

**ROBERTO S. BENEDICTO AND TRADERS ROYAL BANK, PETITIONERS,
VS. MANUEL LACSON, A & A MONTELIBANO HIJOS, INC.,
ROBERTO ABELLO, DOMINADOR AGRAVANTE, LUISA ALANO,
ALEXANDER FARMS, IN...**

G.R. No. 141508. May 05, 2010

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Before this Court is a Petition for Review on certiorari,[1] under Rule 45 of the Rules of Court, seeking to set aside the September 30, 1999 Decision[2] and January 10, 2000 Resolution [3] of the Court of Appeals (CA) in CA-G.R. CV No. 53841.

The facts of the case are as follows:

Under Presidential Decree No. 388,[4] the Philippine Sugar Commission (PHILSUCOM) was created and vested with the power to act as the single buying and selling agency of sugar in the Philippines. On September 7, 1977, PHILSUCOM further organized the National Sugar Trading Corporation (NASUTRA) as its buying marketing arm. Petitioner Robert S. Benedicto[5] was the concurrent Chairman and President of Traders Royal Bank[6] and NASUTRA.

The case stems from a Complaint,[7] docketed as Civil Case No. 95-9137 (Bacolod Case), filed by respondents, individual sugar planters and agricultural corporations Manuel Lacson et al., on November 23, 1995, in the Regional Trial Court (RTC) of Bacolod City, Branch 44. Respondents' complaint was premised on a claim for unpaid shares based on Sugar Order No. 2, series of 1979-1980[8] and Sugar Order No. 1, series of 1980-1981[9] issued by PHILSUCOM. The claims cover the sugar export sales[10] supposedly undervalued by NASUTRA and coursed through Traders Royal Bank, the total amount of which is claimed by respondents to be \$33,907,172. 47, to wit:

**SUMMARY OF CLAIMS UNDER THE FIRST TO FIFTEENTH
CAUSES OF ACTION**

92. As tabulated in Annex C hereof, while the total amount actually paid by the buyers and collected by the PHILSUCOM and the Defendants NASUTRA, BENEDICTO, MONTEBON and TRB on the sales of export sugar subject of the preceding Causes of Action, amounted to US\$ 94,146,954.03, the PHILSUCOM and the said Defendants recorded and reported a total collection of only US\$60,239,781.56, resulting in an undervaluation of Defendant NASUTRA's export sales by US\$ 33, 907,172.74 and, correspondingly, in an equivalent understatement of the amount due the Plaintiffs and other sugar producers in the profits realized from such sales, pursuant to the directive of then President Marcos as implemented in the PHILSUCOM SUGAR ORDERS hereto attached as Annexes B and B-1 hereof.

93. Accordingly, on the basis of their respective production of "A" and "C" sugar for the 1980-1981 crop year vis-à-vis the national production of 20,474,653 piculs of the same classes of sugar for the same crop year, the Plaintiffs are entitled to the payment by Defendants of their pro rata share, in the amounts indicated opposite their respective names in Annex C-1 hereof, in the undeclared profit of US\$33,907,172.74 realized from the export sales, subject of the preceding Causes of Action, during the said crop year.[11]

Petitioner, as President and concurrent Chairman of both Traders Royal Bank and NASUTRA, was charged by respondents with fraud and bad faith, not only in refusing to furnish them accurate data on NASUTRA's export sugar sales, but, more importantly, in under-reporting and under-declaring the true prices of the shipments.[12] Respondents, thus, prayed for a refund of their shares in the undervalued shipments.

On December 27, 1995, petitioner filed a Motion to Dismiss,[13] arguing therein (1) that respondents had violated the rule on forum shopping; (2) that respondents have no cause of action; (3) that the issues involved are res judicata or rendered moot by case law; and (4) that the claim or demand has already been paid.

On the issue of forum shopping, petitioner argued that respondents have already filed the following cases beforehand, viz.: (a) Civil Case No. 4301, before Branch 51 of the RTC of Bacolod, entitled Hector Lacson, et al. v. NASUTRA et al., (Hector Lacson Case); (b) Civil Case No. 88-46368, before Branch 23 of the RTC of Manila, entitled Ramon Monfort et al. v. NASUTRA et al. (Ramon Monfort Case); and (c) Civil Case No. 65156, before Branch 264 of the RTC of Pasig, entitled Manuel Lacson, et al. v. NASUTRA, et al. (Pasig Case).[14]

On the issue of no cause of action, petitioner argued that: (a) not being their agent, NASUTRA had no obligation to share its profits with respondents; (b) the questioned transactions were already perfected and consummated both with respect to the delivery of the sugar and full payment of the price; (c) respondents are estopped from questioning the subject transactions, having executed in favor of NASUTRA a "Chattel Mortgage on Standing Crop" which authorized the latter, among others, to sell or dispose of the same at the time, place, and for the price which it may deem convenient and reasonable; and (d) NASUTRA had long been dissolved and liquidated under Presidential Decree No. 2005 and Executive Order No. 114.[15]

Lastly, petitioner argued that the issues posed by respondents are barred by res judicata and/or rendered moot by the decisions in the following cases, viz.: (a) G.R. No. 55798, entitled Corazon Zayco, et al. v. NASUTRA et al.; (b) Civil Case No. Q- 33723, entitled Hortensia Starke v. NASUTRA, et al.; (c) Civil Case No. 3265, entitled Cecilia Magsaysay, et al. v. NASUTRA et al.; and (d) Civil Case No. 16439, entitled John Keng Seng v. NASUTRA, et al.[16]

On March 26, 1996, respondents filed a Consolidated Opposition to Motion to Dismiss.[17] Simultaneous thereto, respondents also filed an "Amended Certification" to the following effect:

x x x x

2. That, except for the case entitled Manuel Lacson v. Roberto S. Benedicto, et al., Civil Case 65156, Pasig, RTC Branch 264, filed by some of the Plaintiffs on June 20, 1995 and subsequently withdrawn by them without prejudice on November 14, 1995 pursuant to Sec. 1, Rule 17 prior to the filing of the present suit, Plaintiffs have not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency; that to the best of my knowledge, no such action or proceeding is pending the Supreme Court, the Court of Appeals, or any other tribunal or agency; and if I or they should hereafter learn that a similar action or proceeding has been filed or pending before the Supreme Court, Court of Appeals, or any other tribunal or agency, Plaintiffs and I hereby undertake to report such fact within five (5) days therefrom to this Honorable Court.[18]

On June 5, 1996, the RTC issued an Order[19] granting petitioner's motion to dismiss the complaint, the dispositive portion of which reads:

WHEREFORE, premises considered, the Motions to Dismiss are hereby GRANTED. The case against all the defendants is ordered DISMISSED.

Furnish copies of this Order all counsel on record for their information.

SO ORDERED.[20]

The RTC ruled that a perusal of the copies of the complaints in two cases, namely: Hector Lacson Case and Ramon Monfort Case show similarities with the present Bacolod Case such that different decisions or rulings would give rise to conflicting rules on law on similar issues.[21] The RTC also held that respondents were guilty of forum shopping for failure to report in their original anti-forum shopping certification in the Bacolod Case that they had filed a similar case with the RTC of Pasig notwithstanding that the same had been withdrawn by them. The RTC ruled that even if the Pasig Case had been withdrawn, the same had already been commenced.[22] Thus, the RTC held that there was a need to report the same in the anti-forum shopping certification in the Bacolod Case. Lastly, the RTC ruled that NASUTRA had already been dissolved and hence, respondents have no cause of action against NASUTRA.[23] The other grounds raised, however, by petitioner in support of its motion to dismiss were denied by the RTC, as the same did not appear to be indubitable without further evidence. [24]

Respondents appealed the RTC Order to the CA.

On September 30, 1999, the CA rendered a Decision reversing the assailed RTC Order. The CA found merit in respondents' appeal and ordered for the remand of the case to the RTC. The dispositive portion of the Decision reads:

WHEREFORE, the appeal is GRANTED and the Assailed Order dated June 5, 1996 is REVERSED and SET ASIDE, and in lieu thereof, a new one is entered ordering the REMAND of the case to the court of origin for further proceedings.

SO ORDERED.[25]

Aggrieved by the CA Decision, petitioner filed a Motion for Reconsideration[26], which was, however, denied by the CA in a Resolution dated January 10, 2000.

Hence, herein petition, with petitioner raising the following errors committed by the CA, to wit:

5.1. WHEN IT ABSOLVED THE PRIVATE RESPONDENTS OF ANY VIOLATION OF THE ANTI-FORUM SHOPPING RULE NOTWITHSTANDING THEIR (CONCEDED) FAILURE TO SEASONABLY APPRISE THE BACOLOD COURT OF THE EARLIER FILING OF A SIMILAR CASE BEFORE THE PASIG COURT, THE SAME BEING A MATERIAL INFORMATION THE NON- DISCLOSURE OR CONCEALMENT THEREOF CONSTITUTING AN INEXCUSABLE OMISSION CLEARLY PENALIZED UNDER THE PERTINENT SC CIRCULARS AND SECTION 5, RULE 7 OF THE NEW RULES OF CIVIL PROCEDURE;

5.2. WHEN IT REFUSED TO APPLY THE PRINCIPLE OF LITIS PENDENTIA NOTWITHSTANDING THE (CONCEDED) SIMILARITIES IN THE CIRCUMSTANCES OF THE PLAINTIFFS, THE IDENTITIES OF THE DEFENDANTS AND, MOREOVER, THE SIMILARITIES IN SOME OF THE ANTECEDENT ISSUES IN CIVIL CASE NO. 95-9137 AND IN THE OTHER PENDING CASES AGAINST THE HEREIN PETITIONERS; and

5.3. WHEN IT FAILED TO CONSIDER THAT CIVIL CASE NO. 95-9137 DESERVES DISMISSAL, AT ANY RATE, BASED ON THE OTHER GROUNDS INVOKED BY THE HEREIN PETITIONERS, NAMELY, LACK OF CAUSE OF ACTION, RES JUDICATA, PAYMENT AND PRESCRIPTION.[27]

The petition is not meritorious.

On Forum Shopping: Civil Case No. 95-9137 (Bacolod Case) vis-a-vis
Civil Case No. 65156 (Pasig Case)

Petitioner contends that respondents are guilty of forum shopping because they failed to disclose, at the time of the filing of the Bacolod Case, the fact that some of the respondents had earlier commenced a similar action in Pasig. Petitioner claims that respondents should have informed the RTC of Bacolod of the commencement and subsequent withdrawal of the Pasig Case in the certificate of non-forum shopping. Petitioner insists that even if the Pasig Case was subsequently withdrawn, the same still constituted a "commenced action," which is required to be disclosed under the rules of forum shopping.

Section 5, Rule 7 of the 1997 Rules of Civil Procedure provides that:

SEC. 5. Certification against forum shopping. - The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt as well as a cause for administrative sanctions.

A perusal of the records shows that, with the exception of additional party-plaintiffs, the Pasig Case actually has a strong resemblance to the Bacolod Case. The Pasig Case, however, was dismissed upon the instance of the plaintiffs even before the Bacolod Case was filed. The RTC Order[28] allowing the dismissal of the complaint in the Pasig Case is hereunder reproduced, to wit:

x x x x

On November 14, 1995, A Notice of Dismissal was filed by plaintiffs thru counsel, Attys. Ricardo G. Nepomuceno, Jr. and Epifanio Sedigo, Jr., pursuant to Section 1, Rule 17 of the Rules of Court.

According to the said Rule, plaintiff may, at any time before service of answer, dismiss an action by filing a notice of dismissal.

Records show that no answer has yet been filed by defendants.

Being in conformity to the Rules, the same is hereby granted.

WHEREFORE, herein complaint is hereby DISMISSED and without prejudice to the re-filing thereof.

Notify parties and counsel of this Order.

SO ORDERED.[29]

The essence of forum shopping is the filing by a party against whom an adverse judgment has been rendered in one forum, seeking another and possibly favorable opinion in another suit other than by appeal or special civil action for certiorari;^[30] the act of filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively for the purpose of obtaining a favorable judgment.^[31] Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to res

judicata in the action under consideration.[32]

There is no dispute that the dismissal of the complaint in the Pasig case, upon notice of the plaintiffs therein, was sanctioned by Section 1, Rule 17 of the Revised Rules of Court.[33] Quite clearly, the Order declared that the dismissal of the complaint was without prejudice to the re-filing thereof. Moreover, even if the same were tested under the rules on *litis pendentia* and *res judicata*, the danger of conflicting decisions cannot be present, since the Pasig case was dismissed even before a responsive pleading was filed by petitioner. Since a party resorts to forum shopping in order to increase his chances of obtaining a favorable decision or action, it has been held that a party cannot be said to have sought to improve his chances of obtaining a favorable decision or action where no unfavorable decision has even been rendered against him in any of the cases he has brought before the courts.[34]

While the RTC may have been of the opinion that the Pasig Case was nevertheless "commenced" and, therefore, the same should have been stated by respondents in their certification of non-forum shopping in the Bacolod case, this Court does not share the same view.

In *Roxas v. Court of Appeals*,[35] this Court had on occasion ruled that when a complaint is dismissed without prejudice at the instance of the plaintiff, pursuant to Section 1, Rule 17 of the 1997 Rules of Civil Procedure, there is no need to state in the certificate of non-forum shopping in a subsequent re-filed complaint the fact of the prior filing and dismissal of the former complaint, thus:

Considering that the complaint in Civil Case No. 97-0523 was dismissed without prejudice by virtue of the plaintiff's (herein petitioner's) Notice of Dismissal dated November 20, 1997 filed pursuant to Section 1, Rule 17 of the 1997 Rules of Civil Procedure, there is no need to state in the certificate of non-forum shopping in Civil Case No. 97-0608 about the prior filing and dismissal of Civil Case No. 97-0523. In *Gabionza v. Court of Appeals*, we ruled that it is scarcely necessary to add that Circular No. 28-91 (now Section 5, Rule 7 of the 1997 Rules of Civil Procedure) must be so interpreted and applied as to achieve the purposes projected by the Supreme Court when it promulgated that Circular. Circular No. 28-91 was designed to serve as an instrument to promote and facilitate the orderly administration of justice and should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective or the goal of all rules or procedure - which is to achieve substantial justice as expeditiously as possible. The fact that the Circular requires that it be strictly complied with merely underscores its mandatory nature in that it cannot be dispensed with or its requirements altogether disregarded, but it does not thereby interdict substantial compliance with its provisions under justifiable circumstances.

Thus, an omission in the certificate of non-forum shopping about any event that would not constitute *res judicata* and *litis pendentia* as in the case at bar, is not fatal as to merit the dismissal and nullification of the entire proceedings considering that the evils sought to be prevented by the said certificate are not present. It is in this light that we ruled in *Maricalum Mining Corp. v. National Labor Relations Commission* that a liberal interpretation of Supreme Court Circular No. 04-94 on non-forum shopping would be more in keeping with the objectives of procedural rules which is to "secure a just, speedy and inexpensive disposition of every action and proceeding." [36]

Verily, in numerous occasions, this Court has relaxed the rigid application of the rules to afford the parties the opportunity to fully ventilate their cases on the merits. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should thus not serve as basis of decisions.[37] Technicalities should never be used to defeat the substantive rights of the other party.[38] Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.[39] In that way, the ends of justice would be better served. [40] For, indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to

hinder but to promote the administration of justice.[41] In the case at bar, considering that the same involves the various claims of 371 respondents, this Court finds that justice and equity are best served by allowing respondents to prove their case on the merits rather than denying them their day in court on a strict application of the rules.

On Litis Pendentia: Bacolod Case, Hector Lacson Case, Ramon Monfort Case

Petitioner contends that the CA erred when it refused to apply the principle of *litis pendentia* notwithstanding the similarities in the circumstances of the plaintiffs, the identities of the defendants and the similarities in some of the antecedent issues in the Bacolod Case, the Hector Lacson Case and Ramon Monfort Case.

The requisites of *litis pendentia* are: (a) the identity of parties, or at least, such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases, such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[42]

The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action.[43] This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons.[44]

The CA was correct when it opined that:

Our perusal of the record reveals that forum shopping cannot, indeed, be attributed to the appellants. While it may be readily conceded that the plaintiffs in the instant case are more or less similarly situated as the plaintiffs in the cases previously filed and that the defendants, or at least the interest they represent, are basically the same, the fact remains that there is no identity of causes of action and issues in the cases so far filed against the latter. The instant suit, as may be gleaned from the complaint, concerns the supposed undervaluation by the appellees of fifteen (15) sugar export sales of the appellants' export sugar production for the crop years 1979-1980 and 1980-1981 (pp. 3-32, Orig. Rec.). In contrast, Civil Case No. 4301, entitled "Hector Lacson, et al. vs. National Sugar Trading Corporation, et al." concerns the overcharging of trading costs for the plaintiffs' export sugar production for the crop years 1981-1982 and 1982-1983, underpayment resulting from the defendants' use of an erroneous peso-dollar exchange rate and reimbursement for amounts alleged to have been wrongfully withheld by the latter (pp. 163-171, *ibid.*) On the other hand, Civil Case No. 88-46368 entitled "Ramon Monfort, et al. vs. Philippine Sugar Commission, et al." concerned the deficiency due the plaintiffs therein from sugar export sales for which a lower exchange rate was allegedly used by the defendants, the recovery, among others, of excessive trading costs charged, unauthorized deductions, damages, premiums and other sums supposedly still due from the defendants, as well as a detailed accounting of the sales of the export sugar produced by the plaintiffs therein. While the amended complaint filed in the case also sought to claim differentials for three (3) under-valued/under-declared NASUTRA export sales from the crop year 1980-1981 harvest, the same significantly pertained to different shipments and were coursed not through appellee Traders' Royal Bank but through the Republic Planters Bank (pp. 246-271, *ibid.*) The variance in the subject matters of the instant case and the aforesaid cases are even conceded in the brief filed by appellee Roberto Benedicto (pp. 153-155, Rollo).[45]

The test to determine identity of causes of action is to ascertain whether the same evidence necessary to sustain the second cause of action is sufficient to authorize a recovery in the first, even if the forms or the nature of the two (2) actions are different from each other. If the same facts or evidence would sustain both, the two (2) actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action; otherwise, it is not. This method has been considered the most accurate test as to whether a former judgment is a bar in subsequent proceedings between the same parties. It has even been designated as infallible.[46]

While the plaintiffs in the Bacolod Case are more or less similarly situated as the plaintiffs in the Hector Lacson Case and Ramon Monfort Case, the CA was correct when it ruled that there was no identity of causes of action and issues^[47] as it cannot be said that exactly the same evidence are needed to prove the causes of action in all three cases.

Thus, in the Bacolod Case, the evidence needed to prove that petitioner undervalued fifteen sugar export sales of respondents' export sugar production for the crop years 1979-1980 and 1980-1981 is not the same evidence needed in the Hector Lacson Case to prove the over- charging of trading costs for respondents' export sugar production for the crop years 1981-1982 and 1982-1983, underpayment resulting from the petitioner's use of an erroneous peso-dollar exchange rate and reimbursement for amounts alleged to have been wrongfully withheld by the latter. The same holds true for the Ramon Monfort Case where the same significantly pertained to different shipments and were coursed not thru the Traders Royal Bank, but thru the Republic Planters Bank. The Court of Appeals, therefore, did not abuse its discretion in finding that no *litis pendentia* existed in the case at bar.

On the "other grounds" which warrant the dismissal of the action

It is the position of petitioner that the CA erred when it chose not to dismiss the case based on the "other grounds" petitioner had earlier raised in its motion to dismiss. More specifically, petitioner claims that the grounds of lack of cause of action, *res judicata*, payment and prescription warrant the dismissal of the complaint.

The same deserves scant consideration.

It bears to stress that the RTC, in its June 5, 1996 Order, did not also consider the other grounds now raised by petitioner, to wit:

In view of the sufficiency of the grounds for dismissal discussed above, the other grounds invoked by the defendants in their Motion to Dismiss, which do not appear to be indubitable without additional evidence need not be considered.^[48]

While petitioner's Motion to Dismiss was granted by the RTC in its June 5, 1996 Order, the same Order, however, effectively denied the other grounds raised by petitioner as the same did not appear to be indubitable without additional evidence.

It is a settled rule that an Order denying a motion to dismiss is merely interlocutory and, therefore, not appealable, nor can it be subject of a petition for review on certiorari. Such order may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. The ordinary procedure to be followed in that event is to file an answer, go to trial, and if the decision is adverse, reiterate the issue on appeal from the final judgment.^[49]

While the rule refers to instances when a motion to dismiss is completely denied, this Court finds no reason not to apply the same in instances when some of the grounds raised in a motion to dismiss are denied by the lower court. The "other grounds" now raised by petitioner were not before the CA because the same were not put in issue by respondents when they chose to assail the RTC's Order to dismiss the complaint. This is understandable especially since the "other grounds" were not made the basis of the RTC's Order. Procedurally then, the proper remedy of petitioner, should he choose to reassert the "other grounds," is to interpose the same as defenses in his answer and not to put them in issue in this appeal.

WHEREFORE, premises considered, the petition is DENIED. The September 30, 1999 Decision and January 10, 2000 Resolution of the Court of Appeals in CA-G.R. CV No. 53841, directing for the remand of the case, are AFFIRMED. The Regional Trial Court of Bacolod City, Branch 44, is hereby ordered to hear the case on the merits and decide the same with deliberate dispatch.

SO ORDERED.

Corona, (Chairperson), Nachura, Bersamin[*], and Mendoza, JJ., concur.

[*] Designated as an additional member in lieu of Associate Justice Presbitero J. Velasco, Jr. per Raffle dated April 28, 2010.

[1] Rollo, pp. 12-59.

[2] Penned by Associate Justice Fermin A. Martin, Jr., with Associate Justices B.A. Adefuin-dela Cruz and Presbitero J. Velasco, Jr. (now a member of this Court), concurring; id. at 64-89.

[3] Id. at 91-92.

[4] Promulgated on February 2, 1974, as amended by Presidential Decree No. 1192 dated September 2, 1977.

[5] Note that Robert S. Benedicto died on May 15, 2000 as evidenced by a Certificate of Death; rollo, p. 686. Per this Court's June 20, 2001 Resolution, Robert S. Benedicto has been substituted by the administratrix of his estate; i d. at 719.

[6] Note this Court's December 11, 2006 First Division Resolution wherein Traders Royal Bank's motion to withdraw as co-petitioner was granted on the basis of an amicable settlement/compromise agreement with respondents; id. at 1065.

[7] Rollo, pp. 132-161.

[8] PHILSUCOM SUGAR ORDER NO. 2

Series of 1979-1980

x x x x

1. The sugar pertaining to the 1979-1980 crop shall continue to be liquidated by NASUTRA at the following prices without prejudice to future adjustments as circumstances may warrant:

"A" (Export Sugar) — — — -P 90.00 per picul

"C" (Reserve Sugar) — — — - 90.00 per picul

"B" (Domestic Sugar) — — - 110.00 per picul

"B" (Washed Sugar) — — — -124.00 per picul

2. That in addition to these prices, an additional price on "A" and "C" sugars of the 1979-80 crop which are exported equivalent to 50% of the export profits of NASUTRA over and above its break- even cost shall be paid to the producers (planters and millers) on a quarterly and pro rata basis beginning the end of the first quarter of calendar year 1980. The balance of 50% of such export profits of NASUTRA shall be applied to the full repayment of the PHILSUCOM-NASUTRA loans above-mentioned.

3. That this order shall apply retroactively to all sugars already produced since the start of milling of the 1979-1980 crops and prospectively to all sugars still to be produced up to the end of crop year 1979-1980. x x x; id. at 177-178.

[9] PHILSUCOM SUGAR ORDER NO. 1

Series of 1980-1981

x x x x

2. That sugar pertaining to the 1980-1981 crop shall be liquidated by NASUTRA at the following prices, without prejudice to future adjustments as circumstances may warrant:

"A" (Export Sugar) — — — — - P 115.00 per picul
 "C" (Reserve Sugar) — — — — - 115.00 per picul
 "B" (Domestic Sugar) — — — — 110.00 per picul
 "B" (Washed Sugar) — — — — — 124.20 per picul

In addition to the above-stated liquidation price for "A" and "C" Sugar of the 1980-1981 crop, an additional price for the same classes of sugar which are exported equivalent to 50% of the export profits of NASUTRA over and above its break-even cost shall be paid to the producers (planters and millers) on a quarterly and pro rata basis beginning with the first quarter of calendar year 1981. The remaining 50% of such export profits of NASUTRA shall be applied to the repayment of loans from local and foreign sources contracted by PHILSUCOM-NASUTRA to support the liquidation prices paid to the producers which were at a level higher than export prices prevailing in the world market.

The above stated liquidation prices for crop year 1980-1981 shall apply retroactively to all sugars already produced since September 1, 1980 and prospectively to all sugars still to be produced up to the end of August 1981. x x x ; id. at 175-176.

[10] "Summary of Undervalued/ Under-Declared Nasutra Export Sales Coursed Thru TRB;" id. at 179.

Shipment

Vessel

Quantity

Actual

Reported

Undervaluation

Date

Collection

Collection

10/25/80

MV Fairwind

450.00 LT

\$266,716.80

\$153,115.20

\$113,601.60

11/13/80

MV Dona

24,350.00LT

10,524,722.40

10,359,697.60

183,024.80

Corazon

12/02/80

MV Dona

725.00 LT

429,710.40

246,685.60

183,024.80

Magdalena

12/10/80

MV Centurion

22,800.00LT

13,375,756.80

7,757,836.80

5,617,920.00

Bulker

01/21/81

MV Tauros

25,565.00LT

16,327,592.82

9,373,247.73

6,954,345.09

01/27/81

MV Union

7,800.00 LT

4,506,102.67

2,751,273.91

1,754,828.76

Caribbean

12/22/80

MV Silver

10,000.00LT

6,079,494.04

3,422,361.71

2,657,132.33

Wave

01/02/81

MV Caribbean

6,213.90 LT

3,646,837.25

2,052,933.37

1,593,903.88

Ace

01/02/81

MV Hokuho

4,467.40 LT

2,621,844.69

1,475,928.89

1,145,915.80

Maru

01/29/81

MV Capitan

14,763.78LT

9,017,954.18

5,228,288.37

3,789,665.81

Kushnarenko

01/30/81

MV Irene

8,858.26 LT

5,678,577.25

4,649,332.99

1,029,244.26

02/02/81

MV Sophia

11,000.00MT

6,353,729.95

3,683,666.14

2,670,063.81

02/19/81

MV Ios

2,670.08 LT

1,668,653.57

1,222,970.89

445,682.68

03/10/81

MV Faith Five

306.68 MT

117,610.01

104,605.56

13,004.45

06/02/81

MV Dona Magdalena

22,800.00 LT

13,513,651.20

7,757,836.80

5,755,814.40

TOTALS

\$94,146,954.03

\$60,239,781.56

\$33,907,172.47

[11] Rollo, pp. 158-159.

[12] Id. at 74.

[13] Id. at 192-216.

[14] Id. at 74.

[15] Id. at 74-75.

[16] Id. at 75.

[17] Id. at 217-268.

[18] Id. at 76. (Emphasis supplied.)

[19] Id. at 400-405.

[20] Id. at 405.

[21] Id. at 403.

[22] Id. at 404.

[23] Id.

[24] Id.

[25] Id. at 88.

[26] Id. at 594-604.

[27] Id. at 23.

[28] Id. at 130-131.

[29] Id. (Emphasis supplied.)

[30] Heirs of Trinidad de Leon Vda. De Roxas v. Court of Appeals, G.R. No. 138660, February 5, 2004, 422 SCRA 101.

[31] Executive Secretary v. Gordon, G.R. No. 134171, November 18, 1998, 298 SCRA 736, 740.

[32] Marcopper Mining Corporation v. Solidbank Corporation, G.R. No. 134049, June 17, 2004, 432 SCRA 360, citing cases.

[33] Section 1, Rule 17 of the Revised Rules of Court states:

SECTION 1. Dismissal upon notice by plaintiff. - A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Upon such notice being filed, the court shall issue an order confirming the dismissal. Unless otherwise stated in the notice, the dismissal is without prejudice, x x x.

[34] Executive Secretary v. Gordon, supra note 31, at 741.

[35] 415 Phil. 430 (2001).

[36] Id at 445. (Emphasis supplied.)

[37] Crystal Shipping, Inc. v. Natividad, G.R. No. 154798, October 20, 2005, 473 SCRA 559, 566.

[38] Dalton-Reyes v. Court of Appeals, G.R. No. 149580, March 16, 2005, 453 SCRA 498, 508.

[39] Philippine Amusement and Gaming Corporation v. Angara, G.R. No. 142937, November 15, 2005, 475 SCRA 41, 53.

[40] Heavylift Manila, Inc. v. Court of Appeals, G.R. No. 154410, October 20, 2005, 473 SCRA 541, 547.

[41] Asian Spirit Airlines (Airline Employees Cooperative) v. Bautista, G.R. No. 164668, February 14, 2005, 451 SCRA 294, 301.

[42] Dayot v. Shell Chemical Company (Phils.) Inc., G.R. No. 156542, June 26, 2007, 525 SCRA 535, 545-546; Abines v. Bank of the Philippine Islands, G.R. No. 167900, February 13, 2006, 482 SCRA 421, 429.

[43] Sherwill Development Corporation v. Sitio Sto. Niño Residents Association, Inc., G.R. No. 158455, June 28, 2005, 461 SCRA 517, 531.

[44] Forbes Park Association, Inc. v. Pagrel, Inc., G.R. No. 153821, February 13, 2008, 545 SCRA 39, 49.

[45] Rollo, pp. 82-83. (Underscoring supplied.)

[46] Vda. de Cruz v. Carriaga, Jr., G.R. Nos. 75109-10, June 28, 1989, 174 SCRA 330, 342.

[47] Rollo, p. 82.

[48] Id. at 404.

[49] España, Sr. v. Court of Appeals, 335 Phil. 983, 987-988 (1997).

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