

CIVIL SERVICE COMMISSION, AND BUREAU OF INTERNAL REVENUE, PETITIONERS, VS. NIMFA P. ASENSI, RESPONDENT. SYNOPSIS.

G.R. No. 160657. December 17, 2004

Ponente: TINGA, J.

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TINGA, J.:

Before the Court is a Motion for Reconsideration filed by petitioner Civil Service Commission (CSC), of our Resolution dated 30 June 2004 dismissing the Petition for Certiorari. An extended disposition is warranted, if only to address the CSC's spirited insistence that its Office of Legal Affairs may, on its own, represent the CSC before this Court.

A brief recall of the factual antecedents is in order.

Earlier, the CSC imposed the penalty of dismissal against respondent Nimfa Asensi (Asensi), a Revenue District Officer of the Bureau of Internal Revenue in Lucena City. She was charged with falsifying entries in her 1997 Personal Data Sheet relative to her educational background.[1] On 9 July 2003, the Court of Appeals Fourth Division promulgated a Decision holding that the dismissal of Asensi was not warranted. The appellate court denied the motion for reconsideration of that ruling in a Resolution dated 29 October 2003.

The Office of the Solicitor General (OSG) received a copy of the 29 October 2003 Resolution on 7 November 2003. On 21 November 2003, or one day before the deadline to file a petition for review on certiorari before this Court would elapse, the OSG filed a motion for extension until 22 December 2003 to file the petition for review. Said motion was granted in a Resolution dated 9 December 2003.

Nevertheless, on 25 November 2003, the CSC filed a Manifestation to File its Own Petition for Review signed by three lawyers from the Office of Legal Affairs of the CSC. Just two days later, or on 27 November 2003, the CSC through its Office of Legal Affairs, filed with this Court a Petition for Certiorari under Rule 65, assailing the 9 July Decision of the Court of Appeals.

On 22 December 2003, the OSG filed a Manifestation and Motion stating that considering the CSC's declared intent to file its own petition, the OSG had no recourse but to withdraw its earlier Motion for Extension and allow the CSC to actively pursue its own case. In the meantime, Asensi filed her own comment wherein she pointed out that the proper remedy for the CSC was not a special civil action for certiorari under Rule 65, but a petition for review under Rule 45.

The Resolution of this Court now for reconsideration declared that the CSC had indeed resorted to an improper remedy by pursuing a petition for certiorari and not a petition for review. The Court noted that the OSG well understood the proper procedure for review and had actually undertaken the initiatory step for the filing of the proper petition when it filed its Motion for Extension. Still, the CSC ignored such Motion for Extension and employed an erroneous mode of review. Moreover, the Court calls attention to the lack of competence of the Office of Legal Affairs of the CSC to file the petition in behalf of the CSC, considering the well-established rule

that it is the Office of the Solicitor General which has the primary responsibility to appear for the government in appellate proceedings, it being the principal law officer and legal defender of the government.

The CSC, through its Office of Legal Affairs, filed a Motion for Reconsideration, now subject of this Resolution. It argues that the Office of Legal Affairs is capacitated to file its own pleadings before the Court of Appeals or the Supreme Court, pursuant to Section 16(3), Chapter 3, Subtitle A, Title I, Book V of the Administrative Code of 1987. The CSC likewise cited a Memorandum of Agreement dated 6 June 2002 entered into between the OSG and the CSC, Item 7 of which provides: "Should the motion for reconsideration be denied by the Court of Appeals, the OSG shall file the necessary motion for extension of time to file the appropriate appeal. During the period of appeal, the CSC and the OSG shall determine the appropriateness of pursuing the case to the Supreme Court." According to the CSC, it had informed the OSG, through Solicitor Arnold G. Frane, that it would be filing its own petition before this Court as it honestly believed it was in a better position to defend its assailed Resolutions. The CSC likewise alleged that it had not been furnished by the OSG with a copy of the latter's Motion for Extension of Time, and had it known about the same beforehand it would have refrained from filing any pleading related to the said case.

In view of the averments made in the CSC's Motion for Reconsideration, the Court required the OSG and Asensi to file their respective comments.[2] The Court likewise required the OSG and the CSC to submit copies of the Memorandum of Agreement referred to by the CSC in its Motion for Reconsideration.

The OSG took exception to the CSC's claim that the latter would have refrained from filing had it known of the OSG's motion, asserting that the CSC had already made up its mind to file its own petition, it having previously informed the solicitor in charge of its intention to file the petition itself. The OSG characterized it as unfair for the CSC to point an accusing finger at the OSG for the unfavorable result of the case.[3] Nevertheless, the OSG prayed that the Motion for Reconsideration be granted and that CSC's petition for certiorari be treated as a petition for review "in the higher end of justice." [4]

In a Resolution dated 28 September 2004. Rollo, p. 169. Id. at 170.

The CSC's position that its Office of Legal Affairs could have filed the present petition before this Court certainly goes against the grain of established jurisprudence maintaining that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings.[5]

The Court, in *Gonzales v. Chavez*, [6] traced extensively the statutory history of the OSG, which has existed in this jurisdiction as far back as 1901 [7]. Currently, the powers and functions of the OSG are defined under Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987, which pertinently provides:

SECTION 35. Powers and Functions. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government, and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party, (*italics supplied*)

As noted in *Gonzales v. Chavez*:

In thus tracing the origins of the Office of the Solicitor General to gain a clear understanding of the nature of

the functions and extent of the powers of the Solicitors General himself, it is evident that a policy decision was made in the early beginnings to consolidate in one official the discharge of legal functions and services in the government. These took the form mostly of representing the Government in various legal proceedings.

The rationale behind this step is not difficult to comprehend. Sound government operations require consistency in legal policies and practices among the instrumentalities of the State. Moreover, an official learned in the law and skilled in advocacy could best plan and coordinate the strategies and moves of the legal battles of the different arms of the government. Surely, the economy factor, too, must have weighed heavily in arriving at such a decision.

It is patent that the intent of the lawmaker was to give the designated official, the Solicitor General, in this case, the unequivocal mandate to appear for the government in legal proceedings. Spread out in the laws creating the office is the discernible intent which may be gathered from the term "shall," which is invariably employed, from Act No. 136 (1901) to the more recent Executive Order No. 292 (1987).[8]

The Court has explicitly declared that since only the Solicitor General can bring or defend actions on behalf of the Republic of the Philippines, "actions filed in the name of the Republic of the Philippines if not initiated by the Solicitor General will be summarily dismissed"[9] The rule has been extended to include actions filed in the name of agencies or instrumentalities of the Republic[10] such as the CSC. There is clearly all the justification in precedent for the Court to have dismissed the petition.

CSC's reliance on Section 16(3), Chapter 3, Subtitle A, Title I, Book V of the Administrative Code of 1987 is not sufficient to justify the appearance of the Office of Legal Affairs before this Court. Said provision, as quoted by the CSC, reads:

[T]he Office of Legal Affairs shall provide the [CSC] Chairman with legal advise and assistance; render counseling services; undertake legal studies and researches; prepare opinions and rulings in the interpretation and application in the Civil Service law, rules and regulations; prosecute violations of such laws, rules and regulations; and represent the Commission before any Court or tribunal. (italics not ours)

On its face, the provision seems to sanction the representation made by the Office of Legal Affairs for the CSC before this Court. But this provision has to be qualified by the earlier quoted provision (Section 35, Chapter 12, Title III, Book IV) of the same Administrative Code pertaining to the mandate of the Office of the Solicitor General, to "represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof." Clearly, Section 35 finds more specific application in this case than Section 16(3), as the former pointedly governs the procedure pertinent to the representation of "the Government and its officers in the Supreme Court," "in all civil actions and special proceedings." Section 35 is also consistent with precedents and the established rule that it is the Solicitor General who has the primary responsibility to appear for the government in appellate proceedings.[11] Where there is a particular or special provision and a general provision in the same statute and the latter in its most comprehensive sense would overrule the former, the particular or special provision must be operative and the general provision must be taken to affect only the other parts of the statute to which it may properly apply.[12] In this way, all the provisions are given effect.[13]

Moreover, the Court has already ruled on a similar argument before in *Commissioner of Internal Revenue v. La Suerte Cigar and Cigarette Factory*,[14] which was previously cited in the assailed Resolution. In that case, the Commissioner of Internal Revenue invoked Section 220 of the Tax Reform Act of 1997 in asserting that its legal officers were allowed to institute civil and criminal actions and proceedings in behalf of the government before the Supreme Court. The Court disagreed, stating that "Section 220 of the Tax Reform Act must not be understood as overturning the long established procedure before this Court in requiring the Solicitor General to represent the

interest of the Republic." [15] The Court again cited *Gonzales v. Chavez* in holding that "from the historical and statutory perspectives, the Solicitor General is the principal law officer and legal defender of the government." [16] Strikingly, the Tax Reform Act was a law enacted subsequent to the Administrative Code of 1987 and is more specific in application to tax cases. Yet these considerations were not sufficient for the Court to consider the powers granted to BIR legal officers under Section 220 of the Tax Reform Act as superseding those vested to the Solicitor General under the Administrative Code. All the more reason for this Court to assert the primacy of the OSG's mandate over the claimed prerogative of the Office of Legal Affairs.

Even the Memorandum of Agreement between the OSG and the CSC, which the CSC invokes, clearly indicates that it is the OSG which represents the constitutional commission in proceedings before the Court of Appeals and the Supreme Court. The "Whereas Clauses" assert the OSG's mandate "to represent the Government of the Philippines, its agencies and instrumentalities, and its officials and agents in any litigation, investigation or matter requiring the services of a lawyer." [17] We quote the relevant provisions of the Memorandum of Agreement:

NOW, THEREFORE, in view of the foregoing premises, the parties hereto have agreed as follows:

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- When the CSC receives a Resolution from the Court of Appeals or the Supreme Court requiring the submission of comment on a petition regarding its decision, the CSC shall immediately endorse the same to the OSG for its representation, specifying in its request the name and telephone number of the contact person of the CSC assigned to the case.

In the meantime, the CSC shall make a Manifestation that it is seeking OSG's representation and shall request an extension of thirty (30) days on behalf of the OSG.

If the OSG is already furnished a copy of the Resolution, the CSC shall no longer make a Manifestation, but shall immediately forward the original records of the case to the OSG.

If the Resolution requires comment on a motion for reconsideration in a case where the CSC is already represented by the OSG, the OSG shall file said comment without waiting for further endorsement.

- In the event the OSG has reached a position adverse to the CSC, the OSG shall make a Manifestation in lieu of Comment (With Recommendation for Reversal of the Assailed Order/Ruling) within the period given to submit comment with a prayer that CSC be given a fresh period of thirty (30) days within which to file its own comment, furnishing the CSC with a copy of said Manifestation. The OSG shall immediately return the records of the case to the CSC. When the CSC files its own comment, the OSG shall be furnished with a copy of the said comment.

- The OSG shall, at all times, furnish the CSC with a copy of any Comment, Manifestation in Lieu of Comment, Memorandum or any other pleading filed by it with the Court of Appeals or Supreme Court in relation to cases where the CSC is a party.

- The CSC may request the OSG for representation as intervenor whenever a rule or policy of the CSC is being

questioned. The issue on the appropriateness of filing a motion for intervention shall be jointly resolved by the CSC and OSG.

- In case of adverse decision rendered by the Court of Appeals, the OSG shall file a motion for reconsideration. If the OSG decides not to file a motion for reconsideration, it shall inform the Division Chief of Action Office concerned by telephone on or before the seventh (7th) day of the reglementary period.

- Should the motion for reconsideration be denied by the Court of Appeals, the OSG shall file the necessary motion for extension of time to file the appropriate appeal. During the period to appeal, the CSC and the OSG shall determine the appropriateness of pursuing the case to the Supreme Court.[18] (*italics supplied*)

These provisions clearly evince that it is the OSG which initiates, prosecutes or defends the interests of the CSC in litigation before this Court. On the other hand, nowhere in the Memorandum of Agreement does it state that the CSC may, on its own, file a petition before this Court, except for the extraordinary circumstance adverted to in Item No. 3, when the OSG reached a position adverse to the CSC. Item No. 3 does not apply in this case, since there is no indication that the OSG has reached a position adverse to that of the CSC in this case. Besides, even if such were the case, the proper procedure under the Memorandum of Agreement would be for the OSG to make a Manifestation to that effect with a prayer that the CSC be given a fresh period within which to file its own comment. In this case, even the OSG was apparently caught unaware of the CSC's intention of filing the case on its own.[19]

Asensi, for her part, points out similarly disconcerting facts regarding the CSC-OSG relationship when the case was tried before the Court of Appeals. When the Court of Appeals required the CSC to comment on Asensi's Petition, the CSC filed a Manifestation in Lieu of Comment stating that it intended to seek the representation of the OSG.[20] Such step corresponds with the second paragraph of Item No. 2 of the Memorandum of Agreement. Thereafter, it was the OSG that represented the CSC before the Court of Appeals up to its filing a Motion for Reconsideration dated 8 August 2003 after the Court of Appeals had granted Asensi's petition. However, days after the filing by the OSG of the Motion for Reconsideration in behalf of the CSC, the CSC itself filed a "supplemental" Motion for Reconsideration through its legal officers.[21] This aspect is baffling. If the "supplemental" motion for reconsideration raised the same arguments as that of the OSG's, such pleading would have been a redundancy. If it posed arguments contrary to that in the OSG's Motion for Reconsideration, it would have resulted in unnecessary confusion.

It is unclear why the CSC, after having properly called upon representation by the OSG, suddenly became allergic to the assistance of its duly authorized legal counsel. If it was because the OSG adopted a position adverse from that of the CSC, then there should have been first a manifestation to that effect and thereafter both the OSG and the CSC would be called upon to proffer their respective legal positions.[22] Had it been due to personal antipathy between the coordinating personnel of the OSG and the CSC, more commodious arrangements could have been made without having need to traverse the law. Indeed, by filing the Petition for Certiorari — an erroneous mode of review it may be added through the Office of Legal Affairs and not the OSG — the CSC acted contrary to law, jurisprudence, and even its own Memorandum of Agreement. As the Court previously noted, the predicament of the CSC hardly evokes sympathy, it not only having supplied the noose by which it was hung, but tying the knot as well.

Admittedly, there are "exceptions" to the general rule on the OSG's representation of the government and its instrumentalities. The first, enunciated in *Orbos v. CSC*, [23] was already adverted to in our prior Resolution, and

may only be invoked when the government office is adversely affected by the contrary position taken by the OSG. But as stated earlier, such is not the case in the present petition since both the OSG and the CSC apparently seek the reversal of the Decision of the Court of Appeals.

The Court alluded to another exception in *CDA v. Dolefil Agrarian Reform Beneficiaries Cooperative*[24] when it pointed out that under Section 35(8), Chapter 12, Title III, Book IV of the Administrative Code, the Solicitor General, in providing legal representation for the government, is empowered to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases." [25] While this provision would authorize the CSC's Office of Legal Affairs to represent the CSC, it provides for conditions precedent which we must construe strictly, they being exceptions to the general rule. First, there must be an express authorization by the Office of the Solicitor General, naming therein the legal officers who are being deputized. Second, the cases must involve the respective offices of the deputized legal officers. And finally, despite such deputization, the OSG should retain supervision and control over such legal officers with respect to the cases. Thus, in *Virata v. Sandiganbayan*[26] the Court found it proper for the OSG thereinto have filed a Manifestation and Motion, stating its conformity to the PCGG itself filing the required bill of particulars before this Court. Still, the Court noted that in the said Manifestation and Motion, "nowhere is there an iota or indication that the OSG is withdrawing from the case and that the PCGG is taking over its prosecution." [27]

In *NAPOCOR v. NLRC*, [28] the Court clarified that:

The lawyer deputized and designated as "special attorney-OSG" is a mere representative of the OSG and the latter retains supervision and control over the deputized lawyer. The OSG continues to be the principal counsel for the National Power Corporation, and as such, the Solicitor General is the party entitled to be furnished copies of orders, notices and decisions. The deputized special attorney has no legal authority to decide whether or not an appeal should be made. [29]

Deputization is a mode by which the CSC's Office of Legal Affairs could have enjoyed greater participation in the prosecution of the case against Asensi. Yet the decision to deputize lies in the discretion of the OSG, and even after such delegation, the OSG is still expected to exercise supervision and control over the legal officers of CSC. There was no deputization exercised in this case by the OSG; hence, this exception may not apply.

Then there is our course of action in *Commissioner of Internal Revenue v. La Suerte*, [30] which is not really an exception to the rule, but which could serve as possible basis for a more favorable result to the CSC. There, notwithstanding the improper filing of the petition by the legal officers of the BIR, the Court, rather than dismissing the petition directed the OSG to enter its appearance for the BIR and required it to manifest whether or not it was adopting the previously filed petition. [31] Still, there are manifest differences between that case and the present petition. The Court noted in *Commissioner of Internal Revenue* that the dismissal of the petition "could have lasting effect on government tax revenues, the lifeblood of the state." [32] Nothing quite as urgent is posed in this petition. The Court also pointed out that the "Commissioner of Internal Revenue, seeking clarification on the issue of legal representation, [labored] and acted in good faith." [33] We are hard-pressed to make a similar finding of good faith on the part of the CSC. It had earlier sought the representation of the OSG, even citing legal basis for such representation to the Court of Appeals. [34] Then suddenly, without sufficient warning or notice, the CSC started filing pleadings on its own without the consent or even knowledge of its legal counsel, the OSG. Lamentably, there is a badge of uncouthness attending these actions taken by the CSC vis-a-vis the OSG which the Court could not sanction.

And the most important distinction between this case and *Commissioner of Internal Revenue* is that the legal

officers of the BIR filed the correct petition before this Court, unlike the legal officers of the CSC, who had erroneously filed a special civil action for certiorari. Indeed, even if we were to affirm the authority of the CSC Office of Legal Affairs to file this petition, such would not cure the fact that the wrong mode of review was resorted to.

Interestingly, the OSG now prays that the Motion for Reconsideration be granted, "considering the gravity of the offense lodged against [Asensi]." Yet there is hardly any vibrancy in the OSG's arguments, which blandly invokes the suspension of the Rules "in the higher interest of justice,"[35] a pro forma claim if ever there was one. The CSC also similarly invokes the suspension of procedural rules, and also claims that Asensi "should not escape administrative liability on mere technicality," considering that she is a public officer.[36]

Strict compliance with the mandatory rules of procedure is the established norm and any relaxation from that standard could only be an exception.[37] Utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction.[38] We are not convinced that a relaxation of the rules is authorized in this case based on the merits. In fact, the argument posed by the CSC in its Petition is even dangerous and noxious to constitutional due process. The CSC considers it "grave abuse of discretion" on the part of the Court of Appeals in failing to consider purported misrepresentations in at least nine of Asensi's Personal Data Sheets, most of which were executed before 1997. However, as the Court of Appeals pointed out, the charge sheet lodged by the CSC against Asensi only mentioned her personal data sheet dated 11 April 1997. Considering that Asensi was being charged with Falsification, along with Dishonesty and Grave Misconduct, the charge sheet should specify which documents the respondent is being charged as having falsified. A finding of guilt, based on documents not included in the charge sheet, which the CSC would have this Court pronounce, is noxious to due process as it violates the right to be informed of the charges against a person. Without such specific information relating to the documents which she allegedly falsified, Asensi would be at a loss to prepare her defense. As correctly noted by the Court of Appeals, administrative proceedings are not exempt from basic and fundamental principles such as the right to due process in investigation and hearings.[39] This especially holds true for the CSC, which as an instrumentality of the government, is circumscribed by, and accordingly expected to comply with, the Bill of Rights.

Thus, the Court of Appeals correctly limited its inquiry to the 11 April 1997 Personal Data Sheet of Asensi, the only such document mentioned in the charge sheet. We are inclined to respect the Court of Appeals's factual appreciation of this Personal Data Sheet, and its conclusion that Asensi was merely careless in filling up the same.[40] Indeed, considering that it is only the 11 April 1997 Personal Datasheet which could properly have served as basis for administrative sanction against Asensi, the errors therein hardly support the penalty of dismissal as imposed by the CSC.

Thus, the Court finds no compelling reason to reverse its earlier Resolution. It is perhaps unusual that a resolution denying a motion for reconsideration is lengthier than the assailed decision or resolution, such as is in this case. But it is useful for the Court to be emphatic on the matter of the representation of the CSC by its Office of Legal Affairs, if only to serve warning that such error should never happen again.

The Motion for Reconsideration dated 6 August 2004 filed by petitioner Civil Service Commission is DENIED with FINALITY. No costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio Morales, Azcuna, and Chico-Nazario, JJ., concur.

Corona and Callejo, Sr., JJ., on leave.

[1] 18 Rollo, pp. 175-176. See Rollo, p. 99.

[2] In a resolution dated 28 September 2004.

[3] Rollo, p. 169.

[4] Id. at 170.

[5] Commissioner of Internal Revenue v. La Suerte, G.R. No. 144942, 4 July 2002, 384 SCRA 117, 119; citing Republic v. Register of Deeds of Quezon, 244 SCRA 537 (1995); CIR v. S.C. Johnson and Son, Inc., 309 SCRA 87 (1999).

[6] G.R. No. 97351, 4 February 1992, 205 SCRA 816.

[7] Id. at 831-836.

[8] Id. at 836-837.

[9] Republic, et.al. v. Partisala, et.al., G.R. No. L-61997, 15 November 1982, 118 SCRA 370, 373.

[10] See CDA v. Dolefil Agrarian Reform Beneficiaries Cooperative, 432 Phil. 290, 306 (2002).

[11] Supra note 5.

[12] R. Agpalo, Statutory Construction, 3rd ed. (1995), at 200.

[13] Id. citing Lichauco & Co. v. Apostol, 44 Phil. 138 (1922); Cassion v. Banco Nacional Filipino, 89 Phil. 560 (1951).

[14] G.R. No. 144942, 4 July 2002, 384 SCRA 1 17.

[15] Id. at 119.

[16] Ibid.

[17] Rollo, p. 174.

[18] Rollo, p. 175-176.

[19] Indeed, the CSC claims that it had informed OSG Solicitor Arnold G. Frane "through telephone" that it would be filing its own petition before this Court, Rollo p. 122-123, though no mention is made whether such phone call was made prior to the filing of the Petition for Certiorari by the CSC Legal Office. The OSG is similarly silent as to when such notice was made to it, or even if at all. However, we can read from the following averments made by the OSG in its Manifestation and Motion dated 18 December 2003 that it had not been aware of the CSC's intentions:

"On 21 November 2003, the OSG as counsel for petitioner, filed a motion for extension of time to file petition

for review on certiorari. The petition is due on December 22, 2003.

However, on December 3, 2003, the OSG was served with petitioner's Manifestation (Annex A) stating its intention to pursue its case by filing its own petition for certiorari (Annex B) before this Honorable Court.

In view of this recent development, the OSG has no other recourse but to withdraw its November 21, 2003 motion and allow petitioner to actively pursue its case." (Rollo, p. 37)

[20]Rollo, p. 155.

[21]See Rollo, pp. 7, 13. 142.

[22]See Orbosv. CSC, G.R. No. 92661, 12 September 1990, 189 SCRA 459, 466.

[23]G.R. No. 92651, 12 September 1990, 189 SCRA 459.

[24]Supra note 10.

[25]Id. at 307.

[26]339 Phil. 47 (1997).

[27]Id. at 72.

[28]339 Phil. 89 (1997).

[29]Id. at 101.

[30]Supra note 5.

[31]Id. at 121.

[32]Id. at 120.

[33]Ibid.

[34]Supra note 20.

[35]Rollo, p. 170; citing Santo Tomas University Hospital v. Surla, 294 SCRA 383 (1998).

[36]Id. at 125.

[37]Castillo v. Court of Appeals, G.R. No. 159971, 25 March 2004.

[38]Id. citing Digital Microwave Corp. v. Court of Appeals, G.R. No. 128550, March 16. 2000, 328 SCRA 286.

[39]Rollo, p. 30.

[40]Id. at 31.

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