

SANTIAGO LIGHTERAGE CORPORATION, PETITIONER, VS. COURT OF APPEALS, C-SQUARE CONSOLIDATED MINES AND MANUEL A. PELAEZ, RESPONDENTS.

G.R. No. 139629. June 21, 2004

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review on certiorari[1] to annul the Decision[2] dated 15 October 1998 of the Court of Appeals (“appellate court”) in CA-G.R. CV No. 52661, and its Resolution dated 5 August 1999 denying the motion for reconsideration. The appellate court affirmed the Decision[3] dated 4 May 1992 of Branch 56 of the Regional Trial Court of Quezon City (“trial court”) in Civil Case No. Q-89-3769, ordering respondent Manuel A. Pelaez (“Pelaez”) to pay respondent C-Square Consolidated Mines (“C-Square”) actual damages, attorney’s fees, and costs of suit. The trial court ordered petitioner Santiago Lighterage Corporation (“petitioner”) to pay Pelaez, in turn, actual damages, attorney’s fees, and costs of suit.

Antecedent Facts

C-Square filed a complaint for damages against Pelaez before the trial court. C-Square signed a single voyage charter agreement[4] with Pelaez, who represented himself as the disponent owner[5] of MV Christine Gay. Pelaez warranted that MV Christine Gay was seaworthy and can undertake a voyage to South Korea. Since MV Christine Gay failed to start the voyage, C-Square asked the trial court to hold Pelaez liable for actual, moral, and exemplary damages, plus attorney’s fees.

On 24 October 1989, Pelaez filed a third-party complaint against petitioner for damages with prayer for writ of preliminary attachment. Pelaez signed the bareboat charter agreement[6] with petitioner because of petitioner’s representations that MV Christine Gay was seaworthy and fit to undertake a voyage to South Korea. MV Christine Gay failed to begin the voyage. In turn, Pelaez sought to hold petitioner liable for whatever damages the trial court may award to C-Square.

Petitioner filed its answer to Pelaez’s third-party complaint on 29 January 1990. Petitioner argued that Pelaez has no cause of action against petitioner because MV Christine Gay was seaworthy at the time of delivery.

Following an examination of the evidence presented by the parties, the trial court summarized the facts thus:

Sometime in August 1989, defendant-third party plaintiff Manuel A. Pelaez as sole proprietor of the firm M.A.P. Trading offered to plaintiff [C-Square Consolidated Mines] the vessel “MV Christine Gay” for the use of the latter in shipping and exporting its milled chromite ores in bulk to Pohang Port, South Korea. Pelaez assured Emilio G. Libatigue, Vice-President of plaintiff-corporation, that the “MV Christine Gay” was seaworthy (Exh. C, pp. 1-2). Because it needed a vessel to transport its milled chromite ores to its buyer in South Korea, plaintiff accepted the offer of Pelaez and it entered into a [Voyage] Charter Agreement (Exh. C-1) dated 26 August 1989 with Pelaez, it being specifically agreed upon in Exhibit C-1 that the [Voyage]

Charter Agreement shall “automatically be considered rescinded and inoperative” if the “(v)essel is found not seaworthy to undertake a safe voyage to Korea” or if the defendant should fail to “(g)et the necessary permits and/or shipping documents to allow said voyage to Korea.”

As the “MV Christine Gay” was the subject of a [Bareboat] Charter Agreement (Exh. 1-A-Third Party Defendants) dated 22 August 1989 between Santiago Lighterage Corporation as owner of said vessel and M.A.P. Trading as charterer of said vessel, and pursuant to the understanding of plaintiff and Pelaez, the plaintiff paid to third party defendant Santiago Lighterage Corporation – for the account of M.A.P. Trading – the amount of P740,000, as evidenced by a Receipt dated 31 August 1989 (Exh. C-2; TSN, 8 November 1990, p. 11).

On 1 September 1989, the “MV Christine Gay” was turned over by Santiago Lighterage Corporation to Pelaez in Manila (Exh. 1-B-Third Party Defendants). The new set of crew members boarded and took possession of the vessel to determine her actual condition. After boarding the vessel, they immediately proceeded to Masinloc, Zambales from Manila (TSN, 2 October 1990, p. 7).

From the time they started their voyage from Manila to Masinloc, Zambales, Marine Chief Engineer Simeon Panaguiton observed that the engine of the vessel was not in good condition because heavy smoke was going out from the exhaust manifold (TSN, 14 March 1991, p. 7; TSN, 2 October 1990, pp. 7, 12). Engr. Panaguiton, however, allowed the vessel to make the voyage to Zambales, because he was assured that the vessel will be repaired in Masinloc (TSN, 2 October 1990, p. 14).

At Masinloc, Zambales, the chromite ores of plaintiff were loaded on the vessel while repairs on the vessel were also being made by the men of third party defendants Santiago Lighterage Corporation and Robert Tan. A Report (Exh. C-3) was made by Capt. Beltran Sorongon, the master of the vessel, about the condition of the hull and superstructures of the vessel. Because of the inadequacy of the repairs, Engr. Panaguiton recommended to Pelaez that the vessel may not be able to continue with her voyage to South Korea (TSN, 2 October 1990, pp. 16-20). He also informed Capt. Sorongon that the vessel was not seaworthy. Capt. Sorongon’s “reaction was that, it was not really seaworthy” (id., pp. 21-22).

Thereafter, it was decided that the vessel which was already loaded with chromite ores will sail back towards Manila instead of proceeding to Korea as sailing to Korea would be very dangerous (id., p. 24). At about 2:00 o’clock to 3:00 o’clock in the afternoon of 22 September 1989, the engines of the vessel suddenly stopped, thus, making the vessel stop in the middle of the sea (Exh. B, p. 3). Because of this, Capt. Sorongon allowed Maximo Alvarez, the ship purser, to board a passing fishing boat, and instructed Alvarez to inform plaintiff, Pelaez, and Tan about what happened to the vessel (ibid.). Capt. Sorongon also had a handwritten note (Exh. C-4) for Atty. Paculdo of plaintiff-corporation, informing the latter that the vessel was drifting on the sea because some of the pistons and piston rings of the engines of the vessel were damaged.

Also on 22 September 1989, the plaintiff served a notice (Exh. C-5) of rescission of the Charter Agreement upon Pelaez who gave his conformity thereto.

Thereafter, the plaintiff sent a demand letter dated 24 September 1989 (Exh. C-6) informing Pelaez that the former suffered damages in the amount of at least P2,000,000 because the vessel lacked the documentation and that the vessel was not seaworthy.

On 29 September 1989, the counsel of Pelaez wrote a letter (Exh. 7) addressed to Santiago Lighterage Corporation and Robert (Roberto) Tan informing them about the demand letter of plaintiff. In the letter, counsel for Pelaez also demanded that Pelaez be paid the amount of P2,000,000 and the further sum of P1,000,000 representing his unrealized profit on the transaction.

Because the engines of the vessel suffered a breakdown, the vessel was towed by a tugboat to Manila. On 5 October 1989, Pelaez wrote a letter (Exh. 5) to the Maritime Industry Authority (MARINA) requesting for a

re-investigation of the seaworthiness of the vessel. The re-investigation was conducted by a MARINA surveyor on 6 October 1989. On 12 October 1989, MARINA issued a report (Exh. 6) stating that the “MV Christine Gay” was a “dead” ship at the time of inspection.

Consequently, plaintiff had to contract with other companies to transport its chromite ores to South Korea, and this entailed additional expenses. Moreover, the ores had to be unloaded from the vessel “MV Christine Gay.” And, plaintiff spent for the salaries of the officers and crew members of the vessel, provisions, fuel, and other things needed. A summary (Exh. C-7) of the total expenditures incurred by the plaintiff on “MV Christine Gay” in the amount of P3,133,031.15 was prepared. Supporting this summary are various receipts and documents marked as Exhibits D to D-115 inclusive.[7]

The only issue presented by the parties to the trial court for resolution was whether MV Christine Gay was seaworthy when Pelaez signed the bareboat charter agreement to undertake a voyage to South Korea.

The Trial Court’s Ruling

The trial court ruled that MV Christine Gay was not seaworthy when petitioner and Pelaez signed the bareboat charter agreement. The trial court based its decision on the testimony of Engineer Simeon Panaguiton (“Engineer Panaguiton”), marine chief engineer of MV Christine Gay during the charter party, and the report of Captain Beltran Sorongon (“Captain Sorongon”), master of MV Christine Gay. Engineer Panaguiton and Captain Sorongon stated that MV Christine Gay had holes in her hull and bow, and her engines and exhaust system were defective.

The dispositive part of the trial court’s decision reads:

WHEREFORE, and in view of the foregoing, judgment is rendered ordering defendant Manuel A. Pelaez to pay plaintiff C-Square Consolidated Mines, the following sums of money, to wit:

- P3,133,031.15 representing damages pursuant to Article 2201 of the Civil Code;
- P100,000 representing reasonable attorney’s fees and expenses of litigation; and,
- Costs of suit.

Third party defendant Santiago Lighterage Corporation is likewise ordered to pay defendant-third party plaintiff Manuel A. Pelaez the following sums of money, to wit:

- P3,133,031.15 representing damages pursuant to Article 2201 of the Civil Code;
- P50,000 representing reasonable attorney’s fees and expenses of litigation; and
- Costs of suit.

All other claims and counterclaim/s are denied for lack of legal or factual basis.

SO ORDERED.[8]

Petitioner filed a Motion for Reconsideration on 15 October 1992 which the trial court denied in an Order dated 29 January 1993. As Pelaez no longer appealed from the decision, a writ of execution was issued against him on 29 January 1993.

In its appeal before the appellate court, petitioner assigned the following errors:

- THE TRIAL COURT ERRED IN GIVING WEIGHT TO THE TESTIMONY OF ENGINEER SIMEON PANAGUITON ON THE SEAWORTHINESS OF THE VESSEL “M/V CHRISTINE GAY.”
- THE TRIAL COURT ALSO ERRED IN GIVING CREDENCE TO THE REPORT OF CAPTAIN

BELTRAN SORONGON ON THE SEAWORTHINESS OF THE VESSEL “M/V CHRISTINE GAY.”

- THE TRIAL COURT ERRED IN IGNORING THE PROVISIONS OF THE CHARTER AGREEMENT DATED 22 AUGUST 1989 BETWEEN THIRD-PARTY PLAINTIFF AND THIRD-PARTY DEFENDANT.

- THE TRIAL COURT ALSO ERRED IN ORDERING THIRD-PARTY DEFENDANT TO PAY IN FAVOR OF THIRD-PARTY PLAINTIFF-APPELLEE P3,133,031.15 AS DAMAGES, P50,000 AS ATTORNEY’S FEES AND COSTS OF SUIT.[9]

The Appellate Court’s Ruling

The appellate court denied the appeal and affirmed the trial court’s decision. The appellate court upheld the credibility of the testimonies of Engineer Panaguition and Captain Sorongon on the unseaworthiness of MV Christine Gay.

The dispositive part of the appellate court’s decision reads thus:

WHEREFORE, finding no error in the Decision appealed from, the same is hereby AFFIRMED IN TOTO. No pronouncement as to costs.

SO ORDERED.[10]

Hence, the instant petition.

The Issue

Petitioner raises only one issue before this Court, thus:

Whether the trial court and the Court of Appeals could validly and legally ignore or disregard the provisions of the Charter Agreement dated 22 August 1989 between petitioner and respondent Pelaez.[11]

The Ruling of the Court

We find no merit in the appeal.

Interpretation of the Charter Party Agreement

Petitioner challenges the trial and appellate courts’ appreciation of the Charter Party Agreement as part of the evidence in this case. Petitioner asserts that delivery of the MV Christine Gay to Pelaez and Pelaez’s subsequent takeover of the vessel is already a full performance of petitioner’s obligations. Petitioner berthed MV Christine Gay in the port of Manila as early as 26 August 1989 and Pelaez had the opportunity to inspect her from that date until 1 September 1989, when Pelaez took over the vessel.[12] Thus, petitioner is not liable for defects in MV Christine Gay after the delivery and turn over. The pertinent part of the bareboat charter agreement between petitioner and Pelaez reads:

- Delivery – The VESSEL shall be delivered and taken over by the CHARTERERS at the port of the City of Manila, in such ready berth as the CHARTERERS may direct.

The OWNER shall before and at the time of delivery exercise due diligence to make the VESSEL seaworthy and in every respect ready in hull, machinery and equipment for service hereunder. The VESSEL shall be properly documented at time of delivery.

The delivery to the CHARTERERS of the VESSEL and the taking over of the VESSEL by the CHARTERERS shall constitute a full performance by the OWNER of all the OWNER’S obligations hereunder, and thereafter the CHARTERERS shall not be entitled to make or assert any claim against the OWNER on account of the representations or warranties expressed or implied with respect to the VESSEL but the OWNER shall be responsible for repairs or renewals occasioned by latent defects in the VESSEL, her

machinery or appurtenances existing at the time of delivery under this Agreement, provided such defects have manifested before turn-over.[13] (Emphasis supplied)

The mere physical transfer of MV Christine Gay from petitioner to Pelaez does not constitute full performance of its obligation under their bareboat charter agreement. Neither is it considered a delivery. Under the agreement, physical transfer of a seaworthy vessel is necessary to satisfy delivery.[14] Paragraph 3 of the bareboat charter agreement expressly requires petitioner “to make the VESSEL seaworthy” at the time of delivery. Since petitioner did not deliver a seaworthy vessel, petitioner failed to perform his obligation to Pelaez under the agreement.

Seaworthiness is a relative term. Petitioner claims that MV Christine Gay later undertook voyages within the Philippines.[15] However, such subsequent voyages in the Philippines do not prove the vessel’s seaworthiness to withstand a voyage to South Korea. We quote from authorities in Maritime Law:

To be seaworthy, a vessel “must have that degree of fitness which an ordinary, careful and prudent owner would require his vessel to have at the commencement of her voyage, having regard to all the probable circumstances of it.” Thus the degree of seaworthiness varies in relation to the contemplated voyage. Crossing the Atlantic calls for stronger equipment than sailing across the Visayan Sea. It is essential to consider that once the necessary degree of seaworthiness has been ascertained, this obligation is an absolute one, i.e. the undertaking is that the vessel actually is seaworthy. It is no excuse that the shipowner took every possible precaution to make her so, if in fact he failed.

In examining what is meant by seaworthiness we must bear in mind the dual nature of the carrier’s obligations under a contract of affreightment. To satisfy these duties the vessel must (a) be efficient as an instrument of transport and (b) as a storehouse for her cargo. The latter part of the obligation is sometimes referred to as cargoworthiness.

A ship is efficient as an instrument of transport if its hull, tackle and machinery are in a state of good repair, if she is sufficiently provided with fuel and ballast, and is manned by an efficient crew.

And a vessel is cargoworthy if it is sufficiently strong and equipped to carry the particular kind of cargo which she has contracted to carry, and her cargo must be so loaded that it is safe for her to proceed on her voyage. A mere right given to the charterer to inspect the vessel before loading and to satisfy himself that she was fit for the contracted cargo does not free the shipowner from his obligation to provide a cargoworthy ship. (Emphasis added)[16]

Seaworthiness of MV Christine Gay

Petitioner asserts that MV Christine Gay is “sufficient in materials, construction, equipment and outfit” as shown by the documents the Philippine Coast Guard (“Coast Guard”) and the Maritime Industry Authority (“MARINA”) issued to petitioners.[17] Petitioner presents the following documents to show MV Christine Gay’s seaworthiness: Certificate of Inspection No. 2361-89, Cargo Ship Safety Equipment Certificate No. 561-89 dated 11 September 1989, Cargo Ship Safety Construction Certificate No. 538-89, Manning Certificate for Vessels on International Trade, and Special Permit No. 0313-89 dated 1 September 1989.[18] Petitioner overlooks that these documents are mere prima facie evidence of the facts stated and contrary proof can overturn such prima facie evidence.[19]

Prima facie evidence is evidence which, standing alone unexplained or uncontroverted, is sufficient to maintain the proposition affirmed. It is evidence sufficient to establish a fact, and if not rebutted, remains sufficient for that purpose.[20]

The trial court relied, however, on the testimonies of Engineer Panaguigon and Captain Sorongon. Engineer Panaguigon testified thus:

Q

As Chief Engineer of the “MV CHRISTINE GAY” from 1 September 1989 to 2 October 1989, were you able to observe the condition of the said vessel at that time?

A

Yes, sir.

Q

Will you please tell us what your observations were as to the condition and fitness of the vessel to undertake a voyage at that time?

A

There were no new spare parts available on board for the auxiliary engines, and neither were there spare parts for the main engine except for a single worn out cylinder liner and piston. The mechanical governors of both the main and auxiliary engines were all defective. There were no pyrometer gauges installed on the main engine to determine the temperature of individual working cylinders. The main engine indicator docks were not mechanically functioning, and they were blinded and not working. Epoxy [sic] was applied temporarily to some part connections to prevent leakages that cause substantial consumption of lubricating oil especially on engines. No special tools were available specifically for the repair of the main engine in case of a major internal breakdown such as that which happened on 23 September 1989 when we had to use fabricated and imported ones. The bilge pump connections to the main engine were defective and condemned thereby requiring the use of portable gasoline engine Robin pump instead – which is not advisable since fuel feed to operate is highly flammable in character. Per record found registered in the ship’s logbook, dated 6 August 1989, No. 1 and No. 6 pistons were pulled out due to mechanical trouble, and I discovered, when No. 1 piston was damaged again on 23 September 1989, that the said No. 6 piston had not been replaced with a precision one when it was repaired prior to the time I took over as Chief Engineer on 1 September 1989.[21]

Captain Sorongon’s Master Report reads:

After the vessel “MV CHRISTINE GAY,” under my command arrived and/or berthed alongside Acoje Wharf at Sta. Cruz, Zambales on 3 September 1989, the Chief Mate and I (captain) conducted survey around the hull and superstructures. We found the following defects:

- The hull on deck line around the accommodations found [to have] plenty [of] holes and heavily rusted. Seawater entered crew quarters with the possibility to the engine when sea shipping on deck. Recommended for welding with doubler while loading chromite.
- The starboard superstructure deeply dented/crippled.
- Mooring winches forward and aft are defective, gave a lot of problems during berthing and shifting. Pilots complained of power and delay.
- Several pontoon covers are not in good condition.
- No hatch battens to secure hatch covers/tarpaulins, so seawater cannot enter into the hold.
- All bilges not suctioning and very dangerous for sea passage and not safe for crew and cargo loaded on board.
- No lifeboat on board. According to ship’s plan, davits are fitted on portside boatdeck where lifeboat is secured but now not existing anymore, totally not complying [with] the SOLAS requirements.

- Plenty of holes found on deck platings and hatch coamings. Recommended repair while loading.
- Exhaust found not in proper position/location. Seawater will enter through and cause damage to the engine and generators. Chief Engineer recommended to restore to its original position.
- Water tight doors with no rubbers to prevent seawater and butterflies/locks not moving. Reconditioned/greased while loading but no available watertight door rubbers to use.
- Anchor winch cannot heave up the anchor without the aid of the boom runner. Oil seals all worn out[.] Pilots complained of delays.
- Portside of the shell plating below the comfort room as reported by Chief Engineer, there is a heavily corroded portion that by a slight bump of any object will cause the seawater to rush into the engine.
- Atop the bridge, Captain's and Chief Mates' cabin are leaking when raining.
- Found plenty [of] holes at the bow. Vessel not strong or capable to encounter big waves, boisterous winds and other meteorological elements in high seas[,] not seaworthy.
- Ladder steps going up to the bridge are missing and rotten. The Pilot nearly fell down.[22]

The Court gives great respect to the findings of facts of the trial court, especially if affirmed by the appellate court. The Court does not disturb the trial court's calibration of the testimonial evidence of the parties, its assessment of the credibility and probative weight of the evidence of the parties, and its conclusion anchored on its findings. The exception to this rule is when the trial court misconstrued facts and circumstances of substance which if considered would alter the outcome of the case.[23] We have assessed the evidence on record and found no reason to deviate from the trial and appellate courts' findings of facts.

We affirm the trial and appellate courts' finding that MV Christine Gay was unseaworthy for the purpose intended in the bareboat charter agreement. We hold petitioner liable to Pelaez for P3,133,031.15 as actual damages and P50,000 as attorney's fees. Since the parties did not raise in issue the amount of damages, we will no longer delve into the same. The rule in civil procedure is that courts of justice have no jurisdiction to decide a question not in issue.[24]

Legal interest at the annual rate of 6% is due on the amounts the trial court awarded.[25] The 6% annual interest shall begin from 4 May 1992, the date of the decision of the trial court. On finality of this decision, annual interest at 12%, in lieu of 6% annual interest, is due on the amounts the trial court awarded until full payment.

WHEREFORE, we DENY the instant petition for review. The Decision dated 15 October 1998 of the Court of Appeals in CA-G.R. CV No. 52661, and its Resolution dated 5 August 1999 denying the motion for reconsideration, are AFFIRMED with the MODIFICATION that the amount due shall earn legal interest at 6% annually from 4 May 1992, the date of the trial court's decision. On finality of this decision, the amount due shall earn annual interest at 12%, in lieu of 6% annual interest, until full payment.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, and Azcuna, JJ., concur.
Ynares-Santiago, J., no part - on leave.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice (now Supreme Court Associate Justice) Consuelo Ynares-Santiago, with Associate Justices Bennie A. Adefuin-De La Cruz and Presbitero J. Velasco, Jr., concurring.

[3] Penned by Judge Percival Mandap Lopez.

[4] A voyage charter agreement is a type of a contract of affreightment. A contract of affreightment is one by which the owner of a ship or other vessel lets the whole or part of her to a merchant or other person for the conveyance of goods, on a particular voyage, in consideration of the payment of freight. In this voyage charter, the ship is leased for a single voyage. The charter party provides for the hire of the vessel only, the ship owner to supply the ship's store, pay for the wages of the master of the crew, and defray the expenses for the maintenance of the ship. See *Caltex (Philippines), Inc. v. Sulpicio Lines, Inc.*, 374 Phil. 325 (1999).

[5] Under a bareboat charter agreement, also known as "chartering by demise," the shipowner virtually relinquishes all responsibilities and rights in respect of his vessel for a specified period, in return for a pre-arranged and regular payment for hire. The charterer becomes a disponent owner in the strictest sense, operating, crewing and chartering the ship as if he were, in fact, the owner. Hans J. Peters, *The Commercial Aspects of Freight Transport Ocean Transport: Freight Rates and Tariffs*, (visited 1 June 2004) .

[6] Under a demise or bareboat charter, the charterer mans the vessel with his own people and becomes, in effect, the owner for the voyage or service stipulated, subject to liability for damages caused by negligence. See *Caltex (Philippines), Inc. v. Sulpicio Lines, Inc.*, supra note 4.

[7] Rollo, pp. 83-86.

[8] Rollo, pp. 90-91.

[9] CA Rollo, pp. 104-105.

[10] Rollo, p. 112.

[11] Ibid., p. 16.

[12] Folder of Exhibits for Santiago Lighterage, Exh. "1," p. 7.

[13] Rollo, p. 58.

[14] See *Madrigal, Tiangco & Co., et al. v. Hanson, Orth & Stevenson, Inc., et al.*, 103 Phil. 345 (1958).

[15] Santiago Lighterage's Folder of Exhibits, Amended Affidavit of Roberto Tan, p. 16.

[16] *EDUARDO F. HERNANDEZ AND ANTERO A. PEÑASALES, PHILIPPINE ADMIRALTY AND MARITIME LAW* 501-502 (1987).

[17] Rollo, p. 216.

[18] RTC Records, pp. 143-151.

[19] Section 44, Rule 130 of the Rules of Court states:

Sec. 44. Entries in official records. — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated.

[20] *Republic v. Sandiganbayan*, 325 Phil. 762 (1996).

[21] Folder of Exhibits for C-Square, Exh. "A."

[22] Folder of Exhibits for C-Square, Exh. "C-3."

[23] Ramon Arcilla, Jimmy Salazar and Reynaldo Peralta v. Court of Appeals and People of the Philippines, G.R. No. 135270, 30 December 2003.

[24] De Ysasi v. Arceo, 421 Phil. 976 (2001).

[25] Eastern Shipping Lines, Inc. v. Court of Appeals, G.R. No. 97412, 12 July 1994, 234 SCRA 78; Reformina v. Tomol, Jr., No. L-59096, 11 October 1985, 139 SCRA 260.

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