

SPOUSES ARTURO AND NICETA SERRANO, PETITIONERS, VS. COURT OF APPEALS AND HEIRS OF EMILIO S. GELI, RESPONDENTS.*G.R. No. 133883. December 10, 2003*

Ponente: CALLEJO, SR., J.

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Before us is a petition for review on certiorari under Rule 45 of the Rules of Court of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 45573 setting aside the Order of the Regional Trial Court of Quezon City in Civil Case No. Q-24790 with motion of herein petitioners, Spouses Arturo and Niceta Serrano, for the issuance of an alias writ of execution.[2]

The Antecedents

The Spouses Serrano were the owners of a parcel of land as well as the house constructed thereon located at Road 4, Project 6, Diliman, Quezon City, covered by Transfer Certificate of Title No. 80384, and a parcel of land located in Caloocan City, covered by Transfer Certificate of Title No. 15191. The couple mortgaged the said properties in favor of the Government Service Insurance System (GSIS) as security for a loan of P50,000. By June 1969, the couple was able to pay only the amount of P18,000.

On June 23, 1969, the Spouses Serrano, as vendors, and Spouses Emilio and Evelyn Geli, as vendees, executed a deed of absolute sale with partial assumption of mortgage over the parcel of land covered by TCT No. 80384 and the house thereon for the price of P70,000. The Spouses Geli paid the amount of P38,000 in partial payment of the property, the balance of P32,000 to be paid by them to the GSIS for the account of the Spouses Serrano. The Spouses Geli thereafter took possession of the property. In the meantime, Evelyn Geli died intestate and was survived by her husband Emilio Geli and their children.

However, Emilio Geli and his children failed to settle the amount of P32,000 to the GSIS. The latter forthwith filed a complaint against Emilio Geli and his children with the Regional Trial Court of Quezon City for the rescission of the deed of absolute sale with partial assumption of mortgage. The defendants therein alleged, by way of special defense, that the plaintiffs Spouses Serrano failed to furnish them with a detailed statement of the account due from the GSIS, thus accounting for their failure to remit the balance of the loan to the GSIS. On September 6, 1984, the trial court rendered judgment ordering the rescission of the said deed, the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered: a) ordering the rescission of the Deed of Absolute Sale with Assumption of Mortgage, dated June 23, 1969; b) ordering defendant Emilio S. Geli and all persons claiming under him, including the other defendants Oswaldo, Eugenia, Marilyn, Cristopher and Ray, all surnamed Geli, to vacate the house and lot located at No. 110 A-1, Road 4, Project 6, Quezon City, and to turn over the peaceful possession of the premises to plaintiffs Arturo Serrano and Niceta M. Serrano; c) ordering defendant Emilio S. Geli to pay plaintiffs the amount of P1,000.00 a month representing reasonable compensation for the use and occupancy of the premises starting June 23, 1969 up to the time the defendant Geli and all other persons claiming under them including the other defendants, shall have completely vacated the property,

deducting therefrom the sum of P38,000.00 paid by defendant Geli to plaintiffs as part of the aforesaid compensation; and, d) ordering defendant Emilio S. Geli to pay plaintiffs the sum of P10,000.00 representing exemplary damages. Costs against defendant Emilio S. Geli.[3]

Emilio Geli and his children appealed the decision to the CA on October 19, 1984. During the pendency of the appeal, the GSIS foreclosed the real estate mortgage over the property for non-payment of the P50,000 loan secured by the said property. At the sale on public auction, the GSIS was the highest bidder. A certificate of sale over the property was thereby issued by the sheriff in its favor on August 30, 1986. On October 30, 1987 and November 3, 1987, Emilio Geli paid the redemption price of P67,701.84[4] to the GSIS. Official Receipts Nos. 905401 and 901685 for the said amount with the notation "for the account of Arturo Serrano" were issued. Accordingly, on February 22, 1988, the GSIS executed a certificate of redemption[5] and turned over to Emilio Geli the owner's copy of TCT No. 80384 in the names of the Spouses Serrano. Emilio Geli did not inform the Spouses Serrano and the CA that he had paid the redemption price to the GSIS.

On January 8, 1991, the CA dismissed the appeal of Emilio Geli and his children on the ground that the appellants failed to pay the requisite docket fees despite notices from the appellate court. No motion for the reconsideration of the resolution was filed. Thus, the said dismissal of the appeal became final and executory. The Court of Appeals forthwith issued an Entry of Judgment on February 27, 1991.

After the remand of the records, the Spouses Serrano filed with the RTC on January 14, 1994 a motion for the execution of the trial court's September 6, 1984 Decision. On February 15, 1994, the trial court issued an order granting the motion and forthwith issued a writ of execution. The writ, however, was not implemented as the Spouses Serrano were then in the United States. On August 1, 1995, the trial court issued an alias writ of execution on motion of the plaintiffs. This, too, was not implemented, because of the defendants' change of address. On May 9, 1996, the trial court issued an order granting the motion of the plaintiffs for a second alias writ of execution. On September 6, 1996, the defendants filed a motion to quash the same claiming, for the first time, that defendant Emilio Geli had already redeemed the subject property in 1988 from the GSIS. According to the defendants, this constituted a supervening event that would make the execution of the trial court's decision unjust and inequitable.

On May 19, 1997, the trial court issued an order denying the aforesaid motion of the defendants. It noted that the payment by defendant Emilio Geli of the redemption price to the GSIS took place before the CA dismissed the appeal and before the decision of the RTC became final and executory; hence, it did not constitute a supervening event warranting a quashal of the writ of execution. The trial court cited the ruling of this Court in *Lim v. Jabalde*. [6]

On September 18, 1997, the trial court issued an order granting the motion for the issuance of another alias writ of execution filed by the Spouses Serrano, to wit:

The Motion to Quash Writ of Execution, filed by defendants having been earlier denied and, it being explicit under the New Rules of Civil Procedure (1997) that no appeals may be taken from orders of execution, instead of giving due course to the appeal interposed by defendant, the court resolves to grant the motion for the issuance of an Alias Writ of Execution.[7]

On September 26, 1997, the trial court issued an Alias Writ of Execution.[8] Conformably with said writ, the sheriff served a Sheriff's Notice to Vacate[9] on the defendants. In the meantime, Emilio Geli died intestate and was survived by his children.

On October 10, 1997, the heirs of Emilio Geli filed with the Court of Appeals a petition for certiorari and/or prohibition praying for the nullification of the May 19, 1997 and September 18, 1997 Orders of the trial court.

They alleged inter alia that when their father Emilio Geli paid the redemption price to the GSIS on October 30, 1987 and November 3, 1987, their appeal of the September 6, 1984 Decision of the RTC in Civil Case No. Q-24790 before the CA was still pending resolution. Consequently, under the terms of the deed of absolute sale with assumption of mortgage which was still subsisting at that time, they were ipso facto subrogated to the rights of the Spouses Serrano as mortgagors of the property; hence, they became the owners of the property and were entitled to the possession thereof. The petitioners therein further posited that since they acquired ownership of the property before the CA dismissed their appeal and before the September 6, 1984 Decision of the RTC became final and executory, the execution of the decision against them was unjust and unfair. They then prayed for the following relief:

WHEREFORE, premises considered, it is respectfully prayed that the order of public respondent Judge, dated 18 September 1997 and the Notice to Vacate issued by public respondent Sheriff, dated 26 September 1997 be set aside. Likewise, to declare execution of judgment in Civil Case No. Q-24790 to have been rendered impossible, as execution hereof would result to injustice. In the meantime to obviate irreversible damage on the part of petitioners, a writ of PRELIMINARY INJUNCTION be granted after due hearing, ORDERING public respondent Judge and public respondent Sheriff to desist or refrain from implementing the September 18, 1997 order.

Other remedies available in law and equity are likewise prayed for.[10]

On January 5, 1998, the appellate court issued an order restraining the implementation of the alias writ of execution and the notice to vacate issued by the trial court.[11] On May 12, 1998, the CA rendered the assailed decision in favor of the heirs of Emilio Geli, the decretal portion of which reads:

WHEREFORE, the foregoing considered, the petition is hereby GRANTED, and the writ of certiorari issued. The respondent court is hereby PERPETUALLY ENJOINED from issuing any order or writ which would disturb the petitioners in their lawful ownership and possession of the property subject matter of the instant case.[12]

The appellate court ruled that since Emilio Geli paid the redemption price for the property to the GSIS in 1987 while his appeal was pending in the CA, the said redemption was a supervening event which rendered the enforcement of the writ of execution issued by the trial court against them unjust and inequitable.

The Spouses Serrano filed the instant petition and assigned to the CA the following errors:

I

THE COURT A QUO COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT PERMANENTLY ENJOINED THE TRIAL COURT FROM DISTURBING THE RESPONDENTS IN THEIR 'LAWFUL OWNERSHIP AND POSSESSION' OF THE SAID PROPERTY, IT BEING CLEAR THAT THEIR REDEMPTION WAS EFFECTED FOR AND ON BEHALF OF PETITIONER ARTURO V. SERRANO.

II

THE COURT A QUO COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT HELD THAT THE REDEMPTION CONSTITUTED A SUPERVENING EVENT WHICH CHANGE THE RELATIONS OF THE PARTIES, THUS RENDERING EXECUTION INEQUITABLE UNDER THE PREMISES.[13]

The petitioners contend that the payment of the redemption price made by Emilio Geli in 1987 during the pendency of the appeal in the CA was ineffective because, subsequently, when the respondents' appeal was dismissed by the CA, the summary decision of the RTC declaring the deed of absolute sale with partial

assumption of mortgage rescinded had become final and executory. The deed of absolute sale with partial assumption of mortgage executed by the petitioners and the Spouses Geli had ceased to exist with its rescission as decreed by the RTC. According to the petitioners, the payment of the redemption price was conditioned upon the perfection and outcome of the appeal. Since the appeal of the respondents was dismissed by their failure to pay the requisite docket fees, they must suffer the consequences thereof. The petitioners assert that the redemption of a property is a right belonging to the mortgagor-debtor, and since the deed of absolute sale with partial assumption of mortgage had been rescinded by final judgment of the RTC, Emilio Geli was no longer a mortgagor or the successor-in-interest of the mortgagors; hence, he could not redeem the property on behalf of the mortgagors without the latter's knowledge and consent.

For their part, the respondents echo the ruling of the CA that although the issuance by the trial court of a writ of execution is ministerial upon the finality of its decision, the same is subject to the onset of a supervening event which may, as in this case, render the same unwarranted, unjust and inequitable.

The respondents contend that the petitioners lost their ownership over the property when they failed to redeem the property within one year from the sale thereof at public auction to the GSIS. Although the GSIS executed a Certificate of Redemption in favor of Emilio Geli on February 22, 1988, the deed was, in fact, a deed of conveyance because, by then, the one-year period to redeem the property had already lapsed and the GSIS in the meantime had become the owner of the property. Thus, the Spouses Geli acquired ownership thereof when they purchased the same from the GSIS in 1988 for P67,701.84. The GSIS in effect sold the property to Emilio Geli and did not merely allow him to redeem it. Departing from their submission before the CA, the respondents now posit that their claim of ownership over the subject property was after all not anchored on the deed of sale with assumption of mortgage, as it had been admittedly rescinded by virtue of the finality of the trial court's September 6, 1984 Decision. Their claim of ownership rests on the fact that they had acquired the property from the GSIS, the purchaser at public auction. As owners of the property, they cannot now be evicted therefrom.

We find the petition to be meritorious.

Generally, the execution upon a final judgment is a matter of right on the part of the prevailing party. It is the ministerial and mandatory duty of the trial court to enforce its own judgment once it becomes final and executory. It may happen, however, that new facts and circumstances may develop or occur after a judgment had been rendered and while an appeal therefrom is pending; or new matters had developed after the appeal has been dismissed and the appealed judgment had become final and executory, which the parties were not aware of and could not have been aware of prior to or during the trial or during the appeal, as they were not yet in existence at that time. In the first situation, any attempt to frustrate or put off the enforcement of an executory decision must fail. Once a judgment has become final and executory, the only remedy left for material attention thereof is that provided for in Rule 38 of the Rules of Court, as amended. There is no other prerequisite mode of thwarting the execution of the judgment on equitable grounds predicated on facts occurring before the finality of judgment.[14] In the second situation, the execution may be stayed, notwithstanding the affirmance of the appealed judgment by this Court.[15] It is required, however, that the supervening facts and circumstances must either have a direct effect upon the matter already litigated and settled or create a substantial change in the rights or relations of the parties therein which would render execution of a final judgment unjust, impossible or inequitable or when it becomes imperative in the interest of justice.[16] The interested party may file a motion to quash a writ of execution issued by the trial court, or ask the court to modify or alter the judgment to harmonize the same with justice and further supervening facts.[17] Evidence may be adduced by the parties on such supervening facts or circumstances.[18]

In this case, the payment by Emilio Geli of the amount of P67,701.84 on October 30 and November 3, 1987 to the

GSIS for the account of the petitioners was made while the appeal of the private respondents from the summary judgment of the RTC was pending. The summary judgment of the RTC had not yet become final and executory. It behooved the said respondents to prosecute their appeal and file their brief, where they should have invoked the payment of the redemption price as a ground for the reversal of the trial court's summary judgment in their favor. The respondents failed to do so, and even concealed the payment of the loan for the account of the petitioners. Worse, the respondents did not pay the requisite docket fees for their appeal, which resulted in its dismissal. The respondents even opted not to file any motion for the reconsideration of the resolution of the CA dismissing their appeal. In sum, the respondents allowed the decision of the trial court to become final and executory. Consequently, the enforcement of the summary judgment of the trial court can no longer be frustrated by the respondents' payment, through Emilio Geli, of the amount of P67,701.84 to the GSIS in 1987.

Irrefragably, the Spouses Geli, as vendees-mortgagors under the deed of absolute sale with partial assumption of mortgage, would have been subrogated to the rights and obligations of the petitioners under the said deed, including the right to redeem the property from the GSIS.[19] However, the CA dismissed their appeal for failure to pay the requisite docket fees, and such dismissal became final and executory. Hence, the summary judgment of the trial court declaring the deed of absolute sale with partial assumption of mortgage rescinded had also become final and executory.

Generally, the rule is that to rescind a contract is not merely to terminate it, but to abrogate and undo it from the beginning; that is, not merely to release the parties from further obligations to each other in respect to the subject of the contract, but to annul the contract and restore the parties to the relative positions which they would have occupied if no such contract had ever been made. Rescission necessarily involves a repudiation of the contract and a refusal of the moving party to be further bound by it.[20] With the rescission of the deed of sale, etc., the rights of Emilio Geli under the said deed to redeem the property had been extinguished. The petitioners cannot even be compelled to subrogate the respondents to their rights under the real estate mortgage over the property which the petitioners executed in favor of the GSIS since the payment of the P67,701.84 redemption price was made without the knowledge of the petitioners.[21] The respondents, however, are entitled to be reimbursed by the petitioners to the extent that the latter were benefited.[22]

Neither did the respondents acquire title to the property under the certificate of redemption executed by the GSIS on February 10, 1998.

First. In the certificate of redemption, the mortgagor-debtor in whose favor the certificate was executed was the petitioner Arturo Serrano and not Emilio Geli and/or the respondents:

NOW, THEREFORE, for and in consideration of the foregoing premises and the sum of SIXTY-SEVEN THOUSAND SEVEN HUNDRED ONE & 84/100 (P67,701.84) PESOS, Philippine Currency, herein paid by EMILIO S. GELI, of legal age, married, Filipino, with residence and postal address at 110 A-1, Road 4, Project 6, Quezon City, do hereby resell, retransfer and reconvey by way of Certificate of Redemption in favor of ARTURO V. SERRANO, the above-described parcel/s of land, together with the building/s and improvements existing thereon.

IN WITNESS WHEREOF, the GOVERNMENT SERVICE INSURANCE SYSTEM has caused this instrument to be executed by its Director, Atty. Roque M. Fernando, Jr., at the City of Manila, Philippines, this _____ day of _____, 19__.

GOVERNMENT SERVICE INSURANCE SYSTEM
Mortgagee-Purchaser

By: Sgd.

ROQUE M. FERNANDO, JR.
in his capacity as Director[23]

Second. Case law has it that the one-year period within which the mortgagor-debtor or his successor-in-interest may redeem the property should be counted from the time the certificate of sale was registered with the Register of Deeds.[24] Upon the lapse of the one-year period, the right to redeem becomes *functus officio* on the date of its expiry.[25] The rule on redemption is actually liberally construed in favor of the original owner of the property. The purpose of the law is to aid rather than to defeat him in the exercise of his right of redemption.[26] Before the lapse of the one-year period, the mortgagor-debtor remains the owner of the property. The right acquired by the purchaser at public auction is merely *inchoate* until the period of redemption has expired without the right being exercised by the redemptioner.[27] Such right becomes absolute only after the expiration of the redemption period without the right of redemption having been exercised.[28] The purchaser is entitled as a matter of right to consolidation of title and to the possession of the property.[29] Where redemption is seasonably exercised by the mortgagor-debtor, what is actually effected is not the recovery of ownership of his land, which ownership he never lost, but the elimination from his title thereto of the lien created by the registration of a mortgage thereon.[30]

Upon the expiry of the redemption period without the mortgagor-debtor being able to redeem the property, the purchaser can no longer be compelled to allow the former to redeem the property or to resell the property; and if he agrees to sell the property, it may be for a price higher than that for which he purchased the property at public auction.[31]

In this case, there is no showing in the records that the sheriff's certificate of sale in favor of the GSIS had been registered in the Office of the Register of Deeds of Quezon City and if so, when it was in fact registered in the said office. It cannot thus be argued that when Emilio Geli remitted the amount of P67,701.84 to the GSIS in full payment of the account of the petitioners, the one-year period to redeem the property had by then lapsed. Hence, the petitioners remained the owners of the property. The GSIS never acquired title over the property and could not have conveyed and transferred ownership over the same when it executed the certificate of redemption to and in the name of the petitioner Arturo Serrano. As the Latin maxim goes: *NEMO DAT QUOD NON HABET*.

We are not convinced by the ratiocination of the respondents that the enforcement of the summary decision of the trial court and the alias writ of execution against them is unjust and unreasonable.

The Spouses Geli and the respondents, as heirs and successors-in-interest of the said spouses, were obliged under the deed of absolute sale with partial assumption of mortgage to pay to the GSIS the balance of the petitioners' account. The Spouses Geli reneged on their undertaking. The petitioners were impelled to secure the services of counsel and sue the Spouses Geli with the RTC for the rescission of the said deed with damages. The respondent spouses nevertheless remained adamant and refused to pay the petitioners' account with the GSIS which impelled the latter to foreclose the real estate mortgage and sell the property at public auction. Emilio Geli and the respondents did not inform the CA and the petitioners that Emilio Geli had paid the amount of P67,701.84 for the account of the petitioners. The respondents even allowed their appeal to be dismissed by the CA, and the dismissal to become final and executory. The petitioners were impelled to spend money for their counsel and for sheriff's fees for the implementation of the writ of execution and the alias writ of execution issued by the trial court. In the meantime, the respondents remained in possession of the property from 1969, when the said deed of absolute sale with partial assumption of mortgage was executed, up to the present, or for a period of 34 years without paying a single centavo. For the Court to allow the respondents to benefit from their own wrong would run counter to the maxim: *Ex Dolo Malo Non Oritur Actio* (No man can be allowed to found a claim upon his own wrongdoing).[32] Equity is applied only in the absence of and never against statutory law or judicial rules of

procedure.[33] We reiterate our ruling that:

Justice is done according to law. As a rule, equity follows the law. There may be a moral obligation, often regarded as an equitable consideration (meaning compassion), but if there is no enforceable legal duty, the action must fail although the disadvantaged party deserves commiseration or sympathy.

The choice between what is legally just and what is morally just, when these two options do not coincide, is explained by Justice Moreland in *Vales v. Villa*, 35 Phil. 769, 788 where he said:

"Courts operate not because one person has been defeated or overcome by another, but because he has been defeated or overcome illegally. Men may do foolish things, make ridiculous contracts, use miserable judgment, and lose money by them—indeed, all they have in the world; but not for that alone can the law intervene and restore. There must be in addition, a violation of law, the commission of what the law knows as an actionable wrong before the courts are authorized to lay hold of the situation and remedy it." (*Rural Bank of Parañaque, Inc. v. Remolado*, 62051, March 18, 1985) (135 SCRA 409, 412).[34]

In sum then, the respondents, as heirs of Emilio Geli, are obliged to vacate the subject property. However, since the petitioners were benefited to the extent of P67,701.84 which was the total amount paid by Emilio Geli to the GSIS as redemption price for the foreclosed property, the petitioners are obliged to refund the said amount to the respondents.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The assailed decision of the Court of Appeals dated May 12, 1998 in CA-G.R. SP No. 45573 is SET ASIDE AND REVERSED. The petitioners Spouses Serrano are obliged to refund to the respondents, as heirs of Emilio S. Geli, the amount of P67,701.84 to be deducted from the amount due to the petitioners under the September 6, 1984 Decision of the Regional Trial Court, Quezon City, in Civil Case No. Q-24790.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Associate Justice Romeo A. Brawner with Associate Justices Ricardo P. Galvez and Martin S. Villarama, Jr. concurring.

[2] Penned by Judge Jaime M. Lantin who was appointed Associate Justice of the Court of Appeals.

[3] Rollo, p. 43.

[4] Id. at 71.

[5] Id. at 69-70.

[6] 172 SCRA 211 (1989).

[7] Rollo, p. 54.

[8] Annex "D," Petition.

[9] Annex "F," Petition.

[10] Rollo, p. 65.

[11] CA Rollo, p. 41.

[12] Id. at 64.

[13] Rollo, p. 23.

[14] Concurring opinion of Chief Justice Andres N. Narvasa in *Baclayon v. Court of Appeals*, 182 SCRA 761 (1990); *Gabaya v. Mendoza*, 113 SCRA 400 (1982); *Ago v. Court of Appeals*, 16 SCRA 81 (1966).

[15] *Lee v. Mapa*, 51 Phil. 624 (1928).

[16] See *Seavan Carrier, Inc. v. GTI Sportswear Corporation*, 137 SCRA 580 (1985).

[17] See *Limpin, Jr. v. IAC*, 147 SCRA 516 (1987).

[18] *De la Costa v. Cleofas*, 67 Phil. 686 (1939).

[19] *Litonjua v. L & R Corporation*, 320 SCRA 405 (1999).

[20] *Wae v. Zynda*, 278 Northwestern Reports, 66 (1935), citing 1 Black on Rescission and Cancellation, 81.

[21] Article 1237, New Civil Code. -- Whoever pays on behalf of the debtor without the knowledge or against the will of the latter, cannot compel the creditor to subrogate him in his rights, such as those arising from a mortgage, guaranty, or penalty.

[22] Article 1236, New Civil Code. -- The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

[23] Rollo, p. 69.

[24] *Union Bank of the Philippines v. Court of Appeals*, 359 SCRA 480 (2001); *People v. Narido*, 316 SCRA 131 (1999); *Bernardez v. Reyes*, 201 SCRA 648 (1991).

[25] *Urbano v. GSIS*, 367 SCRA 672 (2001).

[26] *Ysmael v. Court of Appeals*, 318 SCRA 215 (1999).

[27] *Medida v. Court of Appeals*, 208 SCRA 886 (1992).

[28] *Heirs of Blancaflor v. Court of Appeals*, 304 SCRA 796 (1999).

[29] *Tarnate v. Court of Appeals*, 241 SCRA 254 (1995).

[30] *Medida v. Court of Appeals*, *supra*.

[31] *Urbano v. GSIS*, *supra*.

[32] *Alba Vda. de Raz v. Court of Appeals*, 314 SCRA 36 (1999).

[33] *Pilipinas Hino, Inc v. Court of Appeals*, 338 SCRA 355 (2000).

[34] *Manzanilla v. Court of Appeals*, 183 SCRA 207 (1990).

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