE NATURE OF A CONTRACT OF SALE OR A JOINT VENTURE.
>
> "3. WHETHER IT WAS ASUNCION OR EVANGELISTA WHO FIRST RENEGED OR FAILED TO COMPLY WITH HIS CORRESPONDING OBLIGATIONS UNDER THE MEMORANDUM OF AGREEMENT."[42]

The petition is meritorious.

One. The respondent Court of Appeals erred in holding that the decision of the trial court dated July 1, 1994 had become final and executory. It is established that petitioner was not aware of his counsel's death while the case was pending in the trial court. He could not have known, therefore, that a copy of the trial court's decision was sent by registered mail to his counsel. Indeed, it was private respondent who notified the trial court of the death of petitioner's counsel and who requested that a copy of the decision be served personally to petitioner. His request was, however, denied.

While petitioner was furnished a copy of the decision by mail, the registry receipt evidencing its date of mailing did not bear a date. There was, therefore, no date from which to reckon the reglementary period to appeal. That petitioner received a copy of the motion and order for writ of execution should not be taken as a waiver of his right to appeal. Not only is petitioner a non-lawyer who could not be expected to know the legal consequences of the motion and the order, but the case is of such merit that it deserves a liberal interpretation of the rules in the interest of justice.

Two. The respondent Court of Appeals ruled that the Memorandum of Agreement was a contract of sale whereby private respondent sold his piggery, Embassy Farms, Inc., with the land on which it stood and his shares of stock therein, in consideration of the monetary equivalent of his aggregate debt obligations to be assumed and paid by petitioner. It found that petitioner failed to assume private respondent's loans with Paluwagan ng Bayan Savings & Loan Association, PAIC Savings & Mortgage Bank and Mercator Finance Corporation. Consequently, rescission of the Memorandum of Agreement was ordered and private respondent was awarded more than thirty

two million pesos (P32,000,000.00) in compensatory damages, which included the alleged proceeds from the sale of hogs during the period of time that private respondent was replaced as president and chief executive officer as well as the value of his landholdings which were foreclosed because of his failure to pay his debt obligations with the said banks.

After a meticulous perusal of the voluminous records of this case, we hold that the respondent Court of Appeals grossly misappreciated the facts and the applicable law. Under the Memorandum of Agreement, it was the obligation of private respondent to cede and convey, in a manner absolute and irrevocable, his real properties and stockholdings in the farm in favor of petitioner in exchange for, among others, the outright payment by petitioner of a lump sum, the continuous operation of the piggery at his expense and the assumption by petitioner of all the financial obligations of private respondent upon their restructuring. The records show that while petitioner paid private respondent the stipulated lump sum and gave more money for the restructuring of private respondent's loans and for the continued operation of Embassy Farms, Inc., private respondent never executed a deed of sale with assumption of mortgage over his landholdings, and although he endorsed in blank his certificates of stock, he never delivered them to petitioner to effectuate their valid transfer.

Private respondent admitted in open court that he refused to comply with his twin obligations to execute the necessary documents of conveyance for the mortgaged parcels of land and to deliver the certificates of stock in Embassy Farms in favor of petitioner. He stated on the witness stand, thus:

> "ATTY. MECIAS:
>
> "Q Now, there is also a mention of nineteen (19) parcels of land as being owned by you as situated in Don Marigato, Marilao, Bulacan and do you know where are the certificates of title over these parcels of land?
>
> "WITNESS:
>
> "A This certificate of title mentioned these are all in the possession of PAEC (sic) Bank and MERCATOR Finance Corporation.
>
> "ATTY. MECIAS:
>
> "Q Were there any titles given or delivered to Paluwagan Savings Bank?
>
> "A There was one (1), but when I was about to pay the loan they were returned to me.
>
> "Q In paragraph 1 of Exhibit 'C' you undertook to cede, transfer and convey to Asuncion, the plaintiff the execution of said parcels of property together with improvements in connection with such transfer you undertook to execute, sign and deliver the whole document appropriate on the same in favor of the plaintiff Asuncion or his nominees. Did you actually execute and sign, deliver that document as mentioned here?
>
> "A May I have an [sic] specific document. What kind of document?
>
> "Q Appropriate conveyance of sale?
>
> "A The only document I know which mention (sic) here is the memorandum of agreement which we sign together with the plaintiff.
>
> "ATTY. MECIAS:
>
> "Q I am referring to the document which you have to execute in favor of Alexander G. Asuncion to cede, transfer and convey those property. Did you execute the document?
>
> "WITNESS:

> "A I did not.
>
> "Q What was your reason for not executing those documents?
>
> "A I did hold on to convey those documents particularly the stock certificate because I was waiting for the plaintiff Asuncion to comply with his obligation to assume all my loan with the three (3) financial institutions."[43]

It is specious for private respondent to justify his refusal to execute the deed of conveyance on the alleged petitioner's failure to assume his loans with the three financial institutions. It is an established fact that petitioner made, in behalf of private respondent, loan payments in the amount of four hundred thousand pesos (P400,000.00) to Paluwagan ng Bayan Savings and Loan Association, one hundred thousand pesos (P100,000.00) to Mercator Finance Corporation and three hundred thousand pesos (P300,000.00) to PAIC Savings & Mortgage Bank. These payments, which were made in addition to outright sums of money given by petitioner to private respondent and to the farm for its operation, prove petitioner's willingness and readiness to assume private respondent's obligations.

It is true that petitioner stopped making further loan payments to the banks, causing them to foreclose private respondent's mortgaged properties. He could hardly, however, be faulted for stopping his further exposure, considering that private respondent has reneged with his obligation to cede his lands and his shareholdings.

Private respondent is clearly obliged under the Memorandum of Agreement to execute the deed of conveyance with assumption of mortgage in favor of petitioner. Had such deed been executed, the interests of both petitioner and private respondent would have been simultaneously secured, the former, as regards his ownership rights over the subject lands sold to him, and the latter, as regards the substitution, in his place, of petitioner as the new debtor in his loan obligations with Paluwagan ng Bayan Savings and Loan Association, PAIC Savings and Mortgage Bank and Mercator Finance Corporation. Private respondent, however, failed and refused, despite demands, to execute this legal document. It follows that petitioner could not be faulted when he desisted from further paying private respondent's debts.

It strikes us as strange that the respondent court failed to appreciate these facts which were established by overwhelming evidence. The very evidence of the private respondent showed that petitioner did make the payments for the restructuring of the former's debts. In light of these payments, private respondent errs in insisting that petitioner cannot be said to have assumed his loan obligations because petitioner never executed a formal assumption of mortgage. It is private respondent's obligation under the Memorandum of Agreement to execute a deed of sale with assumption of mortgage, and he cannot insist that it was petitioner's obligation to execute a formal assumption of mortgage independent of and distinct from the deed of sale. Under private respondent's inequitous thesis, petitioner would have shelled out millions of pesos to pay his loans and save his lands from foreclosure, only to leave him with nothing in exchange therefor.

Three. The impugned Decision rests on the conclusion that the parties' Memorandum of Agreement is a contract of sale where a price certain is paid in exchange for a determinate thing that is sold and delivered. An examination of the Memorandum of Agreement, however, will show that it constitutes not a mere isolated, simple, short-term business deal calling for the outright sale and purchase of land and shares of stocks belonging to private respondent, but a set of chronological, reciprocal and conditional obligations that both petitioner and private respondent must faithfully comply with to ensure the full enforcement of all its stipulations.

The Memorandum of Agreement does not merely stipulate that petitioner has purchased private respondent's landholdings and shares of stock in Embassy Farms, Inc. for the price equivalent to private respondent's total outstanding loans which petitioner shall assume. The Memorandum of Agreement spells out a much more

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complicated, long-term business arrangement involving the transfer of Embassy Farms, Inc. to petitioner, the restructuring of private respondent's loans, the financing by petitioner of the continued operations of the piggery, the organization of a new corporation to replace Embassy Farms, Inc. as well as an agribusiness management company, all at the expense of petitioner, and the payment of specified compensation packages to certain officers of Embassy Farms, Inc. In fine, petitioner and private respondent entered into what the law regards as reciprocal obligations. Of such specie of legal contracts, Tolentino says:

> "x x x Reciprocity arises from identity of cause, and necessarily the two obligations are created at the same time.
>
> "Reciprocal obligations, therefore, are those which arise from the same cause, and in which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other. They are to be performed simultaneously, so that the performance of one is conditioned upon the simultaneous fulfillment of the other."[44]

Article 1191 of the Civil Code governs the situation where there is non-compliance by one party in case of reciprocal obligations. It provides:

> "The power to rescind the obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
>
> "The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.
>
> "The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.
>
> "This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1385 and 2388 and the Mortgage Law."
>
> The effect of rescission is also provided in the Civil Code in Article 1385:
>
> "Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest, consequently, it can be carried out only when he who demands rescission can return whatever he may be obligated to restore.
>
> "Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith.
>
> "In this case, indemnity for damages may be demanded from the persons causing the loss."

Private respondent admitted in open court that petitioner paid him the initial sum of one million pesos (P1,000,000.00) upon the signing of the Memorandum of Agreement as well as various sums of money as fees for the restructuring of his loans. Thereupon, private respondent was obligated to execute a deed of sale with assumption of mortgage, both in compliance with the Memorandum of Agreement and to ensure the legal efficacy of petitioner's promise to assume his loan obligations.

We find that private respondent failed to perform his substantial obligations under the Memorandum of Agreement. Hence, petitioner sought the rescission of the Memorandum of Agreement and ceased infusing capital into the piggery business of private respondent. Private respondent later justified his refusal to execute any deed of sale and deliver the certificates of stock by accusing petitioner of having failed to assume his debts. We hold that private respondent's insistence that petitioner execute a formal assumption of mortgage independent and separate from his own execution of a deed of sale is legally untenable, considering that a recorded real estate

mortgage is a lien inseparable from the property mortgaged and until discharged, it follows the property.[45] In his testimony, private respondent stated that he would be committing economic suicide if he executed a deed of sale because he would then be transferring his lands to petitioner without the latter first assuming his loan obligations. This posturing is puerile. Even without a formal assumption of mortgage, the mortgage follows the property whoever the possessor may be. It is an elementary principle in civil law that a real mortgage subsists notwithstanding changes of ownership and all subsequent purchases of the property must respect the mortgage, whether the transfer to them be with or without the consent of the mortgagee.[46]

Four. Prescinding from these premises, we hold that the award of thirty two million six hundred forty-four thousand four hundred twenty pesos and fifty five centavos (P32,644,420.55) in damages to private respondent is totally baseless. The trial court and the respondent court computed the award in the following manner:

> "x x x [T]his Court finds that [private respondent] is entitled to the following actual damages:
>
> "I. LAND
>
> Value of Land
> Mortgaged to and
> Foreclosed by
> Mercator P2,726,100.00
>
> Less: Mortgage
> as of 8/2/84 1,846,012.96 P 880,087.04
> Value of Land
>
> Mortgaged to and
> Foreclosed by
> PAIC 6,736,180.00
>
> Less: Mortgage
> as of 8/2/84 2,758,968.49 P3,977,211.04
>
> II. STOCKS AND FACILITIES
>
> Livestock P2,889,998.00
> Feedmill
> Machinery 70,000.00
> Feed Ingredients 144,941.88
>
> Less: Payments
> made 103,941.88 41,000.00
>
> Feed Mixer 2,128.00
>
> Drugs Inventory 35,258.00
>
> III. EARNINGS OF
>
> EMBASSY FARMS 27,748,738.00
>
> P35,644,420.55
>
> "From the aforesaid aggregate amount of P35,644,420.55 should be deducted the payments made by [petitioner] totaling P3,000,000.00. Thus, the net effect is that [private respondent] is entitled to the amount of P32,644,420.55, with interest at the legal rate of 6% until fully paid.

> "In addition, [private respondent] is entitled to be paid the amount of P500,000.00 which he granted as a loan to [petitioner] outside of the Memorandum of Agreement. What is due to [private respondent] after deducting the payments made by [petitioner] and adding the interest is as follows:
>
> Loan of [private
> respondent] to
> [petitioner] P500,000.00
>
> Less: Payments made 270,000.00 P230,000.00
>
> Add: Stipulated
> interest (36% p.a.
> up to 1/31/93 540,000.00
>
> Add: Stipulated
> interest up to
> 6/30/94 117,300.00 657,300.00
>
> P887,300.00
>
> "The circumstances of this case indicate that [petitioner] acted in a wanton, fraudulent, reckless or malevolent manner within the purview of Article 2232 of the Civil Code. Despite the fact that [petitioner] had not performed his obligations as a vendee, he pre-empted [private respondent] by filing this action for rescission, ousted [private respondent] as a director of Embassy Farms, Inc., transferred the shares of [private respondent] to himself and his nominees, and assumed full control and management of Embassy Farms, Inc. until he was enjoined by Court in an order issued by then Presiding Judge Zenaida Baltazar dated July 30, 1987. Considering the bad faith and malevolence shown by [petitioner] in his conduct towards [private respondent] in the performance of his obligations under the Memorandum of Agreement, this Court, by way of example and correction for the public good, holds that [private respondent] is entitled to exemplary damages in the amount of P500,000.00.
>
> "This Court likewise finds that [private respondent] is entitled to attorney's fees and expenses of litigation. Considering the complexity and difficulty of this case and the protracted proceedings, this Court awards attorney's fees and expenses of litigation in the amount of P350,000.00,"[47]

summarized in the following dispositive portion:

> "WHEREFORE, this Court hereby declares the Memorandum of Agreement dated 2 August 1984 rescinded and of no further force and effect.
>
> "This Court likewise orders the payment by the plaintiff to the defendant of the following:
>
> "(1) P32,644,420.55 as actual or compensatory damages arising from the rescission of the Memorandum of Agreement with legal rate of interest at 6% per annum until fully paid;
>
> "(2) P887,300.00 for the repayment of the loan granted by the defendant to the plaintiff, with interest at the stipulated rate of 36% per annum until fully paid; and
>
> "(3) P100,000.00 as attorney's fees.

"No pronouncement as to costs.

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"SO ORDERED."[48]

We, therefore, strike down the foregoing award of actual or compensatory damages and attorney's fees.

Petitioner was further ordered to pay twenty seven million seven hundred forty-eight thousand seven hundred thirty eight pesos (P27,748,738.00) representing earnings of Embassy Farms, Inc. as additional compensatory damages. The only piece of evidence supporting the award is private respondent's Exh. "29"[49] which was signed as certified correct by no one else but private respondent. It bore no reference to any receipt, voucher or any other document signed by petitioner or anyone in his behalf, and it even states that it was Vicky Gregorio, not private respondent, who was present during the alleged sales of hogs at the piggery. Exh. "29" was duly objected to and its contents vehemently denied by petitioner but to no avail. This Court cannot countenance the grant of such an unjustified and unconscionable amount of damages on the basis of nothing but a self-serving and hearsay document. As we have ruled in the case of Lufthansa German Airlines vs. CA, et al.:[50]

> "Actual or compensatory damages cannot be presumed, but must be duly proved and proved with reasonable degree of certainty. A court cannot rely on speculations, conjectures or guesswork as to the fact and the amount of damages, but must depend upon competent proof that they have (been) suffered and on evidence of the actual amount thereof."

Neither may this Court allow the grant of damages corresponding to the value of the land foreclosed by private respondent's creditors upon the latter's failure to make his loan payments. Private respondent, in his amended counterclaim, prayed for the rescission of the Memorandum of Agreement. In case of rescission, while damages may be assessed in favor of the prejudiced party, only those kinds of damages consistent with the remedy of rescission may be granted, keeping in mind that had the parties opted for specific performance, other kinds of damages would have been called for which are absolutely distinct from those kinds of damages accruing in the case of rescission. The vintage but still sound teaching of the case of Rios and Reyes v. Jacinto, Palma y Hermanos, S.C.,[51] a 1926 case, is apropos:

> "x x x [A]n obligation may be resolved if one of the obligors fails to comply with that which is incumbent upon him; and it is declared that the person prejudiced may elect between exacting the fulfillment of the obligation (specific performance) and its resolution, with compensation for damage and payment of interest in either case. x x x It will be noted that he is not entitled to pursue both of these inconsistent remedies; and slight advertence to the logic of the situation will teach us that, in estimating the damages to be awarded in case of rescission, those elements of damages only can be admitted that are compatible with the idea of rescission; and of course in estimating the damages to be awarded in case the lessor elects for specific performance only those elements of damages can be admitted which are compatible with the conception of specific performance. It follows that damages which would only be consistent with the conception of specific performance cannot be awarded in an action where rescission is sought.
>
> "x x x Now it is an inseparable incident of resolution or rescission that the parties are bound to restore to each the thing which has been the subject matter of the contract, precisely as in the situation where a decree of nullity is granted. In the common case of the resolution of a contract of sale for failure of the purchaser to pay the stipulated price, the seller is entitled to be restored to the possession of the thing sold, if it has already been delivered. But he cannot have both the thing sold and the price which was agreed to be paid, for the resolution of the contract has the effect of destroying the obligation to pay the price. Similarly, in the case of the resolution, or rescission of a contract of lease, the lessor is entitled to be restored to the possession of the leased premises, but he cannot have both the possession of the leased premises for the remainder of the term and the rent which the other party had contracted to pay. The termination of the lease has the effect of destroying the obligation to pay rent for the future."

Compensatory damages consisting of the value of private respondent's foreclosed landholdings would have been

proper in case he resorted to the remedy of specific performance, not rescission. Since his counterclaim prayed for the rescission of the Memorandum of Agreement, it was grave error on the part of the respondent court to have enforced said agreement by ordering petitioner to pay him the value of the landholdings.

This Court holds, in fine, that the Memorandum of Agreement entered into by petitioner and private respondent should indeed be rescinded. As aforediscussed, the respondent appellate court erred in assessing damages against petitioner for his refusal to fully pay private respondent's overdue loans. Such refusal was justified, considering that private respondent was the first to refuse to deliver to petitioner the lands and certificates of stock that were the consideration for the almost six million pesos in debt that petitioner was to assume and pay.

Five. Nevertheless, neither is petitioner entitled to recover the amount of P3,194,941.88 that he spent as lump sum payment, as feeds and veterinary costs for the continued operation of the piggery and as loan restructuring fees. Mutual restitution is required in rescission, but this presupposes that both parties may be restored in their original situation.[52] In this case, it cannot be gainsaid that an essential part of the consideration of the amount of P3,194,941.88 paid by the petitioner was taking over the effective management of Embassy Farms, Inc. Mutual restitution would require, thus, that petitioner restore private respondent in the effective management of said corporation and that private respondent return said amount to petitioner. This, however, has been rendered impossible by the foreclosure of the landholdings of private respondent and the shutdown of the piggery's operations. Private respondent has lost in his venture, and while he is not blameless for his unfortunate fate, to still order him to remit a considerable amount of money without receiving anything in return would certainly run counter to the essence of rescission as a remedy in equity.[53]

WHEREFORE, the instant petition for review is hereby GRANTED. The Decision of the Court of Appeals dated February 2, 1998 is REVERSED and SET ASIDE. The Memorandum of Agreement entered into by petitioner and private respondent on August 2, 1984 is hereby DECLARED RESCINDED. No damages. No costs.

SO ORDERED.

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

Davide, Jr., C.J., (Chairman), and Kapunan, J., on official business abroad.

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[1] CA-G.R. CV No. 49743.

[2] TSN dated July 24, 1987, p. 6.

[3] Id., p. 14.

[4] Ibid., Articles of Incorporation of Embassy Farms, Inc. marked as Exh. “A” for Plaintiff and as Exh. “4-A” for Defendant.

[5] Articles of Incorporation, supra.

[6] Real Estate Mortgage marked as Exh. “18”.

[7] Mortgage marked as Exh. "16".

[8] Mortgage marked as Exh. "17".

[9] Letter dated September 12, 1984 signed by Emily R. Varua, Senior Vice President, Marketing Group, PAIC Savings & Mortgage Bank marked as Annex "H".

[10] The exact amount of P5,998,955.65 can be found on page 2 of the Memorandum of Agreement, marked as Exh. "15" for Defendant and as Exh. "C" for Plaintiff. This was confirmed by private respondent during the direct examination conducted by his counsel in this wise:

> "Q I will call your attention to the second whereas clause of the Memorandum of Agreement x x x which reads: 'Whereas, Eduardo Evangelista has personal loans with the institution herein below enumerated, correspondingly, with the amount of indebtedness inclusive of interest up to June 30, 1984 and the total of which is P5,998,955.65.' Was that your indebtedness with these financial institution[s] x x x?
>
> "A Yes, sir as far as I can remember that was the correct figure." (TSN dated July 24, 1987, p. 7)

[11] Marked as Exh. "C" for Plaintiff and as Exh. "1" for Defendant.

[12] Private respondent testified, thus:

> "ATTY. COMIA
>
> "Q What is the truth now in your honest opinion. How much was actually all in all paid by Alexander Asuncion the plaintiff in this case on account of this memorandum of agreement.
>
> "x x x
>
> "WITNESS
>
> "A He has been claiming he has spent around P3,000,000.00 but payments for this amount were made to several parties and not to me. All I received from him as downpayment per memorandum of agreement is more than P1M, I think P1.5M or P1.25M, your Honor." (TSN dated July 27, 1987, p. 39)
>
> "ATTY. COMIA:
>
> "Q Last time you testified that you have received from the plaintiff in this case under the memorandum of agreement a sum between P1,500,000.00 to P1,750,000.00?
>
> "A More or less as downpayment under the memorandum of agreement.
>
> "Q Was this paid to you just after the signing of the memorandum of agreement?
>
> "A On three occasions after the signing of the memorandum of agreement, sir." (TSN dated July 28, 1987, p. 14)

[13] Exh. "X", signed by Victoria Gregorio, the treasurer of Embassy Farms, Inc., who received the amount in behalf of private respondent; signature is marked as Exh. "X-1".

[14] Exh. "BB", also signed by Victoria Gregorio for private respondent; signature marked as Exh. "BB-1".

[15] Exh. "CC" signed by Victoria Gregorio for private respondent; signature marked as Exh. "CC-1".

[16] Exh. "S". The voucher bears the signature of private respondent, marked as Exh. "S-1".

[17] Cash Voucher No. 0003 dated July 13, 1984 marked as Exh. "V", signed by private respondent; signature marked as Exh. "V-1".

[18] Exh. "T".

[19] PAIC Savings & Mortgage Bank Receipt No. 11279-A dated August 9, 1984 marked as Exh. "I".

[20] Exh. "U".

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[21] PAIC Savings & Mortgage Bank Receipt No. 11405-A dated August 28, 1984 marked as Exh. "H".

[22] Paragraph Nos. 5 and 6 of the Memorandum of Agreement.

[23] Exh. "AA", signed by Victoria Gregorio for private respondent; signature marked as Exh. "AA-1".

[24] Exh. "Z", signed by private respondent; signature marked as Exh. "Z-1".

[25] Exh. "DD", signed by private respondent; signature marked as Exh. "DD-1".

[26] Disbursement Voucher No. 4284 dated December 26, 1984 marked as Exh. "KK". An employee of Paluwagan ng Bayan Savings and Loan Association signed the voucher to prove receipt of the amount; signature marked as Exh. "KK-1".

[27] Disbursement Voucher No. 4047 dated November 9, 1984 marked as Exh. "EE", signed by private respondent; signature marked as Exh. "EE-1".

[28] Cash Voucher No. 0004 dated July 13, 1984 marked as Exh. "W", signed by private respondent; signature marked as Exh. "W-1".

[29] Exh. "FF", signed by private respondent; signature marked as Exh. "FF-1".

[30] Exh. "GG", signed by private respondent; signature marked as Exh. "GG-1".

[31] Exh. "HH". The signature of R. Tamaliga, driver of private respondent who received the amount in his behalf, is marked as Exh. "HH-1".

[32] Exh. "II", signed by R. Tamaliga for private respondent; signature marked as Exh. "II-1".

[33] Exh. "JJ", signed by R. Tamaliga for private respondent; signature marked as Exh. "JJ-1".

[34] Disbursement Voucher No. 3640 dated September 13, 1984 marked as Exh. "Y", signed by private respondent; signature marked as Exh. "Y-1".

[35] Paragraph Nos. 1 and 2 of the Memorandum of Agreement.

[36] Docketed as Civil Case No. 53335 and raffled to Branch 70, Regional Trial Court, Pasig, Metro Manila.

[37] Decision of the Regional Trial Court dated July 1, 1994, pp. 6-8, Rollo, pp. 167-169.

[38] Id., p. 11, Rollo, p. 172.

[39] Decision, supra, p. 12, Rollo, p. 69.

[40] Id., pp. 12-13, Rollo, pp. 69-70.

[41] Rollo, p. 75.

[42] Petition dated May 15, 1998, p. 12, Rollo, p. 19.

[43] TSN dated March 1, 1990, pp. 9-11.

[44] Tolentino, Arturo, Commentaries and Jurisprudence on the Civil Code of the Philippines, Volume Four, 1985 edition, p. 175.

[45] Id., Volume Five, 1992 edition, p. 555.

[46] Ibid.

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[47] Decision of the Regional Trial Court dated July 1, 1994, pp. 6-11, Rollo, pp. 167-172. Emphasis ours.

[48] Id., p. 11, Rollo, p. 172.

[49] Defendant's Formal Offer of Documentary Evidence, p. 82; entitled, "SALES OF HOGS STARTING ON JULY 4, 1984 WHEN ALEXANDER G. ASUNCION (AGA) ASSIGNED MS. VICKY GREGORIO AS HIS COMPTROLLER AT EMBASSY FARMS, INC. AT LOMA DE GATO, MARILAO, BULACAN WHICH WAS TWENTY-NINE (29) DAYS EARLIER THAN THE SCHEDULED TURN OVER (AUGUST 2, 1984) TO HIM BY EDUARDO B. EVANGELISTA (EBE) OF THE EFFECTIVE CONTROL AND MANAGEMENT OF SAID FARM", dated November 21, 1990.

[50] 243 SCRA 600, 615 (1995), citing Dichoso v. CA, 192 SCRA 169 (1990)and Hua Liong Electric Corp. v. Reyes, 145 SCRA 713 (1986). Lufthansa is cited in Del Rosario v. Court of Appeals, 267 SCRA 158, 170-171 (1997).

[51] 49 Phil. 7, 12-13 (1926).

[52] Grace Park Engineering Co., Inc. v. Dimaporo, 107 SCRA 266 273 (1981).

[53] Tolentino, supra, pp. 570-571.

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