

**URBAN BANK, INC, PETITIONER, VS. MAGDALENO M. PEÑA,
RESPONDENT.***G.R. No. 145817. October 19, 2011*

Ponente: SERENO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-145817/>**SERENO, J.:**

These consolidated petitions began as a simple case for payment of services rendered and for reimbursement of costs. The case spun a web of suits and counter-suits because of: (1) the size of the award for agent's fee rendered in favor of Atty. Magdaleno Peña (Peña) - PhP24,000,000 - rendered by the trial court; (2) the controversial execution of the full judgment award of PhP28,500,000 (agent's fee plus reimbursement for costs and other damages) pending appeal; and (3) the finding of solidary liability against Urban Bank, Inc., and several of its corporate officers and directors together with the concomitant levying and sale in execution of the personal (even conjugal) properties of those officers and directors; and (4) the fact that assets with declared conservative values of at least PhP181 Million which, together with those with undeclared values could reach very much more than such amount,[1] were levied or sold on execution pending appeal to satisfy the PhP28.5 Million award in favor of Atty. Peña. Incidentally, two supersedeas bonds worth PhP80 Million (2.8 times the amount of the judgment) were filed by Urban Bank and some of its officers and directors to stay the execution pending appeal.

Had the four attendant circumstances not afflicted the original case, it would have been an open-and-shut review where this Court, applying even just the minimum equitable principle against unjust enrichment would have easily affirmed the grant of fair recompense to Atty. Peña for services he rendered for Urban Bank if such had been ordered by the trial court.

That Atty. Peña should be paid something by Urban Bank is not in dispute - the Court of Appeals (CA) and the Regional Trial Court (RTC) of Bago City, agreed on that. What they disagreed on is the basis and the size of the award. The trial court claims that the basis is an oral contract of agency and the award should be PhP28,500,000; while, the appellate court said that Atty. Peña can only be paid under the legal principle against unjust enrichment, and the total award in his favor should only amount to PhP3,000,000.

In the eyes of the trial court, the controlling finding is that Atty. Peña should be believed when he testified that in a telephone conversation, the president of Urban Bank, Teodoro Borlongan, a respondent herein, agreed to pay him for his services 10% of the value of the property then worth PhP240,000,000, or PhP24,000,000. Costs and other awards additionally amount to PhP4,500,000, for a total award of PhP28,500,000 according to the trial court. To the Court of Appeals, such an award has no basis, as in fact, no contract of agency exists between Atty. Peña and Urban Bank. Hence, Atty. Peña should only be recompensed according to the principle of unjust enrichment, and that he should be awarded the amount of PhP3,000,000 only for his services and reimbursements of costs.

The disparity in the size of the award given by the trial court vis-à-vis that of the Court of Appeals (PhP28,500,000 v. PhP3,000,000) must be placed in the context of the service that Atty. Peña proved that he

rendered for Urban Bank. As the records bear, Atty. Peña's services consisted of causing the departure of unauthorized sub-tenants in twenty-three commercial establishments in an entertainment compound along Roxas Boulevard. It involved the filing of ejectment suits against them, Peña's personal defense in the counter-suits filed against him, his settlement with them to the tune of PhP1,500,000, which he advanced from his own funds, and his retention of security guards and expenditure for other costs amounting to more or less PhP1,500,000. There is no claim by Atty. Peña of any service beyond those. He claims damages from the threats to his life and safety from the angry tenants, as well as a vexatious collection suit he had to face from a creditor-friend from whom he borrowed PhP3,000,000 to finance the expenses for the services he rendered Urban Bank.

At the time the award of PhP28,500,000 by the trial court came out in 1999, the net worth of Urban Bank was PhP2,219,781,104.[2] While the bank would be closed by the Bangko Sentral ng Pilipinas (BSP) a year later for having unilaterally declared a bank holiday contrary to banking rules, there was no reason to believe that at the time such award came out it could not satisfy a judgment of PhP28,500,000, a sum that was only 1% of its net worth, and a miniscule 0.2% of its total assets of PhP11,933,383,630.[3] In fact, no allegation of impending insolvency or attempt to abscond was ever raised by Atty. Peña and yet, the trial court granted execution pending appeal.

Interestingly, Peña had included as co-defendants with Urban Bank in the RTC case, several officers and board directors of Urban Bank. Not all board directors were sued, however. With respect to those included in the complaint, other than against Teodoro Borlongan, Corazon Bejasa, and Arturo Manuel, no evidence was ever offered as to their individual actions that gave rise to Atty. Peña's cause of action - the execution of the agency contract and its breach - and yet, these officers and directors were made solidarily liable by the trial court with Urban Bank for the alleged breach of the alleged corporate contract of agency. Execution pending appeal was also granted against them for this solidary liability resulting in the levy and sale in execution pending appeal of not only corporate properties of Urban Bank but also personal properties of the individual bank officers and directors. It would have been interesting to find out what drove Atty. Peña to sue the bank officers and directors of Urban Bank and why he chose to sue only some, but not all of the board directors of Urban Bank, but there is nothing on the record with which this analysis can be pursued.

Before us are: (a) the Petitions of Urban Bank (G. R. No. 145817) and the De Leon Group (G R. No. 145822) questioning the propriety of the grant of execution pending appeal, and (b) the Petition of Atty. Peña (G. R. No. 162562) assailing the CA's decision on the substantive merits of the case with respect to his claims of compensation based on an agency agreement.

Ordinarily, the final resolution by the Supreme Court of an appeal from a trial court decision would have automatic, generally-understood consequences on an order issued by the trial court for execution pending appeal. But this is no ordinary case, and the magnitude of the disproportions in this case is too mind-boggling that this Court must exert extra effort to correct whatever injustices have been occasioned in this case. Thus, our dispositions will include detailed instructions for several judicial officials to implement.

At core, these petitions can be resolved if we answer the following questions:

1. What is the legal basis for an award in favor of Peña for the services he rendered to Urban Bank? Should it be a contract of agency the fee for which was orally agreed on as Peña claims? Should it be the application of the Civil Code provisions on unjust enrichment? Or is it to be based on something else or a combination of the legal findings of both the RTC and the CA? How much should the award be?
2. Are the officers and directors of Urban Bank liable in their personal capacities for the amount claimed by Peña?

3. What are the effects of our answers to questions (1) and (2), on the various results of the execution pending appeal that happened here?

Factual Background of the Controversy

Urban Bank, Inc. (both petitioner and respondent in these two consolidated cases),[4] was a domestic Philippine corporation, engaged in the business of banking.[5] The eight individual respondents in G. R. No. 162562 were officers and members of Urban Bank's board of directors, who were sued in their official and personal capacities.[6] On the other hand, Benjamin L. De Leon, Delfin C. Gonzalez, Jr., and Eric L. Lee, (hereinafter the de Leon Group), are the petitioners in G. R. No. 145822 and are three of the same bank officers and directors, who had separately filed the instant Petition before the Court.

Petitioner-respondent Atty. Magdaleno M. Peña (Peña)[7] is a lawyer by profession and was formerly a stockholder, director and corporate secretary of Isabel Sugar Company, Inc. (ISCI).[8]

ISCI owned a parcel of land[9] located in Pasay City (the Pasay property).[10] In 1984, ISCI leased the Pasay property for a period of 10 years.[11] Without its consent[12] and in violation of the lease contract,[13] the lessee subleased the land to several tenants, who in turn put up 23 establishments, mostly beer houses and night clubs, inside the compound.[14] In 1994, a few months before the lease contract was to expire, ISCI informed the lessee[15] and his tenants[16] that the lease would no longer be renewed and that it intended to take over the Pasay property[17] for the purpose of selling it.[18]

Two weeks before the lease over the Pasay property was to expire, ISCI and Urban Bank executed a Contract to Sell, whereby the latter would pay ISCI the amount of Php241,612,000 in installments for the Pasay property.[19] Both parties agreed that the final installment of Php25,000,000 would be released by the bank upon ISCI's delivery of full and actual possession of the land, free from any tenants.[20] In the meantime, the amount of the final installment would be held by the bank in escrow. The escrow provision in the Contract to Sell, thus, reads:

"The SELLER (ISCI) agrees that from the proceeds of the purchase prices of the subject Property (Pasay property), the BUYER (Urban Bank) shall withhold the amount of PHP 25,000,000.00 by way of escrow and shall release this amount to the SELLER only upon its delivery to the BUYER of the full and actual possession and control of the Subject Property, free from tenants, occupants, squatters or other structures or from any liens, encumbrances, easements or any other obstruction or impediment to the free use and occupancy by the buyer of the subject Property or its exercise of the rights to ownership over the subject Property, within a period of sixty (60) days from the date of payment by the BUYER of the purchase price of the subject Property net of the amounts authorized to be deducted or withheld under Item II (a) of this Contract.[21] (Emphasis supplied)

ISCI then instructed Peña, who was its director and corporate secretary, to take over possession of the Pasay property[22] against the tenants upon the expiration of the lease. ISCI's president, Mr. Enrique G. Montilla III (Montilla), faxed a letter to Peña, confirming the latter's engagement as the corporation's agent to handle the eviction of the tenants from the Pasay property, to wit:[23]

MEMORANDUM

TO: Atty. Magdaleno M. Pena
Director

FROM: Enrique G. Montilla III
President

DATE: 26 November 1994

You are hereby directed to recover and take possession of the property of the corporation situated at Roxas Boulevard covered by TCT No. 5382 of the Register of Deeds for Pasay City immediately upon the expiration of the contract of lease over the said property on 29 November 1994. For this purpose you are authorized to engage the services of security guards to protect the property against intruders. You may also engage the services of a lawyer in case there is a need to go to court to protect the said property of the corporation. In addition you may take whatever steps or measures are necessary to ensure our continued possession of the property.

(sgd.) ENRIQUE G. MONTILLA III
President[24]

On 29 November 1994, the day the lease contract was to expire, ISCI and Urban Bank executed a Deed of Absolute Sale[25] over the Pasay property for the amount agreed upon in the Contract to Sell, but subject to the above escrow provision.[26] The title to the land was eventually transferred to the name of Urban Bank on 05 December 1994.[27]

On 30 November 1994, the lessee duly surrendered possession of the Pasay property to ISCI,[28] but the unauthorized sub-tenants refused to leave the area.[29] Pursuant to his authority from ISCI, Peña had the gates of the property closed to keep the sub-tenants out.[30] He also posted security guards at the property,[31] services for which he advanced payments.[32] Despite the closure of the gates and the posting of the guards, the sub-tenants would come back in the evening, force open the gates, and proceed to carry on with their businesses.[33] On three separate occasions, the sub-tenants tried to break down the gates of the property, threw stones, and even threatened to return and inflict greater harm on those guarding it.[34]

In the meantime, a certain Marilyn G. Ong, as representative of ISCI, faxed a letter to Urban Bank - addressed to respondent Corazon Bejasa, who was then the bank's Senior Vice-President - requesting the issuance of a formal authority for Peña.[35] Two days thereafter, Ms. Ong faxed another letter to the bank, this time addressed to its president, respondent Teodoro Borlongan.[36] She repeated therein the earlier request for authority for Peña, since the tenants were questioning ISCI's authority to take over the Pasay property.[37]

In response to the letters of Ms. Ong, petitioner-respondent bank, through individual respondents Bejasa and Arturo E. Manuel - Senior Vice-President and Vice-President, respectively - advised Peña[38] that the bank had noted the engagement of his services by ISCI and stressed that ISCI remained as the lawyer's principal.[39]

To prevent the sub-tenants from further appropriating the Pasay property,[40] petitioner-respondent Peña, as director and representative of ISCI, filed a complaint for injunction[41] (the First Injunction Complaint) with the RTC-Pasay City.[42] Acting on ISCI's prayer for preliminary relief, the trial court favorably issued a temporary restraining order (TRO),[43] which was duly implemented.[44] At the time the First Injunction Complaint was filed, a new title to the Pasay property had already been issued in the name of Urban Bank.[45]

On 19 December 1994, when "information reached the judge that the Pasay property had already been transferred by ISCI to Urban Bank, the trial court recalled the TRO and issued a break-open order for the property. According to Peña, it was the first time that he was apprised of the sale of the land by ISCI and of the transfer of its title in favor of the bank." [46] It is not clear from the records how such information reached the judge or what the break-open order was in response to.

On the same day that the TRO was recalled, petitioner-respondent Peña immediately contacted ISCI's president, Mr. Montilla, who in turn confirmed the sale of the Pasay property to Urban Bank.[47] Peña told Mr. Montilla that because of the break-open order of the RTC-Pasay City, he (Peña) would be recalling the security guards he had posted to secure the property. Mr. Montilla, however, asked him to suspend the planned withdrawal of the

posted guards, so that ISCI could get in touch with petitioner-respondent bank regarding the matter.[48]

Later that same day, Peña received a telephone call from respondent Bejasa. After Peña informed her of the situation, she allegedly told him that Urban Bank would be retaining his services in guarding the Pasay property, and that he should continue his efforts in retaining possession thereof. He insisted, however, on talking to the Bank's president. Respondent Bejasa gave him the contact details of respondent Borlongan, then president of Urban Bank.[49]

The facts regarding the following phone conversation and correspondences are highly-controverted. Immediately after talking to respondent Bejasa, Peña got in touch with Urban Bank's president, respondent Borlongan. Peña explained that the policemen in Pasay City were sympathetic to the tenants and were threatening to force their way into the premises. He expressed his concern that violence might erupt between the tenants, the city police, and the security guards posted in the Pasay property. Respondent Borlongan supposedly assured him that the bank was going to retain his services, and that the latter should not give up possession of the subject land. Nevertheless, petitioner-respondent Peña demanded a written letter of authority from the bank. Respondent Borlongan acceded and instructed him to see respondent Bejasa for the letter.[50]

In the same telephone conversation, respondent Borlongan allegedly asked Peña to maintain possession of the Pasay property and to represent Urban Bank in any legal action that might be instituted relative to the property. Peña supposedly demanded 10% of the market value of the property as compensation and attorney's fees and reimbursement for all the expenses incurred from the time he took over land until possession was turned over to Urban Bank. Respondent Borlongan purportedly agreed on condition that possession would be turned over to the bank, free of tenants, not later than four months; otherwise, Peña would lose the 10% compensation and attorney's fees. [51]

Later that afternoon, Peña received the bank's letter dated 19 December 1994, which was signed by respondents Bejasa and Manuel, and is quoted below:

This is to confirm the engagement of your services as the authorized representative of Urban Bank, specifically to hold and maintain possession of our abovecaptioned property [Pasay property] and to protect the same from former tenants, occupants or any other person who are threatening to return to the said property and/or interfere with your possession of the said property for and in our behalf.

You are likewise authorized to represent Urban Bank in any court action that you may institute to carry out the aforementioned duties, and to prevent any intruder, squatter or any other person not otherwise authorized in writing by Urban [B]ank from entering or staying in the premises.[52] (Emphasis supplied)

On even date, ISCI sent Urban Bank a letter, which acknowledged ISCI's engagement of Peña and commitment to pay for any expenses that may be incurred in the course of his services. ISCI's letter reads:

This has reference to your property located along Roxas Boulevard, Pasay City [Pasay property] which you purchased from Isabela Sugar Company under a Deed of Absolute Sale executed on December 1, 1994.

In line with our warranties as the Seller of the said property and our undertaking to deliver to you the full and actual possession and control of said property, free from tenants, occupants or squatters and from any obstruction or impediment to the free use and occupancy of the property by Urban Bank, we have engaged the services of Atty. Magdaleno M. Peña to hold and maintain possession of the property and to prevent the former tenants or occupants from entering or returning to the premises. In view of the transfer of the ownership of the property to Urban Bank, it may be necessary for Urban Bank to appoint Atty. Peña likewise as its authorized representative for purposes of holding/maintaining continued possession of the said property and to represent Urban Bank in any court action that may be instituted for the abovementioned purposes.

It is understood that any attorney's fees, cost of litigation and any other charges or expenses that may be incurred relative to the exercise by Atty. Peña of his abovementioned duties shall be for the account of Isabela Sugar Company and any loss or damage that may be incurred to third parties shall be answerable by Isabela Sugar Company.[53] (Emphasis supplied)

The following narration of subsequent proceedings is uncontroverted.

Peña then moved for the dismissal of ISCI's First Injunction Complaint, filed on behalf of ISCI, on the ground of lack of personality to continue the action, since the Pasay property, subject of the suit, had already been transferred to Urban Bank.[54] The RTC-Pasay City dismissed the complaint and recalled its earlier break-open order.[55]

Thereafter, petitioner-respondent Peña, now in representation of Urban Bank, filed a separate complaint[56] (the Second Injunction Complaint) with the RTC-Makati City, to enjoin the tenants from entering the Pasay property.[57] Acting on Urban Bank's preliminary prayer, the RTC-Makati City issued a TRO.[58]

While the Second Injunction Complaint was pending, Peña made efforts to settle the issue of possession of the Pasay property with the sub-tenants. During the negotiations, he was exposed to several civil and criminal cases they filed in connection with the task he had assumed for Urban Bank, and he received several threats against his life.[59] The sub-tenants eventually agreed to stay off the property for a total consideration of PhP1,500,000.[60] Peña advanced the payment for the full and final settlement of their claims against Urban Bank.[61]

Peña claims to have borrowed PhP3,000,000 from one of his friends in order to maintain possession thereof on behalf of Urban Bank.[62] According to him, although his creditor-friend granted him several extensions, he failed to pay his loan when it became due, and it later on became the subject of a separate collection suit for payment with interest and attorney's fees.[63] This collection suit became the basis for Atty. Peña's request for discretionary execution pending appeal later on.

On 07 February 1995, within the four-month period allegedly agreed upon in the telephone conversation, Peña formally informed Urban Bank that it could already take possession of the Pasay property.[64] There was however no mention of the compensation due and owed to him for the services he had rendered.

On 31 March 1995, the bank subsequently took actual possession of the property and installed its own guards at the premises.[65]

Peña thereafter made several attempts to contact respondents Borlongan and Bejasa by telephone, but the bank officers would not take any of his calls. On 24 January 1996, or nearly a year after he turned over possession of the Pasay property, Peña formally demanded from Urban Bank the payment of the 10% compensation and attorney's fees allegedly promised to him during his telephone conversation with Borlongan for securing and maintaining peaceful possession of the property.[66]

Proceedings on the Complaint for Compensation

On 28 January 1996, when Urban Bank refused to pay for his services in connection with the Pasay property, Peña filed a complaint[67] for recovery of agent's compensation and expenses, damages and attorney's fees in RTC-Bago City in the province of Negros Occidental.[68] Interestingly, Peña sued only six out of the eleven members of the Board of the Directors of Urban Bank.[69] No reason was given why the six directors were selected and the others excluded from Peña's complaint. In fact, as pointed out, Atty. Peña mistakenly impleaded as a defendant, Ben Y. Lim, Jr., who was never even a member of the Board of Directors of Urban Bank; while, Ben T. Lim, Sr., father and namesake of Ben Y. Lim, Jr., who had been a director of the bank, already passed away in 1997.[70]

In response to the complaint of Atty. Peña, Urban Bank and individual bank officers and directors argued that it was ISCI, the original owners of the Pasay property, that had engaged the services of Peña in securing the premises; and, consequently, they could not be held liable for the expenses Peña had incurred.[71]

On 28 May 1999, the RTC-Bago City[72] ruled in favor of Peña, after finding that an agency relationship had indeed been created between him and Urban Bank. The eight directors and bank officers were found to be solidarily liable with the bank for the payment of agency's fees. The trial court thus ordered Urban Bank and all eight defendant bank directors and officers whom Peña sued to pay the total amount of PhP28,500,000 (excluding costs of suit):

WHEREFORE, premised from the foregoing, judgment is hereby rendered ordering defendants to pay plaintiff jointly and severally the following amounts:

- P24,000,000 as compensation for plaintiff's services plus the legal rate of interest from the time of demand until fully paid;
- P3,000,000 as reimbursement of plaintiff's expenses;
- P1,000,000 as and for attorney's fees;
- P500,000 as exemplary damages;
- Costs of suit.

SO ORDERED.[73]

Urban Bank and the individual defendant bank directors and officers filed a common Notice of Appeal,[74] which was given due course.[75] In the appeal, they questioned the factual finding that an agency relationship existed between the bank and Peña.[76]

Although they put up a single defense in the proceedings in the lower court, Urban Bank and individual defendants contracted different counsel and filed separate Briefs on appeal in the appellate court.

In its Brief,[77] Urban Bank[78] assigned as errors the trial court's reliance on the purported oral contract of agency and Peña's claims for compensation during the controverted telephone conversation with Borlongan, which were allegedly incredible.

Meanwhile, Benjamin L. de Leon, Delfin Gonzalez, Jr., and Eric L. Lee (the De Leon Group),[79] the petitioners in the instant Petition docketed as G. R. No. 145822, argued that, even on the assumption that there had been an agency contract with the bank, the trial court committed reversible error in holding them - as bank directors - solidarily liable with the corporation.[80]

On the other hand, Teodoro Borlongan, Corazon M. Bejasa, Arturo Manuel, Jr., Ben Y. Lim, Jr., and P. Siervo H. Dizon (the Borlongan Group)[81] reiterated similar arguments as those of the De Leon Group, adding that the claimed compensation of 10% of the purchase price of the Pasay property was not reasonable.[82]

Peña refuted all of their arguments[83] and prayed that the trial court's Decision be affirmed.[84]

Acting favorably on the appeal, the Court of Appeals[85] annulled the Decision of the RTC-Bago City and ruled that no agency relationship had been created. Nevertheless, it ordered Urban Bank to reimburse Peña for his expenses and to give him reasonable compensation for his efforts in clearing the Pasay property of tenants in the amount of PhP3,000,000, but absolved the bank directors and officers from solidary liability. The dispositive portion of the CA decision reads as follows:

WHEREFORE, in view of the foregoing considerations, the May 28, 2000 Decision [sic] and the October 19, 2000 [sic] Special Order of the RTC of Bago City, Branch 62,[86] are hereby ANNULLED AND SET ASIDE. However, the plaintiff-appellee [Peña] in CA GR CV No. 65756 is awarded the amount of P3 Million as reimbursement for his expenses as well as reasonable compensation for his efforts in clearing Urban Bank's property of unlawful occupants. The award of exemplary damages, attorney's fees and costs of suit are deleted, the same not having been sufficiently proven. The petition for Indirect Contempt against all the respondents is DISMISSED for utter lack of merit. [87] (Emphasis supplied)

Peña duly filed a Motion for Reconsideration of the unfavorable CA Decision.[88] The appellate court, however, denied his motion.[89] The CA Decision and Resolution were appealed by Peña to this Court, through one of the three consolidated Rule 45 Petitions before us (G. R. No. 162562).

Execution Pending Appeal

On 07 June 1999, prior to the filing of the notice of appeal of Urban Bank and individual bank officers,[90] Peña moved for execution pending appeal[91] of the Decision rendered by the RTC-Bago City,[92] which had awarded him a total of PhP28,500,000 in compensation and damages.[93]

In supporting his prayer for discretionary execution, Peña cited the pending separate civil action for collection filed against him by his creditor-friend, who was demanding payment of a PhP3,000,000 loan.[94] According to Peña, he had used the proceeds of the loan for securing the bank's Pasay property. No other reason for the prayer for execution pending appeal was given by Peña other than this collection suit.[95]

In opposition to the motion, Urban Bank countered that the collection case was not a sufficient reason for allowing execution pending appeal.[96]

On 29 October 1999, the RTC-Bago City, through Judge Henry J. Trocino,[97] favorably granted Peña's motion and issued a Special Order authorizing execution pending appeal.[98] In accordance with this Special Order, Atty. Josephine Mutia-Hagad, the clerk of court and ex officio sheriff, issued a Writ of Execution[99] on the same day.[100] The Special Order and Writ of Execution were directed at the properties owned by Urban Bank as well as the properties of the eight individual bank directors and officers.

On 04 November 1999, affected by the trial court's grant of execution pending appeal, Urban Bank[101] filed a Rule 65 Petition with the CA to enjoin the Special Order and Writ of Execution issued by the trial court with a prayer for a TRO.[102]

On 09 November 1999, the appellate court favorably granted the TRO and preliminarily prohibited the implementation of the Special Order and Writ of Execution.[103]

On 12 January 2000, the CA eventually granted Urban Bank's Rule 65 Petition, and the RTC's Special Order and Writ of Execution, which permitted execution pending appeal, were annulled. The appellate court ruled:[104]

WHEREFORE, the instant petition is GRANTED. The Special Order and writ of execution, both dated October 29, 1999, are ANNULLED and SET ASIDE.

Respondents are directed to desist from further implementing the writ of execution and to lift the garnishment and levy made pursuant thereto. [105]

On 02 February 2000, Peña moved for the reconsideration of the CA's Decision;[106] while petitioners filed their corresponding Comment/Opposition thereto.[107]

During the pendency of Peña's Motion for Reconsideration, Urban Bank declared a bank holiday on 26 April 2000 and was placed under receivership of the Philippine Deposit Insurance Corporation (PDIC).[108]

In its Amended Decision dated 18 August 2000, the CA[109] favorably granted Peña's Motion for Reconsideration, and reversed its earlier Decision to allow execution pending appeal.[110] The appellate court found that the bank holiday declared by the BSP after the promulgation of its earlier Decision, PDIC's receivership of Urban Bank, and the imminent insolvency thereof constituted changes in the bank's conditions that would justify execution pending appeal.[111]

On 29 August 2000, Urban Bank and its officers moved for the reconsideration of the Amended Decision.[112] The De Leon Group subsequently filed several Supplemental Motions for Reconsideration.[113] Thereafter, respondents Teodoro Borlongan and Corazon M. Bejasa also filed their separate Supplemental Motion for Reconsideration,[114] as did petitioner Ben T. Lim, Jr.[115]

On 19 October 2000, the Court of Appeals denied the motion for reconsideration for lack of merit and the other subsequent Supplemental Motions for Reconsideration for being filed out of time.[116] The appellate court also ordered Peña to post an indemnity bond.[117] The Amended Decision and the Resolution were the subjects of several Rule 45 Petitions filed by Urban Bank and individual petitioners (G. R. Nos. 145817, 145818 and 145822).

On the same day the CA denied its Motion for Reconsideration, the De Leon Group immediately moved for the stay of execution pending appeal upon the filing of a supersedeas bond.[118]

On 31 October 2000, the CA[119] granted the stay of the execution upon the filing by the De Leon Group of a Php40,000,000 bond in favor of Peña.[120] Peña moved for the reconsideration of the stay order.[121]

In its Resolution dated 08 December 2000,[122] the appellate court denied Peña's Motion for Reconsideration and a stay order over the execution pending appeal was issued in favor of the De Leon Group, after they had filed their supersedeas bond.[123] The stay of execution pending appeal, however, excluded Urban Bank.[124]

On 08 December 2000, Peña posted his indemnity bond as required by the CA.[125]

As mentioned earlier, Urban Bank, the De Leon Group, and the Borlongan Group filed around December 2000 separate Rule 45 Petitions in this Court, to assail the unfavorable CA Amended Decision and Resolution that affirmed the execution pending appeal. The details of these Rule 45 Petitions will be discussed in detail later on.

In the meantime, Export and Industry Bank (EIB) submitted its proposal for rehabilitation of Urban Bank to the BSP, and requested that the troubled bank be removed from receivership of the PDIC. On 12 July 2001, or almost a year after the Court of Appeals amended its decision to allow execution pending appeal, the rehabilitation plan of Urban Bank was approved by the Monetary Board of the BSP.[126] Thus, the Monetary Board subsequently lifted PDIC's statutory receivership of the bank.[127]

On 14 September 2001, Urban Bank, trying to follow the lead of the De Leon Group, made a similar request with the Court of Appeals for approval of its own supersedeas bond,[128] for the same amount of Php40,000,000, and prayed that the execution of the RTC-Bago City's Decision against it be stayed as well.[129]

Sometime in September and October 2001, Urban Bank began receiving notices of levy and garnishment over its properties. After it received Notice of the impending public execution sale of its shares in the Tagaytay Highlands International Golf Club,[130] Urban Bank reiterated its request for the approval of the supersedeas bond with the Court of Appeals and the issuance of the corresponding stay order.[131]

The appellate court, however, merely noted Urban Bank's motion on the ground that there was no showing

whether a petition to the Supreme Court had been filed or given due course or denied.[132]

After the denial by the Court of Appeals of Urban Bank's motion for approval of its supersedeas bond, some of the levied properties of Urban Bank and the other bank officers were sold on public auction. The table below lists the properties that appear on record to have been levied and/or sold on execution pending appeal and the approximate value of some of these properties. They do not include properties covered by the Petition docketed as G. R. No. 145818.

Table of Levied, Garnished and/or Executed Properties Pending Appeal

Owner/ Defendant

Property Description

Estimated Value or Price at Public Auction

Total Amount

Remarks

Urban Bank

Three Club Shares Tagaytay Highlands International Golf Club[133]

As of 06 December 1999, one share was selling at P1.6 Million.[134]

4,800,000

Three Club Shares in Makati Sports, Club, Inc. (MSCI) [Covered by Stock Certificate Nos. A-1893, A-2305 and B-762][135]

As of 06 December 1999, MSCI Club Shares "A" and "B" were selling at PhP650,000 and PhP700,000, respectively.[136]

2,000,000[137]

Atty. Peña was one of the winning bidders in the auction sale together with his creditor friend, Roberto Ignacio, and Atty. Ramon Ereñeta.

85 Condominium Units in the Urban Bank Plaza, Makati City[138]

The highest bid price obtained for the condominium units was PhP1M at the time of the execution sale.[139]

85,000,000

Intervenor Unimega purchased the 10 condominium units in the auction sale for P1M each or a total of P10 M.[140]

A 155 sqm. condominium unit, Makati City (CCT No. 57697) [141]

Estimates are based on report of Urban Bank[142]

12,400,000

A 12.5 sqm. condominium parking space (Parking Three, Unit P-46) in Makati City (CCT No. 57698)[143]

500,000

A 64,677 sqm. land in Tagaytay City (TCT No. 20471)[144]

Value based on estimate of Urban Bank[145]

35,572,350

Teodoro Borlongan

One Club Share in Manila Polo Club (No. 3433)[146]

Borlongan's club share was estimated to be valued at P1,000,000.[147]

1,000,000

Notice of Sale on Execution on Personal Property dated 25 August 2000[148]

One Club Share in Subic Bay Yacht Club[149]

One club share was estimated to be valued at P500,000.[150]

500,000

One Club Share in Baguio Country Club[151]

As of 06 December 1999, one share was selling at P870,000.[152]

870,000

One Club Share in MSCI[153]

As of 06 December 1999, MSCI Club Shares "A" and "B" were selling at PhP650,000 and PhP700,000 respectively.[154]

650,000

Real Property[155]

No estimate available on record.

Delfin C. Gonzales, Jr.

One Club Share in Manila Polo Club (No. 3818)[156]

Gonzales' club share was estimated to be valued at P4,000,000.[157]

4,000,000

Notice of Sale on Execution on Personal Property dated 25 August 2000[158]

One Club Share in Baguio Country Club.[159]

Gonzales' club share was estimated to be valued at P1,077,000.[160]

1,077,000

One Club Share in Alabang Country Club (Member No. 550)[161]

Gonzales' club share was estimated to be valued at P2,000,000.[162]

2,000,000

30,585 shares of stock in D. C. Gonzales, Jr., Inc. [163]

P20.00 per share[164]

611,700

40 Shares of stock in D. C. Gonzales, Jr., Inc.[165]

P50.00 per share[166]

2,000

Benjamin L. de Leon

One Club Share in Manila Polo Club (with Associate Membership) [No. 0597][167]

De Leon's Share was estimated at P4 M for the share and P1.05 M for the associate membership.[168]

5,050,000

Notice of Sale on Execution on Personal Property dated 25 August 2000[169]

One Club Share in MSCI (Stock Certificate No. A-175)[170]

De Leon's share was estimated at P450,000.[171]

450,000

One Club Share in Baguio Country Club (5523)[172]

As of 06 December 1999, one share was selling at least P870,000.[173]

870,000

P. Siervo G. Dizon

No records available as to properties levied, garnished or executed pending appeal.

Eric L. Lee

One Club Share in Manila Polo Club (2038)[174]

Lee's' club share was estimated to be valued at P4,000,000.[175]

4,000,000

Notice of Sale on Execution on Personal Property dated 25 August 2000[176]

One Club Share in Manila Golf Club, Inc.[177]

Lee's club share was estimated to be valued at P15,750,000.[178]

15,750,000

One Club Share in Sta. Elena Golf Club, Inc. (Class "A" Share) [179]

Lee's club share was estimated to be valued at P2,000,000.[180]

2,000,000

Two Club Shares in Tagaytay Highlands Int'l Golf Club, Inc. [181]

Lee's club shares were estimated to be valued at P1,000,000.[182]

1,000,000

Notice of Sale on Execution on Personal Property dated 25 August 2000[183]

One Club Share in Subic Yacht Club[184]

Lee's club share was estimated to be valued at P500,000.[185]

500,000

60,757 Shares of stock in EQL Properties, Inc.[186]

P20.00 per share

1,214,140

40 Shares of stock in EQL Properties, Inc. [187]

P50.00 per share

2,000

Cash garnished from BPI Account[188]

100,000

Ben T. Lim, Jr.

No records available as to properties levied, garnished or executed pending appeal.

Corazon Bejasa

Real Property[189]

No estimated value.

Arturo Manuel, Jr.,

Real Property[190]

No estimated value.

TOTAL VALUE

181,919,190

The sum of PhP181,919,190 does not include many other properties and it is not difficult to believe that the total value covered reached more than that.[191] In summary, the estimated values and/or purchase prices at the auction sale of the properties of Urban Bank and its officers amounted to no less than PhP181,919,190 already. This amounts to almost six times the value of the award given by the trial court. Otherwise stated, Peña, as judgment creditor, was overly secured by the levied and/or garnished properties for the amount of PhP28,500,000, where the judgment award was still subject of reversal on appeal.

On 22 October 2001, Urban Bank, with respect to its pending Rule 45 Petition in this Court, moved for the approval of its PhP40,000,000 supersedeas bond[192] and requested that the Court stay the execution pending appeal.[193] Peña opposed the motion on the ground that it had already been rendered moot and academic by the

sale of the properties of the bank.[194]

On 23 October 2002, or almost a year after some of the condominium units were sold in a public auction, EIB, as the successor of Urban Bank, expressed to the sheriff of RTC-Bago City an intent to redeem the said condominium units.[195] Thus, EIB tendered three manager's checks in the total amount of Php22,108,800[196] to redeem the properties that were previously under the name of Urban Bank.[197] Although the trial court noted the bank's Manifestation,[198] the sheriff returned the EIB's manager's checks. Thus, on 29 October 2002, EIB, through a motion, was prompted to turn over the checks to the trial court itself.[199]

When Urban Bank supposedly failed to redeem the condominium units according to the sheriff,[200] final Certificates of Sale were issued in favor of Unimega on 04 November 2002.[201] Upon the latter's motion, RTC-Bago City, in its Order dated 13 November 2002, ordered the Register of Deeds of Makati to transfer the Condominium Certificates of Title to the name of Unimega.[202] It has not been shown, though, whether this Order was followed.

This Court, acting on Urban Bank's earlier motion to approve its supersedeas bond, granted the same in its Resolution dated 19 November 2001.[203] Peña moved for reconsideration of the approval,[204] but his motion was subsequently denied by the Court.[205]

Proceedings in the Supreme Court (G. R. Nos. 145817, 145818 & 145822)

On 21 December 2000, Urban Bank,[206] represented by its receiver, PDIC,[207] filed a Rule 45 Petition with this Court (docketed as G. R. No. 145817) to assail the CA's Amended Decision and Resolution granting execution pending appeal.[208] In response, Peña moved for the denial of the petition on the grounds of lack merit, violation of the rule against forum shopping, and non-payment of docket fees, among others.[209] In a separate Comment,[210] Peña also argued that the appellate court had committed no error when it considered the bank's "imminent insolvency" as a good reason for upholding the validity of the execution pending appeal.

On the other hand, the Borlongan Group[211] filed a separate Rule 45 Petition questioning the same Decision and Resolution, docketed as G. R. No. 145818.[212] This Court initially denied their petition on the ground that it failed to sufficiently show that the CA committed reversible order.[213] The Borlongan Group twice moved for the reconsideration of the denial of their petition; but the Court nonetheless denied both motions for lack of merit.[214] This denial of the petition in G. R. No. 145818 became final and executory, with the issuance of the Entry of Judgment.[215]

Meanwhile, another Rule 45 Petition (G. R. No. 145822)[216] was filed by the De Leon Group, assailing the same Decisions of the appellate court. The Court also preliminarily denied this petition on the ground that the De Leon Group failed to file the appeal within the reglementary period and to pay certain fees.[217]

Despite the denial of the Rule 45 Petition in G. R. No. 145822 filed by the De Leon Group, the Court nonetheless ordered that the case be consolidated with Urban Bank's own Rule 45 Petition in G. R. No. 145817.[218] The Court subsequently gave due course to both of these petitions.[219] In compliance with the Court's Order,[220] Urban Bank[221] and the De Leon Group[222] filed their respective Memoranda.

As detailed earlier, the Court granted and approved Urban Bank's supersedeas bond and stayed the execution pending appeal.

Considering the favorable stay of execution pending appeal, EIB, as the new owner and successor of Urban Bank, immediately wrote to tell[223] the corporate secretary of MSCI not to effect the cancellation or transfer of Urban Bank's three MSCI stock certificates previously sold in a public auction. [224] In reply, MSCI explained that

since there was no injunction or stay order, it had no other option but to comply with the trial court's Order for the transfer. Eventually, however, it could not effect the transfer of one of the shares to Peña because a club share had already been previously registered in his name, and the club's bylaws prohibited a natural person from owning more than one share.[225] Meanwhile, one of the winning bidders in the public auction sale of the MSCI shares wrote to the latter to demand that the club share previously owned by Urban Bank be transferred to him.[226]

On 04 February 2002, considering the conflicting claims of Urban Bank (through EIB) and the winning bidders of the club shares, MSCI filed a Motion for Clarification of the Court's Resolution staying the execution pending appeal.[227]

In its Motion for Clarification dated 06 August 2002, Urban Bank likewise requested clarification of whether the stay order suspended, as well, its right to redeem the properties sold at a public auction.[228] The copy of Urban Bank's motion for clarification intended for Peña was mistakenly sent to the wrong counsel.

In its Resolution dated 13 November 2002, the Court explained that its earlier stay order prohibited the MSCI from transferring the shares, and that the one-year period for redemption of the bank's properties was likewise suspended:

WHEREFORE, the Court hereby RESOLVES to clarify that as a consequence of its approval of the supersedeas bond, the running of the one-year period for petitioner Urban Bank to redeem the properties sold at the public auctions held on October 4, 11 and 25, 2001 as well as the consolidation of the titles in favor of the buyers, is SUSPENDED OR STAYED. MSCI is also prohibited from transferring petitioner Urban Bank's MSCI club shares to the winning bidders in the execution sale held on October 11, 2001.[229] (Emphasis supplied)

On 09 December 2002, Peña moved that the Court's Resolution be recalled, because he was not given an opportunity to be heard on Urban Bank's Motion for Clarification, which was sent to a different counsel.[230] Interposing its objection, the bank argued that the error in mistakenly sending the Motion for clarification to a different counsel was by sheer inadvertence,[231] but Peña was nonetheless aware of the motion, and that the Court's clarification did not create or diminish his rights in any case.[232]

The Motion for Clarification filed by Urban Bank, the Court's Resolution dated 13 November 2002 and Peña's Omnibus Motion praying for the recall of the said Resolution became the subject of an administrative case (Administrative Case No. 6332), which was treated as a separate matter and later on de-consolidated with the instant Petitions.[233] The Court had even called for an executive session[234] in which Peña, among others, appeared and was questioned by the then members of the Court's First Division, namely retired Chief Justice Hilario Davide, Justices Jose Vitug, Antonio Carpio and Adolfo Azcuna. Although the Petitions had earlier been assigned to Justice Carpio, he has since taken no part in the proceedings of this case and this resulted in the re-raffling of the Petitions. The transfer and unloading of the case by the subsequently assigned Justices as well as Peña's numerous motions for inhibition and/or re-raffle has likewise cause considerable delay in the disposition of the instant Petitions and the Administrative Case.

Unimega, which was the winning bidder of some of the publicly executed condominium units of Urban Bank, moved to intervene in the case and to have the Court's same Resolution suspending the one-year period of redemption of the properties be reconsidered.[235] Unimega claimed that ownership of the bank's titles to the 10 condominium units had already been transferred to the former at the time the Court issued the Resolution; and, thus, there was no more execution to be suspended or stayed. Only Urban Bank[236] opposed the motion[237] of intervenor Unimega on the ground that the latter was not a buyer in good faith, and that the purchase price was grossly disproportional to the fair market value of the condominium units.[238]

The Court eventually granted the Motion to Intervene considering that the intervenor's title to the condominium units purchased at the public auction would be affected, favorably or otherwise, by the judgment of the Court in this case. However, it held in abeyance the resolution of intervenor's Motion for Reconsideration, which might preempt the decision with respect to the propriety of execution pending appeal.[239] Thereafter, the bank adopted its earlier Opposition to the intervention as its answer to Unimega's petition-in-intervention.[240] Also in answer thereto, the De Leon Group adopted its earlier Manifestation and Comment.[241]

Intervenor Unimega then requested that a writ of possession be issued in its favor covering the 10 condominium units sold during the public auction.[242] The Court required the parties to file their comments on the request.[243] The Lim[244] and Borlongan Groups[245] manifested separately that they would not be affected by a resolution of the request of intervenor Unimega, since the latter was not among the contending parties to the incident. Peña similarly interposed no objection to the issuance of the writ of possession.[246] In contrast, Urban Bank opposed the application of Unimega on the ground that the latter was not entitled to possession of the levied properties, because the rules of extrajudicial foreclosure were not applicable to execution sales under Rule 39, and that intervenor was also not a buyer in good faith.[247] In a similar vein, the De Leon Group opposed the application for a writ of possession, and further argued that the Court had already suspended the running of the one-year period of redemption in the execution sale.[248] Accordingly, intervenor Unimega countered that the right of redemption of the levied properties had already expired without having been exercised by the judgment debtor.[249]

In summary, the Court shall resolve the substantial issues in the following: (a) the Petition of Peña (G. R. No. 162562) assailing the CA's decision on the substantive merits of the case with respect to his claims of compensation based on an agency agreement; and (b) the Petitions of Urban Bank (G. R. No. 145817) and the De Leon Group (G. R. No. 145822) questioning the propriety of the grant of execution pending appeal.

OUR RULING

I

Peña is entitled to payment for compensation for services rendered as agent of Urban Bank, but on the basis of the principles of unjust enrichment and quantum meruit, and not on the purported oral contract.

The Court finds that Peña should be paid for services rendered under the agency relationship that existed between him and Urban Bank based on the civil law principle against unjust enrichment, but the amount of payment he is entitled to should be made, again, under the principle against unjust enrichment and on the basis of quantum meruit.

In a contract of agency, agents bind themselves to render some service or to do something in representation or on behalf of the principal, with the consent or authority of the latter.[250] The basis of the civil law relationship of agency is representation, [251] the elements of which include the following: (a) the relationship is established by the parties' consent, express or implied; (b) the object is the execution of a juridical act in relation to a third person; (c) agents act as representatives and not for themselves; and (d) agents act within the scope of their authority.[252]

Whether or not an agency has been created is determined by the fact that one is representing and acting for another.[253] The law makes no presumption of agency; proving its existence, nature and extent is incumbent upon the person alleging it.[254]

With respect to the status of Atty. Peña's relationship with Urban Bank, the trial and the appellate courts made conflicting findings that shall be reconciled by the Court. On one end, the appellate court made a definitive ruling

that no agency relationship existed at all between Peña and the bank, despite the services performed by Peña with respect to the Pasay property purchased by the bank. Although the Court of Appeals ruled against an award of agent's compensation, it still saw fit to award Peña with Ph3,000,000 for expenses incurred for his efforts in clearing the Pasay property of tenants.[255] On the other extreme, the trial court heavily relied on the sole telephone conversation between Peña and Urban Bank's President to establish that the principal-agent relationship created between them included an agreement to pay Peña the huge amount of PhP24,000,000. In its defense, Urban Bank insisted that Peña was never an agent of the bank, but an agent of ISCI, since the latter, as seller of the Pasay property committed to transferring it free from tenants. Meanwhile, Peña argues on the basis of his successful and peaceful ejectment of the sub-tenants, who previously occupied the Pasay property.

Based on the evidence on records and the proceedings below, the Court concludes that Urban Bank constituted Atty. Peña as its agent to secure possession of the Pasay property. This conclusion, however, is not determinative of the basis of the amount of payment that must be made to him by the bank. The context in which the agency was created lays the basis for the amount of compensation Atty. Peña is entitled to.

The transactional history and context of the sale between ISCI and Urban Bank of the Pasay property, and Atty. Peña's participation in the transfer of possession thereof to Urban Bank provide crucial linkages that establish the nature of the relationship between the lawyer and the landowner-bank.

The evidence reveals that at the time that the Contract to Sell was executed on 15 November 1994, and even when the Deed of Absolute Sale was executed two weeks later on 29 November 1994, as far as Urban Bank was concerned, Peña was nowhere in the picture. All discussions and correspondences were between the President and Corporate Secretary of Urban Bank, on one hand, and the President of ISCI, on the other. The title to the Pasay property was transferred to Urban Bank on 5 December 1994. Interestingly, Peña testifies that it was only on 19 December 1994 that he learned that the land had already been sold by ISCI to Urban Bank, notwithstanding the fact that Peña was a director of ISCI. Peña was not asked to render any service for Urban Bank, neither did he perform any service for Urban Bank at that point.

ISCI undertook in the Contract to Sell, to physically deliver the property to Urban Bank, within 60 days from 29 November 1994,[256] under conditions of "full and actual possession and control ..., free from tenants, occupants, squatters or other structures or from any liens, encumbrances, easements or any other obstruction or impediment to the free use and occupancy by the buyer of the subject Property or its exercise of the rights to ownership over the subject Property...."[257] To guarantee this undertaking, ISCI agreed to the escrow provision where PhP25,000,000 (which is a little over 10% of the value of the Pasay property) would be withheld by Urban Bank from the total contract price until there is full compliance with this undertaking.

Apparently to ensure that ISCI is able to deliver the property physically clean to Urban Bank, it was ISCI's president, Enrique Montilla who directed on 26 November 1994 one of its directors, Peña, to immediately recover and take possession of the property upon expiration of the contract of lease on 29 November 1994.[258] Peña thus first came into the picture as a director of ISCI who was constituted as its agent to recover the Pasay property against the lessee as well as the sub-tenants who were occupying the property in violation of the lease agreement.[259] He was able to obtain possession of the property from the lessee on the following day, but the unauthorized sub-tenants refused to vacate the property.

It was only on 7 December 1994, that Urban Bank was informed of the services that Peña was rendering for ISCI. The faxed letter from ISCI's Marilyn Ong reads:

Atty. Magdaleno M. Peña, who has been assigned by Isabela Sugar Company, Inc., to take charge of inspecting the tenants would like to request an authority similar to this from the Bank, as new owners. Can you

please issue something like this today as he needs this.[260]

Two days later, on 9 December 1994, ISCI sent Urban Bank another letter that reads:

Dear Mr. Borlongan, I would like to request for an authorization from Urban Bank as per attached immediately - as the tenants are questioning the authority of the people there who are helping us to take over possession of the property. (Emphasis supplied)[261]

It is clear from the above that ISCI was asking Urban Bank for help to comply with ISCI's own contractual obligation with the bank under the terms of the sale of the Pasay property. Urban Bank could have ignored the request, since it was exclusively the obligation of ISCI, as the seller, to deliver a clean property to Urban Bank without any help from the latter.

A full-bodied and confident interpretation of the contracts between ISCI and Urban Bank should have led the latter to inform the unauthorized sub-tenants that under its obligation as seller to Urban Bank, it was under duty and had continuing authority to recover clean possession of the property, despite the transfer of title. Yet, what unauthorized sub-tenant, especially in the kind of operations being conducted within the Pasay property, would care to listen or even understand such argument?

Urban Bank thus chose to cooperate with ISCI without realizing the kind of trouble that it would reap in the process. In an apparent attempt to allow the efforts of ISCI to secure the property to succeed, it recognized Peña's role in helping ISCI, but stopped short of granting him authority to act on its behalf. In response to the two written requests of ISCI, Urban Bank sent this letter to Peña on 15 December 1994:

This is to advise you that we have noted the engagement of your services by Isabela Sugar Company to recover possession of the Roxas Boulevard property formerly covered by TCT No. 5382, effective November 29, 1994. It is understood that your services have been contracted by and your principal remains to be the Isabela Sugar Company, which as seller of the property and under the terms of our Contract to Sell dated November 29, 1994, has committed to deliver the full and actual possession of the said property to the buyer, Urban Bank, within the stipulated period. [262] (Emphasis supplied)

Up to this point, it is unmistakable that Urban Bank was staying clear from making any contractual commitment to Peña and conveyed its sense that whatever responsibilities arose in retaining Peña were to be shouldered by ISCI.

According to the RTC-Bago City, in the reversed Decision, Atty. Peña only knew of the sale between ISCI and Urban Bank at the time the RTC-Pasay City recalled the TRO and issued a break-open order:

"... when information reached the (Pasay City) judge that the Pasay property had already been transferred by ISCI to Urban Bank, the trial court recalled the TRO and issued a break-open order for the property. According to Peña, it was the first time that he was apprised of the sale of the land by ISCI and of the transfer of its title in favor of the bank." [263]

There is something contradictory between some of the trial court's factual findings and Peña's claim that it was only on 19 December 1994 that he first learned of the sale of the property to Urban Bank. It is difficult to believe Peña on this point considering: (1) that he was a board director of ISCI and a sale of this significant and valuable property of ISCI requires the approval of the board of directors of ISCI; and (2) that ISCI twice requested Urban Bank for authority to be issued in his favor (07 and 9 December 1994), 12 and 10 days before 19 December 1994, since it would be contrary to human experience for Peña not to have been informed by an officer of ISCI beforehand that a request for authority for him was being sent to Urban Bank.

The sequence of fast-moving developments, edged with a sense of panic, with respect to the decision of the

RTC-Pasay City to recall the temporary restraining order and issue a break-open order on 19 December 1994 in the First Injunction Complaint, is highly enlightening to this Court.

First, Peña allegedly called up the president of ISCI, Montilla, who, according to Peña, confirmed to him that the Pasay property had indeed been sold to Urban Bank.

Second, Peña allegedly told Montilla that he (Peña) would be withdrawing his guards from the property because of the break-open order from the RTC-Pasay City.

Third, Montilla requested Peña to suspend the withdrawal of the guards while ISCI gets in touch with Urban Bank.

Fourth, apparently in view of Montilla's efforts, Bejasa, an officer of Urban Bank called Peña and according to the latter, told him that Urban Bank would continue retaining his services and for him to please continue with his effort to secure the property.

Fifth, this statement of Bejasa was not enough for Peña and he insisted that he be enabled to talk with no less than the President of Urban Bank, Borlongan. At this point, Bejasa gave him the phone number of Borlongan.

Sixth, immediately after the conversation with Bejasa, Peña calls Borlongan and tells Borlongan that violence might erupt in the property because the Pasay City policemen, who were sympathetic to the tenants, were threatening to force their way through the property.

At this point, if indeed this conversation took place, which Borlongan contests, what would have been the response of Borlongan? Any prudent president of a bank, which has just purchased a PhP240,000,000 property plagued by unauthorized and unruly sub-tenants of the previous owner, would have sought to continue the possession of ISCI, thru Peña, and he would have agreed to the reasonable requests of Peña. Borlongan could also have said that the problem of having the sub-tenants ejected is completely ISCI's and ISCI should resolve the matter on its own that without bothering the bank, with all its other problems. But the specter of violence, especially as night was approaching in a newly-bought property of Urban Bank, was not something that any publicly-listed bank would want publicized. To the extent that the violence could be prevented by the president of Urban Bank, it is expected that he would opt to have it prevented.

But could such response embrace the following legal consequences as Peña claims to have arisen from the telephone conversation with Borlongan: (1) A contract of agency was created between Peña and Urban Bank whereby Borlongan agreed to retain the services of Peña directly; (2) This contract of agency was to be embodied in a written letter of authority from Urban Bank; and (3) The agency fee of Peña was to be 10% of the market value as "attorney's fees and compensation" and reimbursement of all expenses of Peña from the time he took over the land until possession is turned over to Urban Bank.

This Court concludes that the legal consequences described in statements (1) and (2) above indeed took place and that the facts support them. However, the evidence does not support Peña's claim that Urban Bank agreed to "attorney's fees and compensation" of 10% of the market value of the property.

Urban Bank's letter dated 19 December 1994 confirmed in no uncertain terms Peña's designation as its authorized representative to secure and maintain possession of the Pasay property against the tenants. Under the terms of the letter, petitioner-respondent bank confirmed his engagement (a) "to hold and maintain possession" of the Pasay property; (b) "to protect the same from former tenants, occupants or any other person who are threatening to return to the said property and/or interfere with your possession of the said property for and in our behalf"; and (c) to represent the bank in any instituted court action intended to prevent any intruder from entering or staying in the

premises.[264]

These three express directives of petitioner-respondent bank's letter admits of no other construction than that a specific and special authority was given to Peña to act on behalf of the bank with respect to the latter's claims of ownership over the property against the tenants. Having stipulated on the due execution and genuineness of the letter during pretrial,[265] the bank is bound by the terms thereof and is subject to the necessary consequences of Peña's reliance thereon. No amount of denial can overcome the presumption that we give this letter - that it means what it says.

In any case, the subsequent actions of Urban Bank resulted in the ratification of Peña's authority as an agent acting on its behalf with respect to the Pasay property. By ratification, even an unauthorized act of an agent becomes an authorized act of the principal.[266]

Both sides readily admit that it was Peña who was responsible for clearing the property of the tenants and other occupants, and who turned over possession of the Pasay property to petitioner-respondent bank.[267] When the latter received full and actual possession of the property from him, it did not protest or refute his authority as an agent to do so. Neither did Urban Bank contest Peña's occupation of the premises, or his installation of security guards at the site, starting from the expiry of the lease until the property was turned over to the bank, by which time it had already been vested with ownership thereof. Furthermore, when Peña filed the Second Injunction Complaint in the RTC-Makati City under the name of petitioner-respondent bank, the latter did not interpose any objection or move to dismiss the complaint on the basis of his lack of authority to represent its interest as the owner of the property. When he successfully negotiated with the tenants regarding their departure from its Pasay property, still no protest was heard from it. After possession was turned over to the bank, the tenants accepted PhP1,500,000 from Peña, in "full and final settlement" of their claims against Urban Bank, and not against ISCI.[268]

In all these instances, petitioner-respondent bank did not repudiate the actions of Peña, even if it was fully aware of his representations to third parties on its behalf as owner of the Pasay property. Its tacit acquiescence to his dealings with respect to the Pasay property and the tenants spoke of its intent to ratify his actions, as if these were its own. Even assuming *arguendo* that it issued no written authority, and that the oral contract was not substantially established, the bank duly ratified his acts as its agent by its acquiescence and acceptance of the benefits, namely, the peaceful turnover of possession of the property free from sub-tenants.

Even if, however, Peña was constituted as the agent of Urban Bank, it does not necessarily preclude that a third party would be liable for the payment of the agency fee of Peña. Nor does it preclude the legal fact that Peña while an agent of Urban Bank, was also an agent of ISCI, and that his agency from the latter never terminated. This is because the authority given to Peña by both ISCI and Urban Bank was common - to secure the clean possession of the property so that it may be turned over to Urban Bank. This is an ordinary legal phenomenon - that an agent would be an agent for the purpose of pursuing a shared goal so that the common objective of a transferor and a new transferee would be met.

Indeed, the Civil Code expressly acknowledged instances when two or more principals have granted a power of attorney to an agent for a common transaction.[269] The agency relationship between an agent and two principals may even be considered extinguished if the object or the purpose of the agency is accomplished.[270] In this case, Peña's services as an agent of both ISCI and Urban Bank were engaged for one shared purpose or transaction, which was to deliver the property free from unauthorized sub-tenants to the new owner - a task that Peña was able to achieve and is entitled to receive payment for.

That the agency between ISCI and Peña continued, that ISCI is to shoulder the agency fee and reimbursement for

costs of Peña, and that Urban Bank never agreed to pay him a 10% agency fee is established and supported by the following:

First, the initial agency relationship between ISCI and Peña persisted. No proof was ever offered that the letter of 26 November 1994 of Mr. Montilla of ISCI to Peña, for the latter "to immediately recover and take possession of the property upon expiration of the contract of lease on 29 November 1994" was terminated. It is axiomatic that the appointment of a new agent for the same business or transaction revokes the previous agency from the day on which notice thereof was given to the former agent.[271] If it is true that the agency relationship was to be borne by Urban Bank alone, Peña should have demonstrated that his previous agency relationship with ISCI is incompatible with his new relationship with Urban Bank, and was thus terminated.

Second, instead, what is on the record is that ISCI confirmed the continuation of this agency between Peña and itself and committed to pay for the services of Peña, in its letter to Urban Bank dated 19 December 1994 which reads:

In line with our warranties as the Seller of the said property and our undertaking to deliver to you the full and actual possession and control of said property, free from tenants, occupants or squatters and from any obstruction or impediment to the free use and occupancy of the property by Urban Bank, we have engaged the services of Atty. Magdaleno M. Peña to hold and maintain possession of the property and to prevent the former tenants or occupants from entering or returning to the premises. In view of the transfer of the ownership of the property to Urban Bank, it may be necessary for Urban Bank to appoint Atty. Peña likewise as its authorized representative for purposes of holding/maintaining continued possession of the said property and to represent Urban Bank in any court action that may be instituted for the abovementioned purposes.

It is understood that any attorney's fees, cost of litigation and any other charges or expenses that may be incurred relative to the exercise by Atty. Peña of his abovementioned duties shall be for the account of Isabela Sugar Company and any loss or damage that may be incurred to third parties shall be answerable by Isabela Sugar Company.[272] (Emphasis supplied)

Third, Peña has never shown any written confirmation of his 10% agency fee, whether in a note, letter, memorandum or board resolution of Urban Bank. An agency fee amounting to Php24,000,000 is not a trifling amount, and corporations do not grant their presidents unilateral authority to bind the corporation to such an amount, especially not a banking corporation which is closely supervised by the BSP for being a business seriously imbued with public interest. There is nothing on record except the self-serving testimony of Peña that Borlongan agreed to pay him this amount in the controverted telephone conversation.

Fourth, while ordinarily, uncontradicted testimony will be accorded its full weight, we cannot grant full probative value to the testimony of Peña for the following reasons: (a) Peña is not a credible witness for testifying that he only learned of the sale of the property of 19 December 1994 when the acts of ISCI, of Urban Bank and his own up to that point all indicated that he must have known about the sale to Urban Bank; and (b) it is incredible that Urban Bank will agree to add another Php24,000,000 to the cost of the property by agreeing to the agency fee demanded by Peña. No prudent and reasonable person would agree to expose his corporation to a new liability of Php24,000,000 even if, in this case, a refusal would lead to the Pasay City policemen and unauthorized sub-tenants entering the guarded property and would possibly erupt in violence.

Peña's account of an oral agreement with Urban Bank for the payment of Php24,000,000 is just too much for any court to believe. Whatever may be the agreement between Peña and ISCI for compensation is not before this Court. This is not to say, however, that Urban Bank has no liability to Peña. It has. Payment to him is required because the Civil Code demands that no one should be unjustly enriched at the expense of another. This payment is to be measured by the standards of quantum meruit.

Amount of Compensation

Agency is presumed to be for compensation. But because in this case we find no evidence that Urban Bank agreed to pay Peña a specific amount or percentage of amount for his services, we turn to the principle against unjust enrichment and on the basis of quantum meruit.

Since there was no written agreement with respect to the compensation due and owed to Atty. Peña under the letter dated 19 December 1994, the Court will resort to determining the amount based on the well-established rules on quantum meruit.

Agency is presumed to be for compensation.[273] Unless the contrary intent is shown, a person who acts as an agent does so with the expectation of payment according to the agreement and to the services rendered or results effected.[274] We find that the agency of Peña comprised of services ordinarily performed by a lawyer who is tasked with the job of ensuring clean possession by the owner of a property. We thus measure what he is entitled to for the legal services rendered.

A stipulation on a lawyer's compensation in a written contract for professional services ordinarily controls the amount of fees that the contracting lawyer may be allowed to collect, unless the court finds the amount to be unconscionable.[275] In the absence of a written contract for professional services, the attorney's fees are fixed on the basis of quantum meruit,[276] i.e., the reasonable worth of the attorney's services.[277] When an agent performs services for a principal at the latter's request, the law will normally imply a promise on the part of the principal to pay for the reasonable worth of those services.[278] The intent of a principal to compensate the agent for services performed on behalf of the former will be inferred from the principal's request for the agents.[279]

In this instance, no extra-ordinary skills employing advanced legal training nor sophisticated legal maneuvering were required to be employed in ejecting 23 sub-tenants who have no lease contract with the property owner, and whose only authority to enter the premises was unlawfully given by a former tenant whose own tenancy has clearly expired. The 23 sub-tenants operated beer houses and nightclubs, ordinary retail establishments for which no sophisticated structure prevented easy entry. After Peña succeeded in locking the gate of the compound, the sub-tenants would open the padlock and resume their businesses at night. Indeed, it appears that only security guards, chains and padlocks were needed to keep them out. It was only the alleged connivance of Pasay City policemen that Peña's ability to retain the possession was rendered insecure. And how much did it take Peña to enter into a settlement agreement with them and make all these problems go away? By Peña's own account, PhP1,500,000 only. That means that each tenant received an average of PhP65,217.40 only. Surely, the legal services of Peña cannot be much more than what the sub-tenants were willing to settle for in the first place. We therefore award him the equivalent amount of PhP1,500,000 for the legal and other related services he rendered to eject the illegally staying tenants of Urban Bank's property.

The Court of Appeals correctly reversed the trial court and found it to have acted with grave abuse of discretion in granting astounding monetary awards amounting to a total of PhP28,500,000 without any basis.[280] For the lower court to have latched on to the self-serving claims of a telephone agreement as sufficient support for extending a multi-million peso award is highly irregular. Absent any clear basis for the amount of the lawyer's compensation, the trial court should have instinctively resorted to quantum meruit, instead of insisting on a figure with circumstantial and spurious justification.

We cannot also agree with the Decision penned by Judge Edgardo L. Catilo characterizing Pena's 10% fee as believable because it is nearly congruent to the PhP25 Million retention money held in escrow for ISCI until a clean physical and legal turn-over of the property is effected:

We now come to the reasonableness of the compensation prayed for by the plaintiff which is 10% of the

current market value which defendants claim to be preposterous and glaringly excessive. Plaintiff [Peña] testified that defendant Borlongan agreed to such an amount and this has not been denied by Ted Borlongan. The term "current market value of the property" is hereby interpreted by the court to mean the current market value of the property at the time the contract was entered into. To interpret it in accordance with the submission of the plaintiff that it is the current market value of the property at the time payment is made would be preposterous. The only evidence on record where the court can determine the market value of the property at the time the contract of agency was entered into between plaintiff and defendant is the consideration stated in the sales agreement between Isabela Sugar Company, Inc. and Urban bank which is P241,612,000.00. Ten percent of this amount is a reasonable compensation of the services rendered by the plaintiff considering the "no cure, no pay" arrangement between the parties and the risks which plaintiff had to undertake.[281]

In the first place, the Decision of Judge Catilo makes Peña's demand of an agency fee of PhP24 Million, an additional burden on Urban Bank. The Decision does not make the retention money responsible for the same, or acquit Urban Bank of any liability to ISCI if it pays the PhP24 Million directly to Peña instead of ISCI. In the second place, the amount of money that is retained by transferees of property transactions while the transferor is undertaking acts to ensure a clean and peaceful transfer to the transferee does not normally approximate a one-to-one relationship to the services of ejecting unwanted occupants. They may be inclusive of other costs, and not only legal costs, with enough allowances for contingencies, and may take into consideration other liabilities as well. The amount can even be entirely arbitrary, and may have been caused by the practice followed by Urban Bank as advised by its officers and lawyers or by industry practice in cases where an expensive property has some tenancy problems. In other words, Judge Catilo's statement is a non sequitur, is contrary to normal human experience, and sounds like an argument being made to fit Peña's demand for a shocking pay-out.

In any case, 10% of the purchase price of the Pasay property - a staggering PhP24,161,200 - is an unconscionable amount, which we find reason to reduce. Neither will the Court accede to the settlement offer of Peña to Urban Bank of at least PhP38,000,000 for alleged legal expenses incurred during the course of the proceedings,[282] an amount that he has not substantiated at any time.

Lawyering is not a business; it is a profession in which duty to public service, not money, is the primary consideration.[283] The principle of quantum meruit applies if lawyers are employed without a price agreed upon for their services, in which case they would be entitled to receive what they merit for their services, or as much as they have earned.[284] In fixing a reasonable compensation for the services rendered by a lawyer on the basis of quantum meruit, one may consider factors such as the time spent and extent of services rendered; novelty and difficulty of the questions involved; importance of the subject matter; skill demanded; probability of losing other employment as a result of acceptance of the proffered case; customary charges for similar services; amount involved in the controversy and the resulting benefits for the client; certainty of compensation; character of employment; and professional standing of the lawyer.[285]

Hence, the Court affirms the appellate court's award of PhP3,000,000 to Peña, for expenses incurred corresponding to the performance of his services. An additional award of PhP1,500,000 is granted to him for the services he performed as a lawyer in securing the rights of Urban Bank as owner of the Pasay property.

II

The corporate officers and directors of Urban Bank are not solidarily or personally liable with their properties for the corporate liability of Urban Bank to Atty. Peña.

The obligation to pay Peña's compensation, however, falls solely on Urban Bank. Absent any proof that individual petitioners as bank officers acted in bad faith or with gross negligence or assented to a patently unlawful act, they

cannot be held solidarily liable together with the corporation for services performed by the latter's agent to secure possession of the Pasay property. Thus, the trial court had indeed committed grave abuse of discretion when it issued a ruling against the eight individual defendant bank directors and officers and its Decision should be absolutely reversed and set aside.

A corporation, as a juridical entity, may act only through its directors, officers and employees.[286] Obligations incurred as a result of the acts of the directors and officers as corporate agents are not their personal liabilities but those of the corporation they represent.[287] To hold a director or an officer personally liable for corporate obligations, two requisites must concur: (1) the complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) the complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.[288] "To hold a director, a trustee or an officer personally liable for the debts of the corporation and, thus, pierce the veil of corporate fiction, bad faith or gross negligence by the director, trustee or officer in directing the corporate affairs must be established clearly and convincingly." [289]

Peña failed to allege and convincingly show that individual defendant bank directors and officers assented to patently unlawful acts of the bank, or that they were guilty of gross negligence or bad faith. Contrary to his claim, the Complaint[290] in the lower court never alleged that individual defendants acquiesced to an unlawful act or were grossly negligent or acted in bad faith.[291] Neither is there any specific allegation of gross negligence or action in bad faith that is attributable to the individual defendants in performance of their official duties.

In any event, Peña did not adduce any proof that the eight individual defendants performed unlawful acts or were grossly negligent or in bad faith. Aside from the general allegation that they were corporate officers or members of the board of directors of Urban Bank, no specific acts were alleged and proved to warrant a finding of solidary liability. At most, petitioners Borlongan, Bejasa and Manuel were identified as those who had processed the agency agreement with Peña through their telephone conversations with him and/or written authorization letter.

Aside from Borlongan, Bejasa and Manuel, Atty. Peña in the complaint pointed to no specific act or circumstance to justify the inclusion of Delfin C. Gonzalez, Jr., Benjamin L. de Leon, P. Siervo H. Dizon, Eric L. Lee, and Ben T. Lim, Jr., except for the fact that they were members of the Board of Directors of Urban Bank at that time. That the five other members of the Board of Directors were excluded from Peña's complaint highlights the peculiarity of their inclusion. What is more, the complaint mistakenly included Ben Y. Lim, Jr., who had not even been a member of the Board of Directors of Urban Bank. In any case, his father and namesake, Ben T. Lim, Sr., who had been a director of the bank at that time, had already passed away in 1997.

In ruling for the solidary liability of the other bank directors, the decision of the trial court hinged solely on the purported admission of Arturo Manuel, Jr., that the transactions with Atty. Peña were approved by the Board of Directors:

In this case, plaintiff testified as to the personal participation of defendants Ted Borlongan and Corazon Bejasa in the subject transaction. On the other hand, with respect to the other defendants, it was the defendants themselves, through witness Arturo Manuel, Jr., who admitted that all the transactions involved in this case were approved by the board of directors. Thus, the court has sufficient basis to hold the directors jointly and severally liable with defendant Urban Bank, Inc.[292] (Emphasis supplied)

The Decision of the RTC-Bago City must be utterly rejected on this point because its conclusion of any cause of action, much less actual legal liability on the part of Urban Bank's corporate officers and directors are shorn of any factual finding. That they assented to the transactions of the bank with respect to Atty. Peña's services without any showing that these corporate actions were patently unlawful or that the officers were guilty of gross

negligence or bad faith is insufficient to hold them solidarily liable with Urban Bank. It seems absurd that the trial court will hold the impleaded selected members of the Board of Directors only, but not the others who also purportedly approved the transactions. Neither is the reason behind the finding of "solidariness" with Urban Bank in such liability explained at all. It is void for completely being devoid of facts and the law on which the finding of liability is based.

The Court of Appeals correctly rejected the claim of personal liability against the individual petitioners when it held as follows:

The plaintiff-appellee's complaint before the court a quo does not point to any particular act of either one or all of the defendants-appellants that will subject them to personal liability. His complaint merely asserts that defendant Borlongan and Atty. Bejasa acted for and in behalf of Urban Bank in securing his services in protecting the bank's newly acquired property. Hence, We cannot allow the same.[293]

Peña had argued that individual defendant bank directors and officers should be held personally and solidarily liable with petitioner-respondent bank, since they failed to argue for limited corporate liability.[294] The trial court subscribed to his reasoning and held that the failure to resort to the said defense constituted a waiver on the part of individual defendants.[295] The Court is not persuaded.

As the complainant on the trial court level, Peña carried the burden of proving that the eight individual defendants performed specific acts that would make them personally liable for the obligations of the corporation. This he failed to do. He cannot capitalize on their alleged failure to offer a defense, when he had not discharged his responsibility of establishing their personal liabilities in the first place. This Court cannot sustain the individual liabilities of the bank officers when Peña, at the onset, has not persuasively demonstrated their assent to patently unlawful acts of the bank, or that they were guilty of gross negligence or bad faith, regardless of the weaknesses of the defenses raised. This is too basic a requirement that this Court must demand sufficient proof before we can disregard the separate legal personality of the corporation from its offices.

Hence, only Urban Bank, not individual defendants, is liable to pay Peña's compensation for services he rendered in securing possession of the Pasay property. Its liability in this case is, however, without prejudice to its possible claim against ISCI for reimbursement under their separate agreements.

III

Considering the absolute nullification of the trial court's Decision, the proceedings arising from the execution pending appeal based on the said Decision is likewise completely vacated.

Since the trial court's main Decision awarding PhP28,500,000 in favor of Peña has been nullified above, the execution pending appeal attendant thereto, as a result, no longer has any leg to stand on and is thus completely vacated.

To recall, prior to the filing of Urban Bank of its notice of appeal in the main case,[296] Peña moved on 07 June 1999 for execution pending appeal[297] of the Decision,[298] which had awarded him a total of PhP28,500,000 in compensation and damages.[299] In supporting his prayer for discretionary execution, Peña cited no other reason than the pending separate civil action for collection filed against him by a creditor, who was demanding payment of a PhP3,000,000 loan.[300] According to him, he had used the proceeds of the loan for securing the bank's Pasay property.[301] In opposition to the motion, Urban Bank countered that the collection case was not a sufficient reason for allowing execution pending appeal.[302]

Favorably acting on Peña's motion, the RTC-Bago City, through Judge Henry J. Trocino,[303] issued a Special Order authorizing execution pending appeal on the basis of Peña's indebtedness to his creditor-friend.[304] In

accordance with this Special Order, Atty. Josephine Mutia-Hagad, the clerk of court and ex officio sheriff, expeditiously issued a Writ of Execution on the same day.[305] The trial court's Special Order and Writ of Execution were the subjects of a Rule 65 Petition filed by Urban Bank with the CA.[306]

Both the Special Order and Writ of Execution are nullified for two reasons:

- (1) Since the Decision of the RTC-Bago City is completely vacated, all its issuances pursuant to the Decision, including the Special Order and the Writ of Execution are likewise vacated; and
- (2) The Special Order authorizing execution pending appeal based on the collection suit filed against Atty. Peña had no basis under the Rules of Court, and the same infirmity thus afflicts the Writ of Execution issued pursuant thereto.

Since the Decision of the RTC-Bago City is vacated, all orders and writs pursuant thereto are likewise vacated.

Considering that the Special Order and Writ of Execution was a result of the trial court's earlier award of PhP28,500,000, the nullification or complete reversal of the said award necessarily translates to the vacation as well of the processes arising therefrom, including all the proceedings for the execution pending appeal.

Considering the unconscionable award given by the trial court and the unjustified imposition of solidary liability against the eight bank officers, the Court is vacating the Decision of the RTC-Bago City Decision. The trial court erroneously made solidarily liable Urban Bank's directors and officers without even any allegations, much less proof, of any acts of bad faith, negligence or malice in the performance of their duties. In addition, the trial court mistakenly anchored its astounding award of damages amounting PhP28,500,000 on the basis of the mere account of Atty. Peña of a telephone conversation, without even considering the surrounding circumstances and the sheer disproportion to the legal services rendered to the bank.

A void judgment never acquires finality.[307] In contemplation of law, that void decision is deemed non-existent.[308] Quod nullum est, nullum producit effectum.[309] Hence, the validity of the execution pending appeal will ultimately hinge on the court's findings with respect to the decision in which the execution is based.

Although discretionary execution can proceed independently while the appeal on the merits is pending, the outcome of the main case will greatly impact the execution pending appeal, especially in instances where as in this case, there is a complete reversal of the trial court's decision. Thus, if the decision on the merits is completely nullified, then the concomitant execution pending appeal is likewise without any effect. In fact, the Rules of Court expressly provide for the possibility of reversal, complete or partial, of a final judgment which has been executed on appeal.[310] Precisely, the execution pending appeal does not bar the continuance of the appeal on the merits, for the Rules of Court explicitly provide for restitution according to equity and justice in case the executed judgment is reversed on appeal.[311]

Considering that the Decision of the RTC-Bago City has been completely vacated and declared null and void, it produces no effect whatsoever. Thus, the Special Order and its concomitant Writ of Execution pending appeal is likewise annulled and is also without effect. Consequently, all levies, garnishment and sales executed pending appeal are declared null and void, with the concomitant duty of restitution under the Rules of Court, as will be discussed later on.

In any case, the trial court's grant of execution pending appeal lacks sufficient basis under the law and jurisprudence.

We rule that the pendency of a collection suit by a third party creditor which credit was obtained by the winning judgment creditor in another case, is not a sufficiently good reason to allow execution pending appeal as the Rules of Court provide. Execution pending appeal is an extraordinary remedy allowed only when there are reasons to believe that the judgment debtor will not be able to satisfy the judgment debt if the appeals process will still have to be awaited. It requires proof of circumstances such as insolvency or attempts to escape, abscond or evade a just debt.

In *Florendo v. Paramount Insurance, Corp.*,^[312] the Court explained that the execution pending appeal is an exception to the general rule that execution issues as a matter of right, when a judgment has become final and executory:

As such exception, the court's discretion in allowing it must be strictly construed and firmly grounded on the existence of good reasons. "Good reasons," it has been held, consist of compelling circumstances that justify immediate execution lest the judgment becomes illusory. The circumstances must be superior, outweighing the injury or damages that might result should the losing party secure a reversal of the judgment. Lesser reasons would make of execution pending appeal, instead of an instrument of solicitude and justice, a tool of oppression and inequity. (Emphasis supplied)

Indeed, the presence or the absence of good reasons remains the yardstick in allowing the remedy of execution pending appeal, which should consist of exceptional circumstances of such urgency as to outweigh the injury or damage that the losing party may suffer, should the appealed judgment be reversed later.^[313] Thus, the Court held that even the financial distress of the prevailing company is not sufficient reason to call for execution pending appeal:

In addressing this issue, the Court must stress that the execution of a judgment before its finality must be founded upon good reasons. The yardstick remains the presence or the absence of good reasons consisting of exceptional circumstances of such urgency as to outweigh the injury or damage that the losing party may suffer, should the appealed judgment be reversed later. Good reason imports a superior circumstance that will outweigh injury or damage to the adverse party. In the case at bar, petitioner failed to show "paramount and compelling reasons of urgency and justice." Petitioner cites as good reason merely the fact that "it is a small-time building contractor that could ill-afford the protracted delay in the reimbursement of the advances it made for the aforesaid increased costs of . . . construction of the [respondent's] buildings."

Petitioner's allegedly precarious financial condition, however, is not by itself a jurisprudentially compelling circumstance warranting immediate execution. The financial distress of a juridical entity is not comparable to a case involving a natural person -- such as a very old and sickly one without any means of livelihood, an heir seeking an order for support and monthly allowance for subsistence, or one who dies.

Indeed, the alleged financial distress of a corporation does not outweigh the long standing general policy of enforcing only final and executory judgments. Certainly, a juridical entity like petitioner corporation has, other than extraordinary execution, alternative remedies like loans, advances, internal cash generation and the like to address its precarious financial condition. (Emphasis supplied)

In *Philippine Bank of Communications v. Court of Appeals*,^[314] the Court denied execution pending appeal to a juridical entity which allegedly was in financial distress and was facing civil and criminal suits with respect to the collection of a sum of money. It ruled that the financial distress of the prevailing party in a final judgment which was still pending appeal may not be likened to the situation of a natural person who is ill, of advanced age or dying as to justify execution pending appeal:

It is significant to stress that private respondent Falcon is a juridical entity and not a natural person. Even assuming that it was indeed in financial distress and on the verge of facing civil or even criminal suits, the

immediate execution of a judgment in its favor pending appeal cannot be justified as Falcon's situation may not be likened to a case of a natural person who may be ill or may be of advanced age. Even the danger of extinction of the corporation will not per se justify a discretionary execution unless there are showings of other good reasons, such as for instance, impending insolvency of the adverse party or the appeal being patently dilatory. But even as to the latter reason, it was noted in *Aquino vs. Santiago* (161 SCRA 570 [1988]), that it is not for the trial judge to determine the merit of a decision he rendered as this is the role of the appellate court. Hence, it is not within competence of the trial court, in resolving a motion for execution pending appeal, to rule that the appeal is patently dilatory and rely on the same as its basis for finding good reason to grant the motion. Only an appellate court can appreciate the dilatory intent of an appeal as an additional good reason in upholding an order for execution pending appeal which may have been issued by the trial court for other good reasons, or in cases where the motion for execution pending appeal is filed with the appellate court in accordance with Section 2, paragraph (a), Rule 39 of the 1997 Rules of Court.

What is worse, only one case was actually filed against Falcon and this is the complaint for collection filed by Solidbank. The other cases are "impending", so it is said. Other than said Solidbank case, Falcon's survival as a body corporate cannot be threatened by anticipated litigation. This notwithstanding, and even assuming that there was a serious threat to Falcon's continued corporate existence, we hold that it is not tantamount nor even similar to an impending death of a natural person. The material existence of a juridical person is not on the same plane as that of human life. The survival of a juridical personality is clearly outweighed by the long standing general policy of enforcing only final and executory judgments. (Emphasis supplied)

In this case, the trial court supported its discretionary grant of execution based on the alleged collection suit filed against Peña by his creditor friend for Php3,000,000:

It has been established that the plaintiff secured the loan for the purpose of using the money to comply with the mandate of defendant bank to hold and maintain possession of the parcel of land in Pasay City and to prevent intruders and former tenants from occupying the said property. The purpose of the loan was very specific and the same was made known to defendant bank through defendant Teodoro Borlongan. The loan was not secured for some other purpose. Truth to tell, the plaintiff accomplished his mission in clearing the property of tenants, intruders and squatters, long before the deadline given him by the defendant bank. The plaintiff was assured by no less than the President of defendant bank of the availability of funds for his compensation and reimbursement of his expenses. Had he been paid by defendant bank soon after he had fulfilled his obligation, he could have settled his loan obligation with his creditor.

Defendants were benefitted by the services rendered by the plaintiff. While plaintiff has complied with the undertaking, the defendants, however, failed to perform their obligation to the plaintiff.

The plaintiff stands to suffer greatly if the collection case against him is not addressed. Firstly, as shown in Exhibit "C", plaintiff's total obligation with Roberto Ignacio as of May 1999 is PhP24,192,000.00. This amount, if left unpaid, will continue to increase due to interest charges being imposed by the creditor to the prejudice of plaintiff. Secondly, a preliminary attachment has already been issued and this would restrict the plaintiff from freely exercising his rights over his property during the pendency of the case.

In their opposition, defendants claim that plaintiff's indebtedness is a ruse, however, defendants failed to adduce evidence to support its claim.

The court finds that the pendency of the case for collection of money against plaintiff is a good reason for immediate execution. [315]

The mere fact that Atty. Peña was already subjected to a collection suit for payment of the loan proceeds he used to perform his services for Urban Bank is not an acceptable reason to order the execution pending appeal against the bank. Financial distress arising from a lone collection suit and not due to the advanced age of the party is not

an urgent or compelling reason that would justify the immediate levy on the properties of Urban Bank pending appeal. That Peña would made liable in the collection suit filed by his creditor-friend would not reasonably result in rendering illusory the final judgment in the instant action for agent's compensation.

Peña's purported difficulty in paying the loan proceeds used to perform his services does not outweigh the injury or damages that might result should Urban Bank obtain a reversal of the judgment, as it did in this case. Urban Bank even asserts that the collection suit filed against Peña was a mere ruse to provide justification for the execution pending appeal, no matter how flimsy.[316] As quoted above, the trial court noted Atty. Peña's total obligation to his creditor-friend as of May 1999 was already the incredible amount of PhP24,192,000.00, even when the Complaint dated 03 April 1999 itself, which spawned the collection suit included only a prayer for payment of PhP3,500,000 with attorney's fees of PhP100,000.[317] It seems absurd that Atty. Peña would agree to obtaining a loan from his own friend, when the Promissory Notes provided for a penalty of 5% interest per month or 60% per annum for delay in the payment.[318] It sounds more like a creative justification of the immediate execution of the PhP28.5 Million judgment notwithstanding the appeal.

In fact, the Court of Appeals noted Atty. Peña's admission of sufficient properties to answer for any liability arising from the collection suit arising from his creditor-friend. In initially denying the execution pending appeal, the appellate court held that:

On the other hand, private respondent's claim that the only way he could pay his indebtedness to Roberto Ignacio is through the money that he expects to receive from petitioners in payment of his services is belied by his testimony at the hearing conducted by the trial court on the motion for execution pending appeal wherein petitioners were able to secure an admission from him that he has some assets which could be attached by Roberto Ignacio and that he would probably have other assets left even after the attachment.[319]

Hence, to rule that a pending collection suit against Atty. Peña, which has not been shown to result in his insolvency, would be to encourage judgment creditors to indirectly and indiscriminately instigate collection suits or cite pending actions, related or not, as a "good reason" to routinely avail of the remedy of discretionary execution.[320] As an exception to the general rule on execution after final and executory judgment, the reasons offered by Atty. Peña to justify execution pending appeal must be strictly construed.

Neither will the Court accept the trial court's unfounded assumption that Urban Bank's appeal was merely dilatory, as in fact, the PhP28,500,000 award given by the trial court was overturned by the appellate court and eventually by this Court.

Moreover, at the time the Special Order of Judge Henry Trociño of the RTC-Bago City came out in 1999, Urban Bank had assets worth more than PhP11 Billion and had a net worth of more than PhP2 Billion. There was no reason then to believe that Urban Bank could not satisfy a judgment of PhP28,500,000, a sum that was only 1% of its net worth, and 1/5 of 1% of its total assets of PhP11,933,383,630.[321] Urban Bank was even given a Solvency, Liquidity and Management Rating of 82.89 over 100 by no less than the BSP[322] and reportedly had liquid assets amounting to PhP2,036,878.[323] In fact, no allegation of impending insolvency or attempt to abscond was ever raised by Atty. Peña and yet, the trial court granted execution pending appeal.

Since the original order granting execution pending appeal was completely void for containing no justifiable reason, it follows that any affirmance of the same by the Court of Appeals is likewise void.

The Decision of the Court of Appeals in the case docketed as CA-G.R. SP No. 55667, finding a new reason for granting execution pending appeal, i.e., the receivership of Urban Bank, is likewise erroneous, notwithstanding this Court's ruling in *Lee v. Trocino*. [324] In accordance with the subsequent Resolution of the Court in abovementioned case of *Lee v. Trocino*, [325] we directly resolve the issue of the insufficiency of the reasons that

led to the grant of execution pending appeal.

In cases where the two or more defendants are made subsidiarily or solidarily liable by the final judgment of the trial court, discretionary execution can be allowed if all the defendants have been found to be insolvent. Considering that only Urban Bank, and not the other eight individual defendants, was later on considered by the Court of Appeals to have been "in danger of insolvency," is not sufficient reason to allow execution pending appeal, since the liability for the award to Peña was made (albeit, mistakenly) solidarily liable together with the bank officers.

In *Flexo Manufacturing Corp. v. Columbus Food, Inc., and Pacific Meat Company, Inc.*,^[326] both Columbus Food, Inc., (Columbus Food) and Pacific Meat Company, Inc., (Pacific Meat) were found by the trial court therein to be solidarily liable to Flexo Manufacturing, Inc., (Flexo Manufacturing) for the principal obligation of PhP2,957,270.00. The lower court also granted execution pending appeal on the basis of the insolvency of Columbus Food, even if Pacific Meat was not found to be insolvent. Affirming the reversal ordered by the Court of Appeals, this Court ruled that since there was another party who was solidarily liable to pay for the judgment debt, aside from the insolvent Columbus Food, there was no good reason to allow the execution pending appeal:

Regarding the state of insolvency of Columbus, the case of *Philippine National Bank v. Puno*, held:

"While this Court in several cases has held that insolvency of the judgment debtor or imminent danger thereof is a good reason for discretionary execution, otherwise to await a final and executory judgment may not only diminish but may nullify all chances for recovery on execution from said judgment debtor, We are constrained to rule otherwise in this particular case. In the *aforecited* cases, there was either only one defeated party or judgment debtor who was, however, insolvent or there were several such parties but all were insolvent, hence the *aforesaid* rationale for discretionary execution was present. In the case at bar, it is undisputed that, assuming MMIC is insolvent, its co-defendant PNB is not. It cannot, therefore, be plausibly assumed that the judgment might become illusory; if MMIC cannot satisfy the judgment, PNB will answer for it. It will be observed that, under the dispositive portion of the judgment hereinbefore quoted, the liability of PNB is either subsidiary or solidary.

Thus, when there are two or more defendants and one is not insolvent, the insolvency of a co-defendant is not a good reason to justify execution pending appeal if their liability under the judgment is either subsidiary or solidary. In this case, Pacific was adjudged to be solidarily liable with Columbus. Therefore, the latter is not the only party that may be answerable to Flexo. Its insolvency does not amount to a good reason to grant execution pending appeal. (Emphasis supplied)

Similarly, the trial court in this case found Urban Bank and all eight individual bank officers solidarily liable to Atty. Peña for the payment of the PhP28,500,000 award. Hence, had the judgment been upheld on appeal, Atty. Peña could have demanded payment from any of the nine defendants. Thus, it was a mistake for the Court of Appeals to have affirmed execution pending appeal based solely on the receivership of Urban Bank, when there were eight other individual defendants, who were solidarily liable but were not shown to have been insolvent. Since Urban Bank's co-defendants were not found to have been insolvent, there was no good reason for the Court of Appeals to immediately order execution pending appeal, since Atty. Peña's award could have been satisfied by the eight other defendants, especially when the de Leon Group filed its supersedeas bond.

It seems incongruous for Atty. Peña to be accorded the benefit of erroneously impleading several bank directors, who had no direct hand in the transaction, but at the same time, concentrating solely on Urban Bank's inability to pay to justify execution pending appeal, regardless of the financial capacity of its other co-defendants. Worse, he capitalized on the insolvency and/or receivership of Urban Bank to levy or garnish properties of the eight other individual defendants, who were never shown to have been incapable of paying the judgment debt in the first

place. The disposition on the execution pending appeal may have been different had Atty. Peña filed suit against Urban Bank alone minus the bank officers and the same bank was found solely liable for the award and later on declared under receivership.

In addition, a judgment creditor of a bank, which has been ordered by the BSP to be subject of receivership, has to fall in line like every other creditor of the bank and file its claim under the proper procedures for banks that have been taken over by the PDIC. Under Section 30 of Republic Act No. 7653, otherwise known as the New Central Bank Act, which prevailed at that time, once a bank is under receivership, the receiver shall immediately gather and take charge of all the assets and liabilities of the bank and administer the same for the benefit of its creditors and all of the bank's assets shall be considered as under custodial legis and exempt from any order of garnishment, levy, attachment or execution.[327] In the Minute Resolution of the Monetary Board of the BSP, Urban Bank was not only prevented from doing business in the Philippines but its asset and affairs were placed under receivership as provided for under the same law.[328] In fact, even Peña himself assured the PDIC, as receiver of Urban Bank, that he would not schedule or undertake execution sales of the bank's assets for as long as the bank remains in receivership.[329] Until the approval of the rehabilitation or the initiation of the liquidation proceedings, all creditors of the bank under receivership shall stand on equal footing with respect to demanding satisfaction of their debts, and cannot be extended preferred status by an execution pending appeal with respect to the bank's assets:

... [t]o execute the judgment would unduly deplete the assets of respondent bank to the obvious prejudice of other creditors. After the Monetary Board has declared that a bank is insolvent and has ordered it to cease operations, the Board becomes the trustee of its assets for the equal benefit of all the depositors and creditors. After its insolvency, one creditor cannot obtain an advantage or preference over another by an attachment, execution or otherwise. Until there is an approved rehabilitation or the initiation of the liquidation proceedings, creditors of the bank stand on equal footing with respect to demanding satisfaction of their debts, and cannot be afforded special treatment by an execution pending appeal with respect to the bank's assets.[330] (Emphasis supplied)

Moreover, assuming that the CA was correct in finding a reason to justify the execution pending appeal because of the supervening event of Urban Bank's closure, the assumption by the EIB of the liabilities of Urban Bank meant that any execution pending appeal can be granted only if EIB itself is shown to be unable to satisfy Peña's judgment award of PhP28,500,000. That is not at all the case. In just one particular sale on execution herein, EIB offered to answer in cash for a substantial part of Peña's claims, as evidenced by EIB's capacity and willingness to redeem the executed properties (condominium units sold to intervenor Unimega) by tendering manager's checks for more than PhP22 Million[331] which is already 77.57% of Peña's total award from the trial court.[332] The fact that EIB's offer to take over Urban Bank means it was able to satisfy the BSP's concern that all legitimate liabilities of Urban Bank be duly discharged.

As an exception to the general rule that only final judgments may be executed,[333] the grant of execution pending appeal must perforce be based on "good reasons." These reasons must consist of compelling or superior circumstances demanding urgency which will outweigh the injury or damages suffered, should the losing party secure a reversal of the judgment or final order.[334] The circumstances that would reasonably justify superior urgency, demanding interim execution of Peña's claims for compensation and/or damages, have already been settled by the financial capacity of the eight other co-defendants, the approval of the supersedeas bonds, the subsequent takeover by EIB, and the successor bank's stable financial condition,[335] which can answer for the judgment debt. Thus, Peña's interest as a judgment creditor is already well-protected.

While there is a general rule that a final and executory judgment in the main case will render moot and academic a petition questioning the exercise of the trial court's discretion in allowing execution pending appeal, we find it

necessary to rule categorically on this question because of the magnitude of the aberrations that attended the execution pending appeal in the Decision of the RTC-Bago City.

Irregularities in the Levy and Sale on Execution Pending Appeal

Assuming that the Special Order granting execution pending appeal were valid, issues have been raised on alleged irregularities that mar the levy and sale on execution of the properties of Urban Bank and its officers and directors. Many of the facts have not been sufficiently litigated before the trial and appellate courts for us to fully rule on the issue, nevertheless, from what is on record, the following are the observations of this Court:

First, contrary to the general rules on execution, no opportunity was given to Urban Bank or the other co-defendants to pay the judgment debt in cash or certified check.[336] Before proceeding on the levying and garnishing personal and real properties, demand must be made by the sheriff against the judgment debtors, Urban Bank and the eight other individual bank officers, for the immediate payment of the award subject of the execution pending appeal. It has not been shown whether Urban Bank and its officers and directors were afforded such an opportunity. Instead of garnishing personal properties of the bank, the sheriff inexplicably proceeded to levy substantial real properties of the bank and its officers at the onset.

Second, assuming that Urban Bank and its officers did not possess sufficient cash or funds to pay for the judgment debt pending appeal, they should have been given the option to choose which of their properties to be garnished and/or levied. In this case, Urban Bank exercised its option by presenting to the sheriff various parcels of land, whose values amount to more than PhP76,882,925 and were sufficient to satisfy the judgment debt.[337] Among those presented by the bank, only the property located in Tagaytay was levied upon by the sheriff.[338] No sufficient reason was raised why the bank's chosen properties were rejected or inadequate for purposes of securing the judgment debt pending appeal. Worse, the Sheriff proceeded with garnishing and levying on as many properties of Urban Bank and its officers, in disregard of their right to choose under the rules.

Third, the public auction sales conducted in the execution pending appeal sold more properties of Urban Bank and the directors than what was sufficient to satisfy the debt. Indeed, the conservative value of the properties levied herein by the sheriff amounting to more than PhP181,919,190, consisting of prime condominium units in the heart of the Makati Business district, a lot in Tagaytay City, shares in exclusive clubs, and shares of stock, among others, was more than sufficient to answer for the PhP28,500,000 judgment debt six times over. Rather than stop when the properties sold had approximated the monetary award, the execution sale pending appeal continued and unduly benefitted Atty. Peña, who, as judgment creditor and, at times, the winning bidder, purchased most of the properties sold.

Fourth, it was supremely disconcerting how Urban Bank, through its successor EIB, was unduly deprived of the opportunity to redeem the properties, even after presenting manager's checks[339] equal to the purchase price of the condominium units sold at the execution sale. No reason was offered by the trial court[340] or the sheriff[341] for rejecting the redemption price tendered by EIB in order to recover the properties executed and sold in public auction pending appeal.

Finally, the Court cannot turn a blind eye to the fact that there was already a sufficient supersedeas bond given to answer for whatever monetary award will be given in the end. To recall, the De Leon Group had already tendered a supersedeas bond of PhP40,000,000 in the Court of Appeals to prevent execution pending appeal over their properties. In fact, even Urban Bank tendered a separate supersedeas bond of equal amount with this Court, for a total of PhP80,000,000 to secure any judgment to be awarded to Atty. Peña. That execution sales over the properties of judgment debtors proceeded despite the three-fold value of securities compared to the amount of the

award indicates bad faith, if not malice, with respect to the conduct of the execution pending appeal.

Inasmuch as the RTC Decision has already been vacated and an independent finding has been made by this Court of the complete nullity of the order granting execution pending appeal, it follows that all acts pursuant to such order and its writ are also void. It does not follow however, that the Court's Decision in *Co v. Sillador*,^[342] is nullified, inasmuch as an equally-important legal doctrine - the immutability of Supreme Court final decisions - is also to be considered. In any case, the factual circumstances and the ruling on that case were limited to the actions of Sheriff Allan Sillador with respect to properties levied under the same Special Order and Writ of Execution, which were subject of third party claims made by the spouses of Teodoro Borlongan, Corazon Bejasa and Arturo Manuel, Jr.^[343] It does not encompass other specific events and acts committed in the course of the execution pending appeal that may warrant administrative or disciplinary actions. Having said that, this Court leaves it to the parties to explore avenues for redress in such a situation.

The observation on the irregularities above-enumerated are made for the purpose of correcting the injustice that has been committed herein, by allowing the Court to pursue the question of who was responsible for such gross violation of the rules on execution, and for the Court to find measures to improve the safeguards against abuse of court processes. It is for this reason that the Office of the Court Administrator will be given a special task by the Court on this matter. Judge Henry Trocino of RTC-Bago City, who issued the Special Order and had supervisory authority over the proceedings of the execution pending appeal, would have been included under such administrative investigation by the Office of the Court Administrator, were it not for his retirement from the judicial service.

The Court's Suspension Order of Execution Pending Appeal

Acting on Atty. Peña's Omnibus Motion dated 09 December 2002^[344] and Unimega's Motion for Reconsideration dated 10 December 2002^[345] with respect to the Court's Order dated 13 November 2002^[346] that clarified the earlier stay order against the execution pending appeal,^[347] the Court hereby denies both motions. The Court is fully correct in suspending the period for the running of the redemption period of the properties of Urban Bank and its officers and directors that were levied and subject of execution sale to satisfy the judgment debt in favor of Atty. Peña, the Court having conclusively determined that the supersedeas bond filed was sufficient and considering the subsequent finding that the said execution pending appeal lacks any sufficient ground for the grant thereof.

As to the theory of Atty. Peña that the actuations of Justice Carpio, the then ponente of this case, in drafting the questioned Order should positively impact his motion for reconsideration of the same, the Court finds this argument utterly devoid of merit.

In the first place, that questioned Order was not the decision of only a single member of the Court, Justice Carpio, but of the entire division to which he belonged, then composed of retired Chief Justice Hilario Davide, Justices Jose Vitug, Consuelo Ynares-Santiago and Adolfo Azcuna. This Order was affirmed by the same Division as its duly-promulgated order. In relation to this, the affirmation by the Division of this Order demonstrates that there is no truth to Atty. Peña's claim that Justice Carpio fabricated the Order.

In the second place, Atty. Peña's claim of undue interest against Justice Carpio specifically with respect to the latter having the instant case transferred to his new Division, is based on ignorance of the system of assignment of cases in the Supreme Court. When a reorganization of the Court takes place in the form of a change in the composition of Divisions, due to the retirement or loss of a member, the Justices do not thereby lose their case assignments but bring the latter with them to their new Divisions.^[348] The cases are then transferred to the

Justices' new Divisions, by way of the corresponding request from each justice. Each justice is in fact, required to make this request, otherwise the rollo of the cases of which he is Member-in-Charge will be retained by a Division in which he is no longer a member. Indeed, Atty. Peña's imagination has gotten the better of him.

Thirdly, his insinuation (which he denies) that Justice Carpio may have been bribed because the latter has a new Mercedes Benz[349] is highly offensive and has no place where his points should have been confined to legal reasons and arguments.

Incidentally, Atty. Peña has voiced the fear in the Letter of Complaint filed in the Court's Committee on Ethics and Ethical Standards,[350] which he brought against the ponente of this Decision, that she will suppress material information regarding the issuance of the Order suspending the redemption period because of her close relationship to Justice Carpio. Contrary to this fear, this Decision is frontally disposing of this claim by stating that there is no basis to believe that the questioned Order was anything than the joint decision of the five members of the then First Division, and that his arguments in his motion to reconsider does not persuade this Court to vary in any form the questioned order. Moreover, our disposition of this case renders moot his motion to reconsider the order.

It must be emphasized that the prolonged resolution of the procedural issue in the Petitions in G. R. Nos. 145817 and 145822 on the execution pending appeal is due in no small part to the delays arising from Peña's peculiar penchant for filing successive motions for inhibition and re-raffle.[351] The Court cannot sanction Peña's repeated requests for voluntary inhibition of members of the Court based on the sole ground of his own self-serving allegations of lack of faith and trust, and would like to reiterate, at this point, the policy of the Court not to tolerate acts of litigants who, for just about any conceivable reason, seek to disqualify a judge (or justice) for their own purpose, under a plea of bias, hostility, prejudice or prejudgment.[352] The Court cannot allow the unnecessary and successive requests for inhibition, lest it opens the floodgates to forum-shopping where litigants look for a judge more friendly and sympathetic to their cause than previous ones.[353]

Restitution of the Bank's Executed Properties

The Court is still confronted with the supervening acts related to the execution pending appeal and the reversal of the award of damages, which affect the rights of the parties as well as of the intervenors to the case, specifically, intervenor Unimega. In completely resolving the differing claims and performing its educational function, the Court shall briefly encapsulate and restate the operational rules governing execution pending appeal when there has been a reversal of the trial court's Decision on the award of damages in order to guide the parties as well as the bench and bar in general. The necessity of making these detailed instructions is prompted by the most natural question an ordinary person with a sense of justice will ask after reading the facts: How can an obligation to pay for the services of a lawyer so that 23 unwanted tenants leave a corporation's property lead to the loss or the impairment of use of more than PhP181 Million worth of properties of that corporation and of its officers and directors? Obviously, this Court must undertake corrective actions swiftly.

The rule is that, where the executed judgment is reversed totally or partially, or annulled - on appeal or otherwise - the trial court may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances.[354] The Rules of Court precisely provides for restitution according to equity, in case the executed judgment is reversed on appeal.[355] "In an execution pending appeal, funds are advanced by the losing party to the prevailing party with the implied obligation of the latter to repay the former, in case the appellate court cancels or reduces the monetary award." [356]

In disposing of the main case subject of these Petitions, the Court totally reversed the staggering amount of damages given by the trial court, and limited on a quantum meruit basis the agent's compensation to

PhP4,500,000 only. However, properties of Urban Bank and individual petitioners have been garnished and levied upon in the amount of supposedly more than PhP85,399,350.[357]

Applying the foregoing rules, petitioner-respondent bank is entitled to complete and full restitution of its levied properties, subject to the payment of the PhP4,500,000. Meanwhile, petitioners bank officers, all of whom have not been found individually or solidarily liable, are entitled to full restitution of all their properties levied upon and garnished, since they have been exonerated from corporate liability with respect to the bank's agency relationship with Peña.

Considering the monetary award to Peña and the levy on and execution of some of its properties pending appeal, Urban Bank, now EIB, may satisfy the judgment in the main case and at the same time fully recover all the properties executed owing to the complete reversal of the trial court's awarded damages. It must immediately and fully pay the judgment debt before the entire lot of levied properties, subject of the execution pending appeal, is restored to it.[358]

Due to the complete reversal of the trial court's award for damages, which was the basis of the Special Order and Writ of Execution allowing execution pending appeal, intervenor Unimega and other bidders who participated in the public auction sales are liable to completely restore to petitioner-respondent bank all of the properties sold and purchased therein. Although execution pending appeal is sanctioned under the rules and jurisprudence, when the executed decision is reversed, the premature execution is considered to have lost its legal bases. The situation necessarily requires equitable restitution to the party prejudiced thereby.[359] As a matter of principle, courts are authorized at any time to order the return of property erroneously ordered to be delivered to one party, if the order is found to have been issued without jurisdiction.[360]

As a purchaser of properties under an execution sale, with an appeal on the main case still pending, intervenor Unimega knew or was bound to know that its title to the properties, purchased in the premature public auction sale, was contingent on the outcome of the appeal and could possibly be reversed. Until the judgment on the main case on which the execution pending appeal hinges is rendered final and executory in favor of the prevailing judgment creditor, it is incumbent on the purchasers in the execution sale to preserve the levied properties. They shall be personally liable for their failure to do so, especially if the judgment is reversed, as in this case.[361] In fact, if specific restitution becomes impracticable - such as when the properties pass on to innocent third parties - the losing party in the execution even becomes liable for the full value of the property at the time of its seizure, with interest. The Court has ruled:

When a judgment is executed pending appeal and subsequently overturned in the appellate court, the party who moved for immediate execution should, upon return of the case to the lower court, be required to make specific restitution of such property of the prevailing party as he or any person acting in his behalf may have acquired at the execution sale. If specific restitution becomes impracticable, the losing party in the execution becomes liable for the full value of the property at the time of its seizure, with interest.

While the trial court may have acted judiciously under the premises, its action resulted in grave injustice to the private respondents. It cannot be gainsaid that it is incumbent upon the plaintiffs in execution (Arandas) to return whatever they got by means of the judgment prior to its reversal. And if perchance some of the properties might have passed on to innocent third parties as happened in the case at bar, the Arandas are duty bound nonetheless to return the corresponding value of said properties as mandated by the Rules. (Emphasis supplied)[362]

In this case, the rights of intervenor Unimega to the 10 condominium units bought during the public auction sale under the Special Order are rendered nugatory by the reversal of the award of unconscionable damages by the trial court. It cannot claim to be an innocent third-party purchaser of the levied condominium units, since the execution

sale was precisely made pending appeal. It cannot simply assume that whatever inaction or delay was incurred in the process of the appeal of the main Decision would

automatically render the remedy dilatory in character.[363] Whatever rights were acquired by intervenor Unimega from the execution sale under the trial court's Special Orders are conditional on the final outcome of the appeal in the main case. Unlike in auction sales arising from final and executory judgments, both the judgment creditor and the third parties who participate in auction sales pending appeal are deemed to knowingly assume and voluntarily accept the risks of a possible reversal of the decision in the main case by the appellate court.

Therefore, intervenor Unimega is required to restore the condominium units to Urban Bank. Although the intervenor has caused the annotation of the sale and levied on the titles to those units, the titles have remained under the name of the bank, owing to the supersedeas bond it had filed and the Court's own orders that timely suspended the transfer of the titles and further execution pending appeal.

The obligation to restore the properties to petitioner-respondent bank is, however, without prejudice to the concurrent right of intervenor Unimega to the return of the Php10,000,000 the latter paid for the condominium units, which Peña received as judgment creditor in satisfaction of the trial court's earlier Decision.[364] Consequently, intervenor's earlier request for the issuance of a writ of possession[365] over those units no longer has any leg to stand on. Not being entitled to a writ of possession under the present circumstances, Unimega's *ex parte* petition is consequently denied.

Upon the reversal of the main Decision, the levied properties itself, subject of execution pending appeal must be returned to the judgment debtor, if those properties are still in the possession of the judgment creditor, plus compensation to the former for the deprivation and the use thereof.[366] The obligation to return the property itself is likewise imposed on a third-party purchaser, like intervenor Unimega, in cases wherein it directly participated in the public auction sale, and the title to the executed property has not yet been transferred. The third-party purchaser shall, however, be entitled to reimbursement from the judgment creditor, with interest.

Considering the foregoing points, the Court adopts with modification the rules of restitution expounded by retired Justice Florenz D. Regalado in his seminal work on civil procedure,[367] which the appellate court itself cited earlier.[368] In cases in which restitution of the prematurely executed property is no longer possible, compensation shall be made in favor of the judgment debtor in the following manner:

- a. If the purchaser at the public auction is the judgment creditor, he must pay the full value of the property at the time of its seizure, with interest.
- b. If the purchaser at the public auction is a third party, and title to the property has already been validly and timely transferred to the name of that party, the judgment creditor must pay the amount realized from the sheriff's sale of that property, with interest.
- c. If the judgment award is reduced on appeal, the judgment creditor must return to the judgment debtor only the excess received over and above that to which the former is entitled under the final judgment, with interest.

In summary, Urban Bank is entitled to complete restoration and return of the properties levied on execution considering the absolute reversal of the award of damages, upon the payment of the judgment debt herein amounting to Php4,500,000, with interest as indicated in the dispositive portion. With respect to individual petitioners, they are entitled to the absolute restitution of their executed properties, except when restitution has become impossible, in which case Peña shall be liable for the full value of the property at the time of its seizure, with interest. Whether Urban Bank and the bank officers and directors are entitled to any claim for damages against Peña and his indemnity bond is best ventilated before the trial court, as prescribed under the procedural rules on execution pending appeal.

WHEREFORE, the Court DENIES Atty. Magdaleno Peña's Petition for Review dated 23 April 2004 (G. R. No. 162562) and AFFIRMS WITH MODIFICATION the Court of Appeals' Decision dated 06 November 2003 having correctly found that the Regional Trial Court of Bago City gravely abused its discretion in awarding unconscionable damages against Urban Bank, Inc., and its officers. The Decision of the Regional Trial Court of Bago City dated 28 May 1999 is hence VACATED.

Nevertheless, Urban Bank, Inc., is ORDERED to pay Atty. Peña the amount of PhP3,000,000 as reimbursement for his expenses and an additional PhP1,500,000 as compensation for his services, with interest at 6% per annum from 28 May 1999, without prejudice to the right of Urban Bank to invoke payment of this sum under a right of set-off against the amount of PhP25,000,000 that has been placed in escrow for the benefit of Isabela Sugar Company, Inc. The Complaint against the eight other individual petitioners, namely Teodoro Borlongan (+), Delfin C. Gonzales, Jr., Benjamin L. de Leon, P. Siervo G. Dizon, Eric L. Lee, Ben Y. Lim, Jr., Corazon Bejasa, and Arturo Manuel, Jr., is hereby DISMISSED.

The Petitions for Review on Certiorari filed by petitioners Urban Bank (G. R. No. 145817) and Benjamin L. de Leon, Delfin Gonzalez, Jr., and Eric L. Lee (G. R. No. 145822) are hereby GRANTED under the following conditions:

- a. Urban Bank, Teodoro Borlongan, Delfin C. Gonzalez, Jr., Benjamin L. de Leon, P. Siervo H. Dizon, Eric L. Lee, Ben Y. Lim, Jr., Corazon Bejasa, and Arturo Manuel, Jr., (respondent bank officers) shall be restored to full ownership and possession of all properties executed pending appeal;
- b. If the property levied or garnished has been sold on execution pending appeal and Atty. Magdaleno Peña is the winning bidder or purchaser, he must fully restore the property to Urban Bank or respondent bank officers, and if actual restitution of the property is impossible, then he shall pay the full value of the property at the time of its seizure, with interest;
- c. If the property levied or garnished has been sold to a third party purchaser at the public auction, and title to the property has not been validly and timely transferred to the name of the third party, the ownership and possession of the property shall be returned to Urban Bank or respondent bank officers, subject to the third party's right to claim restitution for the purchase price paid at the execution sale against the judgment creditor;
- d. If the purchaser at the public auction is a third party, and title to the property has already been validly and timely transferred to the name of that party, Atty. Peña must pay Urban Bank or respondent bank officers the amount realized from the sheriff's sale of that property, with interest from the time the property was seized.

The Omnibus Motion dated 09 December 2002 filed by Atty. Peña and Motion for Reconsideration dated 10 December 2002 filed by Unimega with respect to the Court's Order dated 13 November 2002 is hereby DENIED.

The Office of the Court Administrator is ordered to conduct an investigation into the possible administrative liabilities of Atty. Josephine Mutia-Hagad, the then RTC-Bago City's Clerk of Court, and Allan D. Sillador, the then Deputy Sheriff of Bago City, for the irregularities attending the execution pending appeal in this case, including all judicial officers or sheriffs in the various places in which execution was implemented, and to submit a report thereon within 120 days from receipt of this Decision.

The Office of the Court Administrator is also directed to make recommendations for the prevention of abuses of judicial processes in relation to executions, especially those pending appeal, whether thru administrative circulars from this Court or thru a revision of the Rules of Court, within 30 days from submission of the report on administrative liabilities adverted to above. Let a copy of the Court's Decision in this case be sent to the Office of the Court Administrator.

The Presiding Judge of RTC Bago City shall make a full report on all incidents related to the execution in this case, including all returns on the writ of execution herein.

Because so much suspicious circumstances have attended the execution in this case by the Regional Trial Court of Bago City, the proceedings with respect to any restitution due and owing under the circumstances shall be transferred to the Regional Trial Court in the National Capital Region, Makati City, a court with venue to hear cases involving Urban Bank/Export and Industry Bank whose headquarters is located in Makati City. The Executive Judge of the Regional Trial Court of Makati City is ordered to include the execution of the Decision and the proceedings for the restitution of the case in the next available raffle.

The Regional Trial Court of Makati City, to which the case shall be raffled, is hereby designated as the court that will fully implement the restorative directives of this Decision with respect to the execution of the final judgment, return of properties wrongfully executed, or the payment of the value of properties that can no longer be restored, in accordance with Section 5, Rule 39 of the Rules of Court. The parties are directed to address the implementation of this part of the Decision to the sala to which the case will be raffled.

No pronouncement as to costs.

SO ORDERED.

Brion, (Acting Chairperson), Villarama,[*] Mendoza,**] and Perlas-Bernabe,[***] JJ., concur.

[*] Additional member vice J. Antonio T. Carpio per Raffle dated 7 June 2010.

[**] Additional member vice J. Bienvenido L. Reyes per Raffle dated 17 October 2011.

[***] Additional member vice J. Jose P. Perez per S.O. No. 1114.

[1] The actual ceiling amount for the levied, garnished or executed properties pending appeal is uncertain because of the dearth of records. It seems that the figure could turn out to be very high, considering that the entire Urban Bank Plaza located in Sen. Gil Puyat Avenue, corner Chino Roces Avenue, Makati City in the name of Urban Bank was appraised at a value of PhP2,830,559,000 as of 16 April 2002. Since 85 of the 160 or almost half of the condominium units of Urban Bank Plaza were levied, it is reasonable to assume that more than PhP1.4 Billion worth of bank properties were subject of execution pending appeal. (Appraisal Report as of 16 April 2002 of the Cuervo Appraisers; rollo [G. R. No. 145817], Vol. 2, at 1396-1423)

[2] Report of Independent Public Accountants dated 25 February 2000 by the Sycip Gorres & Velayo, Co. (http://www.urbanbank.info/urbanweb/ubi_financial.htm last visited 07 October 2011)

[3] Id.

[4] Urban Bank is a petitioner in G. R. No. 145817; while it is a respondent in G. R. No. 162562.

[5] Urban Bank was placed under receivership by the Philippine Deposit Insurance Corporation (PDIC), and was eventually succeeded by Export and Industry Bank (EIB), after the PDIC approved the bank's rehabilitation plan. (BSP Minute Resolution No. 37 dated 12 July 2001; rollo [G.R. No. 145817], Vol. 1, at 843-845)

[6] (1) Teodoro Borlongan, (2) Delfin C. Gonzales, Jr., (3) Benjamin L. de Leon, (4) P. Siervo H. Dizon, (5) Eric L. Lee, (6) Ben T. Lim, Jr., (7) Corazon Bejasa, and (8) Arturo Manuel, Jr.

[7] Atty. Peña is the respondents in both the Petitions docketed as G. R. Nos. 145817 and 145822, while he is the petitioner in the Petition docketed as G. R. No. 162562.

- [8] Regional Trial Court (RTC) - Bago City Decision dated 28 May 1999, at 2; rollo (G. R. No. 162562), Vol. 1, at 506.
- [9] The 8,629 square meter parcel of land hosted what was then known as the Pasay International Food and Karaoke Club Compound, which is along Roxas Boulevard. (Exhibit "F," RTC records, Vol. 3, at 583)
- [10] The Pasay property was covered by Transfer Certificate of Title (TCT) No. T-5382, under the name of ISCI. (RTC Decision dated 28 May 1999, at 1; rollo [G. R. No. 145817], Vol. 1, at 78)
- [11] The Pasay property was leased to Mr. Ernesto P. Ochoa from 29 November 1984 to 29 November 1994. (Contract of Lease dated 29 November 1984; rollo [G.R. No. 162562], Vol. 1, at 278-280)
- [12] ISCI Complaint dated 08 December 1994, par. 5, at 3. (Exhibit "E-2," RTC records, Vol. 3, at 574)
- [13] "SUBLEASE PROHIBITED. That as distinguished from LESSEE's [Mr. Ochoa] rent-out operations above-mentioned, the LESSEE [Mr. Ochoa] shall not assign, cede or convey this lease, nor undertake to sub-lease the whole or substantially all of the lease premises [Pasay property] to any single third party, without the LESSOR's [ISCI's] consent in writing; ..." (Contract of Lease dated 29 November 1984, par. 5 at 2; rollo [G.R. No. 162562], Vol. 1, at 279)
- [14] RTC Decision dated 28 May 1999, at 1; rollo (G. R. No. 162562), Vol. 1, at 505.
- [15] "Being the President, I find it proper to inform you about the non-renewal of the lease between you as lessee and our company as lessor over the company's property situated at Pasay City, when the lease expires on November 29, instant." (ISCI's Letter dated 04 February 1994; rollo [G. R. No. 162562], Vol. 1, at 283)
- [16] "We would also like to take this opportunity to inform you and the other establishments that you represent that the lease contract of Mr. Ochoa on said property [Pasay property] will expire on November 29, 1994. It may even be terminated earlier because of continued violations of and non-compliance with the terms and conditions of the contract. Thereafter, we will recover possession of the property and all improvements thereon shall belong to our company [ISCI]." (ISCI's Letter dated 31 May 1994; rollo [G. R. No. 162562], Vol. 1, at 285)
- [17] ISCI Complaint dated 08 December 1994, par. 6, at 3. (Exhibit "E-2," RTC records, Vol. 3, at 574)
- [18] "BOARD RESOLUTION No. 003 Series of 1994. BE IT RESOLVES, AS IT IS HEREBY RESOLVED that the reception of offers to buy the Pasay property be centralized and the President be empowered and authorized to receive, review, admit and analyze all offers for the purchase of the Roxas Boulevard property, more specifically Lot No. 2251 covered by TCT No. T-5382, consisting of an area of 8,629 square meters, more or less." (ISCI's Secretary's Certificate dated 04 February 1994; rollo [G. R. No. 162562], Vol. 1, at 284)
- [19] Contract to Sell dated 15 November 1994. (Exhibit "16," RTC records [Vol. 4] at 846-849)
- [20] Id.
- [21] Id.
- [22] RTC Decision dated 28 May 1999, at 2; rollo (G. R. No. 162562), Vol. 1, at 506.
- [23] RTC Decision dated 28 May 1999, at 8; rollo (G. R. No. 162562), Vol. 1, at 512). See also ISCI's letter dated 31 May 1994; rollo (G. R. No. 162562), Vol. 1, at 285.
- [24] ISCI's fax letter dated 26 November 1994; Exhibit "3," RTC records, Vol. 4, at 810.
- [25] Deed of Absolute Sale dated 29 November 1994; Exhibit "6-G" to "6-I," RTC records, Vol. 4, at 817-819.

- [26] Deed of Absolute Sale dated 29 November 1994; Exhibit "6-G" to "6-I," RTC records, Vol. 4, at 817-819.
- [27] TCT No. 134451 in the name of petitioner Urban Bank dated 05 December 1994; Exhibit "A," RTC records, Vol. 3, at 564-567.
- [28] ISCI Complaint dated 08 December 1994, par. 7, at 3; Exhibit "E-2," RTC records, Vol.3, at 574.
- [29] RTC Decision dated 28 May 1999, at 1; rollo (G. R. No. 162562), Vol. 1, at 505.
- [30] RTC Decision dated 28 May 1999, at 2; rollo (G. R. No. 162562), Vol. 1, at 506.
- [31] Id.
- [32] Peña allegedly paid PhP641,547.41 to the Perm Security and Investigation Agency, Inc., for security services rendered in guarding the Pasay property from 30 November 1994 to 31 March 1995. (Letter and Certification both dated 19 November 1997; Exhibits "AA" and "AA-1," RTC records, Vol. 3, at 755-756).
- [33] "The scenario continued for days when the gates would be closed in the morning and would be forced open in the evening by the operators of the night spots constructed on the subject property." (RTC Decision dated 28 May 1999, at 2; rollo [G. R. No. 162562], Vol. 1, at 506)
- [34] ISCI's Complaint dated 08 December 1994, par. 10, at 4. (Exhibit "E-3," RTC records, Vol. 3, at 575)
- [35] "Atty. Magdaleno M. Peña, who has been assigned by Isabela Sugar Company, Inc., to take charge of inspecting the tenants would like to request an authority similar to this from the Bank [petitioner Urban Bank], as new owners. Can you please issue something like this today as he needs this." (ISCI's letter dated 07 December 1994; Exhibit "1," RTC records, Vol. 4, at 808)
- [36] "Dear Mr. Borlongan, I would like to request for an authorization from Urban Bank as per attached immediately - as the tenants are questioning the authority of the people there who are helping us to take over possession of the property. (Sgd.) MARILYN G. ONG" (ISCI's fax letter dated 09 December 1994; Exhibit "2," RTC records, Vol. 4, at 809)
- [37] RTC Decision dated 28 May 1999, at 8; rollo (G. R. No. 162562), Vol. 1, at 512.
- [38] "This is to advise you [Peña] that we [petitioner Urban Bank] have noted the engagement of your services by Isabela Sugar Company to recover possession of the Roxas Boulevard property formerly covered by TCT No. 5382, effective November 29, 1994. It is understood that your services have been contracted by and your principal remains to be Isabela Sugar Company, which as Seller of the property and under the terms of our Contract to Sell dated November 29, 1994, has committed to deliver the full and actual possession of the said property to the buyer, Urban Bank, within the stipulated period." (Emphasis supplied; petitioner Urban Bank's letter dated 15 December 1994; Exhibit "4," RTC records, Vol. 4, at 811)
- [39] RTC Decision dated 28 May 1999, at 8; rollo (G. R. No. 162562), Vol. 1, at 512.
- [40] RTC Decision dated 28 May 1999, at 2; rollo (G. R. No. 162562), Vol. 1, at 506.
- [41] ISCI's Complaint dated 08 December 1994; Exhibit "E" to "E-6," RTC records, Vol.3, at 572-578.
- [42] ISCI's Complaint for injunction was docketed as Civil Case No. 94-1275. (Id.)
- [43] "WHEREFORE, to prevent the main cause of action or principal relief sought by plaintiff (ISCI) from becoming moot and academic, the parties herein are directed to maintain the status quo more specifically, restraining defendants (tenants) and all persons acting in their behaves (sic), from harassing and threatening

plaintiff's personnel and from forcefully and unlawfully interfering with plaintiff's possession of the property until further orders from this Court. ..." (RTC Order dated 13 December 1994 in Civil Case No. 94-1275; Exhibit "E-7" to "E-7-c," RTC records, Vol. 3, at 579-582)

[44] "The Regional Trial Court of Pasay City issued a Temporary Restraining Order in favor of plaintiff on December 13, 1994 and was implemented on December 17, 1994." (RTC Decision dated 28 May 1999, at 3; rollo [G. R. No. 162562], Vol. 1, at 507)

[45] Title to the Pasay property (TCT No. 134451) was issued on 05 December 1994, which was four days before the First Injunction Complaint was filed with the RTC Pasay City on 09 December 1994.

[46] This is according to the Decision of RTC-Bago City. (RTC Decision dated 28 May 1999, at 3; rollo [G. R. No. 162562], Vol. 1, at 507) The records of the case in RTC-Pasay city are NOT with the Court, as none of the issues raised therein are before Us.

[47] Peña's Petition for Review dated 23 April 2004, at 6; rollo (G. R. No. 162562), Vol. 1, at 13.

[48] RTC Decision dated 28 May 1999, at 3; rollo (G. R. No. 162562), Vol. 1, at 507.

[49] RTC Decision dated 28 May 1999, at 3-4; rollo (G. R. No. 162562), Vol. 1, at 507-508.

[50] RTC Decision dated 28 May 1999, at 4; rollo (G. R. No. 162562), Vol. 1, at 508.

[51] RTC Decision dated 28 May 1999, at 4-5; rollo (G. R. No. 162562), Vol. 1, at 508-509.

[52] Petitioner Urban Bank's Letter dated 19 December 1994; Exhibit "B," RTC records, Vol.3, at 568.

[53] ISCI's Letter dated 19 December 1994 signed by Herman Ponce and Julie Abad; Exhibit "5," RTC records, Vol. 4, at 812.

[54] ISCI's Urgent Ex-parte Motion/Notice to Dismiss dated 21 December 1994; Exhibit "I" to "I-2," RTC records, Vol. 3, at 586-588.

[55] RTC Decision dated 28 May 1999, at 6; rollo (G. R. No. 162562), Vol. I at 510.

[56] Petitioner Urban Bank's Complaint dated 04 January 1995; Exhibit "J" to "J-6," RTC records, Vol. 3, at 589-595.

[57] Petitioner Urban Bank's Complaint was docketed as Civil Case No. 95-029.

[58] RTC-Makati City's Order dated 06 January 1995; Exhibit "K," RTC records, Vol. 3, at 599.

[59] RTC Decision dated 28 May 1999, at 6; rollo (G. R. No. 162562), Vol. 1, at 510.

[60] Id.

[61] Receipt dated 28 April 1995 issued by Atty. Noel B. Malaya from Peña for the amount of PhP1,500,000; Exhibit "BB," RTC records, Vol. 3 at 757.

[62] The PhP3,000,000 loan of Mr. Roberto Ignacio to Peña is covered by three Promissory Notes dated 30 November 1994, 20 December 1994 and 27 April 1995 for PhP1,000,000 each. The three loans were all due on 30 May 1995 with an express stipulation of five percent (5%) interest for every month of delay. (Rollo [G. R. No. 145817], Vol. 1, at 286-288)

[63] Mr. Ignacio's Complaint dated 03 April 1999 (Civil Case No. 99-93952); rollo (G. R. No. 145817), Vol. 1, at 281-285.

[64] Peña's letter dated 07 February 1995 to petitioner Urban Bank; Exhibit "C," RTC records, Vol. 3, at 569.

[65] RTC Decision dated 28 May 1999, at 6-7; rollo (G. R. No. 162562), Vol. 1, at 510-511.

[66] Peña's letter dated 24 January 1996; Exhibit "D," RTC records, Vol. 3, at 570.

[67] Peña's Complaint dated 28 February 1996; RTC records, Vol. 1 at 1-6.

[68] CA Amended Decision dated 18 August 2000, at 2; rollo (G. R. No. 145817), Vol. 1, at 11.

[69] At the time the complaint was filed in 1996, the eleven members of the Board of Directors of Urban Bank included: (1) Teodoro C. Borlongan; (2) Benjamin L. de Leon; (3) Claudio R. de Luzuriaga, Jr.; (4) P. Siervo H. Dizon; (5) Francisco C. Eizmendi, Jr., (6) Delfin C. Gonzalez, Jr.; (7) Noel A. Laman; (8) Eric L. Lee; (9) Ben T. Lim Sr.; (10) Jose P. Magno, Jr., (11) Carlos C. Salinas. (Urban Bank List of Members of the Board of Directors for Year Ending 1995; rollo (G. R. No. 162562), Vol. 1, at 840)

[70] Comment dated 30 March 2005 of Ben Y. Lim, Jr., and P. Siervo H. Dizon; rollo (G. R. No. 162562), Vol. 1, at 804-817.

[71] Petitioners' Answer with Compulsory Counterclaim dated 28 October 1996; rollo (G. R. No. 145817), Vol. 1, at 245-252.

[72] The Decision of the RTC-Bago City was then rendered by Judge Edgardo L. Catilo.

[73] RTC Decision dated 28 May 1999, at 24; rollo (G. R. No. 145817), Vol. 1, at 101.

[74] Notice of Appeal dated 15 June 1999; RTC records, Vol. 5, at 1016.

[75] RTC Order dated 23 June 1999; RTC records, Vol. 5, at 1022.

[76] The appeal was docketed in the Court of Appeals as CA-G. R. CV No. 65756.

[77] Brief for Defendant-Appellant Urban Bank, Inc., dated 25 January 2002; CA rollo (CA-G.R. CV No. 65756), Vol. 1, at 110-175.

[78] The Singson Valdez & Associates Law Office entered its appearance for petitioner Urban Bank. (Notice of Appearance dated 07 November 2001; CA rollo [CA-G.R. CV No. 65756], Vol. 1, at 57-59) Although petitioner Urban Bank's previous counsel, the Poblador Bautista & Reyes Law Office, withdrew its appearance, it remained as counsel for the other individual petitioners. (Withdrawal of Appearance dated 07 August 2001; CA rollo [CA-G.R. CV No. 65756], Vol. 1, at 36-37).

[79] The De Leon Group was represented by the Abello Concepcion Regala & Cruz Law Office.

[80] De Leon Group's Appellants' Brief dated 28 January 2002; CA rollo (CA-G.R. CV No. 65756), Vol. 2, at 177-312.

[81] The Poblador Bautista & Reyes Law Office initially represented petitioner Borlongan Group, but was replaced by the Chato Eleazar Lagmay & Arreza Law Office. (Entry of Appearance dated 05 May 2003; CA rollo, [CA-G.R. CV No. 65756], Vol. 2, at 1201-1203) However, Benjamin Y. Lim and P. Siervo H. Dizon (the Lim Group) retained the Poblador Bautista & Reyes Law Office. (Withdrawal of Appearance dated 15 January 2003; CA rollo [CA-G.R. CV No. 65756], Vol. 2, at 1164-1166)

[82] Petitioner Borlongan Group's Brief for Appellants dated 18 April 2002; CA rollo (CA-G.R. CV No. 65756), Vol. 2, at 675-735.

[83] Peña's Appellee's Brief dated 07 September 2002; CA rollo (CA-G.R. CV No. 65756), Vol. 2, at 892-972.

[84] In a separate original petition under Rule 71, Peña also asked that Urban Bank and the individual officers and directors as well as their counsel be cited for indirect contempt for, among others, withholding material information from the appellate court as well as for misrepresenting the appearance of witnesses in the proceedings below. (Petition dated 05 September 2002; CA rollo [CA-G.R. SP No. 72698], Vol. 1, at 2-14) This petition for indirect contempt was later consolidated with the appeal of the main case. (CA Resolution dated 25 November 2002; CA rollo [CA-G.R. SP No. 72698], Vol. 1, at 295)

[85] The Court of Appeals' Sixth Division was then composed of CA Justices Delilah Vidallon-Magtolis, Jose L. Sabio, Jr., (ponente) and Hakim S. Abdulwahid.

[86] The dates of the trial court's orders appearing in the dispositive portion were later corrected by the CA and now reads "the May 28, 1999 Decision and the October 29, 2000 Special Order." (CA Resolution dated 08 March 2004, at 2; rollo [G. R. No. 162562], Vol. 1, at 80)

[87] CA Decision (CA GR SP No. 72698 & CV No. 65756) dated 06 November 2003; rollo (G.R. No. 162562), Vol. 1, at 82-111.

[88] Peña's Motion for Reconsideration dated 04 December 2003; rollo (G. R. No. 162562), Vol. 1, at 533-565.

[89] CA Resolution (CA GR SP No. 72698 & CV NO. 65756) dated 08 March 2004; rollo (G.R. No. 162562), Vol. 1, at 79-80.

[90] Notice of Appeal dated 15 June 1999; RTC records (Vol. V) at 1016.

[91] Peña's Motion for Execution dated 07 June 1999; rollo (G. R. No. 145817), Vol. 1, at 277-279; see Peña's Memorandum dated 13 October 1999; rollo (G. R. No. 145822), Vol. 1, at 371-376.

[92] RTC Decision dated 28 May 1999, at 24; rollo (G. R. No. 145817), Vol. 1, at 101.

[93] PhP 24,000,000 (compensation) + PhP3,000,000 (reimbursement) + PhP1,000,000 (attorney's fees) + PhP500,000 (exemplary damages) = PhP28,500,000 (excluding costs of suit)

[94] The Complaint filed against Peña was a civil action for collection of PhP3,500,000 and PhP100,000 attorney's fees, which was filed by Mr. Roberto R. Ignacio and was docketed as Civil Case No. 99-93952 with the Regional Trial Court of Manila. (Complaint dated 03 April 1999; rollo [G. R. No. 145822], Vol. 1, at 213-217)

[95] "4. Plaintiff has been unable to pay his loan precisely because defendants have not paid him his fees. Since Mr. Ignacio has been a long time friend of his, he has been granted several extensions but on 4 June 1999, plaintiff received a summons issued by the Regional Trial Court of Manila, Branch 16 for a collection case filed [by] said Mr. Ignacio. ...

"6. ... It is imperative therefore that this Honorable Court's Decision be executed immediately so that he could settle the obligation which he would not have contracted had defendants not engaged his services." (Peña's Motion for Execution dated 07 June 1999, at 2; rollo [G. R. No. 145817], Vol. 1, at 278)

[96] Petitioner Urban Bank's Opposition (to Motion for Execution) dated 15 June 1999; rollo (G. R. No. 145817), Vol. 1, at 289-300; see Petitioner Urban Bank's Memorandum dated 12 October 1999; rollo (G. R. No. 145822), Vol. 1, at 309-331.

[97] Petitioner Urban Bank had earlier moved for the voluntary inhibition of Judge Catilo. (Petitioner Urban Bank's Motion for Voluntary Inhibition by the Presiding Judge dated 15 June 1999; rollo [G.R. No. 145817], Vol.

1, at 301-306)

[98] RTC Special Order dated 29 October 1999; rollo (G.R. No. 145817), Vol. 1, at 880-889.

[99] Writ of Execution dated 28 May 1999; rollo (G. R. No. 145822), Vol. 1, at 152-154.

[100] The trial court's Special Order and Writ of Execution were the subjects of a Rule 65 Petition filed by Urban Bank with the CA, and later docketed as CA-G. R. SP No. 55667. (Urban Bank's Petition for Certiorari and Prohibition dated 29 November 1999; rollo [G. R. No. 145817], Vol. 1, at 307-345)

[101] Petitioner Urban Bank was represented in this Rule 65 Petition by the Poblador Bautista & Reyes Law Offices.

[102] Respondent Pena's Petition for Certiorari and Prohibition with Application for Temporary Restraining Order and Writ of Preliminary Injunction dated 04 November 1999; rollo (G. R. No. 145817), Vol. 1, at 307-338.

[103] CA Resolution dated 09 November 1999.

[104] CA Twelfth Division composed of Justices Godardo A. Jacinto, Marina V. Buzon (ponente) and Edgardo P. Cruz.

[105] CA Decision dated 12 January 2000; rollo (G. R. No. 145817), Vol. 1, at 346-358.

[106] Peña's Motion for Reconsideration dated 02 February 2000; rollo (G. R. No. 145817), Vol. 1, at 359-380.

[107] Petitioners' Comment/Opposition dated 14 April 2000; rollo (G. R. No. 145817), Vol. 1, at 381-401.

[108] The Bangko Sentral ng Pilipinas (BSP) issued Monetary Board Resolution No. 22 placing petitioner Urban Bank under receivership of the Philippine Deposit Insurance Corporation (PDIC), considering that the bank was suffering from illiquidity and its capital was deficient. (Minutes of Board Resolution No. 22 dated 26 April 2000; rollo [G. R. No. 145817], Vol. 1, at 232)

[109] CA Former Special Twelfth Division, Justices Godardo A. Jacinto, Roberto A. Barrios and Edgardo P. Cruz (ponente).

[110] This CA Amended Decision is the subject of petitioner Urban Bank's Rule 45 Petition in G. R. No. 145817. (Rollo [G. R. No. 145817], Vol. 1, at 10-21).

[111] "In the instant case, although petitioner Bank's imminent insolvency may not have been considered by the court a quo in allowing immediate execution, such ground, which has in the meantime arisen, may be relied upon by this Court in deciding the propriety of the execution pending appeal." (CA Amended Decision dated 18 August 2000, at 8; rollo (G. R. No. 145817), Vol. 1, at 17)

[112] Petitioners' Motion for Reconsideration dated 29 August 2000; rollo (G. R. No. 145817), Vol. 1, at 402-419.

[113] Petitioner De Leon Group's Supplemental Motion for Reconsideration dated 21 September 2000 (rollo [G. R. No. 145822], Vol. 1, at 791-815) and Second Supplemental Motion for Reconsideration dated 11 October 2000 (rollo [G. R. No. 145822], Vol. 1, at 851-867); see also CA Resolution dated 19 October 2000, at 1 (rollo [G. R. No. 145817], Vol. 1, at 23).

[114] Benjamin de Leon, Delfin C. Gonzales and Eric L. Lee filed three separate Supplemental Motions for Reconsideration on 22 September 2000, 11 October 2000 and 16 October 2000. (CA Resolution dated 19 October 2000, at 1; rollo [G. R. No. 145817], Vol. 1, at 23)

[115] Petitioner Lim's Supplemental Motion for Reconsideration and Application for Temporary Restraining

Order and Writ of Preliminary Injunction dated 13 October 2000; rollo (G. R. No. 162562), Vol. 1, at 818-824.

[116] CA Resolution dated 19 October 2000 (CA-G.R. SP No. 55667); rollo (G.R. No. 145817), Vol. 1, at 23-26.

[117] "Respondent Magdaleno M. Peña is directed to post, within five (5) days from notice, an indemnity bond in the amount of P15,000,000.00 to answer for the damages which petitioners may suffer in case of reversal on appeal of the trial court's decision." (CA Resolution dated 19 October 2000, at 4; rollo [G.R. No. 145817], Vol. 1, at 26).

[118] Petitioner De Leon Group's Ex Abundanti Cautela Urgent Motion to Stay Execution Pending Appeal Upon Filing of Supersedeas Bond dated 19 October 2000; rollo (G. R. No. 145822), Vol. 1, at 869-879.

[119] The Special Former Special Twelfth Division was composed of Justices Bienvenido L. Reyes, Roberto A. Barrios, and Perlita J. Tria Tirona (ponente).

[120] CA Resolution dated 31 October 2000 (CA-G.R. SP No. 55667); rollo (G.R. No. 145817), Vol. 1, at 668-669.

[121] Peña's Urgent Motion for Reconsideration dated 06 November 2000 and Supplemental Motion dated 13 November 2000; rollo (G. R. No. 145822), Vol. 1, at 995-1008.

[122] CA Resolution dated 08 December 2000 (CA-G.R. SP No. 55667); rollo (G.R. No. 145817), Vol. 1, at 670-674.

[123] Petitioner De Leon Group's Compliance with Motion to Approve Supersedeas Bond dated 08 November 2000; rollo (G. R. No. 145822), Vol. 1, at 990-994.

[124] CA Resolution dated 08 December 2000 (CA-G.R. SP No. 55667); rollo (G.R. No. 145817), Vol. 1, at 670-674.

[125] Peña's Compliance dated 08 December 2000; rollo (G. R. No. 145822), Vol. 1, at 1058-1060); see Peña's Comment dated 30 April 2001, at 12; rollo (G. R. No. 145817), Vol. 1, at 521.

[126] BSP Minute Resolution No. 37 dated 12 July 2001; rollo (G.R. No. 145817), Vol. 1, at 843-845.

[127] Petitioner Urban Bank's Urgent Motion to Approve Supersedeas Bond and to Stay Execution Pending Appeal dated 22 October 2001; rollo (G.R. No. 145817), Vol. 1, at 660-667.

[128] Surety Bond (MICO Bond No. 200104456) dated 13 September 2001; rollo (G.R. No. 145817), Vol. 1, at 740-741.

[129] Petitioner Urban Bank's Compliance with Motion to Approve Supersedeas Bond dated 14 September 2001 in CA-G.R. SP No. 55667; rollo (G.R. No. 145817), Vol. 1, at 675-709.

[130] Notice of Sale on Execution of Personal Property dated 27 September 2001; rollo (G.R. No. 145817), Vol. 1, at 714.

[131] Petitioner Urban Bank's Urgent Manifestation and Motion dated 02 October 2001; rollo (G.R. No. 145817), Vol. 1, at 710-712.

[132] CA Resolution dated 05 October 2001 in CA-G.R. SP No. 55667; rollo (G.R. No. 145817), Vol. 1, at 715-716.

[133] Notice of Sale on Execution of Personal Property dated 27 September 2001; rollo (G.R. No. 145817), Vol. 1, at 714.

[134] Quotes from GG&A Club Shares and Metroland Holdings, Corp., dated 06 December 1999; rollo (G. R. No. 145822), Vol. 1, at 708. (At present, one share in Tagaytay Highlands International Golf Club is selling at PhP560,000 [<http://www.ggaclubshares.com/> last visited 17 October 2011].)

[135] Notice of Sale on Execution of Personal Property dated 03 October 2001; rollo (G.R. No. 145817), Vol. 1, at 717; RTC Orders all dated 15 October 2001; rollo (G. R. No. 145822), Vol. 2, at 2923-2928.

[136] Quotes from GG&A Club Shares and Metroland Holdings, Corp., dated 06 December 1999; rollo (G. R. No. 145822), Vol. 1, at 708. (At present, Makati Sports Club Shares "A" and "B" are now selling at P200,000 and P230,000 respectively [<http://www.ggaclubshares.com/> last visited 17 October 2011])

[137] Two MSCI "A" Club Shares at PhP650,000 each and one MSCI "B" Club Share at PhP700,000.

[138] Notice of Sale on Execution of Real Property dated 03 October 2001, covering Condominium Certificates of Title (CCT) Nos. 56034-39, 56052-69, 56088-56147, and 56154; rollo (G.R. No. 145817), Vol. 1, at 718-739. See Certifications dated 26 October 2001 and 31 October 2001 attesting to the sale of the CCTs covering units in Makati City registered under the name of Urban Bank; rollo (G. R. No. 145817), Vol. 1, at 769-770.

[139] Most of the condominium units were sold anywhere for as low as PhP100,000 to PhP1,000,000. The whole lot of 85 condominiums units in Urban Bank Plaza were sold for a total of PhP27,400,000 only. (c/f Properties levied and attached; rollo [G. R. No. 145817], Vol. 1, at 976-980)

[140] Ten Certificates of Sale all dated 25 October 2001; rollo (G.R. No. 145817), Vol. 1, at 1005-1035.

[141] Notice of Levy on Execution dated 05 November 1999 and Condominium Certificate of Title No. 57697 under the name of Urban Bank; RTC records, Vol. 5, at 1315-1318.

[142] Urban Bank Properties, Annex of Urban Bank's Letter dated 09 November 1999; RTC records, Vol. 5, at 1310.

[143] Notice of Levy on Execution dated 05 November 1999 and Condominium Certificate of Title No. 57698 under the name of Urban Bank; RTC records, Vol. 5, at 1319-1322.

[144] Notice of Levy on Execution dated 05 November 1999; RTC records, Vol. 5, at 1332-1333.

[145] Urban Bank Properties, Annex of Urban Bank's Letter dated 09 November 1999; RTC records, Vol. 5, at 1310.

[146] Letter dated 08 November 1999 of Manila Polo Club; RTC records, Vol. 5, at 1312; RTC Order dated 19 December 2000; rollo (G. R. No. 145822), Vol. 2, at 2550-2552.

[147] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; rollo (G. R. No. 145817), Vol. 2, at 1721-1722. See also Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; rollo (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, one club share in Manila Polo Club sells at PhP7 Million. [http://www.ggaclubshares.com last visited 17 October 2011])

[148] Rollo (G. R. No. 145817), Vol. 1, at 422.

[149] RTC Order dated 31 October 2000, rollo (G. R. No. 145822), Vol. 2, at 2542-2543; RTC Amended Order dated 13 December 2000; rollo (G. R. No. 145822), Vol. 2, at 2546-2549; see also *Lee v. Trocino*, G. R. No. 164648, 06 August 2008, 561 SCRA 178.

[150] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; rollo (G. R. No. 145817), Vol. 2, at 1721-1722. See also Petitioner De Leon Group's Memorandum dated 20 January 2004, at

15-16; rollo (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, one club share in Subic Bay Yacht Club sells at PhP150,000. [<http://www.ggaclubshares.com> last visited 17 October 2011])

[151] RTC Order dated 27 October 2000, rollo (G. R. No. 145822), Vol. 2, at 2540-41.

[152] Quotes from GG&A Club Shares and Metroland Holdings, Corp., dated 06 December 1999; rollo (G. R. No. 145822), Vol. 1, at 708. (At present, one share in Baguio Country Club is selling at PhP650,000 [<http://www.ggaclubshares.com/> last visited 17 October 2011].)

[153] RTC Order dated 27 October 2000, rollo (G. R. No. 145822), Vol. 2, at 2540-41;

[154] Quotes from GG&A Club Shares and Metroland Holdings, Corp., dated 06 December 1999; rollo (G. R. No. 145822), Vol. 1, at 708. (At present, Makati Sports Club Shares "A" and "B" are now selling at P200,000 and P230,000 respectively [<http://www.ggaclubshares.com/> last visited 17 October 2011])

[155] *Co v. Sillador*, A. M. No. P-07-2342, 31 August 2007, 531 SCRA 657.

[156] Letter dated 08 November 1999 of Manila Polo Club; RTC records, Vol. 5, at 1312; RTC Order dated 19 December 2000; rollo (G. R. No. 145822), Vol. 2, at 2550-2552; RTC Order dated 09 March 2001; rollo (G. R. No. 145822), Vol. 2, at 2558-2561.

[157] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; rollo (G. R. No. 145817), Vol. 2, at 1721-1722. See also Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; rollo (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, one club share in Manila Polo Club sells at PhP7 Million. [<http://www.ggaclubshares.com> last visited 17 October 2011])

[158] Rollo (G. R. No. 1458177), Vol. 1, at 420.

[159] Notice of Sale on Execution of Personal Property dated 22 September 2000; rollo (G. R. No. 145822). Vol. 2, at 2520; RTC Order dated 12 October 2000; rollo (G. R. No. 145822), Vol. 2, at 2526-2527; RTC Order dated 24 January 2001; rollo (G. R. No. 145822), Vol. 2, at 2554-2557; see also Urban Bank's Manifestation and Motion dated 20 September 2005, at 4; rollo (G. R. No. 145817), Vol. 2, at 1722.

[160] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; rollo (G. R. No. 145817), Vol. 2, at 1721-1722. See also Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; rollo (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, one share in Baguio Country Club is selling at PhP650,000 [<http://www.ggaclubshares.com/> last visited 17 October 2011].)

[161] Notice of Sale on Execution of Personal Property dated 09 October 2000; rollo (G. R. No. 145822). Vol. 2, at 2523; RTC Order dated 18 October 2000, rollo (G. R. No. 145822), Vol. 2, at 2528-2529; see also Urban Bank's Manifestation and Motion dated 20 September 2005, at 4; rollo (G. R. No. 145817), Vol. 2, at 1722.

[162] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; rollo (G. R. No. 145817), Vol. 2, at 1721-1722. See also Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; rollo (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, Alabang Country Club Shares "A" and "B" are selling at PhP1.95 M and PhP2.95M, respectively [<http://www.ggaclubshares.com/> last visited 17 October 2011].)

[163] Notice of Garnishment dated 29 October 1999; rollo (G. R. No. 145822), Vol. 2, at 2571-2572; Notice of Sale on Execution of Personal Property dated 20 October 2000; rollo (G. R. No. 145822), Vol. 2, at 2539; RTC Order dated 31 October 2000, rollo (G. R. No. 145822), Vol. 2, at 2542-2543; RTC Amended Order dated 13 December 2000; rollo (G. R. No. 145822), Vol. 2, at 2546-2549; see also *Lee v. Trocino*, *id.*

[164] RTC Order dated 31 October 2000, rollo (G. R. No. 145822), Vol. 2, at 2542-2543.

[165] Notice of Sale on Execution of Personal Property dated 20 October 2000; rollo (G. R. No. 145822), Vol. 2, at 2539; RTC Order dated 31 October 2000, rollo (G. R. No. 145822), Vol. 2, at 2544-2545; RTC Amended Order dated 13 December 2000; rollo (G. R. No. 145822), Vol. 2, at 2546-2549; see also *Lee v. Trocino*, id.

[166] RTC Order dated 31 October 2000, rollo (G. R. No. 145822), Vol. 2, at 2544-2545.

[167] Letter dated 08 November 1999 of Manila Polo Club; RTC records, Vol. 5, at 1312; RTC Order dated 19 December 2000; rollo (G. R. No. 145822), Vol. 2, at 2550-2552; RTC Order dated 09 March 2001; rollo (G. R. No. 145822), Vol. 2, at 2558-2561.

[168] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; rollo (G. R. No. 145817), Vol. 2, at 1721-1722. See also Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; rollo (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, one club share in Manila Polo Club sells at PhP7 Million. [<http://www.ggaclubshares.com> last visited 17 October 2011])

[169] Rollo (G. R. No. 145817), Vol. 1, at 425.

[170] Notice of Sale on Execution of Personal Property dated 22 September 2000; rollo (G. R. No. 145822), Vol. 2, at 2522; RTC Order dated 27 October 2000, rollo (G. R. No. 145822), Vol. 2, at 2540-41; see also Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3; rollo (G. R. No. 145817), Vol. 2, at 1721.

[171] Urban Bank's Manifestation and Motion dated 20 September 2005, at 3; rollo (G. R. No. 145817), Vol. 2, at 1721. (At present, a Makati Sports Club Share "A" is now selling at P200,000 [<http://www.ggaclubshares.com/> last visited 17 October 2011])

[172] Notice of Sale on Execution of Personal Property dated 22 September 2000; rollo (G. R. No. 145822), Vol. 2, at 2521; RTC Order dated 27 October 2000; rollo (G. R. No. 145822), Vol. 2, at 2540-2541.

[173] Quotes from GG&A Club Shares and Metroland Holdings, Corp., dated 06 December 1999; rollo (G. R. No. 145822), Vol. 1, at 708. (At present, one share in Baguio Country Club is selling at PhP650,000 [<http://www.ggaclubshares.com/> last visited 17 October 2011].)

[174] Letter dated 08 November 1999 of Manila Polo Club; RTC records, Vol. 5, at 1312; RTC Order dated 19 December 2000; rollo (G. R. No. 145822), Vol. 2, at 2550-2552; RTC Order dated 09 March 2001; rollo (G. R. No. 145822), Vol. 2, at 2558-2561.

[175] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; rollo (G. R. No. 145817), Vol. 2, at 1721-1722. See also Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; rollo (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, one club share in Manila Polo Club sells at PhP7 Million. [<http://www.ggaclubshares.com> last visited 17 October 2011])

[176] Rollo (G. R. No. 145817), Vol. 1, at 421.

[177] Notice of Sale on Execution of Personal Property dated 22 September 2000; rollo (G. R. No. 145822), Vol. 2, at 2519; RTC Order dated 04 October 2000, rollo (G. R. No. 145822), Vol. 2, at 2525; RTC Order dated 20 December 2000; rollo (G. R. No. 145822), Vol. 2, at 2553; see also Urban Bank's Manifestation and Motion dated 20 September 2005, at 4; rollo (G. R. No. 145817), Vol. 2, at 1722.

[178] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; rollo (G. R. No. 145817), Vol. 2, at 1721-1722. See also Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; rollo (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, one club share in Manila Golf Club sells at PhP26.5 Million. [<http://www.ggaclubshares.com> last visited 17 October 2011])

[179] Notice of Sale on Execution of Personal Property dated 09 October 2000; rollo (G. R. No. 145822). Vol. 2, at 2524; RTC Order dated 18 October 2000; rollo (G. R. No. 145822), Vol. 2, at 2530-2531; see also Urban Bank's Manifestation and Motion dated 20 September 2005, at 4; rollo (G. R. No. 145817), Vol. 2, at 1722.

[180] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; rollo (G. R. No. 145817), Vol. 2, at 1721-1722. See also Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; rollo (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, one club share in Sta. Elena Club (both "A" and "B") sells at PhP2.3 Million. [<http://www.ggaclubshares.com> last visited 17 October 2011])

[181] RTC Order dated 19 December 2000; rollo (G. R. No. 145822), Vol. 2, at 2550-2552; Urban Bank's Manifestation and Motion dated 20 September 2005, at 4; rollo (G. R. No. 145817), Vol. 2, at 1722.

[182] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; rollo (G. R. No. 145817), Vol. 2, at 1721-1722. See also Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; rollo (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, one club share in Tagaytay Highlands Int'l Gold Club sells at PhP560,000. [<http://www.ggaclubshares.com> last visited 17 October 2011])

[183] Rollo (G. R. No. 1458177), Vol. 1, at 423-424.

[184] Notice of Sale on Execution of Personal Property dated 20 October 2000; rollo (G. R. No. 145822). Vol. 2, at 2538; see also Urban Bank's Manifestation and Motion dated 20 September 2005, at 4; rollo (G. R. No. 145817), Vol. 2, at 1722.

[185] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 3-4; rollo (G. R. No. 145817), Vol. 2, at 1721-1722. See also Petitioner De Leon Group's Memorandum dated 20 January 2004, at 15-16; rollo (G. R. No. 145822), Vol. 1, at 1235-1236. (At present, one club share in Subic Yacht Club sells at PhP150,000. [<http://www.ggaclubshares.com> last visited 17 October 2011])

[186] RTC Order dated 31 October 2000, rollo (G. R. No. 145822), Vol. 2, at 2542-2543; RTC Amended Order dated 13 December 2000; rollo (G. R. No. 145822), Vol. 2, at 2546-2549; see also *Lee v. Trocino*, id.

[187] RTC Order dated 31 October 2000, rollo (G. R. No. 145822), Vol. 2, at 2544-2545; RTC Amended Order dated 13 December 2000; rollo (G. R. No. 145822), Vol. 2, at 2546-2549; see also *Lee v. Trocino*, id.

[188] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005, at 4; rollo (G. R. No. 145817), Vol. 2, at 1722.

[189] *Co v. Sillador*, Id.

[190] Id.

[191] Based on the Appraisal Report as of 16 April 2002 conducted by Cuervo Appraisers, Inc., submitted by Urban Bank in their Opposition (To Motion for Reconsideration with Intervention) dated 29 April 2003, the ten condominium units alone purchased by Unimega for PhP10 Million (Units 21-2, 21-3, 21-5, 21-6, and 22-1 to 22-6) was already worth PhP146,851,900. Meanwhile, the fair market value of the entire lot of 85 condominium units sold on execution pending appeal could reach as even as much as PhP1.4 Billion. (Appraisal Report; rollo [G. R. No. 145817], Vol. 2, at 1396-1423)

[192] Malaysian Insurance Surety Bond (MICO Bond No. 200104456) dated 13 September 2001; rollo (G. R. No. 145817), Vol. 1, at 740-741

[193] Petitioner Urban Bank's Urgent Motion to Approve Supersedeas Bond and to Stay Execution Pending Appeal dated 22 October 2001; rollo (G. R. No. 145817). Vol. 1, at 660-667.

- [194] Peña's Opposition dated 31 October 2001; rollo (G. R. No. 145817), Vol. 1, at 752-768.
- [195] EIB letter dated 23 October 2002; rollo (G.R. No. 145817), Vol. 2, at 1277.
- [196] The following manager's checks were attached to the Manifestation: (a) Manager's Check No. 80571 (PhP224,000); (b) Manager Check No. 80572 (PhP13,440,000); and (c) Manager's Check No. 80573 (PhP 8,440,800). (Rollo [G. R. No. 145817], Vol. 2, at 1281)
- [197] Petitioner Urban Bank's Manifestation with Tender of Payment of the Redemption Price dated 24 October 2002; rollo (G.R. No. 145817), Vol. 2, at 1278-1281.
- [198] RTC-Bago City's Order dated 28 October 2002; rollo (G. R. No. 145817), Vol. 2, at 1286.
- [199] Petitioner Urban Bank's Motion with Manifestation dated 29 October 2002; rollo (G. R. No. 145817), Vol. 2, at 1287-1291.
- [200] Sheriff Sillador's Affidavits of Non-Redemption both dated 04 November 2002; rollo (G.R. No. No. 145817), Vol. 1, at 1072-1074.
- [201] Sheriff's Certificates of Final Sale both dated 04 November 2002; rollo (G.R. No. 145817), Vol. 1, at 1065-1071.
- [202] RTC-Bago City's Order dated 13 November 2002; rollo (G.R. No. 145817), Vol. 1, at 1086-1089.
- [203] SC Resolution dated 19 November 2001; rollo (G. R. No. 145817), Vol. 1, at 794-795.
- [204] Peña's Motion for Reconsideration (of the Resolution Approving the Supersedeas Bond) dated 07 December 2001; rollo (G.R. No. 145817), Vol. 1, at 846-862.
- [205] SC Resolution dated 24 September 2003; rollo (G.R. No. 145817), Vol. 1, at 1151-1152.
- [206] Petitioner Urban Bank's counsel, the Poblador Bautista & Reyes Law Office, was substituted by the Office of the Chief Legal Counsel of PDIC, which had become the bank's receiver at that time. (Substitution of Counsel dated 24 November 2000; rollo [G. R. No. 145817], Vol. 1, at 27-30)
- [207] PDIC, as receiver of petitioner Urban Bank, was represented by the Ongkiko Kalaw Manhit & Acorda Law Offices. (Entry of Appearance dated 21 December 2000; rollo [G. R. No. 145817], Vol. 1, at 183-185)
- [208] Petitioner Urban Bank's Petition for Review on Certiorari dated 21 December 2000; rollo (G. R. No. 145817), Vol. 1, at 186-213.
- [209] Peña's Comment with Motion to Cite for Contempt and Urgent Motion to Dismiss dated 12 January 2001; rollo (G. R. No. 145817), Vol. 1, at 32-77.
- [210] Peña's Comment dated 30 April 2001; rollo (G. R. No. 145817), at 510-555.
- [211] Petitioner Borlongan Group, comprised of individual bank directors and officers Teodoro Borlongan, Corazon M. Bejasa, Arturo Manuel, Jr., Ben Y. Lim, Jr., and P. Siervo H. Dizon, was then represented by the Poblador Bautista & Reyes Law Offices.
- [212] Petitioner Borlongan Group's Petition for Review on Certiorari dated 21 November 2000; rollo (G. R. No. 145822), Vol. 1, at 887-950.
- [213] "Considering the allegations, issues and arguments adduced in the petition for review on Certiorari of the amended decision and resolution of the Court of Appeals dated August 18, 2000 and October 19, 2000,

respectively, as well as respondent's comments thereon, the Court further Resolves to DENY the petition for failure of the petitioners to sufficiently show that the Court of Appeals committed any reversible error in the challenged amended decision and resolution as to warrant the exercise by this Court of its discretionary appellate jurisdiction in this case." (SC Resolution dated 29 January 2001 in G. R. No. 145818; rollo (G. R. No. 145822), Vol. 1, at 955-956)

[214] SC Resolution dated 25 June 2001 in G.R. No. 145818; rollo (G.R. No. 145817), Vol. 1, at 620-621.

[215] SC Entry of Judgment dated 11 May 2001 in G.R. No. 145818; rollo (G.R. No. 145817), Vol. 1, at 657-658.

[216] Petitioner De Leon Group's Petition for Review on Certiorari dated 06 December 2000; rollo (G. R. No. 145822), Vol. 1, at 14-75.

[217] SC Resolution dated 13 December 2000; rollo (G. R. No. 145822), Vol. 1, at 955-956.

[218] SC Resolution dated 12 November 2001; rollo (G. R. No. 145817), Vol. 1, at 796.

[219] SC Resolution dated 24 September 2003; rollo (G. R. No. 145817), Vol. 1, at 1151-1152.

[220] Id.

[221] Petitioner Urban Bank's Memorandum dated 28 January 2004; rollo (G. R. No. 145822), Vol. 1, at 1267-1288.

[222] Petitioner De Leon Group's Memorandum dated 20 January 2004; rollo (G. R. No. 145822), Vol. 1, at 1221-1266.

[223] EIB letter dated 10 December 2001; rollo (G.R. No. 145817), Vol. 1, at 896-897; see also EIB letter dated 24 October 2001 (rollo [G.R. No. 145817], Vol. 1, at 956) and EIB letter dated 06 June 2002 (rollo [G.R. No. 145817], Vol. 1, at 939)

[224] Petitioner Urban Bank's three shares in the Makati Sports Club were previously sold in a public auction last 11 October 2001, conducted by the sheriff of RTC-Bago City. (RTC Orders all dated 15 October 2001; rollo [G.R. No. 145817], Vol. 1, at 890-895)

[225] MSCI's letter dated 26 November 2001; Annex "C" of MSCI's Motion for Clarification; rollo (G.R. No. 145817), Vol. 1, at 875-899.

[226] Atty. Ereñeta's letter dated 16 January 2002 (rollo [G.R. No. 145817], Vol. 1, at 898-899); Atty. Ereñeta's letter dated 30 May 2002 (rollo [G.R. No. 145817], Vol. 1, at 898-938). See also Atty. Ereñeta's Motion to Cite in Contempt of Court dated 22 July 2002 in Civil Case No. 754 (rollo [G.R. No. 145817], Vol. 1, at 944-948).

[227] Makati Sports Club's Motion for Clarification dated 04 February 2002; rollo (G.R. No. 145817), Vol. 1, at 875-879.

[228] Petitioner Urban Bank's Motion for Clarification dated 6 August 2002; rollo (G.R. No. 145817), Vol. 1, at 972-975. See also petitioner Urban Bank's Urgent Motion to Resolve dated 21 October 2002; rollo (G.R. No. 145817), Vol. 1, at 982-987.

[229] SC Resolution dated 13 November 2002; rollo (G.R. No. 145817), Vol. 1, at 988-990.

[230] Peña's Urgent Omnibus Motion dated 09 December 2002 (rollo [G. R. No. 145817], Vol. 1, at 1090-1102); see also Peña's Supplement to the Urgent Omnibus Motion dated 19 December 2002 (rollo [G. R. No. 145817], Vol. 1, at 1106-1110)

[231] Urban Bank attributed the mistake allegedly due to the fact that in one of the Court's Resolution (SC Resolution dated 13 February 2002), the ACCRA Law Office was mentioned as the "counsel of respondent." (Opposition [To Urgent Omnibus Motion and Supplement to Urgent Omnibus Motion] dated 28 February 2003, at 2-4; rollo [G.R. No. 145817], Vol. 2, at 1220-1222).

[232] Petitioner Urban Bank's Opposition dated 28 February 2003; rollo (G.R. No. 145817), Vol. 2, at 1219-1227.

[233] SC Resolution dated 31 August 2011.

[234] SC Resolution dated 17 February 2003; rollo (G.R. No. 145822), Vol. 3, at 3220-3221.

[235] Intervenor Unimega's Motion for Reconsideration with Intervention dated 10 December 2002; rollo (G.R. No. 145817), Vol. 1, at 991-1004.

[236] Petitioner De Leon Group manifested that Unimega's intervention was only with respect to petitioner Urban Bank's properties (condominium units), but opposed the legal and factual conclusions of Unimega insofar as it deemed the titles to the executed properties to be consolidated in Unimega's name. (Petitioner De Leon Group's Manifestation and Comment dated 24 February; rollo [G. R. No. 145817], Vol. 2, at 1191-196)

[237] Petitioner Urban Bank's Opposition (to Motion for Reconsideration with Intervention) dated 29 April 2003; rollo (G.R. No. 145817), Vol. 2, at 1386-1394.

[238] According to petitioner Urban Bank, the fair market value of the condominium units (of varying sizes) purchased by Unimega, inclusive of the parking lots attached to the units, amounted to Php175,849,850, which is grossly disproportional to the Php10,000,000 paid by Unimega for all the 10 units during the auction sale. (Petitioner Urban Bank's Opposition dated 29 April 2003, at 4; rollo, [G. R. No. 145817], Vol. 2, at 1389)

[239] SC Resolution dated 01 August 2005; rollo (G.R. No. 145817), Vol. 2, at 1623-1630.

[240] Petitioner Urban Bank's Manifestation and Motion dated 20 September 2005; rollo (G. R. No. 145817), Vol. 2, at 1719-1725.

[241] Petitioner De Leon Group's Manifestation dated 12 September 2005; rollo (G. R. No. 145817), Vol. 2, at 1759-1763.

[242] Intervenor Unimega's Ex Parte Petition for the Issuance of a Writ of Possession dated 28 June 2006; rollo (G. R. No. 162562), Vol. 2, at 1156-1169.

[243] SC Resolution dated 06 September 2006; rollo (G. R. No. 162562), Vol. 2, at 1171-1172.

[244] Petitioner Lim Group's Compliance and Comment dated 25 October 2006; rollo (G. R. No. 162562), Vol. 2, at 1181-1184.

[245] Petitioner Borlongan Group's (composed of the heirs of Borlongan, Bejasa and Manuel, Jr.) Compliance dated 30 October 2006; rollo (G. R. No. 162562), Vol. 2, at 1188-1189.

[246] Peña's Compliance and Comment dated 07 January 2008; rollo (G. R. No. 162562), Vol. 2, at 1233-1241.

[247] Petitioner Urban Bank's Opposition (to Ex Parte Petition for the Issuance of a Writ of Possession) dated 08 November 2006; rollo (G. R. No. 162562), Vol. 2, at 1196-1201.

[248] Petitioner De Leon Group's Manifestation and Comment dated 17 November 2006; rollo (G. R. No. 162562), Vol. 2, at 1204-1211.

[249] Intervenor Unimega's Reply/Comment (to the Opposition of Urban Bank and Manifestation/Comment of

Petitioners Gonzales, Jr., De Leon and Lee) dated 07 February 2007; rollo (G. R. No. 162562), Vol. 2, at 1212-1224.

[250] Civil Code, Art. 1868.

[251] Victorias Milling Co., Inc. v. CA, G. R. No. 117356, 19 June 2000, 33 SCRA 663, citing Bordador v. Luz, 283 SCRA 374, 382 (1997).

[252] Eurotech Industrial Technologies v. Cuizon, G. R. No. 167552, 23 April 2007, 521 SCRA 584, citing Yu Eng Cho v. Pan American World Airways, Inc., 385 Phil. 453, 465 (2000).

[253] Yun Kwan Byung v. PAGCOR, G. R. No. 163553, 11 December 2009, 608 SCRA 107, citing Angeles v. Philippine National Railways, 500 SCRA 444, 452 (2006).

[254] Tuason v. Heirs of Ramos, G. R. No. 156262, 14 July 2005, 463 SCRA 408, citing Victorias Milling Co., Inc. v. CA, 389 Phil. 184, 196 (2000); Lim v. CA, 321 Phil. 782, 794, (1995).

[255] "WHEREFORE, in view of the foregoing considerations, the May 28, 2000 Decision [sic] and the October 19, 2000 [sic] Special Order of the RTC of Bago City, Branch 62, are hereby ANNULLED AND SET ASIDE. However, the plaintiff-appellee in CA GR CV No. 65756 is awarded the amount of P3 Million as reimbursement for his expenses as well as reasonable compensation for his efforts in clearing Urban Bank's property of unlawful occupants. The award of exemplary damages, attorney's fees and costs of suit are deleted, the same not having been sufficiently proven. The petition for Indirect Contempt against all the respondents is DISMISSED for utter lack of merit." (CA Decision [CA GR SP No. 72698 & CV No. 65756] dated 06 November 2003; rollo [G.R. No. 162562], Vol. 1, at 82-111)

[256] When Urban Bank paid the purchase price less authorized retention money under the Deed of Absolute Sale.

[257] Contract to Sell dated 15 November 1994. (Exhibit "16," RTC records [Vol. 4] at 846-849)

[258] ISCI's fax letter dated 26 November 1994; Exhibit "3," RTC records, Vol. 4, at 810.

[259] "SUBLEASE PROHIBITED. That as distinguished from LESSEE's [Mr. Ochoa] rent-out operations above-mentioned, the LESSEE [Mr. Ochoa] shall not assign, cede or convey this lease, nor undertake to sub-lease the whole or substantially all of the lease premises [Pasay property] to any single third party, without the LESSOR's [ISCI's] consent in writing; ..." (Contract of Lease dated 29 November 1984, par. 5 at 2; rollo [G.R. No. 162562], Vol. 1, at 279)

[260] ISCI's letter dated 07 December 1994; Exhibit "1," RTC records, Vol. 4, at 808.

[261] ISCI's fax letter dated 09 December 1994; Exhibit "2," RTC records, Vol. 4, at 809.

[262] Urban Bank's letter dated 15 December 1994; Exhibit "4," RTC records, Vol. 4, at 811.

[263] RTC Decision dated 28 May 1999, at 3; rollo (G R. No. 162562), Vol. 1, at 507. However, the records of the case in RTC-Pasay City with respect to the First Injunction Complaint filed by Peña on behalf of ISCI are NOT with this Court, as none of the issues raised therein are before Us.

[264] Petitioner Urban Bank's letter dated 19 December 1994; Exhibit "B," RTC records, Vol. 3, at 568.

[265] "The due execution and genuineness of the letter dated December 19, 1994 sent by the defendant Urban Bank to the plaintiff; ..." (Pre-Trial Order dated 23 September 1997, at 3; RTC records, Vol. 2, at 501)

[266] Cua v. Ocampo Tan, G. R. No. 181455-56&182008, 04 December 2009, 607 SCRA 645, citing Yasuma v. Heirs of Cecilio S. de Villa, 499 SCRA 466, 471-472 (2006).

[267] RTC's Order dated 04 November 1997, modifying the Pre-trial Order dated 23 September 1997; RTC records, Vol. 2, at 514-519.

[268] "Received from Atty. Magdaleno M. Peña the amount of One Million Five Hundred Thousand Pesos (PhP1,500,000) representing full and final settlement of our claims against Urban Bank Incorporated arising from the closure of the Australian Club located in the former International Food Complex along Roxas Boulevard, Pasay City, Metro Manila." (Receipt dated 28 April 1995; Exhibit "BB," RTC records, Vol.3, at 757)

[269] "When two or more principals have granted a power of attorney for a common transaction, any one of them may revoke the same without the consent of the others." (Civil Code, Art. 1925)

[270] "Agency is extinguished: ... (5) By the accomplishment of the object or purpose of the agency;" (Civil Code, Art. 1919)

[271] Civil Code, Art. 1923.

[272] ISCI's Letter dated 19 December 1994 signed by Herman Ponce and Julie Abad; Exhibit "5," RTC records, Vol. 4, at 812.

[273] Civil Code, Art. 1875; cf. National Brewery & Allied Industries Labor Union of the Phils. v. San Miguel Brewery, Inc., G. R. No. L-18170, 31 August 1963, 8 SCRA 805.

[274] 3 Am. Jur. 2d. § 246, citing Monroe v. Grolier Soc. of London, 208 Cal. 447, 281 P. 604, 65 A.L.R. 989 (1929); Chamberlain v. Abeles, 88 Cal. App. 2d 291, 198 P.2d 927 (2d Dist. 1948).

[275] Rules of Court, Rule 138, Sec. 24; Orocio v. Anguluan, G. R. No. 179892-93, 30 January 2009, 577 SCRA 531.

[276] "Quantum meruit means that in an action for work and labor, payment shall be made in such amount as the plaintiff reasonably deserves." (H. L. Carlos Construction, Inc., v. Marina Properties Corp., G. R. No. 147614, 29 January 2004, 421 SCRA 428, citing Republic v. Court of Appeals, 359 Phil. 530, 640 [1998])

[277] Rayos v. Hernandez, G. R. No. 169079, 12 February 2007, 515 SCRA 517; Bach v. Ongkiko Kalaw Manhit & Acorda Law Offices, G. R. No. 160334, 11 September 2006, 501 SCRA 192.

[278] Transcontinental Underwriters Agency, S. R. L., v. American Agency Underwriters, 680 F.2d 298, 300 (18 May 1982), citing Miller v. Wilson, 24 Pa. 114 (1854).

[279] Id.

[280] CA Decision dated 06 November 2003, at 23; rollo (G. R. No. 162562), Vol. 1, at 104.

[281] RTC Decision dated 28 May 1999, at 21; RTC records, Vol. 4, at 962.

[282] "12. It is true that Atty. Singson had been offering the amount of P25 million to respondent but the latter could not agree to the said amount because his legal expenses alone since this case started in 1996 (and considering that it spawned several other case) would already have reached P10 million. In clearing the Roxas Boulevard property, he had to borrow P3 million (an amount which had been earning interest since 1995) from his good friend Mr. Roberto Ignacio. When respondent's services were engaged by petitioner, he was promised ten (10%) of the property's value which was at least P25 million. Thus, even if respondent agreed to forego the interests that had accrued since 1996, and even if Mr. Ignacio agreed to collect from him only the principal loaned

amount, he would still be entitled to at least P38 million. To respondent's mind, therefore, P25 million was out of the question." (Peña's Consolidated Reply dated 01 April 2003, at 6-7; rollo [G. R. No. 145822], Vol. 3, at 3359-3360)

[283] *Adrimisin v. Javier*, A. C. No. 2591, 08 September 2006, 501 SCRA 192.

[284] *Quilban v. Robinol*, A. C. Nos. 2144 & 2180, 10 April 1989, 171 SCRA 768; see *Traders Royal Bank Employees Union, v. NLRC*, G. R. No. 120592, 14 March 1997, 269 SCRA 733.

[285] *Catly v. Navarro*, G. R. No. 167239, 05 May 2010, 620 SCRA 151, citing *Orocio v. Anguluan*, 577 SCRA 531, 551-552 (2009).

[286] *Lambert Pawnbrokers and Jewelry Corp., v. Binamira*, G. R. No. 170464, 12 July 2010, 624 SCRA 705.

[287] *Id.*

[288] *Francisco v. Mallen, Jr.*, G. R. No. 173169, 22 September 2010, 631 SCRA 118, citing Section 31 of the Corporation Code and *Ramoso v. Court of Appeals*, 400 Phil. 1260 (2000).

[289] *Magaling v. Ong*, G. R. No. 173333, 13 August 2008, 562 SCRA .

[290] "7. The defendant URBAN BANK through its President, defendant TEODORO BORLONGAN, and the defendants Board [of] Directors as well as its Senior Vice President CORAZON BEJASA and VICE President, Arturo Manuel, Jr., entered into an agency agreement with the plaintiff, whereby the latter in behalf of defendant URBAN BANK, shall hold and maintain possession of the aforescribed property, prevent entry of intruders, interlopers, and squatters therein and finally turnover peaceful possession thereof to defendant URBAN BANK; it was further agreed that for the services rendered as its agent, defendant URBAN BANK shall pay plaintiff a fee in an amount equivalent to 10% of the market value of the property prevailing at the time of the payment." (Peña's Complaint dated 28 February 1996, at 2; RTC records, Vol. 1, at 2)

[291] Peña's Petition dated 23 April 2004, at 61-65; rollo (G. R. No. 162562), Vol. 1, at 68-72.

[292] RTC Decision dated 28 May 1999, at 23; RTC records, Vol. 4, at 964.

[293] CA Decision dated 06 November 2003, at 24-25; rollo (G. R. No. 162562), Vol. 1, at 105-106.

[294] Peña's Petition dated 23 April 2004, *supra* note 126.

[295] "Impleaded as defendants in this case are the members of the board of directors of Urban bank who were sought to be held liable in the same manner as the bank. Their failure to raise the defense of limited corporate liability in their Motion to Dismiss or in their Answer in consequence with the provision of Rule 9 of the 1997 Rules of Civil Procedure constitute a waiver on their part to bring up this defense. Thus, this warrants the court to hold all the defendants in this case jointly and severally liable with Urban Bank, Inc., This pronouncement finds basis in plaintiff's general prayer for such further or other relief as may be deemed just or equitable." (RTC Decision 28 May 1999, at 22-23; RTC records, Vol. 4, at 963-964)

[296] Notice of Appeal dated 15 June 1999; RTC records (Vol. V) at 1016-1017.

[297] Peña's Motion for Execution dated 07 June 1999; rollo (G. R. No. 145817), Vol. 1, at 277-279; see Peña's Memorandum dated 13 October 1999; rollo (G. R. No. 145822), Vol. 1, at 371-376.

[298] RTC Decision dated 28 May 1999, at 24; rollo (G. R. No. 145817), Vol. 1, at 101.

[299] PhP 24,000,000 (compensation) + PhP3,000,000 (reimbursement) + PhP1,000,000 (attorney's fees) +

PhP500,000 (exemplary damages) = PhP28,500,000 (excluding costs of suit)

[300] "4. Plaintiff has been unable to pay his loan precisely because defendants have not paid him his fees. Since Mr. Ignacio has been a long time friend of his, he has been granted several extensions but on 4 June 1999, plaintiff received a summons issued by the Regional Trial Court of Manila, Branch 16 for a collection case filed [by] said Mr. Ignacio. ...

"6. ... It is imperative therefore that this Honorable Court's Decision be executed immediately so that he could settle the obligation which he would not have contracted had defendants not engaged his services." (Peña's Motion for Execution dated 07 June 1999, at 2; rollo [G. R. No. 145817], Vol. 1, at 278)

[301] The Complaint filed against Peña was a civil action for collection of PhP3,500,000 and PhP100,000 attorney's fees, which was filed by Mr. Roberto R. Ignacio and was docketed as Civil Case No. 99-93952 with the Regional Trial Court of Manila. (Complaint dated 03 April 1999; rollo [G. R. No. 145822], Vol. 1, at 213-217)

[302] Petitioner Urban Bank's Opposition (to Motion for Execution) dated 15 June 1999; rollo (G. R. No. 145817), Vol. 1, at 289-300; see Petitioner Urban Bank's Memorandum dated 12 October 1999; rollo (G. R. No. 145822), Vol. 1, at 309-331.

[303] Petitioner Urban Bank had earlier moved for the voluntary inhibition of Judge Catilo. (Petitioner Urban Bank's Motion for Voluntary Inhibition by the Presiding Judge dated 15 June 1999; rollo [G.R. No. 145817], Vol. 1, at 301-306)

[304] "The court finds that the pendency of the case for collection of money against plaintiff is a good reason for immediate execution." (RTC Special Order dated 29 October 1999, at 7; rollo [G.R. No. 145817], Vol. 1, at 886)

[305] Writ of Execution dated 28 May 1999; rollo (G. R. No. 145822), Vol. 1, at 152-154.

[306] The said Rule 65 Petition in the Court of Appeals was docketed as CA-G. R. SP No. 55667. (Petitioner Urban Bank's Petition for Certiorari and Prohibition dated 29 November 1999; rollo [G. R. No. 145817], Vol. 1, at 307-345)

[307] Nazareno v. Court of Appeals, G. R. No. 111610, 27 February 2002, 378 SCRA 28.

[308] Id.

[309] "That which is a nullity produces no effect." (Maagad v. Maagad, G. R. No. 171762, 05 June 2009, 588 SCRA 649)

[310] Rules of Court, Rule 39, Sec. 5.

[311] Silverio v. Court of Appeals, G. R. No. L-39861, 17 March 1986, 141 SCRA 527.

[312] G. R. No. 167976, 20 January 2010, 610 SCRA 377.

[313] Diesel Construction Company, Inc., v. Jollibee Foods Corp., G. R. No. 136805, 28 January 2000, 323 SCRA 844.

[314] Philippine Bank of Communications v. Court of Appeals, G. R. No. 126158, 23 September 1997, 279 SCRA 364.

[315] RTC Special Order dated 29 October 1999, at 6-7; rollo (G. R. No. 145817), Vol. 1, at 885-886.

[316] "17. More likely than not, the "Mr. Ignacio case" was a convenient ruse employed by Private Respondent [Peña]. It should be noted that Mr. Ignacio stated in his complaint that "(Private Respondent's) assurance that his

client (Petitioner Bank) was going to pay him before (30 May 1995) was what induced (Ignacio) to grant the loans in the first place." However, on 30 November 1994, the day of the first alleged "loan" of P1,000,000, Petitioner Bank was not even in the picture yet. In fact, "it was only (on December 19, 1994), that plaintiff Private Respondent herein) was appraised (sic) that the property had already been sold and the title thereto ha[d] already been transferred to Urban Bank." How then could Petitioner Bank have assured payment to Private Respondent by 30 May 1995, which assurances were allegedly what induced the release of the loan? On the other hand, if the 30 November 1994 loan was taken out because Private Respondents was "instructed by his relatives" at ISCI to clear the property of occupants, why in the world would Private Respondents have to take out the loan with his friend, in his own name?" (Petition for Certiorari and Prohibition dated 04 November 1999, at 14-15; rollo (G. R. No. 145817), Vol. 1, at 320-321; emphasis supplied and citations omitted)

[317] "WHEREFORE, plaintiff respectfully prays that upon the filing of this Complaint, a writ of preliminary attachment be issued ex-parte to cover all of defendants' property and that after due proceedings, defendant be made to pay the principal amount of P3,500,000.00 plus interests and attorney's fees in the amount of P100,000.00." (Mr. Roberto Ignacio's Complaint dated 03 April 1999, at 3-4; RTC records, Vol. 4, at 983-984)

[318] "It is understood that default on my part will entitle payee to 5% interest for every month of delay." (Promissory Notes dated 30 November 1994, 20 December 1994, and 27 April 1995; RTC records, Vol. 4, 986-988)

[319] CA Decision dated 12 January 2000 in C. A.-G. R. SP No. 55667, at 11-12; rollo (G. R. No. 145817), Vol. 1, at 356-357.

[320] "[E]xecution pending appeal must be strictly construed being an exception to the general rule. So, too, execution pending appeal is not to be availed of and applied routinely, but only in extraordinary circumstances." (Corona International, Inc., v. Court of Appeals, G. R. No. 127851, 18 October 2000, 343 SCRA 512)

[321] http://www.urbanbank.info/urbanweb/ubi_financial.htm last visited 07 October 2011.

[322] BSP Letter dated 04 December 1998; rollo (G. R. No. 145822), Vol. 1, at 622.

[323] Business World Special Report, The Commercial Banking System, Selected Balance Sheet Accounts as of 27 September 1999; rollo (G. R. No. 145822), Vol. 1, at 624.

[324] "We agree with the appellate court's ratiocination in CA-G.R. SP No. 55667 that there is good ground to order execution pending appeal. Records show that on April 26, 2000, Urban Bank declared a bank holiday, and the Bangko Sentral ng Pilipinas (BSP) ordered its closure. Subsequently, Urban Bank was placed under receivership of the Philippine Deposit Insurance Corporation (PDIC); five of its senior officials, including defendants (in the trial court) Borlongan and Bejasa, were placed in the hold-departure list of the Bureau of Immigration and Deportation pending investigation for alleged anomalous transactions (e.g. violation of the Single Borrower's Limit provision of Republic Act No. 8791, or the General Banking Law of 2000) and bank fraud which led to Urban Bank's financial collapse. Furthermore, several administrative, criminal and civil cases had been filed against Urban Bank officials, who are defendants in Civil Case No. 754. Also, in the Peña disbarment case, the Court found the existence of an agency relation between Peña and Urban Bank, thereby entitling the former to collection of fees for his services. Impending insolvency of the adverse party constitutes good ground for execution pending appeal." (Lee v. Trocino, G.R. No. 164648, 06 August 2008, 561 SCRA 178)

[325] "Nevertheless, in the interest of an orderly and judicious administration of justice, we resolve to amend specific portions of our Decision which do not affect in any significant manner the integrity of our original disposition of the case. Thus, with regard to whether or not there exists an agency relationship between Urban

Bank and Peña, the matter should be left to the final determination of the Court in G.R. No. 162562. Anent the soundness of the lower court's grant of execution pending appeal, which necessarily settles the validity of the Special Order and Writ of Execution, the decision in G.R. No. 145822 must be awaited. Accordingly, our original dispositions regarding Urban Bank's liability to Peña and finding good reasons for execution pending appeal are hereby withdrawn in order to make way for their resolution in the other petitions pending with the Court." (Lee v. Trocino, G.R. No. 164648, 19 June 2009, 590 SCRA 32)

[326] G.R. No. 164857, 11 April 2005, 455 SCRA 272.

[327] "The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules of Court but shall not, with the exception of administrative expenditures, pay or commit any act that will involve the transfer or disposition of any asset of the institution: Provided, That the receiver may deposit or place the funds of the institution in non-speculative investments. The receiver shall determine as soon as possible, but not later than ninety (90) days from take over, whether the institution may be rehabilitated or otherwise placed in such a condition so that it may be permitted to resume business with safety to its depositors and creditors and the general public: Provided, That any determination for the resumption of business of the institution shall be subject to prior approval of the Monetary Board.

... ..

(2) ... The assets of an institution under receivership or liquidation shall be deemed in custodia legis in the hands of the receiver and shall, from the moment the institution was placed under such receivership or liquidation, be exempt from any order of garnishment, levy, attachment, or execution." (Republic Act No. 7653, Sec. 30)

[328] "1. To prohibit the bank from doing business in the Philippines and to place its assets and affairs under receivership in accordance with Section 30 of R. A. No. 7653; ..." (Monetary Board's Minute Resolution No. 22 dated 26 April 2000; rollo [G. R. No. 145817], Vol. 1, at 232)

[329] "In connection with the above-referenced cases, please be informed that neither the undersigned [Peña] nor the sheriff of RTC Br. 62, Bago City, has initiated execution sale activities against the properties and assets of Urban Bank (UB) after the latter was ordered closed by the Bangko Sentral ng Pilipinas and placed under receivership of the PDIC.

"As the judgment creditor in the aforementioned cases, I would like to assure you that no execution sale of UB's assets shall be scheduled or undertaken for as long as the bank remains under receivership." (Peña's Letter dated 19 December 2000; rollo [G. R. No. 145817], Vol. 1, at 599)

[330] Philippine Veterans Bank v. Intermediate Appellate Court, G. R. No. 73162, 23 October 1989, 178 SCRA 645.

[331] Petitioner Urban Bank, through EIB, had previously expressed its intent to redeem the 10 condominium units sold to intervenor Unimega during the public execution sale.

[332] The RTC-Bago City in the Decision in the main case awarded Peña a total of PhP28,500,000 in compensation and/or damages; EIB tendered three manager's checks totaling PhP22,108,800 to redeem the 10 condominium units sold to intervenor Unimega, an amount that is more than three-fourths of the award in the main case.

[333] Florendo v. Paramount Insurance Corp., G. R. No. 167976, 20 January 2010, 610 SCRA 377, citing City of Iligan v. Principal Management Group, Inc., 455 Phil. 335, 344 (2003).

[334] Stronghold Insurance, Co., Inc., v. Felix, G. R. No. 148090, 28 November 2006, 508 SCRA 357, citing Heirs of Macabangkit Sangkay v. National Power Corporation, 489 SCRA 401, 417 (2006).

[335] "UBI is expected to reopen by end of August 2011. Upon reopening liabilities (as provided in the memorandum of agreement) up to P500,000 (inclusive of the P100,000 insured deposit) shall be paid and the balance payable in the next three (3) years with the first 30% serviced on the first year, 30% on the second year and 40% on the third year." (PDIC Letter dated 13 August 2001 to Atty. Peña; rollo [G. R. No. 145817], Vol. 1, at 654)

[336] Rule 39, Sec. 9 (a).

[337] Letter dated 09 November 1999; RTC records, Vol. 5, at 1308-1309; Petitioner Urban Bank's Memorandum dated 28 January 2004, par. 12, at 4; rollo (G. R. No. 145822), Vol. 1, at 1270; see also petitioner De Leon Group's Memorandum dated 20 January 2004, par. 1.12, at 6; rollo (G. R. No. 145822), Vol. 1, at 1226.

[338] Id.

[339] The following manager's checks were attached to the Manifestation: (a) Manager's Check No. 80571 (PhP224,000); (b) Manager Check No. 80572 (PhP13,440,000); and (c) Manager's Check No. 80573 (PhP 8,440,800). (Rollo [G. R. No. 145817], Vol. 2, at 1281)

[340] RTC Order dated 13 November 2002; rollo (G. R. No. 145817), Vol. 1, at 1086-1089.

[341] Sheriff Sillador's Affidavits of Non-Redemption both dated 04 November 2002; rollo (G.R. No. No. 145817), Vol. 1, at 1072-1074.

[342] In that case, Sheriff Allan Sillador of RTC-Bago City levied and sold on public auction supposedly conjugal properties of Teodoro Borlongan, Corazon Bejasa and Arturo Manuel, Jr., despite the third party claims asserted by their respective spouse. The Court found Sheriff Sillador administratively liable for his failure to comply with the mandatory procedures for the conduct of the auction sale. (A. M. No. P-07-2342, 31 August 2007, 531 SCRA 657)

[343] After the RTC-Bago City granted execution pending appeal in the main case, judgment obligors Teodoro Borlongan, Corazon Bejasa and Arturo Manuel, Jr., received a notice of sale on execution of real properties involving their respective lots. Their respective spouses filed Notices/Affidavits of Third Party Claim with Sheriff Allan Sillador and claimed that the levied properties are included in their conjugal estates. The said administrative complaint was filed with respect to the irregularities attendant the auction sale of these conjugal properties conducted by Sheriff Sillador. Sheriff Sillador was found to found guilty of simple neglect of duty and suspended for a period of 1 month without pay with a stern warning that a repetition of the same or similar acts will be dealt with more severely. (Co. v. Sillador, id.)

[344] Peña's Urgent Omnibus Motion dated 09 December 2002 (rollo [G. R. No. 145817], Vol. 1, at 1090-1102); see also Peña's Supplement to the Urgent Omnibus Motion dated 19 December 2002 (rollo [G. R. No. 145817], Vol. 1, at 1106-1110)

[345] Intervenor Unimega's Motion for Reconsideration with Intervention dated 10 December 2002; rollo (G.R. No. 145817), Vol. 1, at 991-1004.

[346] SC Resolution dated 13 November 2002; rollo (G.R. No. 145817), Vol. 1, at 988-990.

[347] SC Resolution dated 19 November 2001; rollo (G. R. No. 145817), Vol. 1, at 794-795.

[348] "Effect of reorganization of Divisions on assigned cases. - In the reorganization of the membership of

Divisions, cases already assigned to a Member-in-Charge shall be transferred to the Division to which the Member-in-Charge moves, subject to the rule on the resolution of motions for reconsideration under Section 7 of this Rule. The Member-in-Charge is the Member given the responsibility of overseeing the progress and disposition of a case assigned by raffle." (Internal Rules of the Supreme Court [A. M. No. 10-4-20-SC, as amended], Rule 2, Sec. 9)

[349] "Private respondent [Peña] composed himself and tried to recall if there was any pending incident with this Honorable Court regarding the suspension of the redemption period but he could not remember any. In an effort to hide his discomfort, respondent teased Atty. Singson about bribing the ponente to get such an order. Much to his surprise, Atty. Singson did not even bother to deny and in fact explained that they obviously had to exert extra effort because they could not afford to lose the properties involved (consisting mainly of almost all the units in the Urban Bank Plaza in Makati City) as it might cause the bank (now Export Industry Bank) to close down." (Peña's Urgent Motion to Inhibit and to Resolve Respondent's Urgent Omnibus Motion dated 30 January 2006, at 2-3; see SC TSN dated 03 March 2002, at 55-58)

[350] Letter Complaint dated 16 September 2011 (Re: Justices Carpio and Sereno) filed with the Court's Committee on Ethics and Ethical Standards; see Supplement to the Very Urgent Motion for Re-Raffle dated 20 September 2011.

[351] 1. Peña's Motion to Inhibit (Re: Justice Artemio V. Panganiban) dated 12 January 2001; 2. Urgent Motion to Inhibit (Re: Justice Arturo Buena) dated 20 August 2001; 3. Letter Complaint (Re: Justice Buena) dated 28 October 2001; 4. Motion to Inhibit (Re: Justice Panganiban) dated 18 February 2002; 5. Reply (Re: Justice Panganiban) dated 15 March 2001; 6. Urgent Motion to Inhibit (re: ponente) dated 30 January 2003; 7. Motion to Inhibit (Re: Justice Leonardo A. Quisumbing) dated 08 July 2004; 8. Motion to Inhibit (Re: Justice Panganiban) dated 28 December 2004; 9. Motion to Inhibit (Re: Justice Eduardo Antonio B. Nachura) dated 17 December 2007; 10. Motion for Inhibition (Re: Justice Panganiban) dated 28 December 2004; 11. Reiteratory Motion to Recuse dated 03 March 2006 (Re: Justice Panganiban); 12. Motion to Inhibit (Re: Justice Nachura) dated 07 January 2008; 13. Urgent Consolidated Motion to Reiterate Request for Inhibition (Re: Justice Antonio T. Carpio) dated 02 June 2008; 14. Urgent Motion for Re-Raffle (Re: Justice Presbitero J. Velasco) dated 10 July 2008; 15. Supplement to the Urgent Motion for Re-Raffle (Re: Justices Conchita Carpio Morales and Dante O. Tinga) dated 04 August 2008; 16. Urgent Consolidated Motion for Re-Raffle (Re: Justices Carpio Morales, Tinga and Velasco) dated 14 August 2008; 17. Urgent Consolidated Motion for Re-Raffle (Re: Justices Arturo D. Brion, Leonardo A. Quisumbing, Carpio Morales, Tinga, Velasco, Quisumbing) dated 28 August 2008; 18. Motion to Inhibit (Re: Justice Carpio) dated 21 January 2010; 19. Very Urgent Motion to Inhibit (Re: Justices Carpio Morales and Ma. Lourdes P. A. Sereno) dated 30 March 2011; 20. Very Urgent Motion to Inhibit dated 22 August 2011 (Re: Justice Sereno); and 21. Very Urgent Motion to Re-Raffle dated 01 September 2011 (Re: Justices Carpio, Jose Perez and Sereno).

[352] *Pasricha v. Don Luis Dison Realty, Inc.*, G. R. No. 136409, 14 March 2008, 548 SCRA 273.

[353] "We agree that judges have the duty of protecting the integrity of the judiciary as an institution worthy of public trust and confidence. But under the circumstances here, we also agree that unnecessary inhibition of judges in a case would open the floodgates to forum-shopping. More so, considering that Judge Magpale was not the first judge that TAN had asked to be inhibited on the same allegation of prejudgment. To allow successive inhibitions would justify petitioners' apprehension about the practice of certain litigants shopping for a judge more friendly and sympathetic to their cause than previous ones.

"As held in *Mateo, Jr. v. Hon. Villaluz*, the invitation for judges to disqualify themselves need not always be

heeded. It is not always desirable that they should do so. It might amount in certain cases to their being recreant about their duties. It could also be an instrument whereby a party could inhibit a judge in the hope of getting another more amenable to his persuasion." (Chin, v. Court of Appeals, G. R. No. 144618, 15 August 2003, 409 SCRA 206; emphasis supplied)

[354] Rules of Court, Rule 39, Sec. 5.

[355] Legaspi v. Ong, G. R. No. 141311, 26 May 2005, 459 SCRA 122.

[356] Pilipinas Bank v. Court of Appeals, G. R. No. 97873, 12 August 1993, 225 SCRA 268.

[357] Petitioner De Leon Group's Memorandum dated 20 January 2004; at 15-16; rollo (G. R. No. 145822), Vol. 1, at 1235-1236.

[358] Rules of Court, Rule 39, Sec. 9 (a).

[359] "Legal solutions in *pari materia* are not wanting. Section 2 of Rule 39 of the Rules of Court authorize for goods reasons, the immediate execution of decisions of the Courts of First Instance during the pendency of an appeal, but then, evidently to avoid injustice, Section 5 of the same Rule provides: 'When the judgment executed is reversed totally or partially on appeal, the trial court, on motion, after the case is remanded to it, may issue such order of restitution as equity and justice may warrant under the circumstances.' I am aware of no better principle than that underlying this provision that can be applied to the case at bar, for here, as in the case before Us, the order of immediate execution is concededly authorized when issued, but it is considered, in effect, as losing its legal basis after the executed decision is reversed or modified, hence the necessity of equitable restitution to the party prejudiced by the premature execution." (Dissenting Opinion of Justice Antonio P. Barredo in *Yarcia v. City of Baguio*, G. R. No. L-27562, 29 May 1970, 33 SCRA 419; emphasis supplied)

[360] "The gist of the appeal is that since the order for the dismissal of the case was issued on August 20, 1960, and said dismissal had become final, the court could no longer issue its order of December 9, 1960 directing the return of the property. The argument while apparently correct would be productive of clear injustice. As a matter of principle courts should be authorized, as in this case, at any time to order the return of property erroneously ordered to be delivered to one party, if the order was found to have been issued without jurisdiction. Authority for the return of the property is expressed under the provision of Section 5 of Rule 39, Rules of Court ..." (*Esler v. Ellama*, G. R. No. L-18236, 31 January 1964, 10 SCRA 138)

[361] "It is no defense that, prior to the finality of the judgment of the appellate court, the land and its products had been already distributed among the heirs of the late Ceferino Datoon. His administratrix, appellant herein, personally knew of the claim of appellee Salas; she also knew, and was bound to know, that the judgment of the Court of First Instance dismissing the complaint had been appealed, and could be reversed. It was, therefore, incumbent upon her to reserve the land and its products from distribution among the heirs of Datoon until final judgment was rendered, and she is personally answerable for her failure to do so, apart from the obligation of the heirs themselves not to profit from what is not theirs." (*Salas v. Quinga*, G. R. No. L-20294, 30 January 1965, 13 SCRA 143)

[362] *Aranda v. Court of Appeals*, G. R. No. 63188, 13 June 1990, 186 SCRA 456, citing *Po Pauco v. Tan Junco*, 49 Phil. 349 (1926) and *Hilario v. Hicks*, 40 Phil. 576 (1919).

[363] "It is submitted that under the premises movant-intervenor acted in good faith when it proceeded to participate in the execution sale despite the pendency of the appeal of the petitioner to this Honorable Court considering that at the time of the sale this Honorable Court have not yet acted on the said appeal inspite of the

fact that the same was filed before the scheduled execution sale. In such case, the movant-intervenor can assume in good faith that the inaction on the appeal taking into account the urgency of the situation, would mean that the appeal was only dilatory in character." (Intervenor Unimega's Reply dated 22 May 2003, at 2; rollo (G. R. No. 145822), Vol. 3, at 3524)

[364] "Recovery of price if sale not effective; revival of judgment. -- If the purchaser of real property sold on execution, or his successor in interest, fails to recover the possession thereof, or is evicted therefrom, in consequence of irregularities in the proceedings concerning the sale, or because the judgment has been reversed or set aside, or because the property sold was exempt from execution, or because a third person has vindicated his claim to the property, he may on motion in the same action or in a separate action recover from the judgment obligee the price paid, with interest, or so much thereof as has not been delivered to the judgment obligor, or he may, on motion, have the original judgment revived in his name for the whole price with interest, or so much thereof as has been delivered to the judgment obligor. The judgment so revived shall have the same force and effect as an original judgment would have as of the date of the revival and no more." (Rules of Court, Rule 39, Sec. 34; emphasis supplied)

[365] Intervenor Unimega's Ex Parte Petition for the Issuance of a Writ of Possession dated 28 June 2006; rollo (G. R. No. 162562), Vol. 2, at 1156-1169.

[366] Florenz D. Regalado, Remedial Law Compendium II 8[th] ed. (2002), at 424.

[367] Regalado, *id.* at 424, citing *Po Pauco v. Tan Juco*, 49 Phil. 349 (1926).

[368] CA Resolution dated 19 October 2000, at 3-4; rollo (G. R. No. 145817), Vol. 1, at 25-26.

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