

**SPOUSES ERNESTO AND VICENTA TOPACIO, AS REPRESENTED BY
THEIR ATTORNEY-IN-FACT MARILOU TOPACIO-NARCISO,
PETITIONERS, VS. BANCO FILIPINO SAVINGS AND MORTGAGE BANK,
RESPONDENT.**

G.R. No. 157644. November 17, 2010

Ponente: BRION, J.

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BRION, J.:

Before the Court is a petition for review on certiorari,[1] filed by petitioner spouses Ernesto and Vicenta Topacio (petitioners), assailing the August 26, 2002 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 32389, as well as its March 17, 2003 Resolution[3] denying the petitioners' motion for reconsideration. The CA Decision and Resolution affirmed in toto the October 1, 1993 Order of the Regional Trial Court of Valenzuela City, Branch 75, which issued an alias writ of possession in favor of the respondent Banco Filipino Savings and Mortgage Bank (respondent).

THE BACKGROUND FACTS

The background facts, as culled from the records, are summarized below.

The petitioners obtained a loan amounting to P400,000.00 from the respondent. To secure the loan, the petitioners executed on May 8, 1980, a real estate mortgage over Lot 1224-B-1 LRC Psd-15436, covered by TCT No. T-191117 (now 13554) of the Registry of Deeds of Bulacan, in favor of the respondent. The petitioners failed to pay the loan, prompting the respondent to file a Petition for Extrajudicial Foreclosure of Mortgage, pursuant to Act No. 3135. To satisfy the obligation, the Provincial Sheriff of Bulacan, on November 8, 1982, sold the mortgaged property at public auction, where the respondent emerged as the highest bidder. Accordingly, a Certification of Sale was issued in favor of the respondent and registered with the Registry of Deeds.[4]

On May 26, 1983, the respondent filed a Petition for the Issuance of a Writ of Possession[5] over the mortgaged property before the Regional Trial Court, Branch 172, Valenzuela City (RTC). In an Order[6] dated December 12, 1983, the RTC granted the petition, conditioned on the posting of a P100,000.00 bond. Upon posting of the required bond, the RTC issued, on February 16, 1984, a writ of possession, commanding the sheriff to place the respondent in possession of the property.

The writ of possession was not implemented[7] because, on February 27, 1984, the petitioners, filed with the RTC, a petition to set aside the auction sale and the writ of possession (with application for a temporary restraining order and a writ of preliminary injunction).[8] In an Order dated February 28, 1984, the RTC issued a temporary restraining order enjoining the respondent and the Deputy Sheriff from implementing the writ of possession it previously issued. [9] After hearing, the RTC, issued on March 13, 1984, a writ of preliminary injunction ordering the respondent and the Provincial Sheriff to desist from implementing the writ of possession and to refrain from interfering with and disrupting the possession of the petitioners over the subject parcel of

land.[10]

Sometime in April 1984, the respondent filed with the RTC its Motion to Admit Answer with Opposition to the Petition to Set Aside Auction Sale and Writ of Possession with Motion to Dissolve or Lift Preliminary Injunction (Answer) which was granted on April 26, 1984.[11] On May 21, 1984, the petitioners filed their Reply thereto, praying that the writ of preliminary injunction previously issued be maintained.[12]

More than two years after the filing of the Answer and the Reply, and after a series of postponements at the instance of both parties, then Presiding Judge Teresita D. Capulong issued an Order dated December 16, 1986, dismissing the respondent's petition for the issuance of a writ of possession on the ground of "failure to prosecute." [13] The Order reads in full:

When this case was called for hearing, counsel for the oppositors [now petitioners], Atty. Constancio R. Gallamos, was present. Atty. Francisco Rivera [counsel for the respondent] was absent despite notice. Upon petition of the counsel for the oppositors, this case is hereby ordered dismissed for failure to prosecute.

SO ORDERED.

No copy of the above Order was served on the respondent[14] whose operations the Monetary Board (Central Bank of the Philippines) shut down on January 25, 1985, for reasons not relevant to the present case.[15]

Nearly six (6) years later (after the Court ordered the reorganization and resumption of the respondent's operations in G.R. No. 70054)[16] or on August 19, 1992, the respondent filed a Motion to Clarify the Order of December 16, 1986. In the same motion, the respondent likewise moved for the issuance of an alias writ of possession. [17]

In an Order[18] dated September 18, 1992, the RTC made a clarification that the Order of Dismissal of December 16, 1986 refers to the dismissal of the "main case for issuance of a writ of possession." In that same Order, the RTC denied the respondent's motion for the issuance of an alias writ of possession.

On May 18, 1993, the respondent moved for the reconsideration[19] of the September 18, 1992 Order. In an Order[20] dated June 2, 1993, the RTC, this time presided by Judge Emilio L. Leachon, Jr., reconsidered and set aside the Order of December 16, 1986 and granted the respondent's prayer for the issuance of an alias writ of possession. The petitioners moved for a reconsideration of the June 2, 1993 Order and prayed that the implementation of the alias writ of possession be held in abeyance.

The RTC Ruling

On October 1, 1993, the RTC, now presided by Judge Jaime F. Bautista, issued the assailed Order[21] which denied the petitioners' motion for reconsideration and reiterated its order for the issuance of an alias writ of possession in favor of the respondent. The assailed RTC Order is summarized below.

First, the RTC ruled that the Order of Dismissal was granted on a "technicality" and that "[t]he ground of failure to prosecute is manifestly unfounded." [22] The RTC held that "the power of the trial court to dismiss an action on the ground of non prosecutur is not unbounded. The real test x x x is whether under the facts and circumstances, the plaintiff is chargeable with want of due diligence in [failing] to proceed with reasonable promptitude." [23] In the present case, the RTC noted that the records show that the case dragged on for years because of several postponements at the request of both parties, particularly petitioner Ernesto Topacio who went abroad for a long time during the pendency of the case.[24]

Second, the RTC held that the December 16, 1986 Dismissal Order cannot be considered a dismissal on the merits as it was founded not on a substantial ground but on a technical one; it does not amount to a "declaration of the

law [on] the respective rights and duties of the parties, based upon the ultimate x x x facts disclosed by the pleadings and evidence, and upon which the right of recovery depends, irrespective of formal, technical or dilatory objectives or contentions." [25]

Third, the RTC ruled that the revival by a motion for reconsideration (filed on May 18, 1993) of the February 16, 1984 Order, granting the writ of possession, was seasonably filed by the respondent, pursuant to the period allowed under Section 6, Rule 39 of the Rules of Court. Citing *National Power Corporation v. Court of Appeals*, [26] the RTC held that "[i]n computing the time [limit] for suing out an execution, x x x the general rule is that there should not be included the time when execution is stayed, either by agreement of the parties for a definite time, by injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party, or otherwise." The RTC noted that the running of the five-year period under Section 6 of the Rules of Court had been interrupted by the erroneous issuance of a writ of preliminary injunction; the February 16, 1984 Order never attained finality and was overtaken by the issuance of the Order dated June 2, 1993, granting the issuance of an alias writ of execution. [27]

Finally, the RTC held that the respondent, as the winning bidder, "has an absolute right to a writ of possession," [28] considering that: (1) a writ of possession had been issued on February 16, 1984 and the corresponding bond had already been posted, although the writ was not enforced because of the erroneous injunction issued by Judge Capulong; and (2) there was no redemption by the petitioners. [29]

On October 20, 1993, the petitioners filed their Petition for Certiorari and Prohibition under Rule 65 of the 1997 Rules of Court with prayer for the issuance of a preliminary injunction (petition), docketed as CA-G.R. SP No. 32389. [30] Before the CA, the petitioners argued that the RTC acted without jurisdiction or with grave abuse of discretion when it: (1) reinstated the respondent's case more than seven (7) years after the December 16, 1986 Dismissal Order became final and executory, and (2) issued an alias writ of execution upon a mere motion for reconsideration and not by an independent action pursuant to Section 6, Rule 39 of the Rules of Court.

The CA Ruling

On August 26, 2002, the CA denied the petitioners' petition and affirmed in toto the June 2, 1993 and October 1, 1993 Orders of the RTC. The CA found that the December 16, 1986 Order of the RTC does not amount to a dismissal on the merits as it was based on purely technical grounds. It noted that the records show that the respondent was not furnished a copy of the Dismissal Order; hence, the case cannot be deemed to be final with respect to the respondent. The CA also agreed with the RTC's conclusion that the delay in the resolution of the case cannot be solely attributed to the respondent and did not warrant its outright dismissal. [31]

The CA held that an independent action for the revival of the writ of possession need not be filed in order to enforce the writ of possession issued on December 12, 1983 since Section 6, Rule 39 of the Rules of Court applies only to civil actions and not to special proceedings, [32] citing *Heirs of Cristobal Marcos v. de Banuvar*. [33]

The Petition

In the present petition, [34] the petitioners contend that the CA erred in affirming the October 1, 1993 Order of the RTC considering that:

- 1) the December 16, 1986 Dismissal Order constitutes an adjudication on the merits which has already attained finality, and
- 2) a writ of possession may not be enforced upon mere motion of the applicant after the lapse of more than five (5) years from the time of its issuance.

On the first assignment of error, the petitioners submit that the December 16, 1986 Dismissal Order for failure to prosecute constitutes adjudication upon the merits, considering that the RTC did not declare otherwise, pursuant to Section 3, Rule 17 of the Rules of Court. The petitioners further contend that the Dismissal Order has become final and executory since the respondent belatedly filed the Motion to Clarify the Order of December 16, 1986 on August 19, 1992 or almost six years later. On these premises, the petitioners argue that *res judicata* has set in and consequently, the RTC had no jurisdiction to grant the motion for reconsideration and to issue an alias writ of possession in favor of the respondent.[35]

On the second assignment of error, the petitioners contend that pursuant to Section 6, Rule 39 of the Rules of Court, the writ of possession issued on February 16, 1984 may no longer be enforced by a mere motion but by a separate action, considering that more than five years had elapsed from its issuance. The petitioners also argue that Section 6, Rule 39 of the Rules of Court applies to the present case since a petition for the issuance of a writ of possession is neither a special proceeding nor a land registration case.[36]

In their Memorandum, the petitioners additionally submit that they do not dispute that the CA made a finding that the December 16, 1986 Dismissal Order was not properly served. They, however, point out that the CA made no such finding with respect to the September 18, 1992 Order of the RTC. The petitioners contend that the Motion for Reconsideration, filed on May 18, 1993 or eight months later from the September 18, 1992 Order by the respondent, was filed out of time. Thus, they conclude that any subsequent ruling of the RTC, including the June 2, 1993 and October 1, 1993 Orders, is barred by *res judicata*.[37]

OUR RULING

We deny the petition for lack of merit.

A. Preliminary Considerations

Our review of the records, particularly the CA decision, indicates that the CA did not determine the presence or absence of grave abuse of discretion in the RTC decision before it. Given that the petition before the CA was a petition for certiorari and prohibition under Rule 65 of the Rules of Court, it appears that the CA instead incorrectly reviewed the case on the basis of whether the RTC decision on the merits was correct.

To put the case in its proper perspective, the task before us is to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the RTC decision before it. Stated otherwise, did the CA correctly determine whether the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling on the case?

As discussed below, our review of the records and the CA decision shows that the RTC did not commit grave abuse of discretion in issuing an alias writ of possession in favor of the respondent.

B. Applicability of Res Judicata

Under the rule of *res judicata*, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies, in all later suits and on all points and matters determined in the previous suit. The term literally means a "matter adjudged, judicially acted upon, or settled by judgment." [38] The principle bars a subsequent suit involving the same parties, subject matter, and cause of action. The rationale for the rule is that "public policy requires that controversies must be settled with finality at a given point in time." [39]

The doctrine of *res judicata* embraces two (2) concepts: the first is "bar by prior judgment" under paragraph (b) of

Rule 39, Section 47 of the Rules of Court, and the second is "conclusiveness of judgment" under paragraph (c) thereof. Res judicata applies in the concept of "bar by prior judgment" if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and the second action, identity of parties, of subject matter and of causes of action.[40]

The petitioners claim that res judicata under the first concept applies in the present case because all of the elements thereof are present. In response, the respondent argues that res judicata did not set in as the first element is lacking.

We agree with the respondent.

The December 16, 1986 Dismissal Order never attained finality as it was not properly served

The following provisions under Rule 13 of the Rules of Court define the proper modes of service of judgments:[41]

SEC. 2. Filing and service, defined. - x x x

Service is the act of providing a party with a copy of the pleading or paper concerned. x x x

SEC. 5. Modes of service. - Service of pleadings, motions, notices, orders, judgments and other papers shall be made either personally or by mail.

SEC. 6. Personal service. - Service of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein.

SEC. 7. Service by mail. - Service by registered mail shall be made by depositing the copy in the office, in a sealed envelope, plainly addressed to the party or his counsel at his office, if known, otherwise at his residence, if known, with postage fully pre-paid, and with instructions to the postmaster to return the mail to the sender after ten (10) days if undelivered. If no registry service is available in the locality of either the sender or the addressee, service may be done by ordinary mail.

SEC. 8. Substituted service. - If service of pleadings, motions, notices, resolutions, orders and other papers cannot be made under the two preceding sections, the office and place of residence of the party or his counsel being unknown, service may be made by delivering the copy to the clerk of court, with proof of failure of both personal service and service by mail. The service is complete at the time of such delivery.

SEC. 9. Service of judgments, final orders or resolutions. -Judgments, final orders or resolutions shall be served either personally or by registered mail. When a party summoned by publication has failed to appear in the action, judgments, final orders or resolutions against him shall be served upon him also by publication at the expense of the prevailing party.

As a rule, judgments are sufficiently served when they are delivered personally, or through registered mail to the counsel of record, or by leaving them in his office with his clerk or with a person having charge thereof. After service, a judgment or order which is not appealed nor made subject of a motion for reconsideration within the prescribed 15-day period attains finality.[42]

In *Philemploy Services and Resources, Inc. v. Rodriguez*,[43] the Court ruled that the Resolution of the National Labor Relations Commission, denying the respondent's motion for reconsideration, cannot be deemed to have become final and executory as there is no conclusive proof of service of the said resolution. In the words of the

Court, "there was no proof of actual receipt of the notice of the registered mail by the respondent's counsel." [44] Based on these findings, the Court concluded that the CA properly acquired jurisdiction over the respondent's petition for certiorari filed before it; in the absence of a reckoning date of the period provided by law for the filing of the petition, the Court could not assume that it was improperly or belatedly filed.

Similarly, in *Tomawis v. Tabao-Cudang*, [45] the Court held that the decision of the Regional Trial Court did not become final and executory where, from the records, the respondent had not received a copy of the resolution denying her motion for reconsideration. [46] The Court also noted that there was no sufficient proof that the respondent actually received a copy of the said Order or that she indeed received a first notice. Thus, the Court concluded that there could be no valid basis for the issuance of the writ of execution as the decision never attained finality.

In the present case, we note that the December 16, 1986 Dismissal Order cannot be deemed to have become final and executory in view of the absence of a valid service, whether personally or via registered mail, on the respondent's counsel. We note in this regard that the petitioners do not dispute the CA finding that the "records failed to show that the private respondent was furnished with a copy of the said order of dismissal[.]" [47] Accordingly, the Dismissal Order never attained finality.

The petitioners now claim that the Motion for Reconsideration, filed by the respondent on May 18, 1993 from the September 18, 1992 Order of the RTC, was filed out of time. The petitioners make this claim to justify their contention that the subsequent rulings of the RTC, including the June 2, 1993 and October 1, 1993 Orders, are barred by *res judicata*.

We reject this belated claim as the petitioners raised this only for the first time on appeal, particularly, in their Memorandum. In fact, the petitioners never raised this issue in the proceedings before the court *a quo* or in the present petition for review.

As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change the theory on appeal. [48] Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. [49] Thus, to permit the petitioners in this case to change their theory on appeal would thus be unfair to the respondent and offend the basic rules of fair play, justice and due process. [50]

C. Applicability of the Rule on Execution

by Motion or by Independent Action

The petitioners finally submit that the writ of possession, issued by the RTC on February 16, 1984, may no longer be enforced by a mere motion, but by a separate action, considering that more than five years had elapsed from its issuance, pursuant to Section 6, Rule 39 of the Rules of Court, which states:

Sec. 6. Execution by motion or by independent action. - A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

Section 6, Rule 39 of the Rules of Court only applies to civil actions

In rejecting a similar argument, the Court held in *Paderes v. Court of Appeals*[51] that Section 6, Rule 39 of the Rules of Court finds application only to civil actions and not to special proceedings. Citing *Sta. Ana v. Menla*,[52] which extensively discussed the rationale behind the rule, the Court held:

In a later case [*Sta. Ana v. Menla*, 111 Phil. 947 (1961)], the Court also ruled that the provision in the Rules of Court to the effect that judgment may be enforced within five years by motion, and after five years but within ten years by an action (Section 6, Rule 39) refers to civil actions and is not applicable to special proceedings, such as land registration cases. x x x x

We fail to understand the arguments of the appellant in support of the above assignment, except in so far as it supports his theory that after a decision in a land registration case has become final, it may not be enforced after the lapse of a period of 10 years, except by another proceeding to enforce the judgment or decision. Authority for this theory is the provision in the Rules of Court to the effect that judgment may be enforced within 5 years by motion, and after five years but within 10 years, by an action (Sec. 6, Rule 39). This provision of the Rules refers to civil actions and is not applicable to special proceedings, such as a land registration case. This is so because a party in a civil action must immediately enforce a judgment that is secured as against the adverse party, and his failure to act to enforce the same within a reasonable time as provided in the Rules makes the decision unenforceable against the losing party. In special proceedings the purpose is to establish a status, condition or fact; in land registration proceedings, the ownership by a person of a parcel of land is sought to be established. After the ownership has been proved and confirmed by judicial declaration, no further proceeding to enforce said ownership is necessary, except when the adverse or losing party had been in possession of the land and the winning party desires to oust him therefrom.

Subsequently, the Court, in *Republic v. Nillas*,[53] affirmed the dictum in *Sta. Ana* and clarified that "Rule 39 x x x applies only to ordinary civil actions, not to other or extraordinary proceedings not expressly governed by the Rules of Civil Procedure but by some other specific law or legal modality," viz:

Rule 39, as invoked by the Republic, applies only to ordinary civil actions, not to other or extraordinary proceedings not expressly governed by the Rules of Civil Procedure but by some other specific law or legal modality such as land registration cases. Unlike in ordinary civil actions governed by the Rules of Civil Procedure, the intent of land registration proceedings is to establish ownership by a person of a parcel of land, consistent with the purpose of such extraordinary proceedings to declare by judicial fiat a status, condition or fact. Hence, upon the finality of a decision adjudicating such ownership, no further step is required to effectuate the decision and a ministerial duty exists alike on the part of the land registration court to order the issuance of, and the LRA to issue, the decree of registration.

In the present case, Section 6, Rule 39 of the Rules of Court is not applicable to an *ex parte* petition for the issuance of the writ of possession as it is not in the nature of a civil action[54] governed by the Rules of Civil Procedure but a judicial proceeding governed separately by Section 7 of Act No. 3135 which regulates the methods of effecting an extrajudicial foreclosure of mortgage. The provision states:

Section 7. Possession during redemption period. In any sale made under the provisions of this Act, the purchaser may petition the [Regional Trial Court] where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees

specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

The above-cited provision lays down the procedure that commences from the filing of a motion for the issuance of a writ of possession, to the issuance of the writ of possession by the Court, and finally to the execution of the order by the sheriff of the province in which the property is located. Based on the text of the law, we have also consistently ruled that the duty of the trial court to grant a writ of possession is ministerial; the writ issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond.[55] In fact, the issuance and the immediate implementation of the writ are declared ministerial and mandatory under the law.

Thus, in *Philippine National Bank v. Adil*,[56] we emphatically ruled that "once the writ of possession has been issued, the trial court has no alternative but to enforce the writ without delay." The issuance of a writ of possession to a purchaser in an extrajudicial foreclosure is summary and ministerial in nature as such proceeding is merely an incident in the transfer of title. The trial court does not exercise discretion in the issuance thereof;[57] it must grant the issuance of the writ upon compliance with the requirements set forth by law, and the provincial sheriff is likewise mandated to implement the writ immediately.

Clearly, the exacting procedure provided in Act No. 3135, from the moment of the issuance of the writ of possession, leaves no room for the application of Section 6, Rule 39 of the Rules of Court which we consistently ruled, as early as 1961 in *Sta. Ana*, to be applicable only to civil actions. From another perspective, the judgment or the order does not have to be executed by motion or enforced by action within the purview of Rule 39 of the Rules of Court. [58]

D. Conclusion

In sum, based on these considerations, we find that the RTC committed no grave abuse of discretion in issuing an alias writ of possession in favor of the respondent.

WHEREFORE, the present petition is DENIED. The August 26, 2002 Decision and the March 17, 2003 Resolution of the Court of Appeals in CA-G.R. SP No. 32389 are AFFIRMED. Costs against the petitioners.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, Villarama, Jr., and Sereno, JJ.

[1] Under Rule 45 of the Rules of Court; rollo, pp. 9-26.

[2] Penned by Associate Justice Bennie A. Adeguin-de la Cruz, and concurred in by Associate Justice Wenceslao I. Aguir, Jr. and Associate Justice Regalado E. Maambong (all retired); *id.* at 27-35.

[3] *Id.* at 36.

[4] *Id.* at 27.

[5] *Ibid.*

[6] *Id.* at 129.

[7] *Id.* at 159.

[8] Id. at 28.

[9] Annex "P," Petition; id. at 130.

[10] Annex "Q," Petition; id. at 131.

[11] Id. at 28.

[12] Id.

[13] Annex "R," Petition; id. at 132.

[14] Id. at 32.

[15] On January 25, 1985, the Monetary Board issued MB Resolution No. 75 which ordered the closure of the respondent. See *Banco Filipino Savings & Mortgage Bank v. Monetary Board*, Central Bank of the Philippines, G.R. No. 70054, December 11, 1991, 204 SCRA 767, 781.

[16] Ibid.

[17] Rollo, pp. 133-136.

[18] Id. at 214-216.

[19] Id. at 29.

[20] Annex "U," Petition; id. at 140-142.

[21] Annex "V," Petition; id. at 143-151.

[22] Id. at 149.

[23] Citing *Goldloop Properties, Inc. v. Court of Appeals*, G.R. No. 99431, August 11, 1992, 212 SCRA 498, 509.

[24] *Supra* note 22.

[25] Citing *de Ramos v. Court of Appeals*, G.R. No. 86844, September 1, 1992, 213 SCRA 207, 218.

[26] G.R. No. 93238, August 31, 1992, 213 SCRA 133, 137.

[27] Rollo, p. 150.

[28] Id. at 151, citing *Bernardez v. Reyes*, G.R. No. 71832, September 24, 1991, 201 SCRA 648; and *Joven v. Court of Appeals*, G.R. No. 80739, 20 August 1992, 212 SCRA 700.

[29] Id. at 149-150.

[30] Annex "C," Petition; id. at 37-57.

[31] Id. at 31-32.

[32] Id. at 34-35.

[33] No. L-22110, September 28, 1968, 25 SCRA 316, 323-324.

[34] *Supra* note 1. Filed after the CA's denial of the petitioners' Motion for Reconsideration by the Resolution dated March 17, 2003.

[35] Id. at 15-18.

[36] Id. at 19-21.

[37] Memorandum for the Petitioners; id. at 206.

[38] Dela Cruz v. Joaquin, G.R. No. 162788, July 28, 2005, 464 SCRA 576, 589.

[39] Ibid.

[40] Superior Commercial Enterprises, Inc. v. Kunnan Enterprises Ltd., et al., G.R. No. 169974, April 20, 2010.

[41] See Belen v. Chavez, G.R. No. 175334, March 26, 2008, 549 SCRA 472, 485-486.

[42] Rubia v. Government Service Insurance System, G.R. No. 151439, June 21, 2004, 432 SCRA 529, 537.

[43] G.R. No. 152616, March 31, 2006, 486 SCRA 302.

[44] Id. at 321.

[45] G.R. No. 166547, September 12, 2007, 533 SCRA 68.

[46] Id. at 77.

[47] Supra note 14.

[48] Lianga Lumber Co. v. Lianga Timber Co., Inc., No. L-38685, March 31, 1977, 76 SCRA 197.

[49] China Airlines Ltd. v. CA, et al., G.R. Nos. 45985 & 46036, May 18, 1990, 185 SCRA 449.

[50] Siredy Enterprises, Inc. v. CA, et al., G.R. No. 129039, September 17, 2002, 389 SCRA 34.

[51] G.R. Nos. 147074 and 147075, July 15, 2005, 463 SCRA 504, 526-527.

[52] 111 Phil. 947 (1961).

[53] G.R. No. 159595, January 23, 2007, 512 SCRA 286, 297.

[54] See Rayo v. Metropolitan Bank and Trust Company, G.R. No. 165142, December 10, 2007, 539 SCRA 571, 580, citing De Vera v. Agloro, 448 SCRA 203, 215 (2005).

[55] Samson v. Rivera, G.R. No. 154355, May 20, 2004, 428 SCRA 759, 768.

[56] 203 Phil. 492, 500 (1982).

[57] GC Dalton Industries, Inc. v. Equitable PCI Bank, G.R. No. 171169, August 24, 2009, 596 SCRA 723, 729.

[58] Supra note 53.

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