

## PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HERNANDO B. DELIZO, RESPONDENT.

*G.R. No. 141624. August 17, 2004*

Ponente: CALLEJO, SR., J.

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### CALLEJO, SR., J.:

Before us is a petition for review on certiorari of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 50995 granting the petition for certiorari of respondent Dr. Hernando B. Delizo and nullifying the December 18, 1998 and February 1, 1999 Orders[2] of the Regional Trial Court of Mandaluyong City in Criminal Case No. 167-MD for estafa.

#### The Antecedents

Arsenio T. Ng filed a criminal complaint for estafa against the respondent with the Office of the City Prosecutor of Mandaluyong City, docketed as Inv. Slip No. 97-10288. After the requisite preliminary investigation, First Assistant City Prosecutor Esteban A. Tacla, Jr. signed an Information dated October 10, 1997, charging the respondent with estafa. The accusatory portion of the Information reads:

That on or about the 24th day of October, 1996, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, being then President and Chairman of Mediserv, Inc., by means of deceit, false pretenses and fraudulent representation, executed prior to or simultaneously with the commission of the fraud, succeeded in inducing herein complainant, Arsenio T. Ng to give the amount of P12 Million, to the accused on his pretext that said amount will be converted by him into shares of stock (120,000 shares of stocks) and in order to complement such false pretenses or fraudulent acts, he (respondent) even showed a Board Resolution defining his authority to contract loan from the complainant and the conversion of such loan into shares of stock, which, on the strength by said manifestations and representations, the complainant gave said amount and duly received by the accused, he knowing fully well that the same were false and fraudulent and were only made to entice complainant into believing that he, indeed, is empowered and in a position to issue the equivalent number of shares of stocks (120,000) in order to obtain, as in fact, he (accused) obtained the total amount of P12 Million from the complainant and the accused, once in possession of the money, far from complying with his obligation to release the 120,000 shares of stocks into complainant's name, despite demands made on him and, with intent to defraud, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert said amount, to his own personal use and benefit, to the damage and prejudice of Arsenio T. Ng, in the aforementioned amount of P12 Million.

CONTRARY TO LAW.[3]

Before the Information was filed, the Ambulatory Health Care Institute, Inc. (AHCII), also known as Clinica Manila (CM), and the Health Check, Inc. (HCI) filed a Complaint on October 22, 1997 with the Securities and Exchange Commission (SEC) against the respondent and a certain "John Doe" for injunction and damages. The case was docketed as SEC Case No. 10-97-5794. The petitioners therein alleged, inter alia, that a special meeting of the stockholders of CM was held on October 9, 1997 after due notice to the respondent two weeks before the

said date. During the said meeting, the stockholders elected a new board of directors, replacing the respondent as CM president. Thereafter, at 3:00 p.m. of October 13, 1997, the respondent and an unidentified companion arrived at the CM office at SM Megamall, announced that he was still the president, and rallied the officers and employees against the new board of directors. Despite the security guards' request for him to leave the premises, the respondent refused to do so. He, thereafter, wrote the China Banking Corporation, the depository bank of CM, requesting it not to honor any change in the authorized signatories for CM, and appended thereto a falsified General Information Sheet (GIS) to show that he was still a member of the board of directors and president of CM. It was prayed that, after due proceedings, judgment be rendered:

WHEREFORE, it is respectfully prayed of this Honorable Commission to adjudge that respondent be ordered:

- Not to do any act or deed that will disturb or interfere with the operations and business of the petitioners, and not to cause any alarm, scandal, disturbance, intrigue, disloyalty, disorder, or defiance on the part of any (sic) employees, officers, contractors, workers of CLINICA MANILA and HEALTH CHECK, INC.;
- Not to do any act that will interfere with or disturb the management and operation of the funds, bank accounts, receivables, and all other property transactions of the petitioners, and to stop representing themselves as having any kind of power and authority over any asset of the two companies and their management;
- Not to do any act or deed, directly or indirectly, that will dishonor the name and reputation of the petitioners;
- To pay actual damages of P1,000,000; moral damages of P2,000,000; and exemplary damages of P500,000; and to pay the costs of suit.[4]

On October 23, 1997, AHCII, Mediserv, Inc. (MI) and the respondent, filed a Complaint with the SEC against Arsenio T. Ng, Kelly S. Salvador, Antonio Roberto M. Abaya, Bartolome C. Felipe, Jr., Joel Abanilla and Nonette C. Mina. The complainants alleged, inter alia, that they had been stockholders of AHCII since August 1995, and represented a majority of the outstanding capital stock, owning 52.37% and 6.08%, respectively, as shown by the GIS dated October 15, 1997 filed with the SEC; the respondent was the incumbent chairman of the board of directors and president of AHCII; and there was no quorum during the stockholders' meeting of October 9, 1997; as such, the said meeting where a new set of board of directors and officers were, elected was in violation of the by-laws of the complainant AHCII and, consequently, illegal. The complainants prayed that the following reliefs be granted after due proceedings:

- a) Declaring the Writ of Preliminary Injunction earlier issued as permanent;
- b) Adjudging the Special Stockholders' Meeting purportedly held on October 9, 1997 as null and void ab initio;
- c) Adjudging any action, proceeding, resolution, and/or election made in the alleged stockholders' meeting purportedly held on October 9, 1997 as null and void ab initio;
- d) Adjudging respondents Arsenio T. Ng, Kelly S. Salvador, Antonio Roberto M. Abaya, Bartolome C. Felipe, Jr., Joel Abanilla and Nonette C. Mina, jointly and severally, liable to pay to complainant Delizo moral damages of not less than P1,000,000.00;
- e) Adjudging respondents Arsenio T. Ng, Kelly S. Salvador, Antonio Roberto M. Abaya, Bartolome C. Felipe, Jr., Joel Abanilla and Nonette C. Mina, jointly and severally, liable to pay to the complainants, as follows:
  - Exemplary damages of not less than P500,000.00;
  - Actual damages not less than P250,000.00;
  - Attorney's fee of P200,000.00;

- Costs of litigation.

Other equitable reliefs are prayed for.[5]

The case was docketed as SEC Case No. 10-97-5796.

In the meantime, Mediserv, Inc., represented by its president, the respondent, and its treasurer, Marissa D. Delizo, filed a complaint with the RTC of Manila, Branch 29, against the China Banking Corporation, the Landheights (Iloilo) Development Corporation, Notary Public Romeo A. Ignacio, Jr. and the Registrar of Deeds for the City of Manila. An amended complaint was later filed, where it was alleged, inter alia, that MI received a loan from the bank in the amount of P9,820,000, later increased to P11,200,000. To secure the payment of the said loan, MI executed a real estate mortgage and amendment to real estate mortgage over its property covered by Transfer Certificate of Title (TCT) No. 205824 of the Register of Deeds of Manila. MI also executed a promissory note on October 5, 2000 in favor of the bank in the amount of P11,200,000. The bank, thereafter, foreclosed the mortgage and sold the property at public auction in favor of the bank for P15,649,023.29, through defendant Notary Public Romeo A. Ignacio, Jr. It was prayed that, after due proceedings, it be granted the following reliefs:

WHEREFORE, it is most respectfully prayed of this Honorable Court that:

- Immediately upon filing of this Complaint, this Honorable Court issues a Writ of Preliminary Injunction, or at least a Temporary Restraining Order enjoining and restraining defendant Register of Deeds from effecting/allowing the registration or annotation of the purported auction sale of plaintiff's property covered by TCT No. 205824 of the Register of Deeds for the City of Manila in favor of defendant Landheights, or any transaction, dealing or incident arising from the purported auction sale allegedly conducted by defendant Ignacio until further orders from this Honorable Court.
- After hearing, to render Judgment, as follows:
  - Declaring the Writ of Preliminary Injunction earlier issued as permanent;
  - Declaring the alleged public auction sale conducted by defendant Ignacio over the subject plaintiff's property, as null and void;
  - Ordering and commanding Defendant China Bank to comply and to reduce into writing and/or to document its agreement with plaintiff to consolidate the first P5 million loan of plaintiff with it with the plaintiff's second loan of P1,800,000.00;
  - Adjudging defendants China Banking Corporation, Landheights (Iloilo) Development Corporation and Romeo A. Ignacio, Jr., jointly and severally, liable to pay to plaintiff the following:
    - Attorney's Fees in the amount of P200,000.00; and
    - Costs of suit.

Other equitable reliefs are prayed for.[6]

The case was docketed as Civil Case No. Q-97-86152.

On December 3, 1997, the Information for estafa against the respondent was filed with the RTC of Mandaluyong City and raffled to Branch 214. The case was docketed as Criminal Case No. 167-MD. The private prosecutor filed an ex parte motion for preliminary attachment, which was opposed by the respondent. On December 18, 1998, the trial court issued an Order[7] directing the issuance of a writ of preliminary attachment on a bond of P8,000,000. The respondent filed a motion for reconsideration of the order with a prayer for the suspension of the proceedings on the ground of the existence of a prejudicial question on December 23, 1998.

As early as January 13, 1998, the trial court in Branch 213 issued an Order denying the motion to suspend proceedings on the ground that the private complainant, Arsenio T. Ng, was not a stockholder of MI; hence, the pendency of the two (2) SEC cases was not a ground for the suspension of the case. On February 1, 1999, the trial court issued the assailed Order denying the motion for reconsideration.

On February 19, 1999, the respondent filed a Petition for Certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 50995, for the nullification of the Orders of the trial court, contending as follows:

6.A.) THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND ACTED IN EXCESS AND/OR WITHOUT JURISDICTION IN ORDERING THE ISSUANCE OF A WRIT OF PRELIMINARY ATTACHMENT GROSSLY IGNORING THE ESTABLISHED RULE THAT APPLICATIONS FOR A WRIT OF PRELIMINARY ATTACHMENT MUST BE STRICTLY CONSTRUED AGAINST THE APPLICANT AND LIBERALLY IN FAVOR OF THE PARTY AGAINST WHOM IT IS DIRECTED.

6.B.) THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND ACTED IN EXCESS AND/OR WITHOUT JURISDICTION IN ORDERING THE ISSUANCE OF THE PRELIMINARY ATTACHMENT DESPITE THE CLEAR SHOWING THAT THE CIVIL ASPECT OF THE CRIMINAL CASE IS ALREADY COVERED BY CASES BEFORE THE SECURITIES AND EXCHANGE COMMISSION AND THE REGIONAL TRIAL COURT OF MANILA; HENCE, THERE IS NO CIVIL ASPECT ATTACHED AND/OR DEEMED INSTITUTED WITH THE CRIMINAL CASE.

6.C.) THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND ACTED IN EXCESS AND/OR WITHOUT JURISDICTION IN ORDERING THE ISSUANCE OF A WRIT OF PRELIMINARY ATTACHMENT ON A P12 MILLION CLAIM PER THE INFORMATION WITH ONLY P8 MILLION BOND; HENCE, GROSSLY INSUFFICIENT, IMPROPER AND UNREASONABLE.

6.D.) THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND ACTED IN EXCESS AND/OR WITHOUT JURISDICTION IN MERELY RELYING ON THE ALLEGATIONS OF THE EX PARTE MOTION FOR ISSUANCE OF A WRIT OF PRELIMINARY ATTACHMENT WHICH ARE NOT SUPPORTED BY AFFIDAVIT/S AS REQUIRED UNDER THE RULES.

6.E.) THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND ACTED IN EXCESS AND/OR WITHOUT JURISDICTION IN NOT SUSPENDING THE PROCEEDINGS IN THE SUBJECT CRIMINAL CASE IN VIEW OF THE PRESENCE OF PREJUDICIAL QUESTIONS IN THE SEC CASES AND THE RTC CASE WHICH ARE DETERMINATIVE OF THE INNOCENCE OR GUILT OF THE ACCUSED, THE HEREIN PETITIONER.

6.F.) THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND ACTED IN EXCESS AND/OR WITHOUT JURISDICTION IN DENYING THE MOTION TO DISQUALIFY PRIVATE PROSECUTOR BEFORE THE SAID MOTION CAN BE HEARD; HENCE, A CLEAR AND PALPABLE VIOLATION OF DUE PROCESS.

6.G.) THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND ACTED IN EXCESS AND/OR WITHOUT JURISDICTION IN NOT DISQUALIFYING THE PRIVATE PROSECUTOR DESPITE THE CLEAR SHOWING THAT THE CIVIL ASPECT OF THE SUBJECT CRIMINAL CASE IS PRESENTLY LITIGATED AND/OR THE SUBJECT OF SEPARATE ACTIONS BEFORE THE SEC AND THE RTC.[8]

On January 18, 2000, the CA rendered a Decision granting the petition and nullifying the assailed Orders of the trial court, as well as the writ of preliminary attachment it issued. The fallo of the decision reads:

WHEREFORE, the petition is given due course. The assailed Orders of December 18, 1998 and February 1, 1999, as well as the writ of attachment are hereby set aside. The respondent Judge of the Regional Trial Court,

Mandaluyong City, Branch 214, is hereby directed to suspend proceedings of Criminal Case No. 167-MD considering the existence of a prejudicial question in SEC Cases Nos. 10-97-5794 and 10-97-5796 and Civil Case No. 97-86152.

SO ORDERED.[9]

### The Present Petition

The People of the Philippines, now the petitioner, filed its petition for review on certiorari with this Court, on the following grounds:

Public interest requires that all criminal acts be immediately investigated and prosecuted for the protection of society (*Gorospa vs. Pana Florida*, 101 SCRA 445). Thus, the suspension of criminal proceedings must be avoided unless the basis and grounds thereof are clear and unmistakable.

The finding of the trial court that the criminal case, the civil case filed with the Regional Trial Court (RTC) at Manila and the cases filed with the Securities and Exchange Commission (SEC) are based on the same transaction is grounded entirely on speculation. The complaints filed with the RTC and SEC cases do not support such finding.

Moreover, in ruling that a prejudicial question exists, the court based its finding solely on its conclusion that the criminal, civil and SEC cases arose out of the same transaction. This is contrary to Sec. 5, Rule 111 of the Rules of Court and the ruling of the Supreme Court that for a civil case to be considered prejudicial to a criminal action, it must appear not only that the civil case involves the same facts upon which the criminal prosecution is based, but also that the resolution of the issues raised in said civil action would be necessarily determinative of the guilt or innocence of the accused (*Ras vs. Rasul*, 100 SCRA 125).[10]

The petitioner, thus, raises the following issues for resolution:

I

WHETHER OR NOT THE CRIMINAL, CIVIL AND SEC CASES ARE BASED ON THE SAME TRANSACTION.

II

WHETHER OR NOT THE CASES FILED WITH THE SEC AND THE CIVIL CASE FILED WITH THE RTC RAISE PREJUDICIAL QUESTIONS WHICH WOULD NECESSITATE THE SUSPENSION OF THE CRIMINAL ACTION FOR ESTAFA.

Central to the issues in the case at bar are Sections 5 and 6, Rule 111 of the Rules of Court,[11] which read:

Sec. 5. Elements of prejudicial question. – The two (2) essential elements of a prejudicial question are: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed.

Sec. 6. Suspension by reason of prejudicial question. – A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the fiscal or the court conducting the preliminary investigation. When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests.[12]

The petitioner asserts that the issues involved in Criminal Case No. 167-MD for estafa are entirely different from and unrelated to the issues in the SEC cases and in Civil Case No. 97-86152 pending before the RTC of Manila. It asserts that, contrary to the rulings of the appellate court, the said cases are based on facts and transactions different from those in the criminal case. According to the petitioner, the resolution of the issues in the SEC and

the civil cases are not determinative of the guilt or innocence of the respondent in the criminal case; hence, the suspension of the proceedings in the criminal case was barren of factual and legal bases.

On the other hand, the CA held that the P12,000,000 subject of the transaction in the criminal case was the same amount involved in the SEC cases and the civil case. The CA then concluded that the issues raised or involved in such cases were determinative of the guilt or innocence of the respondent in the criminal case, warranting the suspension of the latter case.

#### The Ruling of the Court

The petition is meritorious.

In case the civil action is instituted ahead of the criminal action, under Section 2, Rule 111 of the Rules of Court, the civil action shall be suspended in whatever stage it may be found before judgment on the merits upon the commencement of the criminal action. Such criminal action has precedence over the civil action to enforce the civil liability of the accused arising from the delict. An exception is where the prejudicial question exists, under Sections 5 and 6, Rule 111 of the Rules of Court, as amended.

If the issues raised in a civil action are so similar or intimately related to those in the criminal case such that the resolution of the said issues in the civil case are determinative of the *juris et de jure* of the guilt or innocence of the accused in the criminal case, the proceedings in the latter case shall be suspended and the civil action shall proceed until judgment on its merits.[13] A prejudicial question is one based on a fact distinct and separate from the crime because if both actions arose from the same fact or transaction, the civil case does not constitute a prejudicial question to the determination of the criminal action.[14] Neither is there a prejudicial question if the civil and the criminal actions can, according to the law and rules, proceed independently of each other.[15] The rationale behind the principle of prejudicial question is to avoid two conflicting decisions.[16]

In this case, the transaction subject of the criminal case for estafa against the respondent is the receipt of the amount of P12,000,000 from the private complainant, Ng, which was intended for the purchase of 120,000 shares of stocks of MI. According to the Information in Criminal Case No. 167-MD, the respondent used the money for his personal benefit instead of purchasing the said shares in behalf of Ng. The event or occurrence subject of SEC Case No. 97-5794 filed by the AHCII and the HCI against the respondent was the latter's refusal to vacate the office of the president, and his insistence on performing and exercising the duties and powers of the said office, as well as the chairmanship of the board of directors of the said corporation despite his alleged ouster from the said positions. The plaintiff corporations sought a writ of injunction and relief for damages against the respondent. Neither Ng nor the MI were parties in the said case. On the other hand, SEC Case No. 97-5796 was filed by the respondent and several others, for and in representation of the AHCII and the MI, as the plaintiffs, to nullify the October 9, 1997 stockholders' meeting and the election of the board of directors and officers held thereon, anchored on their claim that they owned majority of the outstanding capital of the AHCII, and that the said meeting and election subsequently held were null and void. As in SEC Case No. 97-5794, Ng's projected investment of P12,000,000 in the MI which, as alleged in the Information, the respondent had misused for his personal benefit, was not the subject of SEC Case No. 97-5796. There is even no showing in the SEC cases that Ng claimed to be a stockholder of the MI on account of the respondent's receipt of the P12,000,000 for the intended purchase of 120,000 shares of stocks therein.

These issues are not, in any way, determinative of the guilt or innocence of the respondent in the criminal case for estafa. Whether the said meeting and elections will be declared null and void by the SEC will not result in the conviction or acquittal of the respondent for estafa, for swindling Ng of P12,000,000. Furthermore, the SEC cases

involve intra-corporate disputes between the respondent, on the one hand, and Ng and the other stockholders of the AHCII, on the other, for the control of the said corporation's management. It must be stressed that the petitions before the SEC are bare of allegations relating to the alleged P12,000,000 received by the respondent from Ng, and intended for the latter's purchase of 120,000 shares of stocks in the MI.

In his petition with the CA, the respondent alleged that in the SEC cases, the MI insisted that the P12,000,000 received by him was a mere loan; that he would not be liable of estafa if he could prove the same.[17] According to the respondent, Ng alleged in the said SEC cases that he and the members of his group became the major and controlling stockholders in AHCII because of the infusion of P12,000,000 by Ng. On the other hand, the respondent averred in his comment on the instant petition that the P12,000,000 he received from Ng referred to AHCII shares of stocks owned by MI.[18] A cursory reading of the Information will show that the P12,000,000 was intended for the purchase of 120,000 shares of stocks of the MI, and not of the AHCII. Even the CA in its decision declared that the P12,000,000 was intended for Ng's purchase of shares of stocks in the MI:

As regard the motion to suspend the proceedings in [the] questioned criminal case in view of the presence of a prejudicial question in the SEC cases, petitioner insists in that the "nature of the subject transaction involving the alleged P12 million of Mr. Cusencio (sic) T. Ng which is the subject of the case at bar, is, likewise, the subject of the consolidated SEC cases." A perusal of the complaints (p. 79, Rollo) filed with the SEC (SEC Cases Nos. 10-97-5794 and 10-97-5796) and the Regional Trial Court of Manila shows that there really exists a prejudicial question. It appears, as claimed by private respondent, that the amount of P12 million subject of the instant Criminal Case for Estafa was given to petitioner to be diverted into shares of stocks from Mediserv, Inc., while the petitioner averred that the amount was given as a loan. Thus, it is clear that the nature of the transaction involving the P12 million of private respondent in the criminal case is the same as the cases before the SEC and the Civil Case Q-97-88152 (sic) in the Regional Trial Court of Manila.[19]

Moreover, the respondent failed to submit to the CA the answer and other pleadings filed by Ng as well as the pleadings of the stockholders of the AHCII in the SEC cases, containing allegations that they became the majority and controlling stockholders of the AHCII because of the infusion of P12,000,000. Such pleadings would have bolstered the respondent's stance in this case, and debilitated that of the petitioner herein.

We agree with the petitioner's contention that the issue of whether or not the P12,000,000 was merely a loan by Ng in favor of the MI is a matter of defense by the respondent in the criminal case.

The transaction subject of the civil case is the loan procured by the MI in the amount of P9,820,000, later increased to P11,200,000, from the China Banking Corporation, the payment of which was secured by a real estate mortgage and amended real estate mortgage over its property in Sampaloc, Manila. The MI sought to nullify the extrajudicial foreclosure of the said mortgage and the sale of its property at public auction, on its allegation that it did not breach its contract with the bank. The respondent's agreement with Ng for the purchase of 120,000 shares of stocks in the MI, as well as the alleged misappropriation of the amount of P12,000,000 by the respondent, is not the subject matter of the civil case. Ng is not even a party thereto; neither was he privy to the said transaction between the respondent and the MI, and the China Banking Corporation involving the said loan.

In sum, the outcome of the civil case is not, in any way, determinative of the guilt or innocence of the respondent in the criminal case. The CA thus erred in granting the petition of the respondent and nullifying the assailed orders of the trial court.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The assailed Decision of the Court of Appeals is SET ASIDE. The Orders of the Regional Trial Court of Mandaluyong City dated December 18, 1998 and February 1, 1999 are REINSTATED. No costs.

**SO ORDERED.**

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

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[1] Penned by Associate Justice Corona Ibay-Somera (retired), with Associate Justices Oswaldo D. Agcaoili (retired) and Eloy R. Bello, Jr., concurring.

[2] Penned by Judge Edwin D. Sorongon.

[3] Rollo, pp. 41-42.

[4] Id. at 53-54.

[5] Id. at 67-68.

[6] Id. at 79-81.

[7] CA Rollo, pp. 45-46.

[8] Rollo, pp. 95-97.

[9] Id. at 152.

[10] Id. at 28.

[11] Now Section 7, Rule 111 of the Revised Rules of Criminal Procedure, as amended.

[12] Underscoring supplied.

[13] *Librado v. Coscolluela, Jr.*, 116 SCRA 303 (1982).

[14] *Jimenez v. Averia*, 22 SCRA 1380 (1968).

[15] *Sabandal v. Tongco*, 366 SCRA 567 (2001).

[16] *Tuanda v. Sandiganbayan*, 249 SCRA 342 (1995).

[17] Rollo, pp. 117-118.

[18] Id. at 197.

[19] Id. at 151. (Underscoring ours.)

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