

**ALLANDALE SPORTSLINE, INC., AND MELBAROSE R. SASOT,
PETITIONERS, VS. THE GOOD DEVELOPMENT CORPORATION,
RESPONDENT.**

G.R. No. 164521. December 18, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the May 15, 2003 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 59475 which dismissed the petition of Allandale Sportslines, Inc. and Melbarose R. Sasot from the January 13, 1998 Decision[2] of the Regional Trial Court (RTC) of Pasig City, Branch 158 in Civil Case No. 61053; and the June 12, 2004 CA Resolution[3] which denied petitioners' motion for reconsideration.

The relevant facts are as follows:

Allandale Sportslines, Inc. (ASI) obtained a loan of P204,000.00 from The Good Development Corp. (GDC) under a Promissory Note signed by Melbarose R. Sasot (Melbarose) and Allandale R. Sasot (Allandale), President and Vice-President, respectively, of ASI, with Theresa L. Manipon (Manipon) as one of three co-makers.[4] The Promissory Note provides that the loan is payable in daily equal installments of P2,000.00 with interest at the rate of 26.002% per annum. In case of default in the payment of any installment, the entire balance of the obligation shall become immediately due and payable, and subject to liquidated penalty/ collection charge equivalent to 2% of the principal.[5]

To provide additional security, ASI and Melbarose executed in favor of GDC a Deed of Mortgage[6] in which they acceded that:

xxxx should the MORTGAGORS fail to comply with any of the terms of the promissory note and this mortgage contract, the MORTGAGEE shall automatically have the absolute right without need of prior notice or demand to forthwith judicially or extrajudicially foreclose this mortgage and proceed against all or any of the mortgaged rights, interests and properties for the full satisfaction of the MORTGAGORS' entire obligation to the MORTGAGEE and, in such event, the MORTGAGORS shall be further liable to the MORTGAGEE in the same judicial or extrajudicial foreclosure proceedings for payment of attorney's fees in an amount equivalent to twenty five (25%) per cent of the unpaid indebtedness but in no case less than Five hundred pesos (500.00); liquidated damages in an amount equivalent to twenty-five (25%) percent of said outstanding obligation and all the expenses and costs incidental to the above proceeding xxx.[7] (Emphasis supplied)

The properties subject of the mortgage are itemized in an inventory attached to the deed. They include: List A -- all the merchandise and stocks in trade found in the commercial establishment owned by ASI and Melbarose at #514 M.V. delos Santos St., Sampaloc, Manila, valued at P100,000.00; List B -- all the furniture, fixtures, appliances, equipment and other personal property found in said business establishment, valued at P3,500.00; and List C -- one Toyota Corona 2DR. HT. with Motor No. 18R-1474348, valued at P40,000.00 and one Toyota

Corolla 4DR. SDN with Motor No. 4K-5872110, valued at P35,000.00.[8]

On June 24, 1991, GDC demanded that Melbarose pay the unpaid account of P179,000.00 or surrender the mortgaged chattels within five days from notice.[9]

When no payment was made, GDC filed with the RTC a Complaint[10] for Replevin and/or Sum of Money with Damages against ASI, Melbarose, Manipon, Florante Edrino and John Doe.[11] It is significant that plaintiff GDC prayed for alternative reliefs, to wit:

WHEREFORE, for all the foregoing it is most respectfully prayed of this Honorable Court that:

- A Writ of Replevin be issued ordering the seizure of the above described chattels or personal property with all the accessories or equipments and directing their transfer to Plaintiff for the purposes of foreclosure &/or transfer in accordance with the law to satisfy Defendants' obligation in favor of Plaintiff; and
- After due notice and trial:
- to enforce said seizure and Plaintiff's right over aforescribed chattels and/or personal property; and
- to order Defendants to pay Plaintiff jointly and severally the sum of P43,750.00 as and for attorney's fees and the sum equivalent to 25% of the obligation as and for liquidated damages, plus other expenses of litigation and costs of suit.

On the Alternative Cause of Action, in the event that manual delivery of said chattels or personal property cannot be obtained for some reason or another, to render judgment ordering Defendants to pay plaintiff, jointly and severally as follows:

- The sum of P175,000.00 plus interest thereon at 26.002% per annum from date of maturity until said sum shall have been fully paid.
- The sum of P43,750.00 as and for Attorney's fees, the sum equivalent to 25% of the obligation as and for liquidated damages, such other expenses of litigation and costs of suit.[12]

The RTC issued a Writ of Replevin,[13] and by virtue thereof, the Sheriff seized and delivered to GDC only one unit of Toyota Corona with Motor No. 18R-1474348 and two appliances.[14]

On December 2, 1991, GDC filed an Amended Complaint to include in its application for replevin the items under List A.[15] After admitting the Amended Complaint, the RTC issued an Alias Writ of Replevin[16] over the items in List A, and, by virtue thereof, the Sheriff seized and delivered to GDC the assorted items enumerated therein.[17]

It appears that a Second Alias Writ of Replevin[18] was issued over one unit Toyota Corolla with Motor No. 4K-5872110, but the records do not indicate that the Sheriff made a return on the writ.

Meanwhile, ASI and Melbarose filed their Answer with Counterclaim.[19] They claimed that their loan obligation to GDC was only for P200,000.00, and after deducting P18,000.00, which amount was retained by GDC as advanced interest payment, and P29,000.00, which represents payments made from June 4, 1991 to July 8, 1991, their unpaid obligation was only P171,000.00;[20] that they repeatedly tendered payment of this amount, but GDC rejected their efforts for no valid reason; that the unreasonable refusal of GDC to accept their tender of payment relieved them of their loan obligation;[21] that its Complaint being obviously without merit, GDC should be held liable to them for damages.[22]

Manipon filed a separate Answer in which she did not deny the authenticity of her signature on the Promissory Note, but argued that she did not knowingly or voluntarily sign the instrument as a co-maker, for at that time she

was under the impression that the instrument she was signing was her own loan application with GDC.[23]

In its Pre-Trial Order dated May 22, 1992, the RTC identified only these issues: (a) whether GDC was entitled to collect P175,000.00, as well as the interests, attorney's fees and other expenses and costs; (b) whether ASI and Melbarose made a valid tender of payment; (c) whether Manipon was a real party-in-interest; and (d) whether the prevailing party was entitled to damages.[24]

However, it is significant that at the trial that ensued, GDC disclosed that after it obtained possession of the properties subject of the writs of replevin, it caused the auction sale of some of them and realized proceeds amounting to P78,750.00.

While there is no certificate of sale in the records of the case, respondent's witness Leonila Buenviaje testified thus:

ATTY. MAMARIL:

x x x x

Q-

In this case, Miss witness, you were able to seize by way of a writ of replevin some properties of the defendants. What did you do with these properties?

A- It was being sold by auction sale.

Q-

Could you tell this Honorable Court if the auction sale pushed through?

A-

Yes, sir.

Q-

How much were you able to realize from the auction sale?

x x x x

A-

We had pulled amounting to P55,050.00. The Karaoke - P3,200.00; the t.v. - P500.00; and athletic uniforms amounting to P20,000.00.

Q-

So, all in all how much could that be?

x x x x

A-

More than P78,000.00. I think P78,750.00.[25]

On cross-examination, the same witness further described the auction sale:

ATTY. QUINONES:

x x x x

Q-

Are you sure that these has been sold already, Miss Buenviaje?

A-

Yes, sir.

Q-

When was it sold?

A-

I forgot the exact date.

Q-

Do you have any document that those items were already sold?

A-

We have a certificate of sale from the Sheriff.

x x x x

Q-

And the car Toyota Corona was also seized and sold?

A-

Yes, sir.

Q-

And in turn you were able to sell it to a third party?

A-

Yes, sir.

Q-

And that car was sold already in the amount of P56,000.00, is that correct?

A-

P55,000.00.[26]

Moreover, GDC presented to the RTC a Statement of Account dated August 24, 1992, which indicated that the total outstanding balance of the loan obligation of ASI and Melbarose was reduced to P191,111.82 after the proceeds of the auction sale conducted on June 19, 1992 in the amount of P78,750.00 was deducted from the earlier balance of P266,126.17.[27]

The RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is rendered in favor of the plaintiff Good Development

Corporation against defendants Melbarose Sasot, Allandale Sportsline Inc., and Ma. Theresa Manipon ordering them to pay the plaintiff jointly and severally the amount of P269,611.82 plus legal interest thereon effective to date until the full amount is fully paid, and 25% of the total amount due as liquidated damages.

SO ORDERED.[28] (Emphasis supplied)

ASI, Sasot and Manipon appealed to the CA, which rendered the Decision assailed herein, to wit:

WHEREFORE, premises considered, the instant appeal is DENIED. The assailed decision of the RTC of Pasig City, Branch 158 in Civil Case No. 61053 is hereby AFFIRMED.

SO ORDERED.[29]

Their Motion for Reconsideration was also denied by the CA.[30]

Only ASI and Sasot (petitioners) took the present recourse, raising the following issues:

- Whether or not petitioners' check payment of Php171,000.00, PCIB Check No. 851688, to cover the total balance of their loan to respondent, became a valid tender of payment by virtue of the respondent's acceptance thereof;
- Whether or not the "parol evidence rule" applies on the promissory note in question when the co-makers thereon are total strangers to one another;
- Whether or not petitioners are entitled to the return of their properties pursuant to Section 9, Rule 60 of the Rules of Court.
- Whether or not there is legal basis in the award of liquidated damages.[31]

The second issue deserves scant consideration for lack of basis. Manipon did not join in the petition. Hence, the finding of the RTC, as affirmed by the CA, that she was a co-maker of Promissory Note and a real party-in-interest is already final and conclusive. Petitioners cannot now question this finding by raising the defense that Manipon signed the promissory note without knowledge of the nature of her liability under the instrument. Such defense is personal to Manipon and cannot be invoked by petitioners, unless it is shown that their interests are so interwoven with and dependent on Manipon's as to be inseparable.[32] However, in their pleadings, petitioners do not deny the authenticity and due execution of the Promissory Note, whereas Manipon has maintained that said instrument was not duly executed; hence, their defenses are clearly separate and distinct.

Only three issues are left to be resolved.

Anent the first issue, petitioners contend that they were relieved of their obligation to pay GDC (respondent) when they made several attempts to tender payment but respondent refused to accept the[33] Respondent rejected the check, citing that the amount was insufficient for, as of July 4, 1991, the balance of the principal loan was P175,000.00, not P171,000.00; and its maturity was September 13, 1991, not October 31, 1991.[34]

On October 15, 1997, petitioners tendered payment of P171,000.00 in cash,[35] but respondent refused to accept it due to the insufficiency of the amount.[36] Instead, respondent sent petitioners a Statement of Account dated October 29, 1991, indicating that as of October 15, 1991 the total balance due was P228,071.61.[37]

On October 29, 1991, petitioners tendered cash payment of P174,986.96,[38] but respondent still refused to accept it for insufficiency of the amount.[39]

The question then is whether petitioners' tender of payment and respondent's refusal thereof discharged petitioners from their obligation.

Tender of payment, without more, produces no effect; rather, tender of payment must be followed by a valid consignation in order to produce the effect of payment and extinguish an obligation.[40]

Tender of payment is but a preparatory act to consignation. It is the manifestation by the debtor of a desire to comply with or pay an obligation. If refused without just cause, the tender of payment will discharge the debtor of the obligation to pay but only after a valid consignation of the sum due shall have been made with the proper court.[41]

Consignation is the deposit of the proper amount with a judicial authority, before whom the debtor must establish compliance with the following mandatory requirements: (1) there was a debt due; (2) the consignation of the obligation had been made because the creditor to whom tender of payment was made refused to accept it, or because he was absent or incapacitated, or because several persons claim to be entitled to receive the amount due, or because the title to the obligation has been lost; (3) previous notice of the consignation had been given to the person interested in the performance of the obligation; (4) the amount due was placed at the disposal of the court; and (5) after the consignation had been made, the person interested was notified thereof. Failure to prove any of these requirements is enough ground to render a consignation ineffective.[42]

Petitioners did not allege or prove that after their tender of payment was refused by respondents, they attempted or pursued consignation of the payment with the proper court. Their tender of payment not having been followed by a valid consignation, it produced no effect whatsoever, least of all the extinguishment of the loan obligation. Therefore, the first issue of the validity or invalidity of their tender of payment is completely moot and academic, for either way the discussion will go, it will lead to no other conclusion but that, without an accompanying valid consignation, the tender of payment did not result in the payment and extinguishment of the loan obligation. The Court cannot take cognizance of such a purely hypothetical issue.[43]

The third and fourth issues are interrelated because their resolution depends on the nature of the remedy which respondent actually adopted.

As emphasized at the outset, the reliefs respondent prayed for in its Complaint and Amended Complaint are in the alternative: delivery of the mortgaged properties preparatory to foreclosure or payment of the unpaid loan.[44]

Moreover, after respondent acquired possession of the mortgaged properties through the writs of replevin, it caused the auction sale of assorted sports outfits, one unit Sansio Karaoke, one unit Sony T.V. Set and one unit Toyota Corona, and earned proceeds amounting to P78,750.00.[45] While it appears that respondent failed to obtain the other personal properties covered by the Deed of Mortgage and the writs of replevin, there is no doubt that it had effectively elected the remedy of extra-judicial foreclosure of the mortgage security over the remedy of collection of the unpaid loan.

The RTC was aware that respondent had elected one remedy. In its Decision, it cited the fact that some of the mortgaged properties which were delivered to respondent by means of the Writs of Replevin had been sold on auction, and acknowledged that the proceeds from said auction sale should be deducted from the loan account of petitioners. The RTC noted:

The seized pieces of personal properties by virtue of the writ of replevin and alias writ of replevin were sold in an auction sale where [respondent] realized P78,750.00 from the sale.[46]

x x x x

[Respondent] realized P78,500.00[sic] from the auction sale of the seized personal property by virtue of the writ of replevin. The amount realized from the auction sale is clearly insufficient to cover the unpaid balance, interest, attorney's fees, costs of the suit and other expenses incidental to litigation. This amount was deducted

from the [petitioners'] total obligation in the amount of P269,111.82 [sic] resulting in the net total obligation of P191,111.82 as of August 24, 1992.[47] (Emphasis supplied)

Yet, it is curious that in the dispositive portion of its Decision, the RTC granted respondent the remedy of collection of sum of money. The dispositive portion of the RTC Decision is reproduced below for emphasis:

WHEREFORE, in view of the foregoing, judgment is rendered in favor of the [respondent] Good Development Corporation against [petitioners] Melbarose Sasot, Allandale Sportsline Inc., and Ma. Theresa Manipon ordering them to pay the [respondent] jointly and severally the amount of P269,611.82 [sic] plus legal interest thereon effective to date until the full amount is fully paid, and 25% of the total amount due as liquidated damages.

SO ORDERED.

Not only is there no more reference to the conduct of the auction sale of the mortgaged properties, there is also no longer any acknowledgment that the proceeds earned from the auction sale should be deducted from the total unpaid loan.

This is a glaring error.

In *Bachrach Motor Co., Inc. v. Icarangal*,^[48] the Court held that the remedies available to any mortgage creditor are alternative, not cumulative or successive,^[49] viz.:

For non-payment of a note secured by mortgage, the creditor has a single cause of action against the debtor. This single cause of action consists in the recovery of the credit with execution of the security. In other words, the creditor in his action may make two demands, the payment of the debt and the foreclosure of his mortgage. But both demands arise from the same cause, the non-payment of the debt, and for that reason, they constitute a single cause of action. Though the debt and the mortgage constitute separate agreements, the latter is subsidiary to the former, and both refer to one and the same obligation. Consequently, there exists only one cause of action for a single breach of that obligation. Plaintiff, then, by applying the rules above stated, cannot split up his single cause of action by filing a complaint for payment of the debt, and thereafter another complaint for foreclosure of the mortgage. If he does so, the filing of the first complaint will bar the subsequent complaint. By allowing the creditor to file two separate complaints simultaneously or successively, one to recover his credit and another to foreclose his mortgage, we will, in effect, be authorizing him plural redress for a single breach of contract at so much cost to the courts and with so much vexation and oppression to the debtor. (Emphasis supplied)

By causing the auction sale of the mortgaged properties, respondent effectively adopted and pursued the remedy of extra-judicial foreclosure,^[50] using the writ of replevin as a tool to get hold of the mortgaged properties.^[51] As emphasized in *Bachrach*, one effect of respondent's election of the remedy of extra-judicial foreclosure is its waiver of the remedy of collection of the unpaid loan.

Therefore, there was no more legal basis for the RTC to grant respondent the relief of collecting from petitioners "the amount of Php269,611.82 [sic] plus legal interest thereon effective to date until the full amount is fully paid," nor for the CA to affirm it.

However, another effect of its election of the remedy of extra-judicial foreclosure is that whatever deficiency remains after applying the proceeds of the auction sale to the total loan obligation may still be recovered by respondent.^[52]

But to recover any deficiency after foreclosure, the rule is that a mortgage creditor must institute an independent civil action.^[53] However, in *PCI Leasing & Finance, Inc. v. Dai*^[54] the Court held that the claim should at least be included in the pre-trial brief. In said case, the mortgage-creditor had foreclosed on the mortgaged properties

and sold the same at public auction during the trial on the action for damages with replevin. After judgment on the replevin case was rendered, the mortgage-creditor filed another case, this time for the deficiency amount. The Court dismissed the second case on the ground of *res judicata*, noting that:

Petitioner ignores the fact that it prayed in the replevin case that in the event manual delivery of the vessel could not be effected, the court "render judgment in its favor by ordering [herein respondents] to pay x x x the sum of P3,502,095.00 plus interest and penalty thereon from October 12, 1994 until fully paid as provided in the Promissory Note."

Since petitioner had extrajudicially foreclosed the chattel mortgage over the vessel even before the pre-trial of the case, it should have therein raised as issue during the pre-trial the award of a deficiency judgment. After all, the basis of its above-stated alternative prayer was the same as that of its prayer for replevin - the default of respondents in the payment of the monthly installments of their loan. But it did not. (Emphasis supplied)

The question in the present case therefore is whether respondent instituted the proper action for the deficiency amount or raised its claim at the pre-trial.

An examination of the Complaint and Amended Complaint reveals that respondent did not allege any deficiency account. Nor did it raise the matter in its Pre-Trial Brief.[55] This is only to be expected because the auction sale of the properties was apparently conducted on June 19, 1992, long after it filed its Complaint/Amended Complaint and Pre-trial Brief.

However, the Court notes that evidence on the deficiency amount was duly presented by respondent and examined by petitioners. Respondent's employee Leonila Buenviaje testified that the proceeds respondent earned from the auction sale of the mortgaged properties amounted to only P78,750.00.[56] Another employee, Grace Borja, testified that after applying the proceeds of P78,750 to the unpaid account of petitioners, there remained a deficiency of P91,111.82.[57] Documentary evidence of the deficiency amount was also presented in the form of the August 24, 1992 Statement of Account marked Exhibits "F-1" and "F-2." [58] Thus, an independent action to recover the deficiency will merely entail the presentation of the same evidence of the same claim, in the process taxing the time and resources of the parties and the courts.[59] Therefore, in the higher interest of justice and equity, the Court takes it upon itself to grant the claim of respondent to the deficiency amount of P191,111.82, as stated in its August 24, 1992 Statement of Account.

Yet another effect of the election by respondent of the remedy of extra-judicial foreclosure is the inapplicability of Section 9, Rule 60 of the Rules of Court, which states:

Section 9. Judgment. - After trial of the issues, the court shall determine who has the right of possession to and the value of the property and shall render judgment in the alternative for the delivery thereof to the party entitled to the same, or for its value in case delivery can not be made and also for such damages as either party may prove, with costs.

As already discussed, the properties of petitioners which were seized by virtue of the Writs of Replevin were extra-judicially foreclosed and sold at public auction by respondent in the exercise of its absolute right under the contract entered into by the parties, without need of prior notice or demand to forthwith judicially or extra-judicially foreclose this mortgage and proceed against all or any of the mortgaged rights, interests and properties for the full satisfaction of the mortgagors' entire obligation to the mortgagee.

Finally, under the same Deed of Mortgage, it is provided that in case of default, petitioners shall be liable for liquidated penalty/collection charge in the amount equivalent to "twenty-five (25%) percent of said outstanding obligation." It being settled that petitioners defaulted on their loan obligation to respondent, the former are liable for liquidated damages.

WHEREFORE, the Court PARTLY GRANTS the petition and MODIFIES the May 15, 2003 Decision and June 12, 2004 Resolution of the Court of Appeals (CA) in CA-G.R. CV No. 59475, as follows:

- The award in the January 13, 1998 Decision of the Regional Trial Court of Pasig City, Branch 158 in Civil Case No. 61053, in favor of respondent, in "the amount of Php269,611.82 plus legal interest thereon effective to date until the full amount is fully paid" is DELETED;
- Respondent The Golden Development Corporation is AWARDED P191,111.82 as the deficiency amount subject to legal interest effective September 12, 1997 up to the date of full payment;
- Respondent is AWARDED 25% of the deficiency amount as liquidated damages.

The claim of petitioners Allandale Sportsline, Inc. and Melbarose R. Sasot to recover properties subject of the writs of replevin is DENIED.

No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Brion[*], JJ., concur.

* Per raffle dated December 10, 2008.

[1] Penned by Associate Justice Elvi John S. Asuncion and concurred in by Associate Justices Ruben T. Reyes (now a member of the Supreme Court) and Lucas P. Bersamin; rollo, p. 29.

[2] Records, p. 578.

[3] Rollo, p. 37.

[4] Exhibit "D", Folder of Plaintiff's Exhibits.

[5] Exhibit "B", id.

[6] Exhibit "B", Folder of Plaintiff's Exhibit.

[7] Id.

[8] Exhibit "C," id.

[9] Exhibit "D," id.

[10] Records, p. 1.

[11] Defendants Endrino and John Doe were not served summons hence, they were dropped from the Complaint.

[12] Complaint, id. at 4-5.

[13] Records, p. 33.

[14] Id. at 58.

[15] Id. at 44.

[16] Id. at 104.

[17] Id. at 141.

- [18] Id. at 235.
- [19] Id. at 68.
- [20] Id. at 69-70.
- [21] Id. at 70-73.
- [22] Id. at 73.
- [23] Records, pp. 143-144.
- [24] Id. at 186.
- [25] TSN, July 16, 1992, pp. 11-12.
- [26] Id. at 18-19.
- [27] Exhibits "F" to "F-1," Folder of Plaintiff's Exhibits. See also TSN, October 15, 1992, p. 7.
- [28] Supra note 2.
- [29] Supra note 1.
- [30] Supra note 3.
- [31] Memorandum for Petitioner, rollo, p. 189l.
- [32] Ouano Arrastre Services, Inc. v. Peary Aleonar, G.R. No. 97664, October 10, 1991, 202 SCRA 618; Citytrust Banking Corporation v. Court of Appeals, G.R. No. 82009, April 10, 1989, 171 SCRA 758.
- [33] Exhibit "17," records, p. 559.
- [34] Id.
- [35] Exhibits "20" and "21," id. at 562-563.
- [36] Exhibit "28," id. at 570.
- [37] Exhibit "21," id. at 567.
- [38] Exhibit "27," id. at 569.
- [39] Exhibit "28," id. at 570.
- [40] B.E. San Diego, Inc. v. Alzul, G.R. No. 169501, June 8, 2007, 524 SCRA 402.
- [41] Benos v. Lawilao, G.R. No. 172259, December 5, 2006, 509 SCRA 549.
- [42] Pabugais v. Sahijwani, G.R. No. 156846, February 23, 2004, 423 SCRA 596.
- [43] Ticzon v. Video Post Manila, Inc., G.R. No. 136342, June 15, 2000, 333 SCRA 472.
- [44] Supra notes 12 and 15.
- [45] Supra notes 25 to 27.
- [46] RTC Decision, rollo, p. 116, citing TSN, July 16, 1992, p. 12.
- [47] RTC Decision, id. at 118, citing TSN, October 15, 1992, p. 7.

[48] 68 Phil. 287 (1939).

[49] *Chieng v. Santos*, G.R. No. 169647, August 31, 2007, 531 SCRA 730; *Suico Rattan & Buri Interiors, Inc. v. Court of Appeals*, G.R. No. 138145, June 15, 2006, 490 SCRA 560.

[50] *Magna Financial Services Group, Inc. v. Colarina*, G.R. No. 158635, December 9, 2005, 477 SCRA 245, citing *Manila Motor Co., Inc. v. Fernandez*, 99 Phil. 782 (1956).

[51] See *PCI Leasing & Finance, Inc. v. Dai*, G.R. No. 148980, September 21, 2007, 533 SCRA 611.

[52] *Superlines Transportation Company, Inc. v. ICC Leasing & Financing Corporation*, G.R. No. 150673, February 28, 2003, 398 SCRA 508; *Philippine National Bank v. Court of Appeals*, G.R. No. 121739, June 14, 1999, 308 SCRA 229; *PAMECA Wood Treatment Plant, Inc. v. Court of Appeals*, G.R. No. 106435, July 14, 1999, 310 SCRA 281; *The Bank of the Philippine Islands v. Olutanga Lumber Company*, 47 Phil. 20 (1924).

[53] *Superlines Transportation Company, Inc. v. ICC Leasing & Financing Corporation*, supra at note 52; *Bicol Savings & Loan Association v. Guinhawa*, No. L-62415, August 20, 1990, 188 SCRA 642.

[54] *PCI Leasing & Finance, Inc. v. Dai*, supra note 51.

[55] Records, p. 121.

[56] Supra notes 25 and 26.

[57] TSN, October 15, 1992, p. 7.

[58] Supra note 27.

[59] Supra note 7.

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