MR. & MRS. GEORGE R. TAN, PETITIONERS, VS. G.V.T. ENGINEERING SERVICES, ACTING THROUGH ITS OWNER/ MANAGER GERINO V. TACTAQUIN, RESPONDENT.

G.R. NO. 153057. August 07, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Assailed in the present petition for review on certiorari under Rule 45 of the Rules of Court is the June 29, 2001 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 59699 affirming with modification the Decision of the Regional Trial Court (RTC) of Quezon City, Branch 81 in Civil Case No. Q-90-7405; and its Resolution[2] promulgated on April 10, 2002 denying petitioners' Motion for Partial Reconsideration.

The facts are as follows:

On October 18, 1989, the spouses George and Susan Tan (spouses Tan) entered into a contract with G.V.T. Engineering Services (G.V.T.), through its owner/manager Gerino Tactaquin (Tactaquin) for the construction of their residential house at Ifugao St., La Vista, Quezon City. The contract price was P1,700,000.00. Since the spouses Tan have no knowledge about building construction, they hired the services of Engineer Rudy Cadag (Cadag) to supervise the said construction. In the course of the construction, the spouses Tan caused several changes in the plans and specifications and ordered the deletion of some items in G.V.T.'s scope of work. This brought about differences between the spouses Tan and Cadag, on one hand, and Tactaquin, on the other. Subsequently, the latter stopped the construction of the subject house.

On December 4, 1990, G.V.T., through Tactaquin, filed a Complaint for specific performance and damages against the spouses Tan and Cadag with the RTC of Quezon City contending that by reason of the changes in the plans and specifications of the construction project ordered by Cadag and the spouses Tan, it was forced to borrow money from third persons at exorbitant interest; that several portions of their contract were deleted but only to be awarded later to other contractors; that it suffered tremendous delay in the completion of the project brought about by the spouses Tan's delay in the delivery of construction materials on the jobsite; that all the aforementioned acts caused undue prejudice and damage to it.

In their Answer with Counterclaims, the spouses Tan and Cadag alleged, among others, that G.V.T. performed several defective works; that to avert further losses, the spouses Tan deleted some portions of the project covered by G.V.T.'s contract and awarded other portions to another contractor; that the changes ordered by the spouses Tan were agreed upon by the parties; that G.V.T., being a mere single proprietorship has no legal personality and cannot be a party in a civil action.

Trial ensued and the court a quo made the following factual findings:

> To begin with, it is not disputed that there was delay in the delivery of the needed construction materials which in turn caused tremendous delay in project completion. The documentary evidence on record shows that

> plaintiff, practically during the entire period that he was working on the project, complained to defendants about the non-delivery on time of the materials on the project site (Exhs. D, G, H, H-1, H-2, H-3, H-4, and H-5). Plaintiff's request for prompt delivery of materials fell on deaf ears.
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> Plaintiff's losses as a result of the delay were aggravated by cancellation by defendants of major portions of the project such as skylight roofing, installation of cement tiles, soil poisoning and finishing among others, which were all included in the construction agreement but were assigned to other contractors (TSN, 9/6/91); Exh. I).
>
> In his testimony, defendant Cadag declared that thirteen (13) items in the construction agreement were deleted mainly due to the lack of technical know-how of the plaintiff, coupled with lack of qualified personnel; that he immediately notified the plaintiff upon discovering the defective workmanship (TSN, 5/26/93); and that he became aware of the imperfection in plaintiff's work as early as during the plastering of the walls (TSN, 10/12/97). The evidence is clear however that plaintiff's attention about the alleged faulty work was called for the first time only on November 16, 1990 when plaintiff was furnished with defendants' letter bearing date of November 10, 1990 (Exh. 20) as their reply to plaintiff's letter of even date.
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> It bears pointing out that defendant Cadag testified that during the construction of the house of defendant spouses he was at the job site everyday to see to it that the construction was being done according to the plans and specifications (TSN, 9/31/94). He was assisted in the project by the other supervising representatives of defendants spouses, namely, Engr. Rogelio Menguito, Engr. Armando Menguito and Arch. Hans Palma who went to the project site to attend the weekly meetings. It thus appears that there was a close monitoring by the defendant of the construction by the plaintiff.[3]

On the basis of the foregoing findings, the trial court concluded thus:

> It is therefore the finding of this Court that defendants' conclusions as to the workmanship and competence of plaintiff are unsupported and without basis and that their act of deleting several major items from plaintiff's scope of work was uncalled for, if not done in bad faith. Defendants's [sic] acts forced plaintiff to withdraw from the project.[4]

Accordingly, the RTC rendered a Decision[5] with the following dispositive portion:

> WHEREFORE, judgment is hereby rendered as follows:
>
> - Ordering defendants Rodovaldo Cadag and spouses George and Susan Tan to pay plaintiff, jointly and severally:
>
> a) the sum of P366,340.00 representing the balance of the contract price;
> b) the amount of P49,578.56 representing the 5% retention fee;
> c) the amount of P45,000.00 as moral damages;
> d) the amount of P100,000.00 for and as attorney's fees; and
> e) the amount of P17,000.00 as litigation expenses.
>
> - Dismissing defendants' counterclaims.

Costs against defendants.

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IT IS ORDERED.[6]

Aggrieved by the trial court's decision, the spouses Tan filed an appeal with the CA contending that the trial court erred in not dismissing the complaint on the ground that G.V.T. has no legal capacity to sue; in not finding that it was G.V.T. which caused the delay in the construction of the subject residential house; in awarding amounts in favor of G.V.T. representing the balance of the contract price, retention fee, moral damages and attorney's fees; and in finding Cadag jointly and severally liable with the spouses Tan.

In its Decision of June 29, 2001, the CA affirmed with modification the judgment of the trial court, to wit:

> IN VIEW OF ALL THE FOREGOING, the appealed decision is hereby MODIFIED by deleting the awards for moral damages, attorney's fees and litigation expenses and dismissing the case against appellant Rodovaldo Cadag. In all other respect, the challenged judgment is AFFIRMED. Costs against the appellant-spouses George and Susan Tan.
>
> SO ORDERED.[7]

Both parties filed their respective Motions for Partial Reconsideration but these were denied by the CA in its Resolution of April 10, 2002.[8]

Hence, herein petition by the spouses Tan based on the following assignments of errors:

> - RESPONDENT COURT OF APPEALS ERRED IN NOT FINDING THAT PETITIONERS DID NOT VIOLATE THEIR CONSTRUCTION AGREEMENT WITH THE PRIVATE RESPONDENT; HENCE, THEY CANNOT BE REQUIRED TO PAY THE AMOUNTS OF P366,340.00 REPRESENTING THE BALANCE OF THE CONTRACT PRICE OF P1,700,000.00 AND P49,578.56 REPRESENTING 5 PERCENT RETENTION FEE.
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> - RESPONDENT COURT OF APPEALS LIKEWISE ERRED IN NOT ABSOLVING THE PETITIONERS FROM LIABILITY TO PRIVATE RESPONDENT.
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> - RESPONDENT COURT OF APPEALS ALSO ERRED IN NOT ORDERING THE DISMISSAL OF CIVIL CASE NO. Q-90-7405 FOR LACK OF JURISDICTION ON THE PART OF THE LOWER COURT.[9]

Petitioners contend that since Tactaquin consented and acquiesced to the changes and alterations made in the plan of the subject house he cannot complain and discontinue the construction of the said house. Petitioners assert that it would be highly unfair and unjust for them to be required to pay the amount representing the cost of the remaining unfinished portion of the house after it was abandoned by Tactaquin, for to do so would enable the latter to unjustly enrich himself at their expense. With respect to the retention fee, petitioners argue that this amount is payable only after the house is completed and turned over to them. Since respondent never completed the construction of the subject house, petitioners claim that they should not be required to pay the retention fee. Petitioners also contend that respondent failed to prove that it is entitled to actual damages.

As to the second assigned error, petitioners contend that since the CA dismissed the complaint against Cadag it follows that they should not also be held liable because they merely relied upon and followed the advice and instructions of Cadag whom they hired to supervise the construction of their house.

Anent the last assigned error, petitioners argue that G.V.T., being a sole proprietorship, is not a juridical person and, hence, has no legal personality to institute the complaint with the trial court. Consequently, the trial court did

not acquire jurisdiction over the case and all proceedings conducted by it are null and void. Petitioners contend that they raised this issue in their Answer to the Complaint and in their appeal to the CA.

In their Supplemental Petition, petitioners contend that under their contract with G.V.T., the latter agreed to employ only labor in the construction of the subject house and that petitioners shall supply the materials; that it was error on the part of the CA and the trial court to award the remaining balance of the contract price in favor of respondent despite the fact that some items from the latter's scope of work were deleted with its consent. Petitioners argue that since the above-mentioned items were deleted, it follows that respondent should not be compensated for the work which it has not accomplished. Petitioners went further to claim that the value of the deleted items should, in fact, be deducted from the original contract price. As to the delay in the construction of the subject house, petitioners assert that said delay was attributable to respondent which failed to pay the wages of its workers who, in turn, refused to continue working; that petitioners were even forced to pay the workers' wages for the construction to continue.

In its Comment, respondent contends that the CA and the trial court are one in finding that petitioners are the ones responsible for breach of contract, for unjustifiably deleting items agreed upon and delaying delivery of construction materials, and that these findings were never rebutted by contrary evidence. Respondent asserts that findings of fact of the trial court especially when affirmed by the CA are conclusive on the Supreme Court when supported by the evidence on record and that the Supreme Court's jurisdiction in cases brought before it from the CA via Rule 45 of the Rules of Court is limited to reviewing errors of law.

As to the second assigned error, respondent asserts that petitioners' argument is fallacious because the court's ruling absolving Cadag from liability is based on the fact that the there is no privity of contract between him and respondent. This, respondent argues, cannot be said with respect to it and petitioners.

As to the last assigned error, respondent quoted portions of this Court's ruling in the case of Yao Ka Sin Trading v. Court of Appeals[10], as cited by the CA in its challenged Decision. In the said case, the Court basically held that no one has been misled by the error in the name of the party plaintiff and to send the case back to the trial court for amendment and new trial for the simple purpose of changing the name of the plaintiff is not justified considering that there would be, on re-trial, the same complaint, answer, defense, interests, witnesses and evidence.

The Court finds the petition without merit.

The Court finds it proper to discuss first the issue regarding G.V.T.'s lack of legal personality to sue.

Petitioners raised the issue of G.V.T.'s lack of legal personality to be a party in a civil action as a defense in their Answer with Counterclaims and, thus, are not estopped from raising this issue before the CA or this Court.[11] It is true that G.V.T. Engineering Services, being a sole proprietorship, is not vested with a legal personality to bring suit or defend an action in court. A perusal of the records of the present case shows that respondent's complaint filed with the trial court as well as its Appellee's Brief submitted to the CA and its Comment filed before this Court are all captioned as "G.V.T. Engineering Services acting through its owner/manager Gerino V. Tactaquin". In fact, the first paragraph of the complaint refers to G.V.T. as the plaintiff. On this basis, it can be inferred that G.V.T. was the one which filed the complaint and that it is only acting through its proprietor. However, subsequent allegations in the complaint show that the suit is actually brought by Tactaquin. Averments therein refer to the plaintiff as a natural person. In fact, one of the prayers in the complaint is for the recovery of moral damages by reason of "his sufferings, mental anguish, moral shock, sleepless nights, serious anxiety and besmirch[ed] reputation as an Engineer and Contractor." It is settled that, as a rule, juridical persons are not entitled to moral damages because, unlike a natural person, it cannot experience physical suffering or such

sentiments as wounded feelings, serious anxiety, mental anguish or moral shock.[12] From these, it can be inferred that it was actually Tactaquin who is the complainant. As such, the proper caption should have been "Gerino Tactaquin doing business under the name and style of G.V.T. Engineering Services", as is usually done in cases filed involving sole proprietorships. Nonetheless, these are matters of form and the Court finds the defect merely technical, which does not, in any way, affect its jurisdiction.

This Court has held time and again that rules of procedure should be viewed as mere tools designed to aid the courts in the speedy, just and inexpensive determination of the cases before them.[13] Liberal construction of the rules and the pleadings is the controlling principle to effect substantial justice.[14] In fact, this Court is not impervious to instances when rules of procedure must yield to the loftier demands of substantial justice and equity.[15] Citing Aguam v. Court of Appeals[16], this Court held in Barnes v. Quijano[17] that:

> The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. "A litigation is not a game of technicalities." "Lawsuits unlike duels are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." Litigations must be decided on their merits and not on technicality. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the unacceptable plea of technicalities. Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[18]

More importantly, there is no showing that respondent's failure to place the correct caption in the complaint or to amend the same later resulted in any prejudice on the part of petitioners. Thus, this Court held as early as the case of Alonso v. Villamor,[19] that:

> No one has been misled by the error in the name of the party plaintiff. If we should by reason of this error send this case back for amendment and new trial, there would be on the retrial the same complaint, the same answer, the same defense, the same interests, the same witnesses, and the same evidence. The name of the plaintiff would constitute the only difference between the old trial and the new. In our judgment there is not enough in a name to justify such action.[20]

In the same manner, it would be an unjustifiable abandonment of the principles laid down in the above-mentioned cases if the Court would nullify the proceedings had in the present case by the lower and appellate courts on the simple ground that the complaint filed with the trial court was not properly captioned.

Coming to the merits of the case, the Court finds for the respondent.

As to the first assigned error, respondent did not refute petitioners' contention that he gave his consent and acquiesced to the decision of petitioners to change or alter the construction plan of the subject house. However, respondent contends that he did not agree to the deletions made by petitioners of some of the items of work covered by their contract. Both the trial and appellate courts gave credence to respondent's contention when they ruled that petitioners were guilty of "deleting several major items from plaintiff's (herein respondent's) scope of work"[21] or "of unjustifiably deleting items agreed upon in the construction agreement and delaying the delivery of construction materials"[22] thereby forcing respondent to withdraw from the project. From these acts of petitioners, both the trial and appellate courts made categorical findings that petitioners are the ones guilty of

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breach of contract.

The Court upholds the factual findings of the trial and appellate courts with respect to petitioners' liability for breach of their contract with respondent. Questions of facts are beyond the pale of Rule 45 of the Rules of Court as a petition for review may only raise questions of law.[23] Moreover, factual findings of the trial court, particularly when affirmed by the Court of Appeals, are generally binding on this Court.[24] More so, as in this case, where petitioners have failed to show that the courts below overlooked or disregarded certain facts or circumstances of such import as would have altered the outcome of the case.[25] The Court, thus, finds no reason to set aside the lower courts' factual findings.

An examination of the records shows that respondent, indeed, refused to give his consent to the abovementioned deletions as evidenced by his letters dated November 10, 1990[26] and November 23, 1990[27] addressed to the spouses Tan. Moreover, petitioners' delay in the delivery of construction materials is also evidenced by the minutes of the meeting held among the representatives of petitioners and respondent on May 5, 1990[28] as well as the letter of respondent to petitioners dated June 15, 1990.[29]

Having resolved that petitioners are guilty of breach of contract, the next question is whether they are liable to pay the amounts of P366,340.00 and P49,578.56, which supposedly represent the balance of the price of their contract with respondent and 5% retention fee, respectively.

There is no question that petitioners are liable for damages for having breached their contract with respondent. Article 1170 of the Civil Code provides that those who in the performance of their obligations are guilty of fraud, negligence or delay and those who in any manner contravene the tenor thereof are liable for damages. Moreover, the Court agrees with the trial court that under Article 1234 of the Civil Code, if the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment less damages suffered by the obligee. In the present case, it is not disputed that respondent withdrew from the project on November 23, 1990. Prior to such withdrawal, respondents gave to petitioners its 22nd Billing, dated October 29, 1990, where the approximated percentage of work completed as of that date was 74% and the portion of the contract paid by petitioners so far was P1,265,660.60.[30] This was not disputed by petitioners. Hence, respondent was able to establish that he has substantially performed his obligation in good faith.

It is also established that a substantial part of the remaining items of work which were supposed to be done by respondent were deleted by petitioners from his scope of work and awarded to other contractors, thus, forcing him to withdraw from the contract. These works include the following: 1) soil poisoning; 2) T & G ceiling and flooring; 3) wood parquet; 4) vitrified floor tiles; 5) glazed and unglazed tiles; 6) washout; 7) marble flooring; 8) vinyl flooring; 9) plywood sheeting; 10) plain GI sheets; 11) cement tiles; 12) skylights; 13) Fixtures electrical works; and, 14) Fixtures and accessories and plumbing works.[31]

The Court finds no cogent reason to depart from the ruling of the trial court, as affirmed by the CA, that since petitioners are guilty of breach of contract by deleting the above-mentioned items from respondent's scope of work, the value of the said items should be credited in respondent's favor. It is established that if the above-mentioned deleted items would have been performed by respondent, as it should have been pursuant to their contract, the construction is already 96% completed.[32] Hence, respondent should be paid 96% of the total contract price of P1,700,000, or P1,632,000.00. The Court agrees with the trial court that since petitioners already paid respondent the total amount of P1,265,660.00, the former should be held liable to pay the balance of P366,340.00.

As to the 5% retention fee which respondent seeks to recover, petitioners do not deny that they have retained the

same in their custody. The only contention petitioners advance is that respondent is not entitled to recover this fee because it is stipulated under their contract that petitioners shall only give them to respondent upon completion of the project and the same is turned over to them. In the present case, respondent was not able to complete the project. However, his failure to complete his obligation under the contract was not due to his fault but because he was forced to withdraw therefrom by reason of the breach committed by petitioners. Nonetheless, as earlier discussed, at the time that respondent withdrew from the contract, he has already performed in good faith a substantial portion of his obligation. Considering that he was not at fault, the law provides that he is entitled to recover as though there has been a strict and complete fulfillment of his obligation.[33] On this basis, the Court finds no error in the ruling of the trial and appellate courts that respondent is entitled to the recovery of 5% retention fee.

The Court finds that respondent was only able to establish the amount of P20,772.05, which is the sum of all the retention fees appearing in the bills presented by respondent in evidence.[34] Settled is the rule that actual or compensatory damages cannot be presumed but must be proved with reasonable degree of certainty.[35] A court cannot rely on speculations, conjectures or guesswork as to the fact of damage but must depend upon competent proof that they have indeed been suffered by the injured party and on the basis of the best evidence obtainable as to the actual amount thereof.[36] It must point out specific facts that could provide the gauge for measuring whatever compensatory or actual damages were borne.[37] Considering that the documentary evidence presented by respondent to prove the sum of retention fees sought to be recovered totals an amount which is less than that granted by the trial court, it is only proper to reduce such award in accordance with the evidence presented.

As to the second assigned error, it is wrong for petitioners to argue that since Cadag, whom they hired to supervise the construction of their house, was absolved by the court from liability, they should not also be held liable.

The Court finds no error on the part of the CA in ruling that it is a basic principle in civil law, on relativity of contracts, that contracts can only bind the parties who had entered into it and it cannot favor or prejudice third persons. Contracts take effect only between the parties, their successors in interest, heirs and assigns.[38] Moreover, every cause of action ex contractu must be founded upon a contract, oral or written, either express or implied.[39] In the present case, the complaint for specific performance filed by herein respondent with the trial court was based on the failure of the spouses Tan to faithfully comply with the provisions of their contract. In other words, respondent's cause of action was the breach of contract committed by the spouses Tan. Cadag is not a party to this contract. Neither did he enter into any contract with respondent regarding the construction of the subject house. Hence, considering that respondent's cause of action was breach of contract and since there is no privity of contract between him and Cadag, there is no obligation or liability to speak about and thus no cause of action arises. Clearly, Cadag, not being privy to the transaction between respondent and the spouses Tan, should not be made to answer for the latter's default.

Furthermore, Cadag was employed by the spouses Tan to supervise the construction of their house. Acting as such, his role is merely that of an agent. The essence of agency being the representation of another, it is evident that the obligations contracted are for and on behalf of the principal.[40] A consequence of this representation is the liability of the principal for the acts of his agent performed within the limits of his authority that is equivalent to the performance by the principal himself who should answer therefor.[41] In the present case, since there is neither allegation nor evidence that Cadag exceeded his authority, all his acts are considered as those of his principal, the spouses Tan, who are, therefore, the ones answerable for such acts.

WHEREFORE, the petition is partly GRANTED. The appealed Decision and Resolution of the Court of Appeals are AFFIRMED with MODIFICATION whereby the amount of retention fee which petitioners are ordered to pay

is reduced from P49,578.56 to P20,772.05.

No costs.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr. and Chico-Nazario, JJ., concur.

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[1] Penned by Justice Conrado M. Vasquez, Jr. and concurred in by Justices Martin S. Villarama, Jr. and Sergio L. Pestaño.

[2] Id.

[3] RTC Decision, original records, pp. 470-472.

[4] Id. at 472.

[5] Penned by then Judge Wenceslao I. Agnir, Jr., now retired Justice of the Court of Appeals.

[6] RTC Decision, supra, pp. 475-476.

[7] CA records, p. 170.

[8] Id. at 214.

[9] Rollo, pp. 14-18.

[10] G.R. No. 53820, June 15, 1992, 209 SCRA 763.

[11] Records, pp. 77, 82.

[12] Filipinas Broadcasting Network, Inc. v. Ago Medical and Educational Center-Bicol Christian College of Medicine, (AMEC-BCCM), G.R. No. 141994, January 17, 2005, 448 SCRA 413, 435.

[13] Sanchez v. Court of Appeals, 452 Phil. 665, 673 (2003).

[14] Id.

[15] Remulla v. Manlongat, G.R. No. 148189, November 11, 2004, 442 SCRA 226, 233.

[16] 388 Phil. 587 (2000).

[17] G.R. No. 160753, June 28, 2005, 461 SCRA 533.

[18] Id. at 540.

[19] 16 Phil. 315 (1910).

[20] Id. at 321.

[21] RTC Decision, records, p. 472.

[22] CA Decision, CA rollo, p. 168.

[23] National Power Corporation v. Court of Appeals, G.R. No. 106804, August 12, 2004, 436 SCRA 195, 208.

[24] Id.

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[25] Metro Manila Transit Corporation v. Court of Appeals, 435 Phil. 129, 138 (2002).

[26] Exhibit "B," Plaintiff's Exhibits (separate folder), p. 31.

[27] Exhibit "B-1," Plaintiff's Exhibits, p. 32.

[28] Exhibit "H-5," Plaintiffs Exhibits, p. 65.

[29] Exhibit "D," Plaintiff's Exhibits, p. 38.

[30] Exhibit "F," Plaintiff's Exhibits, p. 52.

[31] Exhibit "I," Plaintiff's Exhibits, p. 68.

[32] Id.

[33] Civil Code, Article 1234, supra.

[34] Exhibits "L" to "L-24" which corresponds to item IV(a) of Defendants' Exhibits "22-I," "22-J," "22-O," "22-P," "22-S," "22-U," "22-Z," "22-BB," "22-FF," "22-JJ," "22-MM," "22-PP," "22-TT," "22-ZZ," "22-FFF," "22-III," "22-LLL," "22-PPP," "22-CCCC," "22-RRRR," "22-SSSS," "22-TTTTT," "22-YYYYY" and "22-DDDDDD," Defendants' Additional Exhibits, separate folder, pp. 26, 27, 32, 33, 36, 38, 43, 45, 49, 53, 56, 59, 63, 69, 75, 78, 81, 85, 98, 113, 114, 141, 146 and 151.

[35] Saguid v. Security Finance, Inc., G.R. 159467, December 9, 2005, 477 SCRA 256, 275.

[36] Lagon v. Hooven Comalco Industries, Inc., 402 Phil. 404, 424-425 (2001).

[37] Id. at 425.

[38] Civil Code, Article 1311.

[39] Smith Bell and Company v. Court of Appeals, 335 Phil. 194, 202 (1997).

[40] Siredy Enterprises Inc. v. Court of Appeals, 437 Phil. 580, 592 (2002).

[41] Id.

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