

UNIVERSITY OF THE PHILIPPINES, PETITIONER, VS. PHILAB INDUSTRIES, INC., RESPONDENT.

G.R. No. 152411. September 29, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is a petition for review on certiorari of the Decision[1] of the Court of Appeals in CA-G.R. CV No. 44209, as well as its Resolution[2] denying the petitioner's motion for the reconsideration thereof. The Court of Appeals set aside the Decision[3] of Branch 150 of the Regional Trial Court (RTC) of Makati City, which dismissed the complaint of the respondent against the petitioner for sum of money and damages.

The Facts of the Case

Sometime in 1979, the University of the Philippines (UP) decided to construct an integrated system of research organization known as the Research Complex. As part of the project, laboratory equipment and furniture were purchased for the National Institute of Biotechnology and Applied Microbiology (BIOTECH) at the UP Los Baños. Providentially, the Ferdinand E. Marcos Foundation (FEMF) came forward and agreed to fund the acquisition of the laboratory furniture, including the fabrication thereof.

Renato E. Lirio, the Executive Assistant of the FEMF, gave the go-signal to BIOTECH to contact a corporation to accomplish the project. On July 23, 1982, Dr. William Padolina, the Executive Deputy Director of BIOTECH, arranged for Philippine Laboratory Industries, Inc. (PHILAB), to fabricate the laboratory furniture and deliver the same to BIOTECH for the BIOTECH Building Project, for the account of the FEMF. Lirio directed Padolina to give the go-signal to PHILAB to proceed with the fabrication of the laboratory furniture, and requested Padolina to forward the contract of the project to FEMF for its approval.

On July 13, 1982, Padolina wrote Lirio and requested for the issuance of the purchase order and downpayment for the office and laboratory furniture for the project, thus:

- Supply and Installation of Laboratory furniture for the BIOTECH Building Project

Amount : P2,934,068.90

Supplier : Philippine Laboratory Furniture Co.,
College, Laguna
Attention: Mr. Hector C. Navasero

President

Downpayment : 40% or P1,173,627.56

- Fabrication and Supply of office furniture for the BIOTECH Building Project

Amount : P573,375.00

Supplier : Trans-Oriental Woodworks, Inc.
1[st] Avenue, Bagumbayan
Tanyag, Taguig, Metro Manila

Downpayment : 50% or P286,687.50[4]

Padolina assured Lirio that the contract would be prepared as soon as possible before the issuance of the purchase orders and the downpayment for the goods, and would be transmitted to the FEMF as soon as possible.

In a Letter dated July 23, 1982, Padolina informed Hector Navasero, the President of PHILAB, to proceed with the fabrication of the laboratory furniture, per the directive of FEMF Executive Assistant Lirio. Padolina also requested for copies of the shop drawings and a sample contract[5] for the project, and that such contract and drawings had to be finalized before the down payment could be remitted to the PHILAB the following week. However, PHILAB failed to forward any sample contract.

Subsequently, PHILAB made partial deliveries of office and laboratory furniture to BIOTECH after having been duly inspected by their representatives and FEMF Executive Assistant Lirio.

On August 24, 1982, FEMF remitted P600,000 to PHILAB as downpayment for the laboratory furniture for the BIOTECH project, for which PHILAB issued Official Receipt No. 253 to FEMF. On October 22, 1982, FEMF made another partial payment of P800,000 to PHILAB, for which the latter issued Official Receipt No. 256 to FEMF. The remittances were in the form of checks drawn by FEMF and delivered to PHILAB, through Padolina.

On October 16, 1982, UP, through Emil Q. Javier, the Chancellor of UP Los Baños and FEMF, represented by its Executive Officer, Rolando Gapud, executed a Memorandum of Agreement (MOA) in which FEMF agreed to grant financial support and donate sums of money to UP for the construction of buildings, installation of laboratory and other capitalization for the project, not to exceed P29,000,000.00. The obligations of FEMF under the MOA are the following:

ARTICLE II

OBLIGATIONS OF THE FOUNDATION

2.1. The FOUNDATION, in carrying out its principal objectives of promoting philanthropic and scientific projects through financial support to such projects that will contribute to the country's economic development, shall grant such financial support and donate such sums of money to the RESEARCH COMPLEX as may be necessary for the construction of buildings, installation of laboratories, setting up of offices and physical plants and facilities and other capital investment of the RESEARCH COMPLEX and/or any of its component Research Institutes not to exceed P29 Million. For this purpose, the FOUNDATION shall:

(a) Acquire and donate to the UNIVERSITY the site for the RESEARCH COMPLEX; and

(b) Donate or cause to be donated to the UNIVERSITY the sum of TWENTY-NINE MILLION PESOS (P29,000,000.00) for the construction of the buildings of the National Institutes of Biotechnology and Applied Microbiology (BIOTECH) and the installation of their laboratories and their physical plants and other facilities to enable them to commence operations.

2.2. In addition, the FOUNDATION shall, subject to the approval of the Board of Trustees of the FOUNDATION, continue to support the activities of the RESEARCH COMPLEX by way of recurrent additional grants and donations for specific research and development projects which may be mutually agreed upon and, from time to time, additional grants and donations of such amounts as may be necessary to provide the RESEARCH COMPLEX and/or any of its Research Institutes with operational flexibility especially with regard to incentives to staff purchase of equipment/facilities, travel abroad, recruitment of local and expatriate staff and such other activities and inputs which are difficult to obtain under usual government rules and regulations.[6]

The Board of Regents of the UP approved the MOA on November 25, 1982.[7]

In the meantime, Navasero promised to submit the contract for the installation of laboratory furniture to BIOTECH, by January 12, 1983. However, Navasero failed to do so. In a Letter dated February 1, 1983, BIOTECH reminded Navasero of the need to submit the contract so that it could be submitted to FEMF for its evaluation and approval.[8] Instead of submitting the said contract, PHILAB submitted to BIOTECH an accomplishment report on the project as of February 28, 1983, and requested payment thereon.[9] By May 1983, PHILAB had completed 78% of the project, amounting to P2,288,573.74 out of the total cost of P2,934,068.90. The FEMF had already paid forty percent (40%) of the total cost of the project. On May 12, 1983, Padolina wrote Lirio and furnished him the progress billing from PHILAB.[10] On August 11, 1983, the FEMF made another partial payment of P836,119.52 representing the already delivered laboratory and office furniture after the requisite inspection and verification thereof by representatives from the BIOTECH, FEMF, and PHILAB. The payment was made in the form of a check, for which PHILAB issued Official Receipt No. 202 to FEMF through Padolina.[11]

On July 1, 1984, PHILAB submitted to BIOTECH Invoice No. 01643 in the amount of P702,939.40 for the final payment of laboratory furniture. Representatives from BIOTECH, PHILAB, and Lirio for the FEMF, conducted a verification of the accomplishment of the work and confirmed the same. BIOTECH forwarded the invoice to Lirio on December 18, 1984 for its payment.[12] Lirio, in turn, forwarded the invoice to Gapud, presumably sometime in the early part of 1985. However, the FEMF failed to pay the bill. PHILAB reiterated its request for payment through a letter on May 9, 1985.[13] BIOTECH again wrote Lirio on March 21, 1985, requesting the payment of PHILAB's bill.[14] It sent another letter to Gapud, on November 22, 1985, again appealing for the payment of PHILAB's bill.[15] In a Letter to BIOTECH dated December 5, 1985, PHILAB requested payment of P702,939.40 plus interest thereon of P224,940.61.[16] There was, however, no response from the FEMF. On February 24, 1986, PHILAB wrote BIOTECH, appealing for the payment of its bill even on installment basis.[17]

President Marcos was ousted from office during the February 1986 EDSA Revolution. On March 26, 1986, Navasero wrote BIOTECH requesting for its much-needed assistance for the payment of the balance already due plus interest of P295,234.55 for its fabrication and supply of laboratory furniture.[18]

On April 22, 1986, PHILAB wrote President Corazon C. Aquino asking her help to secure the payment of the amount due from the FEMF.[19] The letter was referred to then Budget Minister Alberto Romulo, who referred the letter to then UP President Edgardo Angara on June 9, 1986. On September 30, 1986, Raul P. de Guzman, the Chancellor of UP Los Baños, wrote then Chairman of the Presidential Commission on Good Government (PCGG) Jovito Salonga, submitting PHILAB's claim to be officially entered as "accounts payable" as soon as the assets of FEMF were liquidated by the PCGG.[20]

In the meantime, the PCGG wrote UP requesting for a copy of the relevant contract and the MOA for its perusal.[21]

Chancellor De Guzman wrote Navasero requesting for a copy of the contract executed between PHILAB and

FEMF. In a Letter dated October 20, 1987, Navasero informed De Guzman that PHILAB and FEMF did not execute any contract regarding the fabrication and delivery of laboratory furniture to BIOTECH.

Exasperated, PHILAB filed a complaint for sum of money and damages against UP. In the complaint, PHILAB prayed that it be paid the following:

(1)

PESOS: SEVEN HUNDRED TWO THOUSAND NINE HUNDRED THIRTY NINE & 40/100 (P702,939.40) plus an additional amount (as shall be determined during the hearing) to cover the actual cost of money which at the time of transaction the value of the peso was eleven to a dollar (P11.00:\$1) and twenty seven (27%) percent interest on the total amount from August 1982 until fully paid;

(2)

PESOS: ONE HUNDRED THOUSAND (P100,000.00) exemplary damages;

(3)

FIFTY THOUSAND [PESOS] (P50,000.00) as and for attorney's fees; and

(4)

Cost of suit.[22]

PHILAB alleged, inter alia, that:

- Sometime in August 1982, defendant, through its officials, particularly MR. WILLIAM PADOLINA, Director, asked plaintiff to supply and install several laboratory furnitures and equipment at BIOTECH, a research laboratory of herein defendant located at its campus in College, Laguna, for a total contract price of PESOS: TWO MILLION NINE HUNDRED THIRTY-NINE THOUSAND FIFTY-EIGHT & 90/100 (P2,939,058.90);

- After the completion of the delivery and installation of said laboratory furnitures and equipment at defendant's BIOTECH Laboratory, defendant paid three (3) times on installment basis:

a) P600,000.00 as per Official Receipt No. 253 dated August 24, 1982;

b) P800,000.00 as per Official Receipt No. 256 dated October 22, 1982;

c) P836,119.52 as per Official Receipt No. 202 dated August 11, 1983;

thus leaving a balance of PESOS: SEVEN HUNDRED TWO THOUSAND NINE HUNDRED THIRTY-NINE & 40/100 (P702,939.40).

- That notwithstanding repeated demands for the past eight years, defendant arrogantly and maliciously made plaintiff believe that it was going to pay the balance aforestated, that was why plaintiff's President and General Manager himself, HECTOR C. NAVASERO, personally went to and from UP Los Baños to talk with defendant's responsible officers in the hope of expecting payment, when, in truth and in fact, defendant had no intention to pay whatsoever right from the start on a misplaced ground of technicalities. Some of plaintiff's demand letters since year 1983 up to the present are hereto attached as Annexes A, B, C, D, E, F, G, and H hereof;

- That by reason of defendant's malicious, evil and unnecessary misrepresentations that it was going to pay its obligation and asking plaintiff so many red tapes and requirements to submit, compliance of all of which took plaintiff almost eight (8) years to finish, when, in truth and in fact, defendant had no intention to pay, defendant should be ordered to pay plaintiff no less than PESOS: ONE HUNDRED THOUSAND (P100,000.00) exemplary damages, so that other government institutions may be warned that they must not unjustly enrich themselves at the expense of the people they serve.[23]

In its answer, UP denied liability and alleged that PHILAB had no cause of action against it because it was merely the donee/beneficiary of the laboratory furniture in the BIOTECH; and that the FEMF, which funded the project, was liable to the PHILAB for the purchase price of the laboratory furniture. UP specifically denied obliging itself to pay for the laboratory furniture supplied by PHILAB.

After due proceedings, the trial court rendered judgment dismissing the complaint without prejudice to PHILAB's recourse against the FEMF. The fallo of the decision reads:

WHEREFORE, this case is hereby DISMISSED for lack of merit without prejudice to plaintiff's recourse to the assets of the Marcos Foundation for the unpaid balance of P792,939.49.

SO ORDERED.[24]

Undaunted, PHILAB appealed to the Court of Appeals (CA) alleging that the trial court erred in finding that:

- the contract for the supply and installation of subject laboratory furniture and equipment was between PHILAB and the Marcos Foundation; and,
- the Marcos Foundation, not the University of the Philippines, is liable to pay the respondent the balance of the purchase price.[25]

The CA reversed and set aside the decision of the RTC and held that there was never a contract between FEMF and PHILAB. Consequently, PHILAB could not be bound by the MOA between the FEMF and UP since it was never a party thereto. The appellate court ruled that, although UP did not bind itself to pay for the laboratory furniture; nevertheless, it is liable to PHILAB under the maxim: "No one should unjustly enrich himself at the expense of another."

The Present Petition

Upon the denial of its motion for reconsideration of the appellate court's decision, UP, now the petitioner, filed its petition for review contending that:

- THE COURT OF APPEALS ERRED WHEN IT FAILED TO APPLY THE LAW ON CONTRACTS BETWEEN PHILAB AND THE MARCOS FOUNDATION.
- THE COURT OF APPEALS ERRED IN APPLYING THE LEGAL PRINCIPLE OF UNJUST ENRICHMENT WHEN IT HELD THAT THE UNIVERSITY, AND NOT THE MARCOS FOUNDATION, IS LIABLE TO PHILAB.[26]

Prefatorily, the doctrinal rule is that pure questions of facts may not be the subject of appeal by certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as this mode of appeal is generally restricted to questions of law.[27] However, this rule is not absolute. The Court may review the factual findings of the CA should they be contrary to those of the trial court.[28] Correspondingly, this Court may review findings of facts when the judgment of the CA is premised on a misapprehension of facts.[29]

On the first assigned error, the petitioner argues that the CA overlooked the evidentiary effect and substance of

the corresponding letters and communications which support the statements of the witnesses showing affirmatively that an implied contract of sale existed between PHILAB and the FEMF. The petitioner furthermore asserts that no contract existed between it and the respondent as it could not have entered into any agreement without the requisite public bidding and a formal written contract.

The respondent, on the other hand, submits that the CA did not err in not applying the law on contracts between the respondent and the FEMF. It, likewise, attests that it was never privy to the MOA entered into between the petitioner and the FEMF. The respondent adds that what the FEMF donated was a sum of money equivalent to P29,000,000, and not the laboratory equipment supplied by it to the petitioner. The respondent submits that the petitioner, being the recipient of the laboratory furniture, should not enrich itself at the expense of the respondent.

The petition is meritorious.

It bears stressing that the respondent's cause of action is one for sum of money predicated on the alleged promise of the petitioner to pay for the purchase price of the furniture, which, despite demands, the petitioner failed to do. However, the respondent failed to prove that the petitioner ever obliged itself to pay for the laboratory furniture supplied by it. Hence, the respondent is not entitled to its claim against the petitioner.

There is no dispute that the respondent is not privy to the MOA executed by the petitioner and FEMF; hence, it is not bound by the said agreement. Contracts take effect only between the parties and their assigns.[30] A contract cannot be binding upon and cannot be enforced against one who is not a party to it, even if he is aware of such contract and has acted with knowledge thereof.[31] Likewise admitted by the parties, is the fact that there was no written contract executed by the petitioner, the respondent and FEMF relating to the fabrication and delivery of office and laboratory furniture to the BIOTECH. Even the CA failed to specifically declare that the petitioner and the respondent entered into a contract of sale over the said laboratory furniture. The parties are in accord that the FEMF had remitted to the respondent partial payments via checks drawn and issued by the FEMF to the respondent, through Padolina, in the total amount of P2,288,573.74 out of the total cost of the project of P2,934,068.90 and that the respondent received the said checks and issued receipts therefor to the FEMF. There is also no controversy that the petitioner did not pay a single centavo for the said furniture delivered by the respondent that the petitioner had been using ever since.

We agree with the petitioner that, based on the records, an implied-in-fact contract of sale was entered into between the respondent and FEMF. A contract implied in fact is one implied from facts and circumstances showing a mutual intention to contract. It arises where the intention of the parties is not expressed, but an agreement in fact creating an obligation. It is a contract, the existence and terms of which are manifested by conduct and not by direct or explicit words between parties but is to be deduced from conduct of the parties, language used, or things done by them, or other pertinent circumstances attending the transaction. To create contracts implied in fact, circumstances must warrant inference that one expected compensation and the other to pay.[32] An implied-in-fact contract requires the parties' intent to enter into a contract; it is a true contract.[33] The conduct of the parties is to be viewed as a reasonable man would view it, to determine the existence or not of an implied-in-fact contract.[34] The totality of the acts/conducts of the parties must be considered to determine their intention. An implied-in-fact contract will not arise unless the meeting of minds is indicated by some intelligent conduct, act or sign.[35]

In this case, the respondent was aware, from the time Padolina contacted it for the fabrication and supply of the laboratory furniture until the go-signal was given to it to fabricate and deliver the furniture to BIOTECH as beneficiary, that the FEMF was to pay for the same. Indeed, Padolina asked the respondent to prepare the draft of the contract to be received by the FEMF prior to the execution of the parties (the respondent and FEMF), but

somehow, the respondent failed to prepare one. The respondent knew that the petitioner was merely the donee-beneficiary of the laboratory furniture and not the buyer; nor was it liable for the payment of the purchase price thereof. From the inception, the FEMF paid for the bills and statement of accounts of the respondent, for which the latter unconditionally issued receipts to and under the name of the FEMF. Indeed, witness Lirio testified:

Q:

Now, did you know, Mr. Witness, if PHILAB Industries was aware that it was the Marcos Foundation who would be paying for this particular transaction for the completion of this particular transaction?

A:

I think they are fully aware.

Q:

What is your basis for saying so?

A:

First, I think they were appraised by Dr. Padolina. Secondly, there were occasions during our inspection in Los Baños, at the installation site, there were occasions, two or three occasions, when we met with Mr. Navasero who is the President, I think, or manager of PHILAB, and we appraised him that it was really between the foundation and him to which includes (sic) the construction company constructing the building. He is fully aware that it is the foundation who (sic) engaged them and issued the payments.[36]

The respondent, in its Letter dated March 26, 1986, informed the petitioner and sought its assistance for the collection of the amount due from the FEMF:

Dear Dr. Padolina:

May we request for your much-needed assistance in the payment of the balance still due us on the laboratory furniture we supplied and installed two years ago?

Business is still slow and we will appreciate having these funds as soon as possible to keep up our operations.

We look forward to hearing from you regarding this matter.

Very truly yours,

PHILAB INDUSTRIES, INC.[37]

The respondent even wrote former President Aquino seeking her assistance for the payment of the amount due, in which the respondent admitted it tried to collect from her predecessor, namely, the former President Ferdinand E. Marcos:

YOUR EXCELLENCY:

At the instance of the national government, subject laboratory furnitures were supplied by our company to the National Institute of Biotechnology & Applied Microbiology (BIOTECH), University of the Philippines, Los Baños, Laguna, in 1984.

Out of the total contract price of PESOS: TWO MILLION NINE HUNDRED THIRTY-NINE THOUSAND FIFTY-EIGHT & 90/100 (P2,939,058.90), the previous administration had so far paid us the sum of

P2,236,119.52 thus leaving a balance of PESOS: ONE MILLION FOUR HUNDRED TWELVE THOUSAND SEVEN HUNDRED FORTY-EIGHT & 61/100 (P1,412,748.61) inclusive of interest of 24% per annum and 30% exchange rate adjustment.

On several occasions, we have tried to collect this amount from your predecessor, the latest of which was subject invoice (01643) we submitted to DR. W. PADOLINA, deputy director of BIOTECH. But this, notwithstanding, our claim has remained unacted upon up to now. Copy of said invoice is hereto attached for easy reference.

Now that your excellency is the head of our government, we sincerely hope that payment of this obligation will soon be made as this is one project the Republic of the Philippines has use of and derives benefit from.[38]

Admittedly, the respondent sent to the petitioner its bills and statements of accounts for the payments of the laboratory furniture it delivered to the petitioner which the petitioner, through Padolina, transmitted to the FEMF for its payment. However, the FEMF failed to pay the last statement of account of the respondent because of the onset of the EDSA upheaval. It was only when the respondent lost all hope of collecting its claim from the government and/or the PCGG did it file the complaint against the petitioner for the collection of the payment of its last delivery of laboratory furniture.

We reject the ruling of the CA holding the petitioner liable for the claim of the respondent based on the maxim that no one should enrich itself at the expense of another.

Unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead it must be shown that a party was unjustly enriched in the sense that the term unjustly could mean illegally or unlawfully.[39]

Moreover, to substantiate a claim for unjust enrichment, the claimant must unequivocally prove that another party knowingly received something of value to which he was not entitled and that the state of affairs are such that it would be unjust for the person to keep the benefit.[40] Unjust enrichment is a term used to depict result or effect of failure to make remuneration of or for property or benefits received under circumstances that give rise to legal or equitable obligation to account for them; to be entitled to remuneration, one must confer benefit by mistake, fraud, coercion, or request.[41] Unjust enrichment is not itself a theory of reconvey. Rather, it is a prerequisite for the enforcement of the doctrine of restitution.[42]

Article 22 of the New Civil Code reads:

Every person who, through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.
(Boldface supplied)

In order that accion in rem verso may prosper, the essential elements must be present: (1) that the defendant has been enriched, (2) that the plaintiff has suffered a loss, (3) that the enrichment of the defendant is without just or legal ground, and (4) that the plaintiff has no other action based on contract, quasi-contract, crime or quasi-delict.[43]

An accion in rem verso is considered merely an auxiliary action, available only when there is no other remedy on contract, quasi-contract, crime, and quasi-delict. If there is an obtainable action under any other institution of positive law, that action must be resorted to, and the principle of accion in rem verso will not lie.[44]

The essential requisites for the application of Article 22 of the New Civil Code do not obtain in this case. The respondent had a remedy against the FEMF via an action based on an implied-in-fact contract with the FEMF for the payment of its claim. The petitioner legally acquired the laboratory furniture under the MOA with FEMF;

hence, it is entitled to keep the laboratory furniture.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The assailed Decision of the Court of Appeals is REVERSED AND SET ASIDE. The Decision of the Regional Trial Court, Makati City, Branch 150, is REINSTATED. No costs.

SO ORDERED.

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

[1] Penned by Associate Justice Demetrio G. Demetria (retired), with Associate Justices Ramon Mabutas, Jr. (retired) and Jose L. Sabio, Jr., concurring.

[2] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Oswaldo Agcaoili (retired) and Sergio L. Pestaño, concurring.

[3] Penned by Judge Zeus C. Abrogar.

[4] Rollo, p. 104.

[5] Exhibit "I."

[6] Rollo, p. 65.

[7] Exhibit "24."

[8] Exhibit "2."

[9] Exhibit "3."

[10] Exhibit "4."

[11] Rollo, p. 109.

[12] Ibid.

[13] Exhibit "8."

[14] Exhibit "7."

[15] Exhibit "9."

[16] Exhibit "10."

[17] Exhibit "11."

[18] Exhibit "12."

[19] Exhibit "14."

[20] Exhibit "15."

[21] Exhibit "16."

[22] Rollo, p. 45.

- [23] Id. at 43-44.
- [24] Id. at 58.
- [25] Records, p. 52.
- [26] Rollo, p. 11.
- [27] Metropolitan Bank and Trust Company v. Wong, 359 SCRA 608 (2001).
- [28] Tando v. Court of Appeals, 372 SCRA 321 (2001).
- [29] Spouses Constante Firme and Azucena E. Firme v. Bukal Enterprises and Development Corporation, G.R. No. 146608, October 23, 2003.
- [30] Article 1311, New Civil Code.
- [31] Manila Port Services, Inc. v. Court of Appeals, 20 SCRA 1214 (1967).
- [32] 17 Corpus Juris Secundum, Contract, pp. 559-560.
- [33] G. T. Fogle & Co. v. United States, 135 F.2d 117 (1943).
- [34] Roebling v. Dillon, 288 F.2d 386 (1961).
- [35] Baltimore & O. R. Co. v. United States, 261 U.S. 592 (1923).
- [36] TSN, 17 August 1992, p. 14.
- [37] Exhibit "12."
- [38] Exhibit "14."
- [39] Mon-Ray, Inc. v. Granite Re, Inc., 677 N.W.2d 434 (2004) citing First National Bank of St. Paul v. Ramier, 311 N.W. 2d 502, 504 (1981).
- [40] ServiceMaster of St. Cloud v. GAB Bus. Services., Inc., 544 N.W.2d 302, 306 (1996).
- [41] Callaway Golf Company v. Dunlop Slazenger Group Americas, Inc., 318 F.Supp.2d 216 (2004); Dinosaur Dev., Inc. v. White, 216 Cal.App.3d 1310, 265 Cal.Rptr. 525 (1989).
- [42] Reeves v. Alyeska Pipeline Service Company, 926 P.2d 1130 (1996).
- [43] Tolentino, Arturo M., Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. I, pp. 77; In Albrecht v. Walter, 572 N.W.2d 809 (1997), it was held that:
- ... (1) an enrichment; (2) an impoverishment; (3) some connection between enrichment and impoverishment; (4) the absence of justification for enrichment and impoverishment; and (5) the absence of a remedy provided by law.
- [44] Id. at 82.

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