

PESANE ANIMAS MONGAO, JOINED BY HER HUSBAND BENHUR MONGAO, PETITIONERS, VS. PRYCE PROPERTIES CORPORATION, RESPONDENT.*G.R. NO. 156474. August 16, 2005*

Ponente: TINGA, J.

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Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Civil Procedure assailing the Decision[1] of the Court of Appeals in CA-G.R. CV No. 52753, which reversed the trial court's judgment on the pleadings and remanded the case thereto for trial on the merits, and the Resolution[2] denying petitioners' motion for reconsideration.

The instant petition originated from a complaint for rescission and damages filed on February 14, 1995 by petitioners, Spouses Pesane Animas Mongao (hereafter referred to as petitioner Mongao) and Benhur Mongao, against respondent Pryce Properties Corporation before the Regional Trial Court (RTC) in General Santos City.[3] The complaint alleged that petitioner Mongao and respondent corporation executed a Memorandum of Agreement[4] on December 20, 1993, wherein the former agreed to sell to the latter for the total price of Five Million Twenty-Eight Thousand Eight Hundred Pesos (P5,028,800.00) a parcel of land in Polomolok, South Cotabato covered by Transfer Certificate of Title (TCT) No. T-22186[5] registered in the name of petitioner Mongao only. In accordance with the terms and conditions of the Memorandum of Agreement, respondent corporation allegedly paid petitioners the sum of Five Hundred Fifty Thousand Pesos (P550,000.00) as earnest money considered as part of the purchase price. The complaint further alleged that after considerable delay, respondent corporation offered to pay the balance of the purchase price by issuing a check payable to petitioner Mongao and her mother, Nellie Animas, which the former rejected. Allegedly, respondent corporation continuously refused to heed petitioners' written and oral demands to pay the balance solely to petitioner Mongao.

The complaint also denied that petitioner Mongao executed a Deed of Absolute Sale dated November 15, 1994 in favor of respondent corporation, the registration of which caused the cancellation of TCT No. T-22186 in the name of petitioner Mongao and the issuance of TCT No. T-62944. In addition to petitioners' prayer for the rescission of the Memorandum of Agreement and the Deed of Absolute Sale and the forfeiture of the earnest money paid by respondent corporation, the complaint also asked for the award of moral and exemplary damages and attorney's fees.

Respondent corporation filed an answer and refuted petitioners' allegations with a narration of the factual antecedents leading to the perfection of the contract of sale.[6] It claimed that sometime in 1993, a certain Pedro Animas IV approached Sonito N. Mole, an officer of respondent corporation, and negotiated the sale of properties belonging to the Animas family which were on the verge of being foreclosed by the bank. Respondent corporation further claimed that the subject property was one of the two parcels of land it selected for purchase. Said property covered by TCT No. T-22186 allegedly belonged to petitioner Mongao's parents but was registered in petitioner

Mongao's name as a trustee thereof.

Respondent corporation averred that the true agreement between respondent corporation and the Animas family was for the former to purchase the two parcels of land belonging to the late Pedro Animas, father of petitioner Mongao. It admitted the execution of the Memorandum of Agreement but qualified that respondent corporation did not pay the earnest money directly and solely to petitioner Mongao. Said earnest money was allegedly part of the amount directly paid by respondent corporation to the Development Bank of the Philippines in order to redeem certain properties of the Animas family which were foreclosed and sold at a public auction.

Respondent corporation averred that petitioner Mongao and Pedro Animas, Jr., the registered owners of the subject properties, executed simultaneously the corresponding Deed of Sale and Memorandum of Agreement after respondent corporation's representative delivered the checks to the bank as payment for redemption of the properties. Controversy arose after respondent corporation had allegedly manifested its intent to complete payments but petitioner Mongao demanded that payment be made to her alone to the exclusion of the rest of the Animas family. Respondent corporation admitted issuing a check in the amount of Three Million Three Hundred Fifty-Seven Pesos and Eighty-Seven Centavos (P3,353,357.84) payable to the order of petitioner Mongao and her mother, Nellie Animas, which was however refused by petitioner Mongao.

The answer also admitted that due to the demands of both petitioner Mongao and the Animas family, respondent corporation was constrained to deposit the payment with the Clerk of Court of the RTC of Davao City. By way of a compulsory counterclaim, respondent corporation prayed that petitioners be adjudged liable for attorney's fees for their hasty and unjustified institution of the case.

Petitioners moved for judgment on the pleadings on the ground that the answer admitted the material allegations of the complaint and, therefore, failed to tender an issue.[7] In particular, the answer allegedly admitted the existence of the contract of sale and respondent corporation's refusal to satisfy the unpaid balance of the purchase price despite demand. Petitioners contended that respondent corporation cannot avoid rescission by raising the defense that it contracted with the Animas family and not solely with petitioner Mongao. Petitioners belied respondent corporation's claim for consignment by attaching a letter from the Office of the Clerk of Court of the RTC of Davao City to the effect that the court could not act on petitioners' motion to deny consignment because the deposit was transmitted through a mere letter, hence, the case was not raffled to a particular branch of the court.[8]

Respondent corporation opposed petitioners' motion for judgment on the pleadings, arguing that two material allegations in the complaint, namely: that petitioner Mongao did not execute the Deed of Sale and that petitioner Mongao was the owner of the subject property, were disputed in the answer.[9]

The trial court granted petitioners' motion for judgment on the pleadings and considered the case submitted for decision. The trial court rendered a Decision[10] on November 13, 1995. The dispositive portion thereof reads:

WHEREFORE, premises considered, the Memorandum of Agreement dated 20 December 1993, as well as the Deed of Absolute Sale entered into between plaintiff Pesane Animas Mongao and defendant Pryce Properties Corporation dated November 15, 1994, are hereby declared rescinded. As a consequence thereof, Pryce Properties Corporation is directed to execute a Deed of Reconveyance of the property covered by TCT No. T-62944 in favor of Pesane Animas and to pay attorney's fees in the amount of P50,000.00 as well as costs of suit, by way of damages.

On the other hand plaintiff Pesane Animas Mongao is likewise directed to return to the defendant Pryce Properties Corporation, what she had received by virtue of the contract in the amount of P1,675,442.16, a portion of which may be compensated to the damages herein awarded pursuant to Article 1278 of the New

Civil Code.

SO ORDERED.[11]

With the adverse decision, respondent corporation elevated the case to the Court of Appeals, which reversed the trial court's Decision and remanded the case for trial on the merits through its Decision promulgated on March 22, 2001.[12] On the main issue of whether or not judgment on the pleadings was proper, the Court of Appeals ruled in the negative, finding that there were actual issues raised in the answer requiring the presentation and assessment of evidence. The appellate court opined that aside from the amount of damages claimed by both parties, the following were also put in issue: (1) the genuineness of the Deed of Sale purportedly executed by petitioner Mongao, and (2) the nature of petitioner Mongao's title to the subject property. The Court of Appeals also ruled against the trial court's interference with the consignment case pending before the RTC of Davao City but did not find petitioners guilty of forum-shopping in filing the action for rescission despite the pendency of the consignment case with the RTC of Davao City.

Petitioners moved for the reconsideration of the Court of Appeals' Decision but the same was denied in a Resolution dated November 25, 2002. Hence, this petition for review, raising the following issues:

- WHETHER OR NOT THE MERE DEPOSIT OF A CHECK - PAYABLE TO TWO PERSONS, ONE OF WHOM IS A THIRD PARTY AND/OR A STRANGER TO THE TRANSACTION, AND THE RELEASE OF WHICH IS SUBJECT TO CERTAIN CONDITIONS- CONSTITUTES CONSIGNATION.

- WHETHER OR NOT JUDGMENT ON THE PLEADINGS IS PROPER IN THIS CASE.[13]

The main issue for this Court's resolution is the propriety of the trial court's judgment on the pleadings on the ground that respondent corporation's allegation did not tender an issue.

Judgment on the pleadings is governed by Section 1, Rule 34 of the 1997 Rules of Civil Procedure, essentially a restatement of Section 1, Rule 19 of the 1964 Rules of Court then applicable to the proceedings before the trial court. Section 1, Rule 19 of the Rules of Court provides that where an answer "fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading." The answer would fail to tender an issue, of course, if it does not comply with the requirements for a specific denial set out in Section 10[14] (or Section 8)[15] of Rule 8; and it would admit the material allegations of the adverse party's pleadings not only where it expressly confesses the truthfulness thereof but also if it omits to deal with them at all.[16]

Now, if an answer does in fact specifically deny the material averments of the complaint in the manner indicated by said Section 10 of Rule 8, and/or asserts affirmative defenses (allegations of new matter which, while admitting the material allegations of the complaint expressly or impliedly, would nevertheless prevent or bar recovery by the plaintiff) in accordance with Sections 4[17] and 5[18] of Rule 6, a judgment on the pleadings would naturally not be proper.[19]

Thus, there is joinder of issues when the answer makes a specific denial of the material allegations in the complaint or asserts affirmative defenses which would bar recovery by the plaintiff. Where there is proper joinder of issues, the trial court is barred from rendering judgment based only on the pleadings filed by the parties and must conduct proceedings for the reception of evidence. On the other hand, an answer fails to tender an issue where the allegations admit the allegations in support of the plaintiff's cause of action or fail to address them at all. In either case, there is no genuine issue and judgment on the pleadings is proper.

Petitioners' action for rescission is mainly based on the alleged breach by respondent corporation of its contractual obligation under the Memorandum of Agreement when respondent refused to effect payment of the purchase

price solely to petitioner Mongao. The complaint pertinently alleged the following:

- Plaintiff Pesane Animas Mongao is the registered owner in fee simple of a parcel of land more particularly described as:
 - In a Memorandum of Agreement dated 20 December 1993 and entered in the Notarial Register of Atty. Rosalio C. Cariño, as Document No. 75, Page No. 15, Book No. II, Series of 1993; plaintiff Pesane Animas Mongao agreed to sell the aforesaid parcel of land to defendant (copy of the Memorandum of Agreement is attached as Annex B);
 - As earnest money, defendant paid to plaintiff Pesane Animas Mongao, and in her sole name, the amount of P550,000.00;
-[20]

On the other hand, nothing from the allegations in respondent corporation's answer makes out a proper joinder of issues. Petitioners' cause of action for rescission is founded mainly on a perfected contract of sale allegedly entered into between petitioners and respondent corporation as embodied in the Memorandum of Agreement attached to the complaint. First, the allegations in respondent corporation's answer do not make out a specific denial that a contract of sale was perfected between the parties. Second, respondent corporation does not contest the due execution and/or genuineness of said Memorandum of Agreement. In fact, paragraph 1 of the answer categorically admits paragraph 5 of the complaint, thus:

1. Paragraphs 1, 2, 3, and 5 of the Complaint are admitted.[21]

Paragraph 5 of the complaint referred to above states:

- In a Memorandum of Agreement dated 20 December 1993 and entered in the Notarial Register of Atty. Rosalio C. Cariño, as Document No. 75, Page No. 15, Book No. II, Series of 1993; plaintiff Pesane Animas Mongao agreed to sell the aforesaid parcel of land to defendant (copy of the Memorandum of Agreement is attached as Annex B);[22]

As to how respondent corporation allegedly breached its contractual obligation under the Memorandum of Agreement is illustrated by the following averments in the complaint:

- Subsequent to the execution of the Memorandum of Agreement, defendant corporation after considerable delay offered to pay the balance of the purchase price net of still undetermined and undisclosed deductions, this time in the name of both plaintiff Pesane Animas Mongao and that of her mother;
- Plaintiff Pesane Animas Mongao justifiably refused to accept payment under the conditions unilaterally imposed by defendant corporation;
- Several demands, both written and oral, were conveyed by plaintiffs to defendant corporation to pay the balance immediately, directly and solely to plaintiff Pesane Animas Mongao, but defendant corporation, in patent breach of its contractual obligation, refused;[23]

The answer denied the aforequoted allegations and asserted that there was an earlier understanding between the parties, the substance of which was not clearly expressed in the following averments:

- Paragraph 7 of the Complaint is denied, the truth of the matter being those stated in the Special and Affirmative Defenses in this Answer.
- Paragraph 8 of the Complaint is denied, the truth of the matter being that plaintiff's refusal to accept payment was not justified and was contrary to the earlier understanding and agreement of the parties.

- Paragraph 9 of the Complaint is admitted, except for the allegation that defendant was in "patent breach of its contractual obligation, the truth of the matter being that defendant's refusal was in accordance with its contractual obligation.[24]

Respondent corporation offered the affirmative defense that the separate demands of petitioner Mongao and the Animas family compelled it to issue the check payable to both petitioner Mongao and her mother, to wit:

- That in so far as Pedro Animas, Jr., was concerned, he did not object to payment being made to his brother and/or mother, but with respect to plaintiff Pesane Animas Mongao, it was then that the controversy began since plaintiff now demanded that payment be given to her alone to the exclusion of the rest of the Animas family.

- That in order to play safe, defendant issued the check in the amount of P3,353,357.84, payable to the order of plaintiff "Pesane Animas Mongao" and the surviving matriarch of the Animas Family in the person of "Nellie vda. de Animas". Plaintiff resented this arrangement and refused to accept payment unless the check was made out to her alone.

- That since defendant was now receiving demands from plaintiff and the rest of the Animas Family (through Nellie vda. de Animas), defendant became confused on which was the proper party to receive payment and, on January 18, 1995, the amount of P3,353,357.84 was deposited by the defendant by way consignment with the Clerk of Court of the Regional Court, 11th Judicial Region.[25]

Effectively, the aforequoted averments imply an admission by respondent corporation that it effected payment contrary to the express terms of the contract of sale. Nowhere in the terms of the Memorandum of Agreement does it state that the payment of the purchase price be tendered to any person other than petitioner Mongao. The averment virtually admits petitioners' allegation that respondent corporation committed a breach of its contractual obligation to petitioners and supports their cause of action for rescission. Indeed, the drawing of the check payable to the order of petitioner Mongao and Nellie Vda. de Animas would deprive petitioner Mongao of the exclusive benefit of the payment, thereby sharply deviating from the terms of the contract of sale.

As earlier stated, an answer may allege affirmative defenses which may strike down the plaintiff's cause of action. An affirmative defense is one which is not a denial of an essential ingredient in the plaintiff's cause of action, but one which, if established, will be a good defense-i.e. an "avoidance" of the claim.[26] Affirmative defenses include fraud, statute of limitations, release payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and any other matter by way of confession and avoidance. When the answer asserts affirmative defenses, there is proper joinder of issues which must be ventilated in a full-blown trial on the merits and cannot be resolved by a mere judgment on the pleadings. Allegations presented in the answer as affirmative defenses are not automatically characterized as such. Before an allegation qualifies as an affirmative defense, it must be of such nature as to bar the plaintiff from claiming on his cause of action. For easy reference, respondent corporation's affirmative defenses shall be laid out in full:

SPECIAL AND AFFIRMATIVE DEFENSES

- That, sometime in the latter half of 1993, defendant's officer, Sonito N. Mole, was approached by a real estate broker who introduced Pedro Animas IV who disclosed that his family (referring to his mother, brothers and sisters) was on the verge of permanently losing to the Bank all of their family properties. The Animas family desperately needed to sell some of the properties so that the rest could be saved. Thus, S.N. Mole, as representative of the defendant, and Pedro Animas IV, as representative of the Animas Family, discussed and negotiated on what properties would be purchased and the terms of the purchase.

- That defendant was shown a sketch plan of what was referred to therein as the "ANIMAS SUBDIVISION" situated at Matinao, Polomolok, South Cotabato and its corresponding "Development Permit" No. 01835

issued on January 10, 1985, covering TCT Nos. T-22186 and T-22188, for a residential subdivision in the name of applicant/owner "PEDRO ANIMAS", the late father of the Complainant Pesane Animas Mongao. Because of their potential as residential subdivision, these very same two (2) parcels of land at Matinao were the ones defendant chose to purchase.

- That, sometime in December, 1993, the defendant, through S.N. Mole went to General Santos City, bringing with him the two (2) checks necessary to pay the Bank in order to redeem the Animas family lands from the Bank, the written agreements outlining the terms of the purchase by defendant of the lands, and the deeds of absolute sale for the lands that defendant intended to purchase.

- That upon delivery of the checks to the Bank, plaintiff (and her husband), as well as Pedro Animas, Jr. (the registered owner of the other land purchased by the defendant) signed the necessary memoranda of agreement, as well as the deeds of conveyances (deeds of absolute sale).

- That, in the meantime, a Notice of Lis Pendens was annotated in TCT No. T-22186 regarding Civil Case No. 5195 "FOR: PARTITION" then pending . . . and entitled "PEDRO ANIMAS VI, Plaintiff, versus NELLIE ANIMAS, BALDOMERO ANIMAS, EDUARDO ANIMAS, PEDRO ANIMAS, JR., PEDRO ANIMAS IV, PEDRO ANIMAS V, MARIVIC ANIMAS, MARINEL ANIMAS LIM and PESANE ANIMAS, Defendants" and, on May 23, 1994, judgment was rendered approving the Compromise Agreement, wherein "the defendants will give plaintiff the amount of ONE HUNDRED THOUSAND (P100,000.00) PESOS upon the sale of their Matinao properties in favor of PRYCE INC."

- That in the middle of November, 1995 the lands subject of the purchase by the defendant were finally issued clearances for transfer of title in favor and in the name of the defendant.

- That in early December, 1995, plaintiff Pesane Animas Mongao and the rest of the Animas Family were advised that defendant was ready to complete payments in accordance with their Memorandum of Agreement.

- That in so far as Pedro Animas, Jr., was concerned, he did not object to payment being made to his brother and/or mother, but with respect to plaintiff Pesane Animas Mongao, it was then that the controversy began since plaintiff now demanded that payment be given to her alone to the exclusion of the rest of the Animas Family.

- That in order to play safe, defendant issued the check in the amount of P3,353,357.84, payable to the order of plaintiff "Pesane Animas Mongao" and the surviving matriarch of the Animas Family in the person of "Nellie vda. de Animas". Plaintiff resented this arrangement and refused to accept payment unless the check was made out to her alone.

- That since defendant was now receiving demands from plaintiff and the rest of the Animas Family (through Nellie vda. de Animas), defendant became confused on which was the proper party to receive payment and, on January 18, 1995, the amount of P3,353,357.84 was deposited by the defendant by way consignment with the Clerk of Court of the Regional Court, 11[th] Judicial Region.

- The defendant is still ready and willing to cause the release of said consignment amount (less consignment fees of the court) to whomsoever that the Court may adjudge to be the proper party entitled to the amount.

- That since the start of the negotiations for the purchase of the lands, it was made clear to the defendant that the properties were part of the estate of the deceased Judge Pedro Animas and his surviving wife Nellie vda. de Animas and that the registered owners (the children) were merely holding the same in trust for the estate and Nellie vda. de Animas.

- That no factual nor legal ground exists to support plaintiffs claim for rescission of contract.

- That the complaint states no cause of action against the defendant.

- That this suit actually involves conflicting claims among members of the same family.[27]

In essence, respondent corporation justifies its refusal to tender payment of the purchase price solely to petitioner Mongao by alleging that the latter was a mere trustee and not the beneficial owner of the property subject of the sale and therefore not the proper party to receive payment. Such defense cannot prevent petitioners from seeking the rescission of the contract of sale. The express terms of the Memorandum of Agreement, the genuineness and due execution of which are not denied, clearly show that the contract of sale was executed only between petitioner Mongao and respondent corporation. Where there is an apparent repudiation of the trust by petitioner Mongao, such claim or defense may properly be raised only by the parties for whose benefit the trust was created. Respondent corporation cannot assert said defense in order to resist petitioners' claim for rescission where it has been sufficiently shown by the allegations of the complaint and answer that respondent corporation has breached its contractual obligation to petitioners. There being no material allegation in the answer to resist petitioners' claim, the trial court correctly rendered judgment based on the pleadings submitted by the parties.

The Court of Appeals enumerated certain factual controversies, which it believed can only be resolved after presentation of evidence, and these are: (1) whether or not petitioner Mongao executed the Deed of Absolute Sale in favor of respondent corporation, and (2) whether or not petitioner Mongao is the sole owner of the subject property.

The Court finds that the determination of these factual questions is immaterial to the resolution of the main issue of whether or not there is a valid cause for rescission in light of respondent's implied admissions of certain allegations and the weakness of the affirmative defenses in the answer. At the risk of being repetitious, respondent corporation's answer admitted that there was a perfected contract of sale between respondent and petitioner Mongao and that respondent corporation refused to tender payment of the purchase price solely to petitioner Mongao. These admissions clearly make out a case for rescission of contract.

On the peripheral issue of whether or not there was proper consignment of the purchase price with the RTC of Davao City, the Court adopts the trial court's finding that respondent corporation did not follow the procedure required by law, to wit:

On the second issue, the mere consignment or deposit of the check to the Clerk of Court without observing the mandatory provisions of Articles 1256 to 1257 of the New Civil Code, does not produce the effect of payment in order that the obligor or the defendant herein shall be released from the obligation, hence, no payment of the unpaid balance of P3,533,357.84 has actually been made. In fact it was noted by the Court that the deposit is even conditional, i.e. it should not be released without a court order.[28]

The records reveal that respondent corporation did not file any formal complaint for consignment but merely deposited the check with the Clerk of Court. A formal complaint must be commenced with the trial court to provide the proper venue for the determination if there is a valid tender of payment. Strictly speaking, without the institution of an action for tender of payment and consignment, the trial court cannot rule on whether or not respondent was justified in not effecting payment solely to petitioner Mongao.

WHEREFORE, the instant petition for review is GRANTED. The Decision of the Court of Appeals in CA-G.R. CV No. 52753 is REVERSED and SET ASIDE and the Decision of the Regional Trial Court, Branch 35, General Santos City in Civil Case No. 5545 is hereby REINSTATED. Costs against respondent.

SO ORDERED.

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

[1] Penned by Associate Justice Ruben T. Reyes, Chairman of the Twelfth Division, and concurred in by Associate Justices Presbitero J. Velasco, Jr. and Juan Q. Enriquez; Rollo, p. 147-161-A.

[2] Rollo, p. 173.

[3] Id. at 28-33.

[4] Id. at 38-40.

[5] Id. at 34-37.

[6] Id. at 41.

[7] Id. at 47.

[8] Id. at 50.

[9] Id. at 51.

[10] Id. at 55-58.

[11] Id. at 58.

[12] Supra note 1.

[13] Rollo, p. 8.

[14] Section 10, Rule 8 of the 1964 Rules of Court states: SECTION 10. Specific denial. - The defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters which he will rely upon to support his denial. Where a pleader desires to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Where the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial.

[15] Section 8, Rule 8 of the 1964 Rules of Court states: SECTION 8. How to contest genuineness of such documents. - When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but this provision does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.

[16] Vergara, Sr. v. Suelto, et al., G.R. No. L-74766, December 21, 1987, 156 SCRA 753, 761-762.

[17] Section 4, Rule 6 of the 1964 Rules of Court states: SECTION 4. Answer. - An answer is a pleading in which a defendant or other adverse party sets forth the negative and affirmative defenses upon which he relies.

[18] Section 5, Rule 6 of the 1964 Rules of Court states: SECTION 5. Defenses. - (a) Negative defense is the specific denial of the material fact or facts alleged in the complaint, essential to the plaintiff's cause or causes of action.

(b) An affirmative defense is an allegation of new matter which, while admitting the material allegations of the complaint, expressly or impliedly, would nevertheless prevent or bar recovery by the plaintiff. The affirmative defenses include fraud, statute of limitations, release payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and all other matter by way of confession and avoidance.

[19] Supra note 16 at 762.

[20] Id. at 28-29.

[21] Id. at 41.

[22] Id. at 29.

[23] Id. at 29-30.

[24] Id. at 41-42.

[25] Id. at 44.

[26] Supreme Transliner, Incorporated v. Court of Appeals, et al., G.R. No. 125356, November 21, 2001; 370 SCRA 41, 46 (2001).

[27] Rollo, pp. 42-45.

[28] Id. at 57.

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