

PHILIPPINE BANK OF COMMUNICATIONS AND ROMEO G. DELA ROSA, PETITIONERS, VS. ELENITA B. TRAZO, RESPONDENT.

G.R. NO. 165500. August 30, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Petitioners are asking Us to reverse, in this Petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, the Decision[1] of the Court of Appeals dated 25 March 2004 and its Resolution[2] dated 23 September 2004 denying petitioners' Motion for Reconsideration.

The facts of the case are as follows:

In order to facilitate the payment of her salaries and other monetary benefits from her employer, petitioner Philippine Bank of Communications (PBCOM[3]), respondent Elenita B. Trazo opened a payroll account with China Banking Corporation (CBC) under Current Account No. 101-003921-9.

On or about 29 December 1997, petitioner Romeo G. dela Rosa, PBCOM assistant vice-president, instructed CBC to credit all accounts under its payroll with the medical and clothing subsidy for the year 1998. Accordingly, respondent Trazo's current account was credited on that date with the amount of P7,000.00 for such annual subsidy.

On 31 December 1997, respondent Trazo, then project manager of the information technology and management group, resigned from PBCOM.

Since respondent Trazo severed her employment with PBCOM effective 1 January 1998 and was, therefore, no longer entitled to the medical and clothing subsidy for the year 1998, petitioner dela Rosa wrote William Lim, CBC senior assistant vice-president, on 5 January 1997 authorizing/directing CBC/Lim to debit the sum of P7,000.00 from respondent Trazo's current account. Acting upon such authority/directive, CBC/Lim debited said amount from respondent Trazo's account on the same date.

Meanwhile, respondent Trazo drew checks against her current account in favor of Bliss Development Corporation (BDC) and the House of Sara Lee Phils., Inc. However, the checks were dishonored by CBC due to insufficiency of funds, which was occasioned by the P7,000.00 debit from her current account.

Availing that PBCOM, through dela Rosa, had no authority to unilaterally order the debiting of her current account and that CBC, through Lim, made such debit without her knowledge and consent resulting in the dishonor of her checks, respondent Trazo instituted an action for damages against PBCOM, dela Rosa, CBC, and Lim before the Regional Trial Court (RTC) of Quezon City (Branch 79).

Summons was served on CBC and Lim on 19 May 1998 and on petitioners herein, PBCOM and dela Rosa, on 27 May 1998. On 27 May 1998 and 11 June 1998, or before the expiration of the reglementary period for filing their answers, CBC and Lim, and PBCOM and dela Rosa, respectively, filed motions for 15-day extension of time.

On 8 June 1998, respondent Trazo filed a Motion to Declare Defendants China Banking Corporation and William Lim in Default and Opposition to Motion for Extension of Time to File Answer and/or Responsive Pleading. On 15 June 1998, respondent Trazo filed a Motion to Declare Defendants Philippine Bank of Communication and Romeo G. dela Rosa in Default.

On 16 June 1998, CBC and Lim filed a Motion to Dismiss the case on the ground of improper venue. On 24 June 1998, PBCOM and dela Rosa filed their own Motion to Dismiss on the ground that the complaint failed to state a cause of action.

On 7 October 1998, the lower court issued an Omnibus Order granting the motions to dismiss and declaring the motions to declare defendants in default moot and academic. The dispositive portion of the Omnibus Order is as follows:

PREMISES CONSIDERED, the case against defendants China Bank and William Lim is DISMISSED on the ground of improper venue. The case against defendants Philippine Bank of Communications and Romeo G. dela Rosa is DISMISSED for lack of cause of action.[4]

Respondent Trazo filed with the trial court a Notice of Appeal. In the assailed Decision, the Court of Appeals ruled in favor of respondent Trazo, disposing of the case in the following manner:

WHEREFORE, the omnibus order dated October 7, 1998 of the Regional Trial Court of Quezon City (Branch 79) is REVERSED and SET ASIDE and the complaint REINSTATED. Appellant is given ten (10) days from notice of finality of this decision within which to amend the complaint.[5]

Petitioners filed their Motion for Reconsideration on 14 April 2004, while CBC and Lim filed their Motion for Reconsideration on 19 April 2004. On 23 September 2004, the Court of Appeals issued the assailed Resolution wherein both motions for reconsideration were denied for lack of merit.

Hence, the instant Petition, where petitioners PBCOM and Trazo bring before us the following issues:

A.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT THE COMPLAINT STATED A CAUSE OF ACTION FOR DAMAGES AGAINST PETITIONERS ARISING OUT OF THE ALLEGED UNLAWFUL DEBITING OF RESPONDENT'S CHINABANK ACCOUNT, NOTWITHSTANDING THAT IT WAS CHINABANK WHICH DEBITED THE ACCOUNT, NOT PETITIONERS.

B.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN HOLDING THAT THE COMPLAINT PLEADED A CAUSE OF ACTION FOR ABUSE OF RIGHTS AGAINST PETITIONERS.

C.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN ORDERING THE AMENDMENT OF THE COMPLAINT DESPITE THE COMPLAINT'S ABSOLUTE FAILURE TO STATE A CAUSE OF ACTION AGAINST PETITIONERS.

D.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT THE VENUE CLAUSE IN THE APPLICATION FOR NEW CURRENT ACCOUNTS IS NOT EXCLUSIVE.[6]

Only CBC, and not petitioners PBCOM and dela Rosa, can move for dismissal on the ground of improper venue.

The Application for New Current Accounts, which embodies the terms and conditions of respondent Trazo's relationship with CBC, contains a stipulation on venue, to wit:

In case of litigation hereunder, venue shall be in the City Court or Court of First Instance of Manila as the case may be for determination of any and all questions arising thereunder.[7]

The RTC of Quezon City dismissed the complaint against CBC and Lim based on this stipulation, but the Court of Appeals reversed said dismissal. According to the Court of Appeals, absent any qualifying or restrictive words, a stipulation on venue should be considered merely as an agreement on an additional forum, and not to be considered as limiting venue to the specified place.[8]

Before proceeding any further, it bears to point out that among the multiple defendants in the case filed by respondent Trazo, only CBC and its officer Lim can assert the alleged impropriety of venue since they are privy to and covered by the contract containing the venue stipulation. Indeed, the dispositive portion of the RTC decision shows that the dismissal on the ground of improper venue was effective only as against CBC and Lim. As CBC and Lim did not appeal the decision of the Court of Appeals reversing the RTC ruling, such decision has become final and executory as regards its disposition on the issue regarding venue.

Nevertheless, We agree with the Court of Appeals that it was incorrect for the RTC to dismiss the complaint on the ground of improper venue. The parties must be able to show that the stipulation is exclusive. Thus, sans words expressing the parties' intention to restrict the filing of a suit in a particular place, courts will allow the filing of a case in any of the venues prescribed by law or stipulated by the parties, as long as the jurisdictional requirements are followed.[9] The subject clause contains no qualifying nor restrictive words, such as "must," or "exclusively," as would indicate the parties' intention "mandatorily to restrict the venue of actions to the courts of (Manila) only." [10] In the 8 December 2000 case of *Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, [11] where the venue stipulation contained the word "shall," [12] we held that the stipulations of the parties "lack qualifying or restrictive words to indicate the exclusivity of the agreed forum," [13] and therefore "the stipulated place is considered only as an additional, not a limiting venue." [14] Consequently, the dismissal by the RTC of the complaint against CBC and Lim on ground of improper venue is erroneous, and was correctly reversed by the Court of Appeals.

Respondent Trazo's complaint contains a cause of action against petitioners PBCOM and dela Rosa.

As discussed above, the RTC dismissed the complaint, insofar as it operates against CBC and Lim, on the ground of improper venue. In the same Omnibus Order, the RTC also dismissed the same complaint on the ground of failure to state a cause of action, this time, insofar as the complaint operates against petitioners PBCOM and dela Rosa. The Court of Appeals, in reversing the Order of the RTC dismissing the complaint on the ground of failure to state a cause of action, held:

Par. 13 of the complaint recites appellant's alleged cause of action against [PBCOM and dela Rosa]. It reads:

"13. Upon further personal inquiry with [PBCOM], [respondent Trazo] found out that on January 5, 1998 [petitioner] ROMEO G. DE LA ROSA, without [respondent Trazo's] knowledge, consent and approval, wrote a letter and authorized/directed x x x CHINABANK and WILLIAM LIM `to debit the account of Elenita Trazo under C/A #101-003921-9 in the amount of PESOS: SEVEN THOUSAND PESOS ONLY – P7,000.00 representing her medical and clothing subsidy for the year 1998." He even acknowledged and admitted that [respondent Trazo] resigned from PBCom effective December 31, 1997. He further stated that CHINABANK make the `Manager's check payable to Philippine Bank of Communications.' x x x."

Crucial to appellant's action against [PBCOM and dela Rosa] is the issue of whether the latter had the right to authorize/direct [CBC and Lim] to debit the amount of P7,000.00 from appellant's current account and, if so,

whether appellant was entitled to notice of such authority/directive.

In authorizing/directing [CBC and Lim] to debit appellant's current account, [PBCOM and dela Rosa] had, in effect, sought to recover, without resorting to a court action, an amount erroneously credited to her. And because appellant was not given the courtesy of a notice of such authority/directive, she was lulled into the belief that her funds at CBC were sufficient to cover the checks she was issuing.

Nevertheless, the lower court ruled that the averment in par. 13 of the complaint is insufficient to make out a cause of action against [PBCOM and dela Rosa] on the theory that the "debit (of) the amount of P7,000.00 from the account of [respondent Trazo] x x x cannot be attributed as the fault of (PBCOM) since the fiduciary relationship exists only between (CBC) and [respondent Trazo] as its depositor and the primary responsibility whether to deposit or not lies with (CBC) alone."

However, the lower court did not consider whether the act of authorizing/directing CBC/Lim to debit appellant's current account without giving notice to her constitutes a cause of action against [PBCOM and dela Rosa], for abuse of rights.

The modern tendency is to depart from the classical and traditional theory and to grant indemnity for damages in cases where there is an abuse of rights, even when the act is not illicit (*Sea Commercial Company, Inc. vs. Court of Appeals*, 319 SCRA 210). But even supposing that the asserted act of [PBCOM and dela Rosa] is insufficient to make out a case of abuse of rights, the lower court could have simply ordered appellant to amend the complaint. Thus, Sec. 1, Rule 10, in relation to Sec. 3, Rule 16, *id.*, allows amendment of pleadings before a responsive pleading is served.

Amendment of the complaint, by way of supplementing and amplifying facts as would carve out a clear abuse of rights situation, would prevent multiplicity of suits. This is so because of Our ruling that the dismissal of the complaint against [CBC and Lim] on ground of improper venue is erroneous, with the effect that the complaint against them is reinstated. However, affirmance of the dismissal of the complaint against [PBCOM and dela Rosa] anchored on failure to state a cause of action would trigger the filing of a new action against the latter, thereby spawning two suits, *i.e.*, the instant action and the new one.

Amendment, not dismissal, of the complaint is proper to avoid multiplicity of suits (*Eugenio, Sr. vs. Velez*, 185 SCRA 425). The policy in this jurisdiction is that amendment of pleadings is favored and liberally allowed in the interest of substantial justice. Amendment of the complaint may be allowed even if an order for its dismissal has been issued provided that the motion to amend is filed before the order of dismissal acquired finality (*Tirona vs. Alejo*, 367 SCRA 17). Rules of Procedure, after all, are but tools designed to facilitate the attainment of justice (*Valenzuela vs. Court of Appeals*, 363 SCRA 779).[15]

Petitioners argue that the afore-quoted paragraph 13 shows that PBCOM and dela Rosa merely requested CBC to debit the account of respondent Trazo, and that nothing in said paragraph shows that PBCOM and dela Rosa were actually responsible for the alleged unlawful debiting of respondent's account.[16]

As regards the Court of Appeals' finding that the complaint contains a cause of action against petitioners for abuse of rights,[17] petitioners claim that the elements of abuse of rights are not found in the complaint, since no bad faith was imputed to PBCOM and dela Rosa in requesting the debiting of the amount stated, and since there was no allegation showing that PBCOM and dela Rosa acted with the sole intent of prejudicing or injuring respondent in requesting the same.[18]

While we agree with petitioners that the complaint does not contain a cause of action against them for abuse of rights, their petition would, nonetheless, fail.

A cause of action is an act or omission of one party in violation of the legal right of the other.[19] A motion to dismiss based on lack of cause of action hypothetically admits the truth of the allegations in the complaint.[20]

The allegations in a complaint are sufficient to constitute a cause of action against the defendants if, hypothetically admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer therein. A cause of action exists if the following elements are present, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages.[21]

The Court of Appeals, like the RTC, seems to have acquiesced in the petitioners' statement[22] that respondent's cause of action against them is found exclusively in paragraph 13 of the complaint. An examination of the subject complaint,[23] however, reveals that it contains other provisions establishing the cause of action against petitioners PBCOM and de la Rosa, not the least of which is paragraph 23, which provides:

- In debiting the checking/current account of the plaintiff, without her knowledge, consent and approval, defendants acted in a wanton, reckless and oppressive manner. Defendants PBCOM and ROMEO G. DE LA ROSA had no cause nor reason to unilaterally order the debiting of plaintiff's account as it was her personal property and not of defendant PBCOM. Even if defendant PBCOM erroneously credited plaintiff with monetary benefits, plaintiff was to receive, as she did receive separation benefits equivalent to more than FIVE HUNDRED THOUSAND PESOS (P500,000.00) more or less, from defendant PBCOM itself. A reasonable set-off or compensation should and could have been resorted to. However, defendant PBCOM never utilized this option. Defendant PBCOM neither informed plaintiff of said transaction, much less seek her approval and authority to debit her CHINABANK account when at the time of the debiting (sic), January 5, 1998, she was no longer an employee of PBCOM. (Emphasis supplied.)[24]

As regards respondent Trazo's entitlement to damages, the complaint recites that:

In order not to jeopardize her housing loan obligations with BDC and Sara Lee, Phil., Inc., and considering the legal actions foisted against her, x x x [respondent Trazo] made immediate restitution to BDC and Sara Lee Phil., Inc. for her outstanding obligations, which included unwarranted charges and penalties which were not [respondent Trazo's] making.[25]

The Complaint also claims that the actions of defendants therein, including petitioners PBCOM and dela Rosa, caused "mental anguish, moral shock, besmirched reputation, social humiliation, serious fright and anxiety, sleepless nights and wounded feelings." [26] The same was reiterated in Annex K of said complaint, wherein respondent Trazo, through her legal representative, wrote to petitioner dela Rosa, in his capacity as Assistant Vice-President of petitioner PBCOM, stating:

On January 5, 1997, you, as AVP of PBCOM's Human Resource Management Department, authorized CHINA BANKING CORPORATION to debit our client's account under C/A # 101-003921-9 in the amount of SEVEN THOUSAND PESOS (P7,000.00), representing her medical and clothing subsidy for the year 1998, without notifying our client, much less acquiring her consent and approval. However, our client resigned from PBCOM effective July 1, 1998, during which time the same account already ceased to be a payroll account.

As a result of your action[,] our client incurred damages and injury in several personal transactions involving check payments made by her under said checking account with CHINA BANKING CORPORATION. This unfortunate incident caused her untold sufferings, not to mention lost opportunities in her profession and other businesses, besmirched reputation, sleepless nights, mental anguish and wounded feelings.[27]

Paragraph 20[28] of the complaint makes its Annex K an integral part thereof.

We find a sufficient cause of action in the above-quoted allegations. If these allegations are assumed to be true, respondent Trazo would indeed be entitled to damages, though the amount of the same would still depend on the

evidence presented during trial.

We carefully scrutinize the allegations in the Complaint. It provides that "(d)efendants PBCOM and ROMEO G. DE LA ROSA had no cause nor reason to unilaterally order the debitting (sic) of plaintiff's account as it was her personal property and not of defendant PBCOM." [29] The Complaint also described the action of all defendants, including petitioners PBCOM and dela Rosa, as unjust and illegal, [30] and done in a wanton, reckless and oppressive manner. [31] The cause of action stated in the Complaint, therefore, consists in (1) a right in favor of the plaintiff, which in this case consists of a right to her personal property; [32] (2) an obligation on the part of the named defendant to respect her right to her personal property; and (3) an act of such defendant violative of the right of the plaintiff, which in this case is the order by petitioners to CBC and Lim to debit respondent Trazo's account, an act which petitioners allege to have caused them damage.

In the case at bar, the allegations in the complaint verily show a cause of action. To sustain a motion to dismiss for lack of cause of action, the Complaint must show that the claim for relief does not exist rather than that a claim has been defectively stated or is ambiguous, indefinite or uncertain. [33]

We, however, disagree with the Court of Appeals when it decided that the allegations in the complaint show a cause of action against petitioners for abuse of rights under Article 19 [34] of the Civil Code. The elements of abuse of rights are: (1) a legal right or duty; (2) which is exercised in bad faith; and (3) for the sole intent of prejudicing or injuring another. [35] Rather, the allegations bare commission of an act contrary to law under Article 20 of the same Code, which provides:

Art. 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

Whereas Article 19 provides for a cause of action for damages in cases when there is no law violated, the act causing damage being within rights or duties of defendant, Article 20 furnishes a general sanction for violations of provisions of law which do not especially provide their own sanction. [36] The complaint clearly alleges a violation of respondent Trazo's property rights with respect to her checking account. Article 429 of the Civil Code provides that the owner or lawful possessor of the thing has the right to exclude any person from the enjoyment and disposal thereof.

Petitioners retort that the complaint did not base its claim for damages on Articles 19, 20 and 21 of the Civil Code, [37] and faults the Court of Appeals for making out "a cause of action for respondent on grounds not even alleged in the Complaint. [38] We, however, have held in *Consolidated Dairy Products, Co. v. Court of Appeals*, [39] that the applicable law to a set of facts stated in the complaint need not be set out directly. Consequently, the complaint need not state that the property right alleged to have been violated is found in Article 429 of the Civil Code, or that such violation entitled petitioner Trazo to damages pursuant to Article 20 of the same Code, which provides a cause of action therefor.

Petitioners' claim that respondent failed to specify in the complaint the standard of proper conduct and decency required of PBCOM and the basis of invoking such standard on PBCOM [40] did not improve their position any. The complaint should state only ultimate facts, not conclusions of law, nor evidentiary facts. In determining whether the allegations of a complaint are sufficient to support a cause of action, the complaint does not have to establish or allege the facts proving the existence of a cause of action at the outset; this will have to be done at the trial on the merits of the case. [41] Ultimate facts refer to the principal, determinative, constitutive facts upon the existence of which the cause of action rests. The term does not refer to details of probative matter or particulars of evidence which establish the material ingredients. [42]

In their last ditch efforts to save their cause, petitioners assert that the duty to notify respondent regarding the

debiting of her account properly belongs to CBC[43] and that, had CBC denied petitioners' "request," then there would have been no alleged debit of respondent's account.[44] Petitioners add that the mere act of "requesting" a bank to return a certain amount of money erroneously credited to one of the bank's depositors cannot be considered an act which violates the rights of said depositor.[45]

Petitioners' allegations are in the nature of defenses, and, thus, cannot be considered in determining the sufficiency of the cause of action. For the complaint to be dismissed for failure to state the cause of action, the insufficiency of the cause of action must appear on the face of the complaint.[46] If the allegations in a complaint can furnish a sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defenses that may be assessed by the defendants.[47]

WHEREFORE, the instant petition is DENIED for lack of merit. The assailed Decision and Resolution of the Court of Appeals, which reversed and set aside the Regional Trial Court of Quezon City's 7 October 1998 Omnibus Order dismissing respondent's complaint, are AFFIRMED. Costs against petitioners.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez and Callejo, Sr., JJ., concur.

[1] CA-G.R. CV No. 61726, penned by Associate Justice Edgardo P. Cruz with Associate Justices Ruben T. Reyes and Noel G. Tijam, concurring; Rollo, pp. 42-50.

[2] Id. at 52-53.

[3] Referred to as "PBCom" in some portions of the Rollo.

[4] Rollo, p. 55.

[5] Id. at 50.

[6] Id. at 353-354.

[7] Records, p. 83.

[8] Philippine Banking Corporation v. Tensuan, G.R. No. 104649, 28 February 1994, 230 SCRA 413, 420.

[9] Mangila v. Court of Appeals, 435 Phil. 870, 884 (2002).

[10] Philippine Banking Corporation v. Tensuan, G.R. No. 106920, 10 December 1993, 228 SCRA 385, 391.

[11] G.R. No. 139437, 8 December 2000, 347 SCRA 542, 555-556.

[12] Id. at 554-555: "It is hereby agreed that in case of foreclosure of this mortgage under Act 3135, as amended, and Presidential Decree No. 385, the auction sale shall be held at the capital of the province, if the property is within the territorial jurisdiction of the province concerned, or shall be held in the city, if the property is within the territorial jurisdiction of the city concerned."

[13] Id. at 555-556.

[14] Id. at 556.

[15] Rollo, pp. 48-50.

[16] Id. at 356.

[17] Id. at 49.

[18] Id. at 361.

[19] *Bachrach Corporation v. Court of Appeals*, G.R. No. 128349, 25 September 1998, 296 SCRA 487, 494.

[20] *Sta. Clara Homeowners' Association v. Spouses Gaston*, 425 Phil. 221, 227 (2002).

[21] *Del Bros Hotel Corporation v. Court of Appeals*, G.R. No. 87675, 16 June 1992, 210 SCRA 33, 41; *Development Bank of the Philippines v. Pundogar*, G.R. No. 96921, 29 January 1993, 218 SCRA 118, 143; *Dulay v. Court of Appeals*, 313 Phil. 8, 20 (1995).

[22] Rollo, p. 355: "The only allegation upon which Respondent hinges her cause of action against DELA ROSA and PBCOM is found in Paragraph 13 of her complaint, which states: x x x"

[23] Rollo, pp. 166-177.

[24] Id. at 171-172.

[25] Id. at 171.

[26] Id. at 173.

[27] Id. at 190.

[28] Paragraph 20 reads in full: "20. After several consultations with lawyers and legal consultants, including the undersigned, a demand letter was issued through Pangulayan and Associates Law Offices, to defendants CHINABANK, WILLIAM LIM, PBCOM and ROMEO G. DE LA ROSA. Copies of the demand letter together with the Registry Receipts and personal acknowledgment of receipt by the defendants are attached hereto as Annexes "I", "J" and "K" respectively and made integral parts hereof." (Rollo, p. 171.)

[29] Rollo, pp. 171-172.

[30] Id. at 172.

[31] Id. at 171.

[32] Article 429 of the Civil Code provides that "(t)he owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof."

[33] *Azur v. Provincial Board*, 136 Phil. 301, 308 (1969).

[34] Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

[35] *Sea Commercial Company, Inc. v. Court of Appeals*, 377 Phil. 221, 230 (1999); *Albenson Enterprises Corp. v. Court of Appeals*, G.R. No. 88694, 11 January 1993, 217 SCRA 16, 25.

[36] *Albenson Enterprises Corp. v. Court of Appeals*, id.

[37] Rollo, p. 360.

[38] Id.

[39] G.R. No. 100401, 24 August 1992, 212 SCRA 810, 818.

[40] Rollo, p. 14.

[41] Del Bros Hotel Corporation v. Court of Appeals, *supra* note 21.

[42] Barcelona v. Court of Appeals, G.R. No. 130087, 24 September 2003, 412 SCRA 41, 48.

[43] Rollo, p. 357.

[44] *Id.* at 359.

[45] *Id.* at 356.

[46] Consolidated Dairy Products v. Court of Appeals, *supra* note 39; Peltran Development, Inc. v. Court of Appeals, 336 Phil. 824, 833 (1997).

[47] Rava Development Corporation v. Court of Appeals, G.R. No. 96825, 3 July 1992, 211 SCRA 144, 153; Consolidated Bank & Trust Corporation v. Court of Appeals, G.R. No. 84588, 29 May 1991, 197 SCRA 663, 669.

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