

UMBRA M. TOMAWIS, PETITIONER, VS. ATTY. NORA M. TABAO-CAUDANG, RESPONDENT.*G.R. No. 166547. September 12, 2007*

Ponente: NACHURA, J.

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This is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA), dated September 8, 2004, in CA-G.R. SP No. 84424, and its Resolution[2] dated December 20, 2004. The assailed Decision annulled and set aside the Decision[3] of the Regional Trial Court (RTC) of Lanao del Sur, Branch 8, Marawi City, dated September 15, 2003 in Special Civil Action No. 820-02, as well as its Order[4] and Writ of Execution[5] dated April 23, 2004.

Factual and Procedural Antecedents

On September 1, 1987, then Office of Muslim Affairs (OMA) Executive Director Jiamil I.M. Dianalan (Dianalan) appointed[6] Atty. Nora M. Tabao-Caudang (Caudang) as Regional Director of Region XII-B, pursuant to Section 8 of Executive Order (E.O.) No. 122-A, as amended by E.O. No. 295. At that time, the OMA staff and Regional Directors were not yet classified as Career Executive Service (CES) positions. Hence, the Civil Service Commission (CSC) approved Caudang's appointment as permanent.

On February 18, 1991, the directorship positions in the OMA, including those of Regional Directors, were classified as CES positions thereby requiring CES eligibility for permanent appointments. Said reclassification was embodied in CSC Resolution No. 94-2925 and CSC Memorandum Circular No. 21, both dated May 13, 1994.

On February 4, 1993, Caudang received a notice[7] that she had been replaced by Mr. Umbra Tomawis (Tomawis), the latter having been appointed by then President Fidel V. Ramos. Aggrieved, Caudang requested a ruling from the CSC on her status (of appointment) as Regional Director. Before the CSC could resolve the matter, on April 29, 1993, Caudang filed a petition for quo warranto against Tomawis before this Court, but the same was dismissed for lack of certification of non-forum shopping and verified statement of material dates, as required by Revised Circular No. 1-88 and Circular No. 28-91.[8]

On January 4, 1994, the CSC promulgated Resolution No. 94-0014[9] declaring Caudang's appointment as permanent. She was declared as the lawful incumbent, giving her the right to recover the position through a petition for quo warranto before the appropriate court.

On the basis of the above resolution, on February 4, 1994, Caudang filed a petition for quo warranto docketed as CA-G.R. SP No. 33246. On June 30, 1994, the CA granted Caudang's petition reinstating her to the position and ordering Tomawis to vacate and relinquish the same.[10] However, on motion for reconsideration filed by the Solicitor General, the CA reversed itself in an Amended Decision[11] dated October 17, 1994, ruling that the petition should not have been entertained in the first place for being violative of the procedural rules on non-forum shopping, given the identical petition Caudang earlier filed with this Court. On appeal before this

Court via a petition for review on certiorari, we denied the petition for failure to show that a reversible error had been committed by the appellate court. The said denial had become final and executory and the same was subsequently entered in the Book of Entries of Judgments.[12]

Left with no other recourse, Caudang went to the CSC and moved for the issuance of a writ of execution of CSC Resolution No. 94-0014. In Resolution No. 966231[13] dated September 23, 1996, the CSC denied Caudang's motion. The CSC noted that Caudang's petition for quo warranto was dismissed by the CA, thus, the motion for execution must necessarily fail. The CSC likewise held that the services of Caudang were terminated by the Chief Executive prior to the filing of the petition for quo warranto, thus, preventing the Commission from an inquiry into the said separation from service effected by the President as the issue is reviewable only by the High Court.[14] The CSC later denied Caudang's motion for reconsideration.

On July 3, 1998, then OMA Executive Director Acmad Tomawis removed Tomawis from the contested position and appointed Engr. Dardagan Maruhom in his stead. Tomawis did not challenge his removal and, instead, claimed terminal pay equivalent to his earned leave credits. He was re-appointed to the same position on July 31, 2000 by then OMA Executive Director Ismael Naga, Jr. but his appointment was characterized as temporary, because he did not possess the appropriate CES eligibility.

On December 18, 2001, then OMA Executive Director Habib Mujahab A. Hashim (Hashim) issued a Memorandum[15] to Tomawis clarifying that his appointment was merely temporary and that a new appointment may be issued either in his favor or to another qualified individual. He was directed to start clearing himself of money, property and all other office accountabilities. On March 8, 2002, Hashim issued Office Order No. 0079, series of 2002[16] reinstating Caudang to the contested position. Consequently, Tomawis was directed to vacate and formally relinquish the position and turn over the office, along with its funds and properties, to Caudang.

Caudang then requested the CSC to issue an order affirming the continuity of her service from the time she was separated from service on February 8, 1993 until her reinstatement in 2002. On July 29, 2002, the CSC denied Caudang's request in Resolution No. 021000.[17] The CSC held that Caudang's request had no legal basis because CSC Resolution No. 94-0014 (which was ostensibly the basis of Hashim's Office Order) was, in effect, reversed by the Court of Appeals in its October 17, 1994 Amended Decision.[18]

Aggrieved by Hashim's order requiring him to vacate his position, Tomawis instituted an action for injunction and prohibition[19] against Caudang and Hashim before the RTC. The case was docketed as Special Civil Action No. 820-02.

Tomawis likewise filed a verified complaint against Hashim for alleged violation of the "Anti-Graft Law" for issuing Office Order No. 0079. The Presidential Anti-Graft Commission conducted a fact-finding inquiry and, acting on its recommendation, the Office of the President (OP) dismissed the complaint on the ground that the reinstatement of Caudang was just and lawful pursuant to CSC Resolution No. 94-0014.[20]

Meanwhile, on September 15, 2003, the RTC rendered a Decision in favor of Tomawis, the dispositive portion of which reads:

WHEREFORE, foregoing premises considered, the instant petition for Injunction and Prohibition is hereby granted for being highly meritorious. Respondent OMA Executive Director Hon. HABIB MUJAHAB A. HASHIM or any person acting in his behalf is hereby directed to cease, desist and refrain from enforcing office Order No. 0079, Series of 2002 dated March 8, 2002. Respondent Atty. Nora T. Caudang is likewise ordered to cease, desist and refrain from further assuming the powers and functions of OMA Regional Director, Region XII-B, Marawi City.

SO ORDERED.[21]

A copy of the decision was served on Caudang on September 24, 2003. The following day, Caudang filed a motion for reconsideration[22] which was denied[23] on December 15, 2003. However, it appears from the records that Caudang never received a copy of the December 15 Order.[24]

On December 18, 2003, Caudang filed a Manifestation[25] praying for the immediate dismissal of the case, attaching thereto a copy of the Decision of the Office of the President in OP Case No. 2-J-523 and a Certification issued by the OMA Director for Administrative Services that Caudang is the incumbent Regional Director of Region XII.[26] However, this Manifestation (which was really a motion for the dismissal of the pending case) was not set for hearing. Thereafter, the RTC issued an Order[27] dated January 7, 2004 setting aside its September 15 and December 15, decision and resolution, respectively, on the ground that the legal authority of Caudang as Regional Director was administratively upheld by the OMA and the OP.

On January 16, 2004, Tomawis filed an Urgent Ex-Parte Motion for Execution of the September 15 decision and December 15 order of the RTC averring that they had become final and executory for failure of Caudang to appeal the same within the reglementary period. Caudang, however, opposed the motion claiming that she had not been served a copy of the order denying her motion for reconsideration.

On April 23, 2004, the court granted[28] the motion and the corresponding writ of execution[29] was accordingly issued. On May 7, 2004, Caudang moved[30] to quash the writ which the court denied in an Order[31] dated May 19, 2004.

Pursuant to the above writ of execution, then Undersecretary/OMA Executive Director Datu Zamzamin L. Ampatuan issued Office Order No. 04-270[32] dated June 3, 2004 re-installing Tomawis to the contested position until the issuance of a new appointment either in his favor or to other qualified applicant.

On June 9, 2004, Caudang elevated the matter to the CA via a special civil action for certiorari and prohibition assailing the validity of the writ of execution issued by the RTC on the ground that the decision sought to be executed did not attain finality. Caudang claimed that it was the January 7[33] Order of the RTC that had, instead, become final and executory.

On September 8, 2004, the CA rendered the assailed Decision in favor of Caudang, the pertinent portion of which reads:

WHEREFORE, premises considered, the petition is GRANTED. The Decision of the Regional Trial Court, Branch 8, Marawi City in Spl. Cvl. Action No. 820-02 dated 15 September 2003, the Order dated 23 April 2004 and the Writ of Execution dated 23 April 2004 are hereby ANNULLED and SET ASIDE. Office Order No. 04-270, Series of 2004, issued by OMA Executive Director Zamzamin Ampatuan directing the re-installation of respondent Umbra Tomawis as OMA Regional Director, Region XII-B, Marawi City is hereby declared NULL and VOID. Director Ampatuan is further directed to recognize petitioner ATTY. NORA TABAO-CAUDANG as the legitimate holder/occupant of the office. Land Bank of the Philippines, Marawi Branch, through its bank officials, is directed to desist from honoring checks and withdrawals signed/issued by respondent Tomawis. Respondent Umbra Tomawis is hereby ordered to cease and desist from performing the functions of OMA Regional Director, Region XII-B, Marawi City and to surrender said office to petitioner Caudang. No pronouncement as to costs.

SO ORDERED.[34]

The appellate court held that in both procedural and substantive aspects of the case, the RTC committed grave abuse of discretion: first, the September 15 Decision of the RTC never attained finality because Caudang had not received a copy of the resolution denying her motion for reconsideration; the rule on constructive receipt of mails is not applicable because the envelope containing said resolution was marked "return to sender"; second, the

January 7 Order of the RTC is null and void for failure to comply with the procedural requirement of a valid hearing; and third, the petition for injunction commenced by Tomawis is a disguised petition for quo warranto which should never have been entertained because Tomawis had no legal standing to file the same since he held the contested position merely in a temporary capacity.

Tomawis' motion for reconsideration was denied in a Resolution[35] dated December 20, 2004. Tomawis, now the petitioner, filed the instant petition, and in his Memorandum,[36] he raises the following issues:

(1).

DID NOT THE COURT OF APPEALS COMMIT GRAVE ABUSE OF DISCRETION AND ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION WHEN IT ANNULLED AND SET ASIDE THE DECISION OF JUDGE ADIONG DATED SEPTEMBER 15, 2003.

(2).

DID NOT THE COURT OF APPEALS ERR IN RULING THAT THE PETITIONER HAD NO LEGAL RIG[H]T TO FILE SPL. CIVIL ACTION NO. 802-02.

(3).

DID NOT THE RESPONDENT COMMIT MULTIPLE FORUM SHOPPING.[37]

In his memorandum, Tomawis claims that the CA erred in reviewing the merits of the RTC decision, as it was never raised as an issue before the appellate court. He claims that the only issue elevated to the appellate court was whether or not the decision sought to be executed attained finality in order to warrant the issuance of a writ of execution.[38] Tomawis also insists that he has the legal personality to commence the injunction case being the occupant of the contested position, albeit in a temporary capacity.[39] He further avers that the CA should not have relied on the decision of the OP in OP Case No. 2-J-523 because it was in the nature of a forgotten evidence since the respondent failed to present the same in her evidence-in-chief.[40] Lastly, the petitioner argues that respondent is guilty of multiple forum shopping in litigating her claim before the CSC, the CA and this Court.[41]

The petition is without merit.

The first and second issues, being interrelated, shall be discussed together.

It must be understood that there are two RTC decisions involved in the present case, the second (January 7) entirely incompatible with the first (September 15). From the factual circumstances surrounding this case, and as correctly held by the CA, the January 7 Order is null and void because of an incurable procedural defect,[42] i.e., it was never set for hearing. Thus, the only decision material to our consideration is the September 15 Decision. Did the aforesaid decision attain finality to justify the issuance of a writ of execution? We answer in the negative.

Section 9, Rule 13 of the Rules of Court provides:

Service of judgments, final orders or resolutions. - Judgments, final orders or resolutions shall be served either personally or by registered mail. x x x.

Section 10 of the same Rule provides:

Completeness of service. - Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier.

The rule on service by registered mail contemplates two situations: (1) actual service, the completeness of which is determined upon receipt by the addressee of the registered mail; and (2) constructive service, which is deemed complete upon expiration of five (5) days from the date the addressee received the first notice from the postmaster.[43]

Thus, there is constructive service by registered mail only if there is conclusive proof that a first notice was duly sent by the postmaster to the addressee and that such first notice had been delivered to and received by the addressee. The best evidence to prove that notice was sent would be a certification from the postmaster to the effect that not only was notice issued or sent but also on how, when and to whom the delivery was made. The mailman may also testify that the notice was actually delivered.[44]

In the instant case, there was no sufficient proof that the respondent actually received a copy of the December 15 resolution. Neither was there proof that a first notice was indeed received by her. As such, the rule on constructive notice cannot apply. Accordingly, since the respondent was not served a copy of the resolution, the decision could never attain finality. Consequently, there can be no valid basis for the issuance of the writ of execution.

Before a writ of execution may issue, there must necessarily be a final judgment or order that disposes of the action or proceeding. The writ of execution is the means by which a party can enforce a final judgment or order of the court. Absent a final judgment or order, there is nothing to enforce or execute; thus, there can be no valid writ of execution.[45]

Aside from nullifying the questioned writ of execution, the CA also delved into the intrinsic validity of the September 15 decision of the RTC, and Tomawis challenges the procedural propriety of such review by the appellate court.

It is true that in her petition before the CA, Caudang merely sought the nullification of the writ of execution for having been issued with grave abuse of discretion. She did not raise as an issue the propriety of the RTC's decision granting the writ of injunction. But the procedural lapse, if any, is of no great moment.

Be it remembered that in the performance of their duties, courts should not be shackled by stringent rules which would result in manifest injustice. Rules of procedure are mere tools designed to facilitate the attainment of justice. Their strict and rigid application, if they result in technicalities that tend to frustrate rather than promote substantial justice, must be avoided. Substantive rights must not be prejudiced by a rigid and technical application of the rules. Indeed, when a case is impressed with public interest, we should relax the application of the rules.

The controversy between Tomawis and Caudang started in 1993. Several cases had been brought before both judicial and administrative tribunals, and no final resolution had been reached. In the meantime, the legitimacy of the public officer who should occupy the position of OMA Regional Director, Region XII-B, remains in question. Public service is compromised.

The RTC judge, who should have been resolute, proved to be indecisive. First, he ordered Hashim and Caudang to cease and desist from enforcing Office Order No. 0079 and from occupying the position of Regional Director, respectively; then, in his clarificatory order, he declared that his decision did not include the reinstatement of Tomawis to the position. This vacillating attitude only served to create a hiatus in public service, totally repugnant to the basic rule that title to public office should not be subjected to continued uncertainty. In addition, as observed by the CA, the RTC judge remained deafeningly silent on the alleged January 7 Order, neither confirming nor denying issuance of the same.

Moreover, the appellate court could not have simply turned a blind eye to the obvious blunder committed by the trial court in issuing the injunctive writ. To overlook such a manifest mistake would have been inconsistent with

substantial justice, and would have allowed a party to unjustly benefit from a mistake or inadvertence of the trial court. Thus, the Rules reserve to the appellate court the right, resting in public duty, to take cognizance of palpable error on the face of the record and proceedings, especially such as clearly demonstrate that the suitor has no cause of action. The rule does not intend for the (appellate) court to sift the record and deal with questions which are of small importance, but only to notice errors which are obvious upon inspection and are of a controlling character. The underlying purpose of this reservation in the rule is to prevent the miscarriage of justice resulting from oversight.

On the merit of the RTC decision, we agree with the CA that Tomawis had no clear legal right to institute his petition for injunction. Indeed, the Tomawis suit before the RTC was a thinly disguised petition for quo warranto, and not having any legal title to the position of Regional Director (his temporary appointment having been terminated), he did not possess proper personality to file the action.[46]

Even if the initiatory pleading filed by Tomawis before the RTC is truly a special civil action for injunction and prohibition, our conclusion remains - he still had no clear legal right to institute the same.

Injunction is a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act. It may be the main action or merely a provisional remedy for and as an incident in the main action.[47] As a rule, to justify the injunctive relief prayed for, the movant must show: (1) the existence of a right in esse or the existence of a right to be protected; and (2) that the act against which injunction is to be directed is a violation of such right.[48] A "clear legal right" means one clearly founded on or granted by law or is enforceable as a matter of law.[49] The onus probandi is on movant to show that there exists a right to be protected, which is directly threatened by the acts sought to be enjoined. Further, there must be a showing that the invasion of the right is material and substantial and that there is an urgent and paramount necessity for the writ to prevent a serious damage.[50]

The facts clearly show that Tomawis was appointed Regional Director. However, because he did not possess the requisite CES eligibility, pursuant to established rules and jurisprudence, his appointment was characterized merely as temporary. His appointment papers dated July 31, 2000, specifically provided that his appointment was merely temporary. As such, he had no security of tenure.[51] Upon the issuance of Office Order No. 0079 appointing Caudang to the position, Tomawis' right to the position ceased to exist. Thus, he should have vacated and relinquished the position and turned over the duties, funds and properties of the office to Caudang.

Accordingly, his petition for injunction should have been denied outright by the court. In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion.[52]

Lastly, we cannot sustain petitioner's claim that respondent is guilty of multiple forum shopping. There is forum shopping where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other.[53] True, respondent had previously instituted quo warranto proceedings involving the same contested position, and her petitions had been dismissed with finality by this Court. We, however, find that the issue in the instant case is based on a different set of facts.

This case was initiated by no less than the petitioner himself through a petition for injunction before the RTC in order to enjoin the enforcement of Office Order No. 0079 which recognized the new appointment of the respondent thereby terminating his (petitioner's) temporary appointment. The previous quo warranto actions instituted by the respondent were based on her appointment on September 1, 1987. On the other hand, the present action is based on her appointment on March 8, 2002. Although the issues in all of the cases brought to this Court involve the rightful occupant of the contested position, the fact remains that the "appointments" are distinct from one another.

In view of all the foregoing, we hereby affirm the nullity of the writ of injunction issued by the RTC for failure of the petitioner to show clear legal right to enjoin the enforcement of the office order. We likewise affirm the findings of the appellate court that the September 15 Decision of the RTC never attained finality. Consequently, the corresponding writ of execution is null and void. Office Order No. 04-270 (installing petitioner to the contested position) issued pursuant to the writ of execution is, likewise, annulled.

WHEREFORE, the petition is hereby DENIED. The September 8, 2004 Decision of the Court of Appeals and its December 20, 2004 Resolution are AFFIRMED.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., and Reyes, JJ., concur.
Quisumbing, J., on leave.

[1] Penned by Associate Justice Teresita Dy-Liacco Flores, with Associate Justices Romulo V. Borja and Rodrigo F. Lim, Jr., concurring; rollo, pp. 56-70.

[2] Rollo, pp. 72-77.

[3] Penned by Judge Santos B. Adiong, id. at 115-129.

[4] Rollo, pp. 149-150.

[5] Id. at 151.

[6] Her appointment is embodied in CSC Form No. 33, id. at 298.

[7] The notice received by Caudang reads:

Please be informed that I have appointed Mr. UMBRA M. TOMAWIS to replace you as Regional Director of the Office of Muslim Affairs for Region XII-B.

I wish to take this opportunity to extend to you my sincerest thanks and appreciation for the services you have rendered to the government in said capacity. (Id. at 78.)

[8] Rollo, p. 79.

[9] The pertinent portion of the CSC Resolution reads:

Considering that Caudang is occupying her position under permanent status as approved by the Commission, she cannot be removed therefrom except for cause and after due process. As such, she may recover the possession of the said position through a quo warranto proceeding in the appropriate court of law.

WHEREFORE, foregoing premises considered, the Commission hereby resolves to rule that Atty. Nora M. Caudang is the lawful incumbent of the position of Regional Director, Region XII-B, OMA. (Id. at 81.)

[10] The dispositive portion of the decision reads:

WHEREFORE, petition is GRANTED. Petitioner is hereby reinstated to the position of Regional Director, OMA, Region XII-B, Marawi City. Accordingly, respondent Tomawis shall vacate and relinquish the position to the petitioner who is the lawful incumbent thereto and entitled to hold said position and to discharge the functions and duties attached and appertaining to the same.

SO ORDERED. (Id. at 87.)

[11] The dispositive portion of the amended decision reads:

WHEREFORE, the motion for reconsideration filed by the Solicitor General is GRANTED and the Decision of this Court dated June 30, 1994 is RECONSIDERED and SET ASIDE. Consequently, the petition is hereby DISMISSED. Petitioner and counsel are hereby warned that a repetition of the same or similar act of forum shopping will be dealt with pursuant to paragraph 2 (b) of Revised Circular No. 28-91.

SO ORDERED. (Id. at 88-90.)

[12] Rollo, p. 91.

[13] Id. at 94-97.

[14] The dispositive portion of the CSC Resolution reads:

WHEREFORE, the Motion for the issuance of an Order of Execution filed by Atty. Nora Tabao Caudang is hereby DISMISSED. The case is deemed closed. (Id. at 97.)

[15] Rollo, p. 99.

[16] Id. at 100.

[17] Id. at 101-105.

[18] Id. at 59.

[19] Id. at 110-114.

[20] The OP further held that a perusal of the SC, CA and CSC decisions and resolutions reveals that none of them has abrogated CSC Resolution No. 94-0014.

[21] Rollo, p. 129.

[22] Id. at 130-137.

[23] Id. at 138.

[24] The Sheriff certified that said Order was served on Caudang on December 23, 2003 but the envelope containing the same was marked "Return to Sender."

[25] Rollo, pp. 139-144.

[26] Id. at 60.

[27] Id. at 145-146.

[28] Id. at 149-150.

[29] Id. at 151.

[30] Id. at 152-154.

[31] Id. at 155.

[32] Id. at 161.

[33] The January 7 Order set aside the decision sought to be executed and upheld instead the authority of Caudang to hold the contested position.

[34] Rollo, p. 69.

[35] Id. at 72-77.

[36] Id. at 398-448.

[37] Id. at 422.

[38] Id. at 424.

[39] Id. at 433.

[40] Id. at 440-441.

[41] Id. at 445.

[42] The January 7 Order set aside the September 15 Decision of the RTC on motion (manifestation) of the respondent herein. However, said motion was not set for hearing which is violative of Section 4, Rule 15 of the Rules of Court which states:

Section 4. Hearing of motion. - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant. x x x.

[43] Philemploy Services and Resources, Inc. v. Rodriguez, G.R. No. 152616, March 31, 2006, 486 SCRA 302, 321; Santos v. Court of Appeals, 356 Phil. 458, 464 (1998).

[44] Abrajano v. Court of Appeals, 397 Phil. 76, 84-85 (2000).

[45] David v. Velasco, 418 Phil. 643, 652 (2001).

[46] Tarrosa v. Singson, G.R. No. 111243, May 25, 1994, 232 SCRA 553, 557.

[47] Garayblas v. Atienza, Jr., G.R. No. 149493, June 22, 2006, 492 SCRA 202, 217.

[48] Philippine Sinter Corporation v. Cagayan Electric Power and Light Co., Inc., 431 Phil. 324, 334-335 (2002); Gustilo v. Real, Sr., 405 Phil. 435, 445 (2001).

[49] Boncodin v. National Power Corporation Employees Consolidated Union (NECU), G.R. No. 162716, September 27, 2006, 503 SCRA 611, 623.

[50] Gustilo v. Real, Sr., supra note 48.

[51] Erasmo v. Home Insurance and Guaranty Corporation, 436 Phil 689, 695 (2002).

[52] Almeida v. Court of Appeals, G.R. No. 159124, January 17, 2005, 448 SCRA 681, 695.

[53] First Philippine International Bank v. Court of Appeals, 322 Phil. 280, 306 (1996).

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