

SEMIRARA COAL CORPORATION (NOW SEMIRARA MINING CORPORATION), PETITIONER, VS. HGL DEVELOPMENT CORPORATION AND HON. ANTONIO BANTOLO, PRESIDING JUDGE, BRANCH 13, REGIONAL TRIAL COU...

G.R. NO. 166854. December 06, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for review on certiorari assailing the Decision[1] dated January 31, 2005, of the Court of Appeals in CA G.R. CEB SP No. 00035 which affirmed the Resolution[2] dated September 16, 2004 of the Regional Trial Court of Culasi, Antique, Branch 13.

The facts are as follows:

Petitioner Semirara Mining Corporation is a grantee by the Department of Energy (DOE) of a Coal Operating Contract under Presidential Decree No. 972[3] over the entire Island of Semirara, Antique, which contains an area of 5,500 hectares more or less. [4]

Private respondent HGL Development Corporation is a grantee of Forest Land Grazing Lease Agreement (FLGLA) No. 184 by the then Ministry of Environment and Natural Resources,[5] over 367 hectares of land located at the barrios of Bobog and Pontod, Semirara, Caluya, Antique. The FLGLA No. 184 was issued on September 28, 1984[6] for a term of 25 years, to end on December 31, 2009. Since its grant, HGL has been grazing cattle on the subject property.

Sometime in 1999, petitioner's representatives approached HGL and requested for permission to allow petitioner's trucks and other equipment to pass through the property covered by the FLGLA. HGL granted the request on condition that petitioner's use would not violate the FLGLA in any way. Subsequently, however, petitioner erected several buildings for petitioner's administrative offices and employees' residences without HGL's permission. Petitioner also conducted blasting and excavation; constructed an access road to petitioner's minesite in the Panaan Coal Reserve, Semirara; and maintained a stockyard for the coal it extracted from its mines. Thus, the land which had been used for cattle grazing was greatly damaged, causing the decimation of HGL's cattle.

On September 22, 1999, HGL wrote petitioner demanding full disclosure of petitioner's activities on the subject land as well as prohibiting petitioner from constructing any improvements without HGL's permission. Petitioner ignored the demand and continued with its activities.

On December 6, 2000, the Department of Environment and Natural Resources (DENR) unilaterally cancelled FLGLA No. 184 and ordered HGL to vacate the premises. The DENR found that HGL failed to pay the annual rental and surcharges from 1986 to 1999 and to submit the required Grazing Reports from 1985 to 1999 or pay the corresponding penalty for non-submission thereof.[7]

HGL contested the findings and filed a letter of reconsideration on January 12, 2001, which was denied by DENR Secretary Heherson Alvarez in a letter-order dated December 9, 2002. The DENR stated that it had coordinated with the DOE, which had jurisdiction over coal or coal deposits and coal-bearing lands, and was informed that coal deposits were very likely to exist in Sitios Bobog and Pontod. Hence, unless it could be proved that coal deposits were not present, HGL's request had to be denied.[8]

HGL sent a letter dated March 6, 2003 to DENR Secretary Alvarez seeking reconsideration. The DENR did not act on the letter and HGL later withdrew this second letter of reconsideration in its letter of August 4, 2003.

On November 17, 2003, HGL filed a complaint against the DENR for specific performance and damages with prayer for a temporary restraining order and/or writ of preliminary injunction, docketed as Civil Case No. 20675 (2003) with the Regional Trial Court of Caloocan City. A writ of preliminary injunction was issued by the Caloocan City RTC on December 22, 2003, enjoining the DENR from enforcing its December 6, 2000 Order of Cancellation.

Meanwhile, HGL had also filed on November 17, 2003, a complaint against petitioner for Recovery of Possession and Damages with Prayer for TRO and/or Writ of Preliminary Mandatory Injunction, docketed as Civil Case No. C-146 with the Regional Trial Court of Culasi, Antique, Branch 13.[9]

On December 1, 2003, the Antique trial court heard the application for Writ of Preliminary Mandatory Injunction in Civil Case No. C-146. Only HGL presented its evidence. Reception for petitioner's evidence was set to March 23-24, 2004. Petitioner was notified. But, on March 19, 2004, petitioner's President wrote the court asking for postponement since its counsel had suddenly resigned. The trial court refused to take cognizance of the letter and treated it as a mere scrap of paper since it failed to comply with the requisites for the filing of motions and since it was not shown that petitioner's President was authorized to represent petitioner. Because of petitioner's failure to attend the two scheduled hearings, the trial court, in an Order dated March 24, 2004, deemed the application for issuance of a Writ of Preliminary Mandatory Injunction submitted for decision. Meanwhile, petitioner had filed its Answer dated February 26, 2004, raising among others the affirmative defense that HGL no longer had any right to possess the subject property since its FLGLA has already been cancelled and said cancellation had already become final.

On April 14, 2004, petitioner filed a verified Omnibus Motion praying that the trial court reconsider its Order of March 24, 2004, since petitioner's failure to attend the hearing was due to an accident. Petitioner also prayed that the trial court admit as part of petitioner's evidence in opposition to the application for injunction, certified copies of the DENR Order of Cancellation dated December 6, 2000; HGL's letter of reconsideration dated January 12, 2001; letter of DENR Secretary Alvarez dated December 9, 2002 denying reconsideration of the order; and registry return receipt showing HGL's receipt of the denial of reconsideration. In the alternative, petitioner prayed that the case be set for preliminary hearing on its affirmative defense of lack of cause of action and forum-shopping.[10] Public respondent denied the Omnibus Motion in a Resolution dated June 21, 2004.

Petitioner filed a motion for reconsideration of the said resolution. Upon HGL's opposition, the motion was declared submitted for resolution in accordance with the trial court's Order of August 5, 2004.[11]

On September 16, 2004, the trial court granted the prayer for issuance of a Writ of Preliminary Mandatory Injunction.[12] Petitioner did not move for reconsideration of the order. The Writ of Preliminary Mandatory Injunction was accordingly issued by the trial court on October 6, 2004.[13] The writ restrained petitioner or its agents from encroaching on the subject land or conducting any activities in it, and commanded petitioner to restore possession of the subject land to HGL or its agents.

Petitioner questioned the Resolution dated September 16, 2004, and the Writ of Preliminary Mandatory Injunction dated October 6, 2004 before the Court of Appeals in a petition for certiorari, raising eight issues. On January 31, 2005, however, the appellate court dismissed the petition. The Court of Appeals in its decision by Justice Magpale ruled on the issues posed before the appellate court:

- PRIVATE RESPONDENT HAS NO LEGAL RIGHT OR CAUSE OF ACTION UNDER THE PRINCIPAL ACTION OR COMPLAINT, MUCH LESS, TO THE ANCILLARY REMEDY OF INJUNCTION;
- PRIVATE RESPONDENT DID NOT COME TO COURT WITH "CLEAN HANDS";
- RESPONDENT JUDGE UNJUSTIFIABLY AND ARBITRARILY DEPRIVED PETITIONER OF ITS FUNDAMENTAL RIGHT TO DUE PROCESS BY NOT GIVING IT AN OPPORTUNITY TO PRESENT EVIDENCE IN OPPOSITION TO THE MANDATORY INJUNCTION;
- RESPONDENT JUDGE IMMEDIATELY GRANTED THE APPLICATION FOR THE ISSUANCE OF A WRIT OF MANDATORY INJUNCTION WITHOUT FIRST RESOLVING THE PENDING MOTION FOR RECONSIDERATION DATED JULY 12, 2004 OF PETITIONER;
- RESPONDENT JUDGE DID NOT CONSIDER OR ADMIT THE CERTIFIED TRUE COPIES OF THE OFFICIAL RECORDS OF THE DENR CANCELLING PRIVATE RESPONDENT'S FLGLA AS EVIDENCE AGAINST THE MANDATORY INJUNCTION PRAYED FOR;
- RESPONDENT JUDGE SHOULD HAVE GRANTED PETITIONER'S MOTION FOR PRELIMINARY HEARING ON ITS AFFIRMATIVE DEFENSE THAT PRIVATE RESPONDENT UNDER ITS COMPLAINT HAS NO CAUSE OF ACTION AGAINST PETITIONER;
- RESPONDENT JUDGE SHOULD HAVE DISMISSED THE COMPLAINT OUTRIGHT FOR VIOLATION OF THE RULES ON FORUM SHOPPING BY PRIVATE RESPONDENT;
- THE MANDATORY INJUNCTION ISSUED IN THE INSTANT CASE IS VIOLATIVE OF THE PROVISIONS OF PRESIDENTIAL DECREE 605.[14]

The Court of Appeals in the assailed Decision dated January 31, 2005, opined and ruled as follows (which we quote verbatim):

Anent the first issue, WE rule against the petitioner.

Perusal of the allegations in the Complaint filed by the private respondent with the court a quo show that its cause of action is mainly anchored on the Forest Land Grazing Lease Agreement ("FLGLA") executed by and between said private respondent and the Department of Environment and Natural Resources (DENR) which became effective on August 28, 1984 and to expire on December 31, 2009.

Under the said lease agreement, the private respondent was granted permission to use and possess the subject land comprising of 367-hectares located at the barrios of Bobog and Pontod, Semirara Island, Antique for cattle-grazing purposes.

However, petitioner avers that the "FLGLA" on which private respondent's cause of action is based was already cancelled by the DENR by virtue of its Orders dated December 6, 2000 and December 9, 2002.

While it is true that the DENR issued the said Orders cancelling the "FLGLA", the same is not yet FINAL since it is presently the subject of Civil Case No. 20675 pending in the Regional Trial Court (RTC) of Caloocan City. Thus, for all intents and purposes, the "FLGLA" is still subsisting.

The construction of numerous buildings and the blasting activities thereon by the petitioner undertaken without the consent of the private respondent blatantly violates the rights of the latter because it reduced the area being

used for cattle-grazing pursuant to the "FLGLA".

From the foregoing it is clear that the three (3) indispensable requisites of a cause of action, to wit: (a) the right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (b) an obligation on the part of the named defendant to respect or not to violate such right; (c) an act or omission on the part of such defendant is violative of the right of plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages, are PRESENT.

Hence, having established that private respondent herein has a cause of action under the principal action in Civil Case No. C-146, necessarily it also has a cause of action under the ancillary remedy of injunction.

Anent the third issue, WE rule against the petitioner.

This Court finds that the petitioner was not deprived of due process.

It appears from the records of the instant case that the petitioner was given two (2) settings for the reception of its evidence in support of its opposition to the prayer of herein private respondent for the issuance of a writ of preliminary mandatory injunction. Unfortunately, on both occasions, petitioner did not present its evidence.

Petitioner claims that its failure to attend the hearings for the reception of its evidence was excusable due to the sudden resignation of its lawyer and as such, nobody can attend the hearings of the case.

WE are not persuaded.

Scrutiny of the pleadings submitted by both parties shows that petitioner's lawyer, Atty. Mary Catherine P. Hilario, affiliates herself with the law firm of BERNAS SAN JUAN & ASSOCIATE LAW OFFICES with address at 2nd Floor, DMCI Plaza 2281 Pasong Tamo Extension, Makati City, by signing on and in behalf of the said law office. This Court takes judicial notice of the fact that law offices employ more than one (1) associate attorney aside from the name partners. As such, it can easily assign the instant case to its other lawyers who are more than capable to prepare the necessary "motion for postponement" or personally appear to the court a quo to explain the situation.

Even assuming arguendo that Atty. Hilario is the only one who is knowledgeable of the facts of the case, still, petitioners cannot claim that there was violation of due process because the "ESSENCE of due process is reasonable opportunity to be heard x x x. What the law proscribed is lack of opportunity to be heard." In the case at bar, petitioner was given two (2) settings to present its evidence but it opted not to.

Lastly, a prayer for the issuance of a writ of preliminary mandatory injunction demands urgent attention from the court and as such, delay/s is/are frowned upon due to the irreparable damage/s that can be sustained by the movant.

Anent the fourth issue, WE rule against the petitioner.

Petitioner claims that the court a quo gravely erred when it issued the writ of preliminary injunction without first resolving its Motion for Reconsideration dated July 12, 2004.

WE rule that the public respondent cannot be faulted for not resolving the Motion for Reconsideration dated July 12, 2004 because the same partakes of the nature of a second motion for reconsideration of the Order dated March 24, 2004.

Records readily disclose that a prior motion for reconsideration was filed by the petitioner herein assailing the Order dated March 24, 2004. Although captioned as "Omnibus Motion" the same was really a motion for reconsideration. Said "Omnibus Motion" was resolved by the court a quo in its Order dated June 21, 2004.

Hence, the public respondent is no longer duty bound to resolve the subsequent, reiterative and second motion for reconsideration.

Anent the fifth issue, WE rule against the petitioner.

The court a quo was correct in disregarding the documentary evidence submitted by the petitioner in support of its opposition to the prayer for the issuance of a writ of preliminary mandatory injunction.

The documentary evidence submitted by the petitioner herein with the court a quo were merely attached to an "Omnibus Motion" and was not properly identified, marked and formally offered as evidence which is a blatant disregard and violation of the Rules on Evidence.

Considering the above discussions, this Court finds that the public respondent did not abuse his discretion in issuing the assailed resolution.

Anent the eighth issue, WE likewise rule against the petitioner.

Presidential Decree (PD) 605 is the law "Banning the Issuance by Courts of Preliminary Injunctions in Cases Involving Concessions, Licenses, and Other Permits Issued by Public Administrative Officials or Bodies for the Exploitation of Natural Resources."

Section 1 thereof provides that "No court of the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction or preliminary mandatory injunction in any case involving or growing out of the issuance, suspension, revocation, approval or disapproval of any concession, license, permit, patent or public grant of any kind for the disposition, exploitation, utilization, exploration and development of the natural resources of the country."

The instant case is not within the purview of the above-cited law because the issue/s raised herein does not involve or arise out of petitioner's coal operation contract.

The case filed with the court a quo is principally based on the alleged encroachment by the petitioner of the subject land over which private respondent claims it has authority to occupy or possess until December 31, 2009 pursuant to FLGLA No. 184.

As such, the preliminary mandatory injunction issued by the court a quo did not in any way affect the efficacy of the petitioner's coal concession or license.

WHEREFORE, the instant petition for certiorari is DENIED and consequently, the assailed Resolution is hereby AFFIRMED.

SO ORDERED.[15]

Hence, this instant petition. On February 23, 2005, this Court issued a TRO enjoining the implementation and enforcement of the Court of Appeals Decision dated January 31, 2005.[16]

Petitioner submits in the petition now the following grounds:

I

THE RESOLUTION DATED 16 SEPTEMBER 2004 AND THE WRIT OF PRELIMINARY MANDATORY INJUNCTION DATED 6 OCTOBER 2004 ISSUED BY PUBLIC RESPONDENT ARE A PATENT NULLITY AS PRIVATE RESPONDENT CLEARLY HAS NO LEGAL RIGHT OR CAUSE OF ACTION UNDER ITS PRINCIPAL ACTION OR COMPLAINT, MUCH LESS, TO THE ANCILLARY REMEDY OF PRELIMINARY MANDATORY INJUNCTION;

II

A WRIT OF PRELIMINARY MANDATORY INJUNCTION CANNOT BE USED TO TAKE PROPERTY OUT OF THE POSSESSION OF ONE PARTY AND PLACE IT INTO THAT OF ANOTHER WHO HAS

NO CLEAR LEGAL RIGHT THERETO;

III

PRIVATE RESPONDENT'S COMPLAINT IN CIVIL CASE NO. C-146 IS IN THE NATURE OF AN ACCION PUBLICIANA, NOT FORCIBLE ENTRY; HENCE, A WRIT OF PRELIMINARY MANDATORY INJUNCTION IS NOT A PROPER REMEDY;

IV

PETITIONER WAS UNJUSTIFIABLY AND ARBITRARILY DEPRIVED OF ITS FUNDAMENTAL RIGHT TO DUE PROCESS WHEN IT WAS DENIED THE RIGHT TO PRESENT EVIDENCE IN OPPOSITION TO THE APPLICATION FOR PRELIMINARY MANDATORY INJUNCTION;

V

THE PUBLIC RESPONDENT DELIBERATELY WITHHELD THE RESOLUTION OF PETITIONER'S MOTION FOR RECONSIDERATION DATED 12 JULY 2004 AND PROCEEDED TO PREMATURELY ISSUE THE PRELIMINARY MANDATORY INJUNCTION IN VIOLATION OF PETITIONER'S RIGHT TO FAIR PLAY AND JUSTICE;

VI

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION WHEN:

- 1) HE REFUSED OR FAILED TO ADMIT AND/OR CONSIDER THE CERTIFIED DENR RECORDS OF THE DENR ORDER CANCELLING PRIVATE RESPONDENT'S FLGLA;
- 2) HE REFUSED OR FAILED TO CONDUCT A HEARING ON THESE CERTIFIED PUBLIC DOCUMENTS WHICH CONCLUSIVELY PROVE PRIVATE RESPONDENT'S LACK OF CAUSE OF ACTION UNDER THE PRINCIPAL ACTION; AND
- 3) HE REFUSED OR FAILED TO DISMISS THE COMPLAINT OUTRIGHT FOR VIOLATING THE RULES ON FORUM SHOPPING BY PRIVATE RESPONDENT.[17]

Before this Court decides the substantive issues raised herein, certain procedural issues that were raised by the parties must first be addressed.

Petitioner contends that it was improper for the Regional Trial Court of Antique to issue the writ of preliminary mandatory injunction (and for the Court of Appeals to affirm the same) without giving it an opportunity to present evidence and without first resolving the Motion for Reconsideration dated July 12, 2004. But as borne by the records of the case, it is evident that petitioner had the opportunity to present evidence in its favor during the hearing for the application of the writ of preliminary mandatory injunction before the lower court. However, petitioner's failure to present its evidence was brought by its own failure to appear on the hearing dates scheduled by the trial court. Thus, petitioner cannot complain of denial of due process when it was its own doing that prevented it from presenting its evidence in opposition to the application for a writ of preliminary mandatory injunction. It must be pointed out that the trial court correctly refused to take cognizance of the letter of petitioner's President which prayed for the postponement of the scheduled hearings. Said letter was not a proper motion that must be filed before the lower court for the stated purpose by its counsel of record. Moreover, there was absolutely no proof given that the sender of the letter was the duly authorized representative of petitioner.

Second, the filing of the motion for reconsideration dated July 12, 2004, which essentially reproduced the arguments contained in the previously filed and denied Omnibus Motion dated April 14, 2004, renders the said motion for reconsideration dated July 12, 2004, a mere pro forma motion. Moreover, the motion for

reconsideration dated June 12, 2004, being a second motion for reconsideration, the trial court correctly denied it for being a prohibited motion.[18]

Third, it must be stated that the petition for certiorari before the Court of Appeals should not have prospered because petitioner failed to file a motion for reconsideration from the assailed resolution of the Regional Trial Court of Antique, granting the writ of preliminary mandatory injunction. Well settled is the rule that before a party may resort to the extraordinary writ of certiorari, it must be shown that there is no other plain, speedy and adequate remedy in the ordinary course of law. Thus, it has been held by this Court that a motion for reconsideration is a condition sine qua non for the grant of the extraordinary writ of certiorari.[19] Here, a motion for reconsideration was an available plain, speedy and adequate remedy in the ordinary course of law, designed to give the trial court the opportunity to correct itself.

Now on the merits of the instant petition.

The pivotal issue confronting this Court is whether the Court of Appeals seriously erred or committed grave abuse of discretion in affirming the September 16, 2004 Resolution of the Regional Trial Court of Antique granting the writ of preliminary mandatory injunction.

Under Article 539 of the New Civil Code, a lawful possessor is entitled to be respected in his possession and any disturbance of possession is a ground for the issuance of a writ of preliminary mandatory injunction to restore the possession.[20] Thus, petitioner's claim that the issuance of a writ of preliminary mandatory injunction is improper because the instant case is allegedly one for accion publiciana deserves no consideration. This Court has already ruled in *Torre, et al. v. Hon. J. Querubin, et al.*[21] that prior to the promulgation of the New Civil Code, it was deemed improper to issue a writ of preliminary injunction where the party to be enjoined had already taken complete material possession of the property involved. However, with the enactment of Article 539, the plaintiff is now allowed to avail of a writ of preliminary mandatory injunction to restore him in his possession during the pendency of his action to recover possession.[22]

It is likewise established that a writ of mandatory injunction is granted upon a showing that (a) the invasion of the right is material and substantial; (b) the right of complainant is clear and unmistakable; and (c) there is an urgent and permanent necessity for the writ to prevent serious damage.[23]

In the instant case, it is clear that as holder of a pasture lease agreement under FLGLA No. 184, HGL has a clear and unmistakable right to the possession of the subject property. Recall that under the FLGLA, HGL has the right to the lawful possession of the subject property for a period of 25 years or until 2009. As lawful possessor, HGL is therefore entitled to protection of its possession of the subject property and any disturbance of its possession is a valid ground for the issuance of a writ of preliminary mandatory injunction in its favor. The right of HGL to the possession of the property is confirmed by petitioner itself when it sought permission from HGL to use the subject property in 1999. In contrast to HGL's clear legal right to use and possess the subject property, petitioner's possession was merely by tolerance of HGL and only because HGL permitted petitioner to use a portion of the subject property so that the latter could gain easier access to its mining area in the Panaan Coal Reserve.

The urgency and necessity for the issuance of a writ of mandatory injunction also cannot be denied, considering that HGL stands to suffer material and substantial injury as a result of petitioner's continuous intrusion into the subject property. Petitioner's continued occupation of the property not only results in the deprivation of HGL of the use and possession of the subject property but likewise affects HGL's business operations. It must be noted that petitioner occupied the property and prevented HGL from conducting its business way back in 1999 when HGL still had the right to the use and possession of the property for another 10 years or until 2009. At the very least, the failure of HGL to operate its cattle-grazing business is perceived as an inability by HGL to comply with

the demands of its customers and sows doubts in HGL's capacity to continue doing business. This damage to HGL's business standing is irreparable injury because no fair and reasonable redress can be had by HGL insofar as the damage to its goodwill and business reputation is concerned.

Petitioner posits that FLGLA No. 184 had already been cancelled by the DENR in its order dated December 6, 2000. But as rightly held by the Court of Appeals, the alleged cancellation of FLGLA No. 184 through a unilateral act of the DENR does not automatically render the FLGLA invalid since the unilateral cancellation is subject of a separate case which is still pending before the Regional Trial Court of Caloocan City. Notably, said court has issued a writ of preliminary injunction enjoining the DENR from enforcing its order of cancellation of FLGLA No. 184.

The Court of Appeals found that the construction of numerous buildings and blasting activities by petitioner were done without the consent of HGL, but in blatant violation of its rights as the lessee of the subject property. It was likewise found that these unauthorized activities effectively deprived HGL of its right to use the subject property for cattle-grazing pursuant to the FLGLA. It cannot be denied that the continuance of petitioner's possession during the pendency of the case for recovery of possession will not only be unfair but will undeniably work injustice to HGL. It would also cause continuing damage and material injury to HGL. Thus, the Court of Appeals correctly upheld the issuance of the writ of preliminary mandatory injunction in favor of HGL.

WHEREFORE, the instant petition is DENIED. The Decision dated January 31, 2005, of the Court of Appeals in CA G.R. CEB SP No. 00035, which affirmed the Resolution dated September 16, 2004 of the Regional Trial Court of Culasi, Antique, Branch 13, as well as the Writ of Preliminary Mandatory Injunction dated October 6, 2004 issued pursuant to said Resolution, is AFFIRMED. The temporary restraining order issued by this Court is hereby lifted. No pronouncement as to costs.

SO ORDERED.

Carpio, Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 55-64.

[2] Id. at 208-218.

[3] Promulgating an Act to Promote an Accelerated Exploration, Development, Exploitation, Production and Utilization of Coal.

[4] Rollo, p. 700.

[5] CA rollo, pp. 66-70. Now Department of Environment and Natural Resources.

[6] Also dated as "August 28, 1984" and "September 21, 1984" in other parts of the records.

[7] Rollo, p. 90.

[8] Id. at 95, 702-703.

[9] Id. at 98-112.

[10] Id. at 149-161.

[11] Id. at 207.

[12] Id. at 208-217.

[13] Id. at 220.

[14] CA rollo, pp. 10-11.

[15] Rollo, pp. 60-64.

[16] Id. at 511-513.

[17] Id. at 854-855.

[18] RULES OF COURT, Rule 37, Sec. 5.

[19] *Conti v. Court of Appeals*, G.R. No. 134441, May 19, 1999, 307 SCRA 486, 495.

[20] *Torre, et al. v. Hon. J. Querubin, et al.*, 101 Phil. 53, 56 (1957).

[21] Id.

[22] See also *Mara, Inc. v. Estrella*, No. L-40511, July 25, 1975, 65 SCRA 471, 476.

[23] *Pelejo v. Court of Appeals*, No. L-60800, October 18, 1982, 117 SCRA 665, 668.

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