

ATTY. GEORGE S. BRIONES, PETITIONER, VS. LILIA J. HENSON-CRUZ, RUBY J. HENSON, AND ANTONIO J. HENSON, RESPONDENTS.

G.R. No. 159130. August 22, 2008

Ponente: BRION, J.

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BRION, J.:

We review in this petition[1] the Decision of the Court of Appeals (Fifteenth Division) dated February 11, 2003[2] in CA-G.R. SP No. 71844.

THE ANTECEDENTS

Respondent Ruby J. Henson filed on February 23, 1999 a petition for the allowance of the will of her late mother, Luz J. Henson, with the Regional Trial Court (RTC) of Manila, docketed as Special Proceedings No. 99-92870.

Lilia Henson-Cruz, one of the deceased's daughters and also a respondent in this petition, opposed Ruby's petition. She alleged that Ruby understated the value of their late mother's estate and acted with "unconscionable bad faith" in the management thereof. Lilia prayed that her mother's holographic will be disallowed and that she be appointed as the Intestate Administratrix.

Lilia subsequently moved for the appointment of an Interim Special Administrator of the estate of her late mother, praying that the Prudential Bank & Trust Company-Ermita Branch be appointed as Interim Special Administrator. The trial court granted the motion but designated Jose V. Ferro (Senior Vice-President and Trust Officer, Trust Banking Group of the Philippines National Bank) as the Special Administrator. Ferro, however, declined the appointment.

The trial court then designated petitioner Atty. George S. Briones as Special Administrator of the estate. Atty. Briones accepted the appointment, took his oath of office, and started the administration of the estate. The significant highlights of his administration are listed below:

- On November 22, 1999, the trial court directed the heirs of Luz J. Henson to turn over the possession of all the properties of the deceased to the Special Administrator.
- On February 16, 2000, Atty. Briones moved that the trial court approve Special Administrator's fees of P75,000.00 per month. These fees were in addition to the commission referred to in Section 7, Rule 85 of the Revised Rules of Court. The trial court granted the motion but reduced the fees to P60,000.00 per month, retroactive to the date Atty. Briones assumed office.
- Atty. Briones filed a Special Administrator's Report No. 1 dated September 8, 2000 which contained an inventory of the properties in his custody and a statement of the income received and the disbursements made for the estate. The trial court issued an Order dated March 5, 2001 approving the report.
- On September 17, 2001, the heirs of Luz J. Henson submitted a project of partition of the estate for the trial

court's approval.

- On January 8, 2002, Atty. Briones submitted the Special Administrator's Final Report for the approval of the court. He prayed that he be paid a commission of P97,850,191.26 representing eight percent (8%) of the value of the estate under his administration.
- The respondents opposed the approval of the final report and prayed that they be granted an opportunity to examine the documents, vouchers, and receipts mentioned in the statement of income and disbursements. They likewise asked the trial court to deny the Atty. Briones' claim for commission and that he be ordered to refund the sum of P134,126.33 to the estate.
- On February 21, 2002, the respondents filed an audit request with the trial court. Atty. Briones filed his comment suggesting that the audit be done by an independent auditor at the expense of the estate.
- In an Order dated March 12, 2002, the trial court granted the request for audit and appointed the accounting firm Alba, Romeo & Co. to conduct the audit.
- The respondents moved for the reconsideration of Order dated March 12, 2002, alleging that in view of the partition of the estate there was no more need for a special administrator. They also clarified that they were not asking for an external audit; they merely wanted to be allowed to examine the receipts, vouchers, bank statements, and other documents in support of the Special Administrator's Final Report and to examine the Special Administrator under oath.
- The trial court handed down an Order dated April 13, 2002, the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, the court hereby:

- Reiterates its designation of the accounting firm of Messrs. Alba, Romeo & Co. to immediately conduct an audit of the administration by Atty. George S. Briones of the estate of the late Luz J. Henson, the expenses of which shall be charged against the estate.
- Suspends the approval of the report of the special administrator except the payment of his commission, which is hereby fixed at 1.8% of the value of the estate.
- Directs the special administrator to deliver the residue to the heirs in proportion to their shares. From the shares of Lilia J. Henson-Cruz, there shall be deducted the advances made to her.

IT IS SO ORDERED.

On April 29, 2002, respondents filed with the Court of Appeals (CA) a Petition for Certiorari, Prohibition, and Mandamus which was raffled to the CA's Ninth Division and docketed as CA-G.R. SP No. 70349. The petition assailed the Order dated March 12, 2002 which appointed accounting firm Alba, Romeo & Co. as auditors and the Order dated April 3, 2002 which reiterated the appointment.

Prior the filing of the petition for certiorari in CA G.R. SP No. 70349, the heirs of Luz Henson filed on April 9, 2002 a Notice of Appeal with the RTC assailing the Order dated April 3, 2003 insofar as it directed the payment of Atty. Briones' commission. They subsequently filed their record on appeal.

The trial court, however, denied the appeal and disapproved the record on appeal on May 23, 2002 on the ground of forum shopping. Respondents' motion for reconsideration was likewise denied.

On July 26, 2002, the respondents filed a Petition for Mandamus with the appellate court, docketed as CA-G.R. SP No. 71844. They claimed that the trial court unlawfully refused to comply with its ministerial duty to approve their seasonably-perfected appeal. They refuted the trial court's finding of forum shopping by declaring that the

issues in their appeal and in their petition for certiorari (CA-G.R. SP No. 70349) are not identical, although both stemmed from the same Order of April 3, 2002. The appeal involved the payment of the special administrator's commission, while the petition for certiorari assailed the appointment of an accounting firm to conduct an external audit.

On the other hand, the petitioner insisted that the respondents committed forum shopping when they assailed the Order of April 3, 2002 twice, i.e., through a special civil action for certiorari and by ordinary appeal. Forum shopping took place because of the identity of the reliefs prayed for in the two cases. The petitioner likewise posited that the trial court's error, if any, in dismissing the appeal on the ground of forum shopping is an error of judgment, not of jurisdiction, and hence is not correctible by certiorari.

On February 11, 2003, the Court of Appeals decided the respondents' petition for Mandamus (CA-G.R. SP No. 71844) as follows:

WHEREFORE, the petition is GRANTED and respondent Judge is directed to give due course to the appeal of petitioners from the Order dated April 3, 2002 insofar as it directed the payment of commission to private respondent. [Emphasis supplied.]

SO ORDERED.

The Court of Appeals held that the trial court had neither the power nor the authority to deny the appeal on the ground of forum shopping. It pointed out that under Section 13, Rule 41 of the 1997 Rules of Civil Procedure, as amended, the authority of the trial court to dismiss an appeal, either *motu proprio* or on motion, may be exercised only if the appeal was taken out of time or if the appellate court docket and other fees were not paid within the reglementary period.

Atty. Briones moved for the reconsideration of this decision. The appellate court denied his motion in its Resolution dated July 17, 2003. Thereupon, he seasonably filed the present Petition for Review on Certiorari on September 4, 2003 on the ground that the CA refused to resolve the issue of forum shopping in its Decision of February 11, 2003 and its resolution of July 17, 2003 in CA-G.R. SP No. 71844 (Petition for Mandamus to give due course to the appeal).

In the interim, on August 5, 2003, the Court of Appeals (Ninth Division) handed down its Decision[3] in CA-G.R. SP No. 70439 (Petition for Certiorari, Prohibition, and Mandamus on the appointment of the auditing firm), whose fallo reads:

WHEREFORE, premises considered, the petition is GRANTED. The assailed Orders dated March 12, 2002 and April 3, 2002 are REVERSED and SET ASIDE. Public respondent Judge Artemio S. Tipon is hereby COMMANDED to allow petitioner-heirs: 1) to examine all the receipts, bank statements, bank passbook, treasury bills, and other documents in support of the Special Administrator's Final Report, as well as the Statement of the Income and Disbursement Made from the Estate; and 2) to cross-examine private respondent Briones, before finally approving the Special Administrator's Final Report. [Emphasis supplied.]

SO ORDERED.

THE PARTIES' POSITIONS

The petitioner faults the appellate court for refusing to resolve the forum shopping issue in its Decision of February 11, 2003 and the Resolution of July 17, 2003, thereby deciding the case in a way not in accord with law or with applicable decisions of this Court. On the matter of forum shopping, the appellate court simply stated in its decision that "In view of the fact that respondent Judge had no power to disallow the appeal on the ground of

forum shopping, we deem it unnecessary to discuss whether or not petitioners committed forum shopping." Neither did the appellate court pass upon the issue of forum shopping in its ruling on the petitioner's motion for reconsideration, stating that forum shopping should be resolved either in the respondent's appeal or in their petition for certiorari, prohibition, and mandamus (CA-G.R. SP No. 70349).

As basis, the petitioner cites Section 3 of this Court's Circular No. 28-91 which provides that "(a) Any violation of this Circular shall be a cause for the summary dismissal of the multiple petition or complaint; and (b) Any willful and deliberate forum shopping by any party and his lawyer with the filing of multiple petitions and complaints to ensure favorable action shall constitute direct contempt of court."

To prove that forum shopping transpired, the petitioner cites the respondents' petition for certiorari, prohibition, and mandamus (CA-G.R. SP No. 70349) that prayed for the annulment of the assailed Order of April 3, 2002 in its entirety. To the petitioner, the attack on the entire Order meant that even the payment of the special administrator's commission - which was the subject of a separate appeal - was covered by the petition. The petitioner further alleged that "to conceal the attempt at forum shopping, respondents deliberately failed to mention the existence of their ordinary appeal of the same Order of April 3, 2002 in the certification against forum shopping attached to their petition for certiorari, prohibition, and mandamus in CA-G.R. SP No. 70349."

The petitioner cites in support of his position the cases of *Silahis International, Inc. v. National Labor Relations Commission*,^[4] *Tantoy Sr. v. Court of Appeals*,^[5] and *First Philippine International Bank v. Court of Appeals*.^[6] *Silahis* was cited for the proposition that only one recourse - the appeal - should have been filed because the issues were inter-related. *Tantoy, Sr.* spoke of related causes or the same or substantially the same reliefs in considering whether there is forum shopping. On the other hand, *First Philippine International Bank* was cited to emphasize that the key to a finding of forum shopping is the objective of the relief; though differently worded, there is violation of the rule against forum shopping if the objective in all the actions filed involves the same relief - in this case, the setting aside of the Order of April 3, 2002. The petitioner noted that the respondents had succeeded in obtaining this relief in their petition for certiorari, prohibition, and mandamus (CA-G.R. SP No. 70349) and the ruling in this petition already constituted *res judicata* on the validity of the Order of April 3, 2002.

The respondents, for their part, claim that "the mere failure to specify in the decision the contentions of the appellant and the reason for refusing to believe them is not sufficient to hold the same contrary to the provisions of the law and the Constitution."^[7] In support of the twin recourses they took, they cite *Argel v. Court of Appeals*^[8] where this Court rejected the ground for objection similar to present petitioner's because "the special civil action for certiorari and the appeal did not involve the same issue." The respondents saw as ineffective the argument that the petition for certiorari prayed for the annulment of the entire Order of April 3, 2002 since the petition and the appeal were very specific on the portions of the Order that were being assailed. They pointed, too, to the decision in CA-G.R. SP No. 70349 which only passed upon the issues specified in the petition for certiorari, leaving untouched the issue that they chose to raise via an appeal. As their last point, the respondents claimed they saw no need to mention the pendency of the appeal in their non-forum shopping certification because the appeal dealt with an issue altogether different from the issues raised in the petition for certiorari, citing for this purpose the specific wordings of Section 5, Rule 7 of the Revised Rules of Court.

THE ISSUE

The sole issue presented to us for resolution is: Did the Court of Appeals (Fifteenth Division) err in not dismissing the respondents' petition for mandamus (CA-G.R. SP No. 71844) on the ground of forum shopping?

THE COURT'S RULING

We find the petition devoid of merit as the discussions below will show.

The Order of April 3, 2002

An examination of the RTC Order of April 3, 2002 shows that it resolved three matters, namely: (1) the designation of the accounting firm of Alba, Romeo & Co. to conduct an audit of the administration of Atty. George S. Briones of the estate of Luz J. Henson, at the expense of the estate; (2) the payment of the petitioner's commission as the estate's Special Administrator; and (3) the directive to the petitioner to deliver the residue of the estate to the heirs in their proportional shares. Of these, only the first two are relevant to the present petition as the third is the ultimate directive that will close the settlement of estate proceedings.

The first part of the Order (the auditor's appointment) was the subject of the petition for certiorari, prohibition, and mandamus that the respondents filed before the appellate court (CA-G.R. SP No. 70349). Whether this part is interlocutory or one that fully settles the case on the merits can be answered by the test that this Court laid down in *Mirada v. Court of Appeals*: "The test to ascertain whether or not an order is interlocutory or final is - Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not it is final." [9]

The terms of the trial court's order with respect to the appointment or "designation" of the accounting firm is clear: "to immediately conduct an audit of the administration by Atty. George S. Briones of the estate of the late Luz J. Henson, the expenses of which shall be charged against the estate."

To audit, is "to examine and verify (as the books of account of a company or a treasurer's accounts)." An audit is the "formal or official examination and verification of books of account (as for reporting on the financial condition of a business at a given date or on the results of its operations for a given period)."[10] Black's Law Dictionary defines it no differently: "a systematic inspection of accounting records involving analyses, tests and confirmations; a formal or official examination and authentication of accounts, with witnesses, vouchers, etc." [11]

Given that the subject matter of the audit is Atty. Briones' Final Report in the administration of the estate of the decedent, its preparatory character is obvious; it is a prelude to the court's final settlement and distribution of the properties of the decedent to the heirs. In the context of what the court's order accomplishes, the court's designation of an auditor does not have the effect of ruling on the pending estate proceeding on its merits (i.e., in terms of finally determining the extent of the net estate of the deceased and distributing it to the heirs) or on the merits of any independently determinable aspect of the estate proceeding; it is only for purposes of confirming the accuracy of the Special Administrator's Final Report, particularly of the reported charges against the estate. In other words, the designation of the auditor did not resolve Special Proceedings No. 99-92870 or any independently determinable issue therein, and left much to be done on the merits of the case. Thus, the April 3, 2002 Order of the RTC is interlocutory in so far as it designated an accounting firm to audit the petitioner's special administration of the estate.

In contrast with the interlocutory character of the auditor's appointment, the second part is limited to the Special Administrator's commission which was fixed at 1.8% of the value of the estate. To quote from the Order: the court hereby. . . 2. Suspends the approval of the report of the special administrator except the payment of his commission, which is hereby fixed at 1.8% of the value of the estate." Under these terms, it is immediately apparent that this pronouncement on an independently determinable issue - the special administrator's commission - is the court's definite and final word on the matter, subject only to whatever a higher body may decide if an appeal is made from the court's ruling.

From an estate proceeding perspective, the Special Administrator's commission is no less a claim against the

estate than a claim that third parties may make. Section 8, Rule 86 of the Rules recognizes this when it provides for "Claim of Executor or Administrator Against an Estate." [12] Under Section 13 of the same Rule, the action of the court on a claim against the estate "is appealable as in ordinary cases." [13] Hence, by the express terms of the Rules, the ruling on the extent of the Special Administrator's commission - effectively, a claim by the special administrator against the estate - is the lower court's last word on the matter and one that is appealable.

Available Recourses against
the April 3, 2002 Order

We bring up the above distinctions between the first two parts of the Order of April 3, 2002 to highlight that the directives or determinations under the Order are not similarly final and appealable in character. In this regard, Section 1, Rule 41 of the 1997 Rules of Rules of Court lays down the rules on what are or are not subject to appeal and it provides:

Section 1. Subject of appeal. - An appeal may be taken from a judgment or final order that completely disposes of the case or of a particular matter therein when declared by these Rules to be appealable.

No appeal shall be taken from:

x x x

(c) An interlocutory order.

x x x

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

Under these terms and taking into account the previous discussion of the nature of the various parts of the Order of April 3, 2002, the lower court's determination of the special administrator's commission is clearly appealable while the auditor's appointment is not. The latter, under the express terms of the above provision, can be the subject of an "appropriate special civil action under Rule 65."

Rulings abound on when an appeal or a petition for certiorari is the appropriate recourse to take from a lower court ruling. [14] The twist in the present case is that the losing party took two available recourses from the same Order of the lower court: an appeal was made with respect to that portion of the Order that is final in character, and a petition for certiorari was taken against the portion that, again by its nature, is interlocutory. It was under these circumstances that the petitioner posited that forum shopping had been committed as the respondents should have simply appealed, citing the interlocutory aspect as an error in the appeal of the final aspect of the Order of April 3, 2002.

While the petitioner's position may be legally correct as a general rule, it is not true in the present case considering the unique nature of the case that gave rise to the present petition. The petitioner is the special administrator in a settlement of estate, a special proceeding governed by Rule 72 to 109 of the Revised Rules of Court. Section 1, Rule 109 in part states:

Section 1. Orders or judgments from which appeals may be taken. - An interested person may appeal in special proceedings from an order or judgment rendered by a Court of First Instance or a Juvenile Domestic Relations Court, where such order or judgment:

x x x x x x x x

(c) allows or disallows, in whole or in part, any claim against the estate of a deceased person, or any claim

presented on behalf of the estate in offset to a claim against it;

(d) settles the account of an executor, administrator, trustee or guardian;

(e) constitutes, in the proceedings relating to the settlement of the estate of a deceased person x x x a final determination in the lower court of the rights of the party appealing, except that no appeal shall be allowed from the appointment of a special administrator.

The rationale behind allowing more than one appeal in the same case is to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the court and held to be final.[15] In this multi-appeal mode, the probate court loses jurisdiction only over the subject matter of the appeal but retains jurisdiction over the special proceeding from which the appeal was taken for purposes of further remedies the parties may avail of.[16]

Where multi-appeals are allowed, we see no reason why a separate petition for certiorari cannot be allowed on an interlocutory aspect of the case that is separate and distinct as an issue from the aspect of the case that has been adjudged with finality by the lower court. To reiterate, the matter appealed matter was the special administrator's commission, a charge that is effectively a claim against the estate under administration, while the matter covered by the petition for certiorari was the appointment of an auditor who would pass upon the special administrator's final account. By their respective natures, these matters can exist independently of one another and can proceed separately as envisioned by the Rules under Rule 109.

The Forum Shopping Issue

Forum shopping is the act of a litigant who "repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court to increase his chances of obtaining a favorable decision if not in one court, then in another." [17] It is directly addressed and prohibited under Section 5, Rule 7 of the 1997 Rules of Civil Procedure, and is signaled by the presence of the following requisites: (1) identity of parties, or at least such parties who represent the same interests in both actions, (2) identity of the rights asserted and the relief prayed for, the relief being founded on the same facts, and (3) identity of the two preceding particulars such that any judgment rendered in the pending case, regardless of which party is successful, would amount to res judicata in the other.[18] In simpler terms, the test to determine whether a party has violated the rule against forum shopping is where the elements of litis pendencia are present or where a final judgment in one case will amount to res judicata in the other.[19]

We see no forum shopping after considering these standards as neither litis pendencia nor res judicata would result in one case from a ruling in the other, notwithstanding that the appeal that subsequently became the subject of CA-G.R. SP No. 71844 and the petition for certiorari in CA-G.R. SP No. 70439 both stemmed from the trial court's Order dated April 3, 2002. The simple reason - as already discussed above - is that the petition and the appeal involve two different and distinct issues so that a ruling in either one will not affect the other.

Forum shopping is further negated when the nature of, and the developments in, the proceedings are taken into account - i.e., an estate proceedings where the Rules expressly allow separate appeals and where the respondents have meticulously distinguished what aspect of the RTC's single Order could be appealed and what could not. Thus, the petitioner cannot take comfort in the cases it cited relating to forum shopping; these cases, correct and proper in their own factual settings, simply do not apply to the attendant circumstances and special nature of the present case where the issues, although pertaining to the same settlement of estate proceedings and although covered by the same court order, differ in substance and in stage of finality and can be treated independently of one another for the purposes of appellate review.

Did the Court of Appeals err in refusing to resolve the issue of forum shopping?

Given our above discussion and conclusions, we do not see forum shopping as an issue that would have made a difference in the appellate court's ruling. Nor is it an issue that the appellate court should, by law, have fully ruled upon on the merits. We agree with the respondent that the appellate court is not required "to resolve every contention and issue raised by a party if it believes it is not necessary to do so to decide the case." [20]

The reality though is that the appellate court did rule on the issue when it stated that "it becomes unnecessary to discuss whether the latter engaged in forum shopping. Apparently, the issue on forum shopping was also raised in CA-G.R. SP No. 70349 and private respondent can again raise the same in the appeal from the order dated April 3, 2002, where the issue should be properly resolved." [21] To the appellate court - faced with the task of ruling on a petition for mandamus to compel the trial court to allow the respondents' appeal - forum shopping was not an issue material to whether the trial court should or should not be compelled; what was material are the requisite filing of a notice of appeal and record on appeal, and the question of whether these have been satisfied. We cannot find fault with this reasoning as the forum shopping issue - i.e., whether there was abuse of court processes in the respondents' use of two recourses to assail the same trial court order - has specific pertinence and relevance in the sufficiency and merits of the recourses the respondents took.

In sum, we hold that the Court of Appeals did not err in refusing to resolve forum shopping as an issue in its Decision in CA-G.R. SP No. 71844.

WHEREFORE, we hereby DENY the petition and, accordingly, AFFIRM the Decision of the Court of Appeals dated February 11, 2003 in CA-G.R. SP No. 71844. Costs against the petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court.

[2] Rollo, pp. 44-51; penned by Associate Justice Marina L. Buzon, with Associate Justice Josefina Guevara-Salonga and Associate Justice Danilo B. Pine concurring.

[3] Rollo, pp. 92-100; penned by Associate Justice B.A. Adefuin-De la Cruz, with Associate Justice Jose L. Sabio, Jr. and Associate Justice Hakim S. Abdulwahid concurring.

[4] G.R. No. 104513, August 4, 1993, 225 SCRA 94.

[5] G.R. No. 141427, April 20, 2001, 357 SCRA 329.

[6] G.R. No. 115849, January 24, 1996, 252 SCRA 259.

[7] *Air France v. Carrascoso*, G.R. No. L-21438, September 28, 1966, 18 SCRA 155.

[8] G.R. No. 128805, October 12, 1999, 316 SCRA 511.

[9] G.R. No. L-33007, June 18, 1976, 71 SCRA 295.

[10] Webster's Third International Dictionary (1993 ed.), p. 143.

[11] Fifth Ed. (1979), p. 120.

[12] Section 8. Claim of executor or administrator against an estate. - If the executor or administrator has a claim

against the estate he represents, he shall give notice thereof in writing, to the court, and the court shall appoint a special administrator, who shall, in the adjustment of such claim, have the same power and be subject to the same liability as the general administrator or executor in the settlement of other claims. The court may order the executor or administrator to pay the special administrator necessary funds to defend such action.

[13] Section 13. Judgment appealable. The judgment of the court approving or disapproving a claim, shall be filed with the record of the administration proceedings with notice to both parties, and is appealable as in ordinary cases. A judgment against the executor or administrator shall be that he pay, in due course of administration, the amount ascertained to be due, and it shall not create any lien upon the property of the estate, or give to the judgment creditor any priority of payment.

[14] See *People v. Laguio, Jr.*, G.R. No. 128587, March 16, 2007, 518 SCRA 393.

[15] *Roman Catholic Archbishop of Manila v. Court of Appeals*, G.R. No. 111324, July 5, 1996, 258 SCRA 186.

[16] *Valarao v. Pascual*, G.R. No. 150164, November 26, 2002, 392 SCRA 695.

[17] *Gatmaytan v. Court of Appeals*, G. R. No. 123332, February 3, 1997, 267 SCRA 487. See also: *Mondragon Leisure and Resorts Corp. v. United Coconut Planters Bank*, 427 SCRA 585 (2044), citing *T'Boli Agro-Industrial Development, Inc. (TADI) v. Solidapsi*, 394 SCRA 269 (2002).

[18] *Hongkong & Shanghai Banking Corp. Ltd. v. Catalan*, G.R. Nos. 159590-91, October 18, 2004, 440 SCRA 498, 513-514, citing *Phil. Commercial International Bank v. Court of Appeals*, 406 SCRA 575 (2003).

[19] *Velasquez v. Hernandez*, G.R. Nos. 150732 & 151095, August 31, 2004, 437 SCRA 357, 367, citing *Bangko Silangan Development Bank v. Court of Appeals*, 360 SCRA 322 (2001), *Phil. Economic Zone Authority v. Vianzon*, 336 SCRA 309 (2000), *Progressive Development Corp. v. Court of Appeals*, 301 SCRA 637 (1999).

[20] *Air France v. Carrascoso*, *supra* note 7.

[21] *Rollo*, pp. 54-55.

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