

ROBERTO G. ROSALES, AS SUCCESSOR-IN-INTEREST OF NAPOLEON S. ROSALES AND LUIS BUSTILLO, PETITIONERS, VS. THE HON. COURT OF APPEALS AND NATIONAL DEVELOPMENT CORPORATION, AS SUBSTITUTED PARTIES

G.R. No. 137566. February 28, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a petition for review assailing the decision of the Court of Appeals dated January 6, 1999, and the resolution dated February 18, 1999, in CA-G.R. SP No. 46391.

On April 12, 1966, the Continental Bank instituted Civil Case No. 612 with the then Court of First Instance of Balayan, Batangas, Branch 7, entitled, "Continental Bank, Plaintiff versus Atlas Timber Company, Napoleon S. Rosales and Luis Bustillo, Defendants." The complaint[1] alleged that Atlas Timber Company, through its Managing Partner Napoleon Rosales, and Luis Bustillo in his personal capacity, executed in favor of Continental Bank a promissory note dated August 11, 1965, in the amount of P1,000,000.00; that as security for the payment of the note, Bustillo executed in favor of the bank a real estate mortgage over forty-four (44) parcels of land registered in his name under Transfer Certificate of Title No. T-11337, situated in Nasugbu, Batangas; that likewise as security for the payment of the note, Rosales executed a real estate mortgage over forty-nine (49) parcels of land registered in his name under TCT Nos. T-11828 and T-11839, also in Nasugbu, Batangas; that defendants failed and refused to pay the first amortization on the loan of P90,000.00, thus rendering the whole principal amount thereof due and demandable. Plaintiff bank prayed that defendants be ordered to pay the amount of One Million Pesos (P1,000,000.00) with interest thereon at 8% per annum and attorney's fees equivalent to 10% thereof, and, in default thereof, that the real estate mortgages executed by defendants Rosales and Bustillo in favor of the bank be judicially foreclosed.

In their Answer with Counterclaim,[2] defendants admitted the execution of the promissory note and real estate mortgages. By way of affirmative defenses, they averred that the loan was applied for under the Industrial Guaranty Loan Fund (IGLF) of the Central Bank, through Continental Bank, and was intended for the completion of the veneer plant of Atlas Timber Company, then being constructed in Butuan City. Pursuant to the terms of the Fund, the proceeds of the loan in the amount of P1,000,000.00 were deposited by the Central Bank with Continental Bank. Upon the assurance by Continental Bank that the full amount of P1,000,000.00 will be released to them, defendants executed the promissory note and real estate mortgages. However, instead of delivering to them the entire amount of P1,000,000.00, Continental Bank delivered only P424,000.00 and retained the balance of P576,000.00, despite repeated demands for the turn-over thereof. Consequently, defendants were unable to complete the construction of the plant and to manufacture veneer for exportation to the United States. Defendants, therefore, set up a counterclaim for pecuniary, moral and exemplary damages and for attorney's fees.

Continental Bank filed its answer to the counterclaim, alleging that out of the net proceeds of the loan, in the

amount of P999,730.00, the sum of P575,535.82 was applied to previous loans obtained by Atlas Timber for the initial construction of the veneer plant.

On December 16, 1974, the trial court rendered its decision,[3] the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered as follows:

(1) Ordering the defendants Atlas Timber Company and Napoleon S. Rosales, jointly and severally, to pay plaintiff bank the sum of P1 million with interest at the rate of 8% per annum from August 11, 1965 until fully paid and the further sum equivalent to 10% of the total amount due, as and for attorney's fees, plus costs of suit, and which defendants shall pay within ninety (90) days from date of receipt of this decision;

(2) In default of such payment, the mortgaged properties including the improvements existing thereon covered by OCT (sic) No. T-11337 and TCT No. 11282, both of the Land Records of Batangas, shall be sold at public auction to satisfy the judgment herein, without prejudice to the issuance of writ of execution against defendants Atlas Timber Company and Napoleon S. Rosales in the event that the proceeds of the foreclosure sale be insufficient to satisfy the entire judgment.

SO ORDERED.[4]

Subsequently, the trial court issued an Order dated April 22, 1975,[5] amending the aforesaid decision as follows:

Finding plaintiff's motion to amend the decision dated December 16, 1974 to be well-founded, same is hereby granted, and the dispositive part of the decision specifically paragraph 2 thereof, is hereby amended in the sense that Original Transfer Certificate of Title No. T-11337 should read as Transfer Certificate of Title No. T-11337 and that Transfer Certificate of Title No. T-11839 registered in the name of Napoleon S. Rosales given as security for the obligation mentioned in the complaint should be included in the public auction sale to satisfy the judgment in case of default in the payment of the obligation.

SO ORDERED.

On July 14, 1975, after ascertaining that defendants have failed to pay the judgment debt within ninety (90) days from January 25, 1975, when service of the decision on them was deemed completed, the court issued the Writ of Execution,[6] commanding the Branch Deputy Sheriff to sell at public auction the lands covered by TCT Nos. T-11337, T-11828, and T-11839.

At the foreclosure sale, Continental Bank was awarded the lands as the highest bidder for the price of P120,500.00. Accordingly, the Branch Deputy Sheriff of the CFI, Branch VII, Balayan, Batangas, executed the Officer's Deed of Sale[7] on September 25, 1975, conveying to Consolidated Bank the mortgaged parcels of land.

On October 30, 1975, Continental Bank filed a Motion for Confirmation of Officer's Deed of Sale and To Order Issuance of Certificate of Final Record.[8] The hearing on the motion was set on December 3, 1975, and later reset to February 20, 1976. In the meantime, Atty. Santiago F. Alidio, collaborating counsel for defendants, filed a Manifestation and Motion,[9] alleging that he had been designated as the City Legal Officer of the City of Manila since December 20, 1974; and that on February 20, 1976, he was directed by the Mayor of Manila to attend a conference at Malacañang Palace with Presidential Assistant Juan C. Tuvera. Hence, he moved that his appearance at the hearing on said date be dispensed with and that defendants and their lead counsel, Atty. Tagalo, be served notice of hearing.

The lower court issued an Order dated June 15, 1976,[10] denying Atty. Alidio's prayer for deferment of the hearing and granting the confirmation and approval of sheriff's sale.

On September 19, 1996, petitioners Roberto G. Rosales, as successor-in-interest of Napoleon S. Rosales, and Luis

Bustillo, filed with the lower court, then designated as the Regional Trial Court of Balayan, Batangas, Branch 9, a Motion to Reopen the case, on the ground that defendants and their lead counsel never received the decision dated December 16, 1974; that they were never notified of any hearing for the confirmation of the Sheriff's Deed of Sale; and that the lower court did not conduct a hearing prior to the issuance of its Order dated June 15, 1976, confirming the Sheriff's Deed of Sale. Petitioners prayed, among others, that the sheriff's sale and order of confirmation be set aside; and that another ninety-day period be fixed within which they shall pay the judgment debt.

In an Order dated March 17, 1997,[11] the trial court denied petitioners' motion to reopen the case.

Meanwhile, on June 30, 1997, the lower court, resolving an Ex-Parte Motion to Order the Issuance of Final Deed of Sale filed by National Development Corporation, the successor-in-interest of Continental Bank, ruled as follows:

Perforce, the Sheriff does not have any option but to execute the Final Deed of Sale as mandated by Section 63 (a) of P.D. 1529 and there is no need for the Court's intervention in order for the sheriff to discharge his mandated function. For to do so, it would leave into the hands of the Sheriff the power to determine when to transfer the property to the purchaser as he wishes to.

ACCORDINGLY, the ex-parte motion is hereby DENIED.[12]

On that same date of June 30, 1997, the Ex-Officio Sheriff of the Regional Trial Court of Balayan, Batangas, executed the Final Deed of Sale in favor of Continental Bank.[13]

Petitioners filed a motion for reconsideration of the denial of their motion to reopen the case, but the same was denied on November 4, 1997.[14] Thus, on January 2, 1998, petitioners filed with the Court of Appeals a petition for certiorari, docketed as CA-G.R. SP No. 46391, entitled, "Roberto G. Rosales, as successor-in-interest of Napoleon S. Rosales and Luis F. Bustillo, Petitioners versus Hon. Elihu A. Ybañez as Presiding Judge of the Regional Trial Court of Balayan, Batangas, Branch 9; National Development Corporation, as substituted plaintiff and successors in interest of Continental Bank; and, Arturo G. Matibag, as Ex-Officio Sheriff of Balayan, Batangas, Respondents." [15]

Petitioners argued, in fine, that the lower court amended the decision in its Order dated April 22, 1975, by adding TCT No. T-11839 to the properties to be sold at public auction, without prior notice to petitioners (defendants therein). The amendment was substantial because it included property which was not stated in the original decision; hence, the ninety-day period for petitioners to pay the judgment debt should be reckoned not from the date of service of the original decision but from the date of service of the amendment thereto. Consequently, plaintiff's motion for execution filed on May 3, 1975, or barely eleven days after the Order amending the decision, was premature inasmuch as the thirty-day reglementary period to appeal had not yet elapsed. More importantly, the lower court's Order dated June 30, 1975 for the issuance of a Writ of Execution was null and void, since this was done before the expiration of the ninety-day period for defendants to pay the judgment debt. Therefore, petitioners contend that they should be allowed another period of ninety (90) days within which to pay the judgment debt.

Petitioners further argue that the sale to private respondent of the lands, consisting of a total of 271.306 hectares, for the measly sum of P120,500.00, must be stricken down as null and void for being grossly inadequate and unconscionable as to shock the moral sense. Moreover, the inclusion at the auction sale of the property of Luis Bustillo, covered by TCT No. T-11337, was likewise null and void in view of the lower court's finding in its decision that "Luis Bustillo did not sign the promissory note and therefore should not be held liable for the same." [16]

Likewise, petitioners assail the validity of the order of confirmation issued by the lower court for having been issued without affording them notice and hearing, as shown by the Certification of the Clerk of Court of the Regional Trial Court of Balayan, Batangas, dated March 11, 1999,[17] to the effect that counsel for Napoleon S. Rosales was not furnished a copy of the Order of the court dated June 15, 1976. As mortgagors, they should have been afforded a hearing and an opportunity to show cause why the sale should not be confirmed, as by proof of irregularities therein or gross inadequacy of the price. The lack of such a notice vitiates the confirmation sale, which may be set aside anytime.

Finally, petitioners accused Consolidated Bank of laches and prescription for its failure to consolidate its title for twenty (20) years.

On January 6, 1999, the Court of Appeals dismissed the petition.[18] Petitioners' motion for reconsideration was denied in its Resolution dated February 18, 1999.[19] Hence, this petition for review.

In its comment,[20] private respondent National Development Corporation, successor-in-interest of Continental Bank, maintained that Napoleon Rosales was duly notified of all Orders of the trial court. In fact, petitioners wrote several letters to private respondent wherein they requested that they be allowed to repurchase the properties, and that they failed to pay the real estate taxes on the lands or perform any act consistent with ownership thereof. Based on these, petitioners are estopped from claiming ownership over the properties

On August 25, 1999, the petition was given due course and the parties were required to submit their respective memoranda.[21]

There is merit in the petition.

The Court of Appeals dismissed the petition for certiorari on the main ground that service on petitioners of the decision dated December 16, 1974 as well as the orders of the lower court were deemed completed; and that petitioners, by their subsequent acts, should be deemed to have constructive notice of the decision of the case *a quo*. However, the Court of Appeals failed to address petitioners' primary argument in their petition for certiorari - that the issuance of the writ of execution was null and void for failure to afford petitioners the full ninety-day period within which to pay the judgment debt and avoid the sale of their properties at public auction.

We agree with petitioners that their period of appeal and the ninety days grace period within which they could have paid the judgment debt should have been counted from service of the Order dated April 22, 1975, which substantially amended the decision. The amendatory Order added TCT No. T-11839 to the properties that were to be judicially foreclosed and sold at public auction in the event that defendants therein fail to pay the judgment debt within the ninety-day period.

As such, the period to appeal should be reckoned from service of the said amendatory Order. Where a judgment is amended, the date of the amendment should be considered the date of the decision in the computation of the period for perfecting the appeal.[22] For all intents and purposes, the lower court rendered a new judgment from which the time to appeal must be reckoned.[23]

In the case at bar, the records reflect that a copy of the amendatory Order was sent to defense counsel by registered mail on April 23, 1975. Assuming there was constructive notice, service thereof must have been deemed completed sometime thereafter. Consequently, the motion for execution filed by Continental Bank on May 3, 1975 was premature, inasmuch as it was still within the reglementary period for petitioners to appeal, which under the Rules in force at that time was fixed at thirty days.[24]

(T)he rule is that a judgment may be modified prior to the perfection of the appeal while the lower court still has control over said judgment. In the case involved, there was an actual material amendment of the dispositive

portion of the original decision before an appeal was perfected by the defendant. It is likewise settled that, in such a situation and for all intents and purposes, a new judgment has been promulgated and it is from receipt thereof that the period to appeal must be reckoned.[25]

More importantly, the writ of execution issued by the trial court on July 14, 1975, which states that "defendants Atlas Timber Company, Napoleon S. Rosales and Luis Bustillo failed to make any payment even after the ninety (90) day period from January 25, 1975, when service of the Decision upon them is deemed completed,"[26] and commanding the Branch Deputy Sheriff to sell at public auction all the foreclosed properties, was null and void. The ninety-day period within which petitioners could have paid the judgment debt and thus avoided the sale of their properties at public auction should have commenced a few days from April 23, 1975. When the Writ of Execution was issued on July 14, 1975, the said ninety-day period had not yet expired.

Since petitioners were deprived of the full use of the ninety-day period within which to pay the judgment debt, the writ of execution and the order to sell the properties at public auction were null and void. A judgment in an action for foreclosure of mortgage could only be executed in a manner prescribed in the Rules. Where the order of execution was not in conformity with the Rules, the same is null and void.[27] The order for defendants to pay the judgment debt within ninety days, prior to the sale of the foreclosed properties at public auction, is a substantive requirement which cannot be omitted.[28]

This 90-day period given in the rule is not a procedural requirement merely; it is a substantive right granted to the mortgage debtor as the last opportunity to pay the debt and save his mortgaged property from final disposition at the foreclosure sale. It is one of the two steps necessary to destroy what in law is known as the mortgagor's "equity of redemption," the other being the sale. It may not be omitted. As the writ of execution or the order allowing the sale of the mortgaged property was issued without granting the mortgage debtor said 90-day period, the order for the sale of the property would be a denial of a substantial right and void.[29]

Consequently, the sale to Continental Bank of the subject real properties is likewise null and void. Necessarily, respondent's contention that petitioners' right of action has prescribed must perforce fail. The action or defense for the declaration of inexistence of a contract does not prescribe.[30] A contract which is null and void is subject to attack at any time.[31] Being null and void, the sale of the properties to Continental Bank produced no legal effects whatsoever. *Quod nullum est, nullum producit effectum*. [32]

Apart from the foregoing, there exists in this case a more compelling reason to nullify the auction sale, which is the gross inadequacy of the price at which respondent acquired the lands. If it is to be presumed that private transactions were fair and regular,[33] and the ordinary course of business was followed,[34] then the properties had a market value of, at the very least, One Million Pesos (P1,000,000.00), which was the amount of the loan secured by the real estate mortgages executed on the land. Moreover, it is also presumed that there was sufficient consideration for a contract.[35] Parenthetically, it is worthy to note that the totality of the mortgaged properties consisted of ninety-three lots, with an aggregate area of 271.306 hectares. These vast tracts of land, however, were sold to Continental Bank for only P120,500.00, or roughly twelve percent (12%) of the estimated market value of the property.

There is no dispute that mere inadequacy of the price per se will not set aside a judicial sale of real property. Nevertheless, where the inadequacy of the price is purely shocking to the conscience, such that the mind revolts at it and such that a reasonable man would neither directly nor indirectly be likely to consent to it,[36] the sale shall be declared null and void.[37] In the early case of *Director of Lands v. Abarca*, [38] we ruled:

In dismissing the claim of Sarenas and Braganza, the lower court held that the sale by the sheriff of the property in question in favor of said claimants was null and void, because it was not made in accordance with the requirements of the law, and also because the amount of P877.25 paid by Sarenas and Braganza was

absolutely inadequate. In deciding this appeal we do not deem it necessary to discuss all the questions raised by the parties in their briefs. We believe that the lower court was right in declaring the sheriff's sale null and void on the ground of the inadequacy of the price paid. It appears that in 1927 the assessed value of the contested property was more than P60,000. A judicial sale of real property will be set aside when the price is so inadequate as to shock the conscience of the court. (*National Bank vs. Gonzalez*, 45 Phil., 693.)[39]

Respondents allege that petitioners should be held guilty of laches. We do not agree. There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances. The question of laches is addressed to the sound discretion of the court and since laches is an equitable doctrine, its application is controlled by equitable considerations. It cannot be worked to defeat justice or to perpetrate fraud and injustice.[40] In *Santiago v. Court of Appeals*, [41] we held:

As for laches, its essence is the failure or neglect, for an unreasonable and unexplained length of time to do that which, by the exercise of due diligence, could or should have been done earlier; it is the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it (*Felix v. Buenaseda*, 240 SCRA 139, 152 [1995], citing *Cristobal v. Melchor*, 78 SCRA 175, 182 [1977]). But there is, to be sure, no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances. The question of laches is addressed to the sound discretion of the court and since laches is an equitable doctrine, its application is controlled by equitable considerations. It cannot be worked to defeat justice or to perpetrate fraud and injustice (*Jimenez v. Fernandez*, 184 SCRA 190, 197 [1990]). In the case under consideration, it would not only be impractical but well-nigh unjust and patently iniquitous to apply laches against private respondent and vest ownership over a valuable piece of real property in favor of petitioners by virtue of an absolutely simulated deed of sale never, in the first place, meant to convey any right over the subject property. It is the better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result (*Rañeses v. Intermediate Appellate Court*, 187 SCRA 397, 404 [1990], citing *Cristobal v. Melchor*, *supra*).[42]

Respondent argues that petitioners should likewise be declared estopped from seeking the declaration of nullity of the auction sale because they offered to repurchase the lands from the bank. It appears that these proposals were made between the periods September 2, 1993 and July 30, 1996,[43] which was prior to the filing by petitioners of their motion to reopen the case on September 16, 1996. Rather than construing this offer against petitioners, this gesture must be taken as an intention to avoid further litigation and, thus, partook of the nature of an offer to compromise. As such, the same cannot be taken as an admission that petitioners were liable for the judgment debt.[44] Necessarily, and with more reason, the offer should not be taken as a waiver of their right to assail the validity of the sale. Verily, by offering to redeem the properties, petitioners would attain their ultimate objective, i.e., to pay off the judgment debt and regain ownership of their lands. When respondent refused this last-ditch proposal, as it were, petitioners were constrained to resort to legal means to achieve their goal, and thus filed with the trial court their motion to reopen the case.

Moreover, we find that, insofar as petitioner Bustillo's land is concerned, the dispositive portion of the decision was not in accord with the findings as contained in the body thereof. While the dispositive portion prevails over the body of the decision in case of conflict, this rule does not apply where it is clear from the body of the decision that there was a glaring error made in the dispositive portion, in which case the body of the decision will control.

The general rule is, where there is a conflict between the dispositive portion or the *fallo* and the body of the decision, the *fallo* controls. This rule rests on the theory that the *fallo* is the final order while the opinion in the body is merely a statement ordering nothing. However, where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion, the body of the decision will

prevail.[45]

In the case below, the trial court clearly found that Bustillo did not make or sign the promissory note, and thus declared that he should not be held liable for the loan and his property should not be sold at public auction, unless the properties included in petitioner Rosales' mortgage was not sufficient to satisfy the entire money judgment. In the dispositive portion, however, the trial court ordered that TCT No. T-11337, in the name of petitioner Bustillo, was to be sold at public auction, absolutely and without qualification. This part of the judgment, which subjected Bustillo's property primarily liable for the judgment debt notwithstanding the finding that the same should only be made to answer for the debt in a subsidiary manner, violated Bustillo's right against the deprivation of property without due process of law. Hence, the body of the decision should have prevailed over the dispositive portion, and Bustillo's property should not have been sold at public auction unless it was shown that the lands belonging to Napoleon Rosales were insufficient to satisfy the judgment debt.

Therefore, the sheriff's sale of TCT Nos. T-11337, T-11828 and T-11839 to Continental Bank is hereby declared null and void. It should be stressed that we are not here called upon to resolve the merits of Civil Case No. 612, as contained in the decision of the Court of First Instance of Balayan, Batangas dated December 16, 1974. In their petition for certiorari before the Court of Appeals as well as in the petition for review before us, petitioners question Continental Bank's act of debiting the sum of P576,000.00 from the proceeds of their loan, purportedly to satisfy previous obligations incurred by Atlas Timber Company. However, the findings of fact of the trial court on this matter were not appealed by petitioners, albeit for reasons not attributable to them.

Hence, the decision of December 16, 1974, as amended by the Order dated April 22, 1975, should not be disturbed, except only to delete TCT No. 11337 in the name of Luis Bustillo from the lands to be judicially foreclosed, in view of our finding as above-stated. Petitioners, therefore, remain liable to pay respondent the amount of the loan of P1,000,000.00, with interest thereon at the rate of 8% per annum, and an amount equivalent to 10% thereof as attorney's fees, as stipulated in the promissory note. Petitioners are hereby granted a new period of one hundred twenty (120) days within which to pay the same, otherwise the lands covered by TCT Nos. 11828 and 11839 shall be sold at public auction to satisfy the debt. Under the 1997 Rules of Civil Procedure, the period prescribed for that purpose in cases of judicial foreclosure is not less than ninety (90) days nor more than one hundred twenty (120) days, counted from entry of judgment.[46]

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals dated January 6, 1999, and the Resolution dated February 18, 1999, in CA-G.R. SP No. 46391, are REVERSED and SET ASIDE. The sale of petitioners' lands covered by TCT Nos. T-11337, T-11828 and T-11839 to Continental Bank is declared NULL and VOID. Any transfers made and any and all certificates of title issued in lieu of TCT Nos. T-11337, T-11828 and T-11839, are ORDERED CANCELLED.

Petitioners are ordered to pay to respondent National Development Corporation, as successor-in-interest of Continental Bank, the sum of One Million Pesos (P1,000,000.00), with interest thereon at the rate of eight percent (8%) per annum computed from August 11, 1965 until the date of full payment, and an amount equivalent to ten percent (10%) of the total amount due, as and for attorney's fees, plus costs of suit, within a period of one hundred twenty (120) days from the entry of judgment. In default of such payment, the property included in TCT Nos. T-11828 and T-11839 in the name of Napoleon S. Rosales shall be sold at public auction to satisfy the judgment.

SO ORDERED.

Davide, Jr., C.J., Puno, Kapunan, and Pardo, JJ., concur.

- [1] Rollo, pp. 249-273.
- [2] Ibid., pp. 274-277.
- [3] Id., pp. 280-296.
- [4] Id., pp. 295-296.
- [5] Id., p. 297.
- [6] Id., pp. 300-319.
- [7] Id., pp. 321-334.
- [8] Id., pp. 335-336.
- [9] Id., pp. 89-90, 337-338.
- [10] Id., pp. 339-341.
- [11] Id., pp. 347-351.
- [12] Id., pp. 343-344.
- [13] Id., pp. 345-346.
- [14] Id., pp. 352-353.
- [15] Id., pp. 68-84.
- [16] Id., p. 295.
- [17] Id., p. 88.
- [18] Id., pp. 42-53; Associate Justice Cancio C. Garcia, ponente; Associate Justices Omar U. Amin and Teodoro P. Regino, concurring.
- [19] Id., p. 54.
- [20] Id., pp. 95-101.
- [21] Id., pp. 109-110.
- [22] Eudela v. Court of Appeals, 211 SCRA 546, 550 (1992), citing Cuento v. Paredes, 40 Phil. 346 (1919); Board of Liquidators v. Ricma Trading Corp., 29 SCRA 397, 407 (1969), citing Cuento v. Paredes, supra, and Capistrano v. Cariño, 93 Phil. 710 (1953).
- [23] Sta. Romana v. Lacson, 104 SCRA 93, 99 (1981); Magdalena Estate, Inc. v. Caluag, 11 SCRA 333, 337 (1964).
- [24] 1964 REVISED RULES OF COURT, Rule 41, Section 3.
- [25] Galan Realty Co., Inc. v. Arranz, 237 SCRA 770, 775 (1994).
- [26] Rollo, p. 301.
- [27] Constantino v. Aquino, 9 SCRA 911, 917 (1963).
- [28] Ibid., at 918.

[29] De Leon v. Ibañez, 95 Phil. 119, 122-123 (1954).

[30] CIVIL CODE, Article 1410.

[31] Salomon v. Intermediate Appellate Court, 185 SCRA 352, 363 (1990).

[32] Solid State Multi-Products Corp. v. Court of Appeals, 196 SCRA 630, 643, citing Agne v. Director of Lands, G.R. No. L-40399, February 6, 1990. 181 SCRA 793.

[33] RULES OF COURT, Rule 131, Section 3 (p).

[34] RULES OF COURT, Rule 131, Section 3(q).

[35] RULES OF COURT, Rule 131, Section 3 (r).

[36] Vda. de Alvarez v. CA, 231 SCRA 309, 318 (1994); Cachola, Sr. v. Court of Appeals, 208 SCRA 496, 501 (1992), citing Vda. de Cruz v. Cariaga, 174 SCRA 330 (1989) and Prudential Bank v. Martinez, 189 SCRA 612 (1990).

[37] Provincial Sheriff of Rizal v. Court of Appeals, 68 SCRA 329, 334 (1975).

[38] 61 Phil. 70 (1934).

[39] Ibid., at 72; underscoring provided.

[40] Jimenez v. Fernandez, 184 SCRA 190, 197 (1990).

[41] 278 SCRA 98 (1997).

[42] Supra, at 112-113.

[43] Rollo, pp. 172-177.

[44] RULES OF COURT, Rule 130, Section 27.

[45] Asian Center for Career and Employment System and Services, Inc. v. NLRC, 297 SCRA 727, 731-32 (1998).

[46] 1997 Rules of Civil Procedure, Rule 68, Section 2.

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