

**CITY OF CEBU, PETITIONER, VS. VICENTE B. DEL ROSARIO,
REPRESENTED BY HIS ATTORNEY-IN-FACT PANTALEON U. DEL
ROSARIO, RESPONDENT.**

G.R. NO. 169341. November 22, 2006

Ponente: CALLEJO, SR.,J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-169341/>

CALLEJO, SR.,J.:

This is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. Ceb-SP No. 00090 and its Resolution[2] denying the motion for reconsideration of the said decision.

The Antecedents

Teresita Reyes-de Leon and her uncle, Vicente S. del Rosario, were co-owners of 17 parcels of land with a total area of 21,000 square meters located in Mambaling, Basak-Sur, Cebu City. Among the properties were Lots 3113, 3114, 3147, 3148, and 8401, 8403, 8494 and 8405, collectively known as the "Asinan Fishpond," later renamed "Alumnus." On December 13, 1983, Teresita de Leon executed a Contract of Sale in favor of her uncle's eldest son, Pantaleon U. del Rosario, covering her share, rights and interests over the property consisting of "salt beds, fishponds, coconuts and other improvements thereon, and the other properties she inherited from the estate of Ceferina Flores Vda. del Rosario." The purchase price of P250,000.00 was payable via downpayment of P50,000.00 and monthly installments of P50,000.00.[3]

On August 24, 1984, Vicente S. del Rosario and Pantaleon U. Del Rosario executed a Contract to Buy and Sell covering the Asinan Fishpond in favor of the City of Cebu, through then Mayor Ronald R. Duterte. The contract price was P113.00 per square meter, or a total of P2,156,040.00. The lots were to be used for the construction of a modern abattoir to replace the already dilapidated and almost unsanitary one.[4] The parties agreed that the contract shall become effective upon the approval by the President of the Philippines, Commission on Audit (COA), and Ministry of Finance, and that the purchase price would be deposited in an escrow account in a bank authorized by the city, to be payable to the vendors after the titles to the properties shall have been transferred in the buyer's name pursuant to COA regulations.

On January 20, 1985, Teresita de Leon executed a Deed of Absolute Sale covering her rights, shares and interests over the 17 parcels of land, including those she inherited from Ceferina Vda. del Rosario, in favor of her nephew Vicente B. del Rosario, son of Pantaleon, as vendee, also for P250,000.00, receipt of which was duly acknowledged.[5] Vicente S. Del Rosario wrote his son a letter dated August 25, 1985, which reads:

Capt. Pantaleon U. del Rosario Metro Cebu Abattoir and Meat Processing Services City of Cebu

Sir:

When we jointly signed the contract to Buy and Sell a portion of the Asinan Property to the City of Cebu, it was agreed that you will comply with the following conditions, to wit:

- THAT the areas sold to the City of Cebu for its abattoir project, the subject of the above contract, will be entirely taken from the share of Teresita R. Reyes de Leon bought by your son Vicente B. del Rosario per Deed of Absolute Sale dated January 20, 1985, entered as Doc. 490, page 98, Book 52, series of 1985 of the Notarial Registry of Notary Public Carlito P. Valente;
- THAT all proceeds in connection with the sale of the above-mentioned properties shall accrue in your favor only;
- THAT you will pay me for the cost of the house and bodega which will be demolished when the abattoir building will be constructed;
- THAT modern sanitation and pollution controls be implemented in accordance with the standards acceptable to the National Pollution Control Commission;
- THAT the City of Cebu will provide a ten (10)-meter road right of way for passage to our property at their expense.

THESE FOREGOING CONDITIONS were mutually agreed upon precedent to our signing of the above-stated contract, so please sign your conformity in the space provided for to make this agreement final, executory and effective immediately.

Truly yours,

(Signature)

VICENTE S. DEL ROSARIO

(Signature)

PANTALEON U. DEL ROSARIO

Conforme[6]

The Contract to Buy and Sell was approved by the President on January 7, 1986. Thereafter, respondent and his father Pantaleon executed an Agreement which, in part, reads:

NOW, THEREFORE, the City of Cebu represented by the City Mayor, Ronald R. Duterte, through the Office of the City Treasurer, hereby deposits in escrow with the Philippine National Bank, Cebu Branch the total amount of P2,156,040.00 and the Vendors pursuant to their obligations under the contract hereby allows the peaceful and uninterrupted possession by the Vendee of the aforementioned parcels of land which shall take effect on January 7, 1986, subject to the following conditions:

- The vendors Vicente S. del Rosario and Pantaleon U. del Rosario may not withdraw any amount from said deposit in escrow until they shall have delivered to the Vendee City of Cebu all the clean titles to the aforementioned eight parcels of land, however, if the titles are not issued at one and the same time, the Vendee may allow the Vendors to partially collect for every title or titles they could deliver to the City of Cebu.
- The City of Cebu shall immediately facilitate the release of the sum deposited as soon as the clean title or titles shall have been delivered to the City of Cebu.
- That in spite of the delay in the delivery of the clean titles and therefore the vendors cannot withdraw the amount deposited, the Vendee City of Cebu shall have the absolute right of possession of the aforementioned parcels of land and the Vendors undertake not to disturb said possession and that as agreed upon in the Contract to Buy and Sell the Vendors shall cause the immediate clearing of the properties from any and all obstructing improvements and the filling up of the existing fishponds.[7]

As agreed upon, the City of Cebu deposited in escrow the purchase price with the Philippine National Bank, Cebu

City Branch. The City also engaged the services of the H. Franco Construction Company for the construction of the abattoir. The contractor commenced the work and as of early 1986 had completed 40% of the work.

Meanwhile, respondent was able to have two lots titled to the City under TCT Nos. 55557 and 40590. On February 10, 1986, the City remitted to Vicente S. del Rosario P167,353.00 in payment for said lots.[8]

After the EDSA People Power upheaval in 1986, John Osmena was appointed as Officer-in-Charge of the Office of the City Mayor of Cebu City. After assuming office, Osmena ordered the construction of the abattoir stopped. In a letter dated July 3, 1986, he proposed the following to the Del Rosarios:

- 1) The ownership of the vendees of Lot 3443, 3447 and 3448 subject of the Contract to Buy and Sell be documented;
- 2) If the City decides to relocate the abattoir, the properties will be used for the relocation of squatters;
- 3) A renegotiation of the purchase price;
- 4) The decision of the RTC in Bohol had been annotated at the dorsal portion of the titles of the property. Steps should be undertaken to deliver titles to the property to the City free from any other liens or encumbrances.[9]

All these were rejected by respondent in his reply letter[10] dated July 8, 1986, where he emphatically stated that he could not agree to the proposal to make the area into a relocation site for squatters, and that such proposal was a naive attempt to taunt and harass him.

On January 22, 1987, respondent filed a complaint in the Regional Trial Court (RTC) of Cebu against Cebu City for Specific Performance and/or Rescission of Contract and Damages, with a plea for injunctive relief. The case was docketed as Civil Case No. 5705.

On February 26, 1987, the City, through John Osmena, and the Dakay Construction and Development Corporation, executed a contract for the construction of a modern abattoir at the reclamation area.[11]

Meanwhile, Vicente S. del Rosario died on May 9, 1987. He was survived by Ceferina del Rosario and their children, including Pantaleon U. del Rosario, Carlos U. del Rosario and Manuel U. del Rosario.

In a letter dated July 16, 1991, incumbent City Mayor Tomas Osmena informed Pantaleon U. del Rosario of the City's intention to use the property as lechon area or chicken slaughter house.[12] On October 16, 1991, Pantaleon, acting as attorney-in-fact of all the heirs of Vicente S. del Rosario, wrote the City Mayor that they had no objection to reduce the land area of the lot to be purchased by the City - from the original 10,000 sq m to 5,945 sq m area - and for the return of Lot No. 4147 to them in exchange for the same area to be taken from the 5,945 sq m. The heirs declared that they were willing to withdraw their claim for loss of income and damages, provided that all interest earned by the escrow account in the PNB amounting to P1,882,627.49 as of September 1991 be given to them.[13]

However, the parties did not arrive at a settlement. On February 26, 1992, the complaint in Civil Case No. 5705 was dismissed without prejudice.[14]

The heirs of Vicente S. del Rosario did not refile the complaint. Instead, Pantaleon U. del Rosario and his son, Vicente B. del Rosario, filed a Complaint on September 24, 1994, and Amended and Second Amended Complaints, against Ceferina Vda. del Rosario, Carlos U. del Rosario and Manuel U. del Rosario for partition of the estate of Vicente S. del Rosario, including the "Asinan properties." [15] The case was docketed as Civil Case No. Ceb-17236 and raffled to Branch 5 of the court. On March 30, 1998, the court issued an Order placing the property under receivership, including the lots where the abattoir was to be constructed. On July 16, 1998, the

RTC granted the motion of Carlos del Rosario to lease out the Asinan properties for one year.[16]

On December 10, 1999, Teresita Reyes-de Leon filed a complaint against Vicente B. del Rosario in the RTC of Cebu City for the nullification of the Contract of Sale dated January 20, 1985, on the ground, inter alia, that the document of sale in favor of Vicente B. del Rosario was fraudulent. The case was docketed as Civil Case No. 24698.[17] On August 15, 2000, the RTC issued an Order, dismissing the complaint on the ground that the issue of the ownership of the properties subject matter of the case should be ventilated in Civil Case No. 17236 which was the partition case. The plaintiff moved to reconsider the order but the court denied the motion on February 19, 2002. The plaintiff filed a petition for review the resolution before this Court docketed as G.R. No. 152862.

On January 21, 2002, Vicente B. del Rosario, as plaintiff, through his father, Pantaleon del Rosario, as his attorney-in-fact, filed a complaint against the City of Cebu in the RTC of Cebu for the rescission of the Contract to Buy and Sell, and the Agreement. The case was docketed as Civil Case No. 27334. The plaintiff amended his complaint, alleging that he and his grandfather, Vicente S. del Rosario, were co-owners of the subject property; he filed the complaint as the sole plaintiff because they had an agreement that the abattoir would be constructed on his (plaintiff's) property. He alleged that the City of Cebu had breached the contract and agreement, as follows:

- That immediately after assuming office as OIC-Mayor of the City of Cebu, John H. Osmena publicly announced that the City of Cebu will not proceed with the construction of the abattoir in plaintiff's property;
- That consistent with his foregoing public pronouncement, and imposing his unilateral will and decision, OIC-Mayor John H. Osmena ordered the stoppage of the construction of the abattoir at plaintiffs property and in lieu thereof constructed another abattoir in another site located in the City of Mandaue, Cebu;
- That by constructing another abattoir in another place, i.e., in the City of Mandaue, defendant City of Cebu, through then OIC-Mayor John H. Osmena have effectively abandoned its original plan of constructing and operating an abattoir at the site acquired by defendant City of Cebu from herein plaintiff and the late Vicente S. del Rosario, thereby breaching the contract it entered into with the latter;
- That plaintiff had never intended that his property be used for any other purpose than as a site for the Cebu City Abattoir only, its use for any other purpose will never be allowed and, in fact, the civil works on the abattoir in his property was already in advanced stage and the stoppage of the contraction and eventual abandonment of the project thereat had caused irreparable damages consisting of among others, of the destruction of fishponds and saltworks which deprived and will continue to deprive plaintiff of income in the amount estimated to be not less than P250,000.00, or as may be proven during the trial on the merits of the case;
- That the excavations for the foundation of the abattoir which rendered the area unproductive and the presence of the unfinished abattoir which now constitute a perpetual obstruction will prevent the use of the premises for the purpose it was used before the buildings were constructed.[18]

Vicente prayed for moral damages and unrealized monthly rentals of P75,000.00, or, in the alternative, that the amount deposited in escrow with the PNB, inclusive of interests be given to him:

WHEREFORE, foregoing premises considered, it is most respectfully prayed that after trial on the merits, judgment issue in favor of plaintiff and against defendant:

- Declaring the RESCISSION of the Contract to Buy and Sell (Annex "A" hereto) and Agreement (Annex "B" hereto), and all other agreements related thereto;
- Ordering the defendant City of Cebu, to:
 - (a) Remove all improvements introduced in the property of plaintiff by reason of or as a consequence of the

Contract to Buy and Sell and the Agreement:

(b) Restore the property to plaintiff on the same condition before defendant City of Cebu took possession thereof and for defendant to pay the plaintiff monthly rentals of at least SEVENTY FIVE THOUSAND (Php75,000.00) PESOS; from August 23, 1985; or in the alternative, the amount deposited in escrow together with the accrued interest be paid to plaintiff as rentals.

(c) Pay plaintiff compensatory damages in the amount not less than P250,000.00;

(d) Pay plaintiff not less than P250,000.00 as moral damages; P100,000.00 as exemplary damages; P70,000.00 as attorney's fees; P30,000.00 as litigation expenses; and other costs, and;

Such other reliefs and remedies as may be consistent with law, justice and equity are likewise prayed for.[19]

In its Answer to the Complaint, the City of Cebu alleged, by way of special and affirmative defenses, that the plaintiff was not a party to the Contract to Buy and Sell and Agreement, hence, has no cause of action for rescission. The construction of the abattoir is not a suspensive condition, and there is no provision in the Contract to Buy and Sell, or in the Agreement, which states that the failure of the abattoir will entitle plaintiff to rescind the same. The use of the property for the construction of a modern abattoir is only an incidental condition which does not affect the efficacy of the contracts; hence, the plaintiff has no cause of action to rescind the deeds. Neither will the non-construction of the abattoir constitute performance of a negative resolutive condition that terminates the contract. The non-construction of the abattoir cannot also be considered as the cause or consideration of the contract of the "Contract to Buy and Sell" and the subsequent "Agreement" because the consideration is the P2,156,040.00 agreed upon by the parties. The City declared that the plaintiff is not entitled to rescission because in the first place, the clean titles to the lots had not been delivered. Moreover, plaintiff's claim for monthly rental of P75,000.00 is completely devoid of any factual and contractual basis. The City claimed that the plaintiff should be compelled to produce the titles for those parcels of land which had not yet been transferred in its name otherwise the amount deposited in escrow could never be legally withdrawn.[20]

In its Second Amended Pre-Trial Brief in Civil Case No. 27334, the plaintiff enumerated the issues to be litigated by the parties and to be resolved by the court, to wit:

- 1) Whether or not defendant City of Cebu culpably violated Art. 1308 of the New Civil Code of the Philippines?
- 2) Whether or not defendant violated the principal condition of the Contract to Buy and Sell when defendant City of Cebu stopped and abandoned the on-going construction of the Abattoir at plaintiff's property and transferred it to another site in Mandaue City?
- 3) Whether or not defendant City of Cebu can be held liable for the restoration of the property, pay rentals, damages and attorney's fees called in the complaint?[21]

For its part, the City of Cebu defined the issues as follows:

- 1) Whether or not the Contract to Buy and Sell entered by the parties may be validly rescinded? In other words, whether or not the action for rescission is barred by prescription?
- 2) Whether or not Vicente B. del Rosario herein represented by his Attorney-in-Fact Pantaleon U. del Rosario has the legal personality to solely and single-handedly ask for the rescission of the contract without taking into consideration the collective decision of the co-heirs of the late Vicente S. del Rosario? And owing to the alleged claim of the would-be intervenors who are the heirs of the late Teresita Reyes-de Leon would bolster the lack of legal personality for Vicente B. del Rosario to ask for rescission.
- 3) Whether or not the defendant City could be held liable for damages and attorney's fees in view of the

complaint for rescission filed by the plaintiff?[22]

On February 26, 2003, Isidro de Leon and Michael de Leon filed a Motion for Leave to Intervene as defendants. They averred that they are husband and son, respectively, of Teresita Reyes-de Leon, the former owner of the properties subject matter of the Amended Complaint, and that they had filed a complaint for the declaration of nullity of the January 20, 1985 Deed of Absolute Sale in the RTC of Cebu City, docketed as Civil Case No. Ceb-24698. Appended thereto was the Answer-in-Intervention of the movants as well as a copy of the complaint in Civil Case No. Ceb-24698.[23] Only the plaintiff opposed the motion contending, inter alia, that the movants had no more interest over the properties; in any event, their interest may amply be protected in the cases for partition pending between the parties over the same properties - Civil Case No. 24698 and Civil Case No. 17236.

However, on July 7, 2003, the court issued an Order denying leave for the movants to intervene.[24]

Plaintiff filed a motion for summary judgment contending that, as defined by the City of Cebu in its Pre-Trial Brief, the only issues are of law, and that all the material facts of the case are within the court's judicial knowledge. Appended to the motion was the Affidavit of Pantaleon U. del Rosario, the attorney-in-fact and father of the plaintiff.[25]

The City of Cebu opposed the motion, contending that summary judgment is not proper because there are several genuine issues which the defendant and the would-be intervenors have raised in their answer. They insisted that the following issues could not just be ignored, nor summarily resolved, and should instead be threshed out in a full-blown trial on the merits:

- a) Whether plaintiff has cause of action against defendant?
- b) Whether Pantaleon del Rosario can lawfully and properly represent VICENTE B. DEL ROSARIO in this case?
- c) Whether the action for rescission is barred by prescription or not?
- d) Whether the construction of the abattoir is the suspensive or resolutory condition which affects the efficacy of the contracts which herein plaintiff sought to be rescinded.
- e) Whether plaintiff can rightfully withdraw the deposit in escrow despite the fact that he has not delivered the clean titles of the properties to the defendant City of Cebu?
- f) Whether plaintiff can legally and rightfully convert the money deposited in escrow meant for payment of the lots into monthly rentals;
- g) Whether judicial novation of contract is allowed?
- h) Whether plaintiff is guilty of estoppel and laches?
- i) Whether defendants are liable for damages and attorney's fees?[26]

On March 17, 2004, the court issued an Order declaring that the case was submitted for decision only for the interpretation of the contract and not for the claim of damages. In short, the court declared that the plaintiff should waive his claim for damages, otherwise, the case cannot be submitted for decision.[27] On April 19, 2004, the plaintiff, through counsel, filed a "Waiver of Claim for Damages" so that the case could be submitted for decision.[28]

On May 28, 2004, the trial court rendered judgment in favor of the plaintiff and against the defendant. The court awarded damages to the plaintiff in the form of unrealized rentals for the property of P2,156,040.00. The dispositive portion of the decision reads:

WHEREFORE, premises considered, a decision is hereby rendered in favor of plaintiff and against the defendant, as follows:

- The rescission prayed for by the plaintiff is granted, consequently the Contract to Buy and Sell, dated August 23, 1985, which was notarized as Document No. 883, Page No. 77, Book II, by Notary Public Lorenda E. Amion, is hereby ordered RESCINDED;
- Consequently, defendant is directed to pay rentals to plaintiff to be taken from the whole amount of TWO MILLION ONE HUNDRED FIFTY-SIX THOUSAND AND FORTY (P2,156,040.00) PESOS deposited by defendant in escrow with the Philippine National Bank, Cebu Branch, and to include all the interests it earned up to the present.
- Defendant is also directed to remove all the improvements it introduced on the subject lots; and
- In addition, defendant is ordered to pay plaintiff P50,000.00 attorney's fees and P30,000.00 litigation expenses.

IT IS SO ORDERED.[29]

In an Urgent Manifestation[30] filed on June 14, 2004, the plaintiff informed the court that the defendant had transferred the deposit in escrow to the Land Bank of the Philippines.

The defendant filed a motion for the reconsideration of the decision, contending that there was no factual and legal basis for the award for damages in the form of unearned rentals due to the following reason:

The affidavit by so-called attorney-in-fact Pantaleon del Rosario attached to the motion for summary judgment did not mention of any claim for damages which warrant the award rendered by the Court. Furthermore, plaintiff submitted a Waiver of Damages on April 19, 2004. These matters are judicial admissions or omissions which do not need any further proof. The award of litigation expenses by the court in favor of the plaintiff is erroneous and misguided because such award is disallowed, there being no price for litigation. (Filinvest Corporation vs. IAC, et al., GR No. 65935, Sept. 30, 1988)

However, the court, for reasons which defendant could not fathom nor comprehend has amazingly awarded damages in the form of rentals to the plaintiff equivalent to the amount of compensation for property as if plaintiff would be in the right position to submit clean title of the property to defendant.

The factual basis of said damages in the form of rentals are wanting including the factual basis for the award of attorney's fees and litigation costs because no evidence was ever presented by the plaintiff to that effect. On the contrary, an express waiver was made renouncing the same.

"Actual damages cannot be awarded in the absence of receipts to support the same, in line with the rule that actual damages cannot be allowed unless supported by evidence on record." (PEOPLE vs. (sic) G.R. Nos. 124384-86, 2000 January 28, 1st Division)

Even the document presented by the plaintiff require that payment of the property shall only be made when title shall be transferred to the defendant. The same is quoted in the decision on page 7, however, the same is given nary a consideration. Further, the payment of rental is never a consequence of rescission.[31]

The plaintiff opposed the motion, contending that although he waived his claim for damages, he did not waive his claim for unrealized rentals which are not synonymous to damages.

On July 8, 2004, Carlos del Rosario, one of the surviving children of Vicente S. del Rosario and Pantaleon's brother, filed a motion for leave to intervene as plaintiff. He averred that Vicente S. del Rosario was the owner of an undivided portion of the property subject of the Amended Complaint; the plaintiff had no right to the property because the right, interest and participation of Teresita Reyes-de Leon over the other half of the property had been

acquired by Pantaleon del Rosario, not the plaintiff; the Contract to Buy and Sell was executed by the defendant, as vendee, and his father, Vicente S. del Rosario, and Pantaleon del Rosario, as vendors-owners. Thus, only Vicente S. del Rosario and Pantaleon del Rosario were entitled to the escrow account in the PNB which represented the purchase price of the property. The movant prayed that:

WHEREFORE, foregoing premises considered, it is most respectfully prayed that after trial on the merits, judgment issue in favor of Plaintiff-in-Intervention and against Defendants-in-Intervention:

- Declaring the RESCISSION of the Contract to Buy and Sell (ANNEX "B" hereto) and Agreement (ANNEX "C" hereto), and that other agreements related thereto;
- Ordering the City of Cebu, to Remove all improvements introduced in the property of the late Vicente S. del Rosario and Pantaleon U. del Rosario by reason of or as a consequence of the Contract to Buy and Sell and the Agreement;
- Ordering the City of Cebu to Restore the property to the Plaintiff-in-Intervention/Intervenor and other legal heirs of the late Vicente S. del Rosario, as well as to co-owner Pantaleon U. del Rosario, to the same condition when City of Cebu took possession thereof;
- Ordering the City of Cebu to pay to the Plaintiff-in-Intervention/Intervenor and the other legal heirs of the late Vicente S. del Rosario, as well as co-owner Pantaleon U. del Rosario, REASONABLE RENT in consideration for the almost twenty (20) years of its absolute possession, control and use of the properties above cited (1985-to date).
- Declaring that the Plaintiff-in-Intervention Carlos U. del Rosario and other legal heirs of the late Vicente S. del Rosario is entitled to the one half (1/2) or fifty (50) percent of the said reasonable rent and other award of this Court, while the other half (1/2) pertain to the co-owner Pantaleon U. del Rosario.
- Award to the Plaintiff-in-Intervention reasonable attorney's fees, damages and cost of litigation as may be proven in court.

Such other relief and remedies as may be consistent with law, justice and equity are likewise prayed for.[32]

On July 9, 2004, plaintiff filed a Motion[33] for a special order for execution, citing the rulings of this Court in *Navarra v. Labrador*[34], *PVTA v. Lucero, et al*[35]. The City of Cebu opposed the motion contending, inter alia, that:

- For the Court to allow the execution pending appeal of its decision as prayed for by the Plaintiff would have very serious consequences to the Defendant. There is a pending case for partition among the heirs of the late Vicente S. Del Rosario wherein certain parcels of land subject of the Contract to Buy and Sell are included in the list of the properties of the decedent. Another claimant may be the heirs of the late Teresita de los Reyes who are questioning the spurious claim of the Plaintiff to the decedent's inherited properties. Their case for certiorari is awaiting decision from the Supreme Court. To prematurely execute the decision would pre-empt the right of the Defendant to seek a review of the questioned decision to a higher court. The Plaintiff's claim of ownership to the properties which are subject of the Contract to Buy and Sell is highly questionable as he does not have any privity of contract with the city government of Cebu. It is a fact that if judgment is executed and, on appeal, the same is reversed, although there are provisions for restitution, often times, damages may arise which cannot be fully compensated. The city stands to suffer irreparable injury because it is hardly expected that the Plaintiff shall be able to make complete and full restitution. Public funds are at stake and should this be released to the wrong person, it is exposing itself to possible lawsuits from the legal heirs of the late Vicente S. del Rosario;
- Why the obvious haste as clearly displayed by the attorney-in-fact of the Plaintiff and his counsel? There are still two (2) pending incidents left unresolved by the Court - the motion for reconsideration filed by the

Defendant and the Motion for Intervention filed by Mr. Carlos U. del Rosario. It would seem that the attorney-in-fact, who is just one of the co-heirs of the late Vicente S. del Rosario through some maneuverings, would want to deprive his siblings their rights, by claiming the proceeds on the pretext that all these are his son's sole and rightful share.

- To consider the mere posting of a bond a "good reason" would precisely make immediate execution of a judgment pending appeal routinary, the rule rather than the exception. To follow such line of reasoning would mean that judgments would be executed immediately, as a matter of course, once rendered, if all that the prevailing party needed to do was to post bond to answer for damages that might result therefrom. This is a situation, to repeat, neither contemplated nor intended by law. (David vs. Court of Appeals, 342 Phil. 387, 391).[36]

The plaintiff likewise opposed the motion of Carlos del Rosario for leave to intervene on the ground that his interests over the property and on the purchase price thereof may be adequately protected in Civil Case No. 17236.

On July 26, 2004, the Court rendered judgment in G.R. No. 152862, dismissing Teresita de Leon's petition for review. The Court ruled that the issue of ownership of the properties subject of Civil Case No. 24698 should be resolved in the partition case, Civil Case No. 17236.[37]

On August 9, 2004, the RTC issued an Order denying plaintiffs motion for execution for being premature and the motion for reconsideration of the defendant for lack of merit. The defendant forthwith filed its notice of appeal.[38]

On August 17, 2004, plaintiff filed a "Motion for Execution" [39] on the same grounds. The plaintiff informed the court via an Addendum that the deposit in escrow with the Land Bank of the Philippines, inclusive of interests, amounted to P9,846,760.00. On August 20, 2004, the court issued an Order[40] directing the Branch Clerk to transmit the records, as well as the transcripts and exhibits, to the Court of Appeals. The defendant reiterated its opposition to the motion, and averred that the court had already lost jurisdiction over the case after it directed the elevation of the records, inclusive of the transcripts and exhibits.[41]

On September 6, 2004, the RTC issued an Order granting the motion for execution of the plaintiff. It declared that there were good reasons for execution pending appeal:

In the decision dated May 28, 2004, the court considered the fact that the subject real properties, consisting of eight (8) lots with a total area of 21,000 square meters or more than two hectares, are in the absolute possession and control of defendants since January 6, 1986 up to the present on the basis of a stipulation in the contract of buy and sell between herein parties that defendant would pay them in the amount of P2,156,040.00 placed in escrow deposit with the Philippine National Bank, Cebu City. Until now or for a period of eighteen (18) years, the defendant has not paid a single centavo to the plaintiff. So the court believes the defendant should pay reasonable rentals to the plaintiff in keeping with the law against unjust enrichment, although the plaintiff made an express waiver of its claim for damages.

In short, the foregoing facts are the "good reason" that the court considers in granting the execution pending appeal. Moreover, it could not be disputed that the eight (8) lots subject matter of the contract between the plaintiff and defendant City of Cebu are located within the city proper of Cebu City, so the yearly rental of P547,042.237, which is only P45,586.85 a month, appears just and reasonable under the circumstances. Thus, the original amount in escrow deposit with PNB, Cebu City, has now accumulated to P9,846,760.27 (as per addendum) to include the increments, which amount was already transferred already to the Land Bank of the Philippines, Banilad Branch, Cebu City. The rentals should be taken from the aforesaid amount.[42]

Plaintiff moved for the reconsideration of the Order, asking for the reduction of the surety bond. On the part of the

City of Cebu, it averred that the court no longer had jurisdiction to grant the motion for execution pending appeal because it already ordered the transmittal of the records to the CA. Besides, there is no good reason to support the granting of the motion for execution pending appeal.

On October 26, 2004, the court issued an Order denying the motion of the City of Cebu, and declared that the appeal filed by the defendant was dilatory:

On the FIRST REASON, the court believes it still has jurisdiction to grant the Motion for Execution Pending Appeal because the records of the case are still in its possession and it has not yet transmitted them to the Court of Appeals.

On the SECOND REASON, the court does not doubt there is a good reason to support the execution pending appeal, as may be stated as follows:

- On August 23, 1985, defendant City of Cebu, through then City Mayor Ronald Duterte, entered into a Contract to Buy and Sell with the plaintiff on the latter's Lots 8401, 8403, 8404, 8405, 3113, 3114, 3147 and 3148, with a total area of 21,000 square meters to be used as a City Abattoir. The stipulated purchase price for the eight (8) lots is P2,156,040.00, which defendant deposited in escrow with the Land Bank of the Philippines, Banilad Branch, Cebu City.

- After the EDSA People Power, when John H. Osmena became the OIC-Mayor of Cebu City he unilaterally stopped the on-going construction of the abattoir on the plaintiff's lots and transferred the same to Mabolo, Cebu City where it is now located. For nineteen (19) continuous years and until now, defendant is in actual possession of subject lots, to the damage and prejudice of the plaintiff who has not received a single centavo by way of income or considerable payment thereof. With these facts, the court believes the present appeal interposed by defendant is patently dilatory.[43]

On October 29, 2004, the court issued an Amended Order for Execution, the dispositive portion of which reads:

WHEREFORE, you are commanded to serve a copy of this Writ upon the Land Bank of the Philippines, Plaza Independencia Branch, Cebu City and direct them to release to the plaintiff the amount of P9,846,760.27, representing the principal and interest under account Nos. 1451, 1024-58 and 1451 1024-66, respectively, and deliver the same to the plaintiff, plus the lawful fees for the service of this writ after the commission due thereon shall have been paid to the Ex-Officio Sheriffs Official Cashier for which an official receipt shall be issued therefore, and thereafter return this Writ to this court with your proceedings endorsed thereon, in accordance with Sec. 14, Rule 39 of the Rules of Court, as amended.

You are further commanded to comply with the directives provided for in par. No. 4 of the Administrative Circular No. 12 as approved by the Supreme Court of the Philippines, en banc, on October 1, 1985, by submitting to the Honorable IRENEO LEE GAKO, JR., Presiding Judge of this court, a report of the action you have taken on this writ within ten (10) days from your receipt hereof.[44]

The plaintiff posted a surety bond issued by the Utility Assurance Corporation for the amount of P9,846,760.00 which was approved by the court. The court issued the Writ of Execution[45] on October 29, 2004 which was however amended[46] on the same day. A notice of garnishment[47] was subsequently issued.

Aggrieved, the City of Cebu filed a petition for certiorari under Rule 65 with prayer for temporary restraining order (TRO) and/or writ of preliminary injunction before the CA, Cebu City, seeking to nullify the following: (1) the Order dated September 8, 2004 granting the motion for execution pending appeal; (2) the Order dated October 26, 2004 denying the motion for reconsideration of the earlier order; (3) the writ of execution dated October 29, 2004; and (4) the Notice of Garnishment dated October 3, 2004.

On November 11, 2004, the appellate court issued a TRO.[48] On January 27, 2005, the CA issued a

Resolution[49] granting the plea for a writ of preliminary injunction.

On April 8, 2005, the CA rendered judgment dismissing the petition for certiorari.[50] The fallo reads:

WHEREFORE, foregoing premises considered, the petition is hereby dismissed. The writ of preliminary injunction issued by this court on January 27, 2005 is hereby lifted. The assailed Orders and other issuances of the lower court are hereby affirmed and reinstated.

The appellate court affirmed the findings of the trial court and declared that

The trial court ordered on September 8, 2004 an execution of its decision pending appeal, as follows: In the decision, dated May 28, 2004, the court considered the fact that the subject real properties, consisting of eight (8) lots with a total area of 21,000 square meters or more than two hectares, are in the absolute possession and control of defendants since January 6, 1986 to the present on the basis of a stipulation in the contract to buy and sell between the herein parties that defendant would pay them the amount of P2,156,040.00 placed in escrow deposit with the Philippine National Bank, Cebu City. Until now or for a period of more than eighteen (18) years, the defendant has not paid a single centavo to the plaintiff. So the court believes that defendant should pay reasonable rentals to the plaintiff in keeping with the law against unjust enrichment, although the plaintiff made an express waiver with respect to its claim for damages.

In short, the foregoing facts are the "good reason" that the court considers in granting the execution pending appeal.

From the foregoing, the public respondent clearly and concisely elucidated the superior circumstances and indeed, the very "good reason" for its granting private respondent's motion for execution pending appeal. With the above cited good reason as the basis for the execution pending appeal prayed for, the public respondent further buttressed the same by ordering private respondent to post a bond in an amount equal the value sought to be enforced in the amount of P9,846,760.27, so as to protect the interest of petitioner, City of Cebu. Indeed, the bond which has been properly posted through a bonding company amply guarantees and safeguards the rights of the petitioner.

The "combination of circumstances is the dominant consideration which impels the grant of immediate execution, the requirement of a bond is imposed merely as an additional factor, no doubt for the protection of the defendant's creditor."

The ascertainment of good reasons for execution pending appeal lies within the sound discretion of the trial court, and the appellate court will not normally disturb such finding. Intervention by the latter may be proper, if it is shown that there has been an abuse of discretion. Normally, the trial court is not allowed to assess its own judgment and to hold that an appeal may not prosper, or that it would merely be dilatory. In the present case, however, there are circumstances that undisputedly serve as cogent bases for arriving at such a conclusion. In the light of the former, there is hardly any question that private respondent's Motion for Execution Pending Appeal is meritorious.[51]

x x x x

Even assuming ex gratia argitmenti that there indeed existed certain legal infirmities in connection with the assailed Orders of Judge Gako, still, considering the totality of circumstances of this case, the nullification of the contested orders would be iniquitous. As rightly averred by public respondent that "until now for a period of eighteen (18) years, the petitioner has not paid a single centavo to the respondent. So the court believes the defendant should pay reasonable rentals to the plaintiff in keeping with the law against unjust enrichment x x x. Moreover, it could not be disputed that the eight (8) lots subject matter of the contract between the plaintiff and the defendant City of Cebu are located within the city proper of Cebu City, so a yearly rental of P547,042.237,

which is only P45,586.85 a month, appears just and reasonable under the circumstances. Thus, the original amount deposited in escrow with PNB, Cebu City, [which] has now accumulated to P9,846,760.27 (as per addendum) to include the increments should be granted to private respondent in the equitable form of rentals for the past 18 years.

All told, private respondent having been deprived of the use, possession and enjoyment of his property for 18 long years, starting 1986, when the edifice for the abattoir was constructed on the site or property in controversy, up to the present, is entitled to the amount garnished by way of rentals in keeping with the age old principle of justice and equity. To rule otherwise would result in the unjust enrichment of the petitioner at the expense of private respondent.

The Civil Code provision on human relations states:

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.

Following the applicable provision of law and hearkening to the dictates of equity, that no one, not even the government, shall unjustly enrich himself at the expense of another. At any rate, of paramount importance to us is that justice has been served. No right of the public was violated and public interest was preserved. This Court will not condone the repudiation of just obligations contracted by municipal corporations. On the contrary, we will extend our aid and every judicial facility to any citizen in the enforcement of just and valid claims against abusive local government units.[52]

The appellate court likewise ruled that the petitioner was guilty of forum shopping because it filed a petition for certiorari while its appeal from the decision of the RTC was pending in the CA.

Meantime, per Report[53] of Sheriff Rogelio T. Pinar dated September 22, 2005, he received from LBP, Plaza Independencia Branch, Manager's Check No. 0000002931 in the amount of P9,846,760.27 payable to Vicente B. del Rosario, represented by Pantaleon U. del Rosario for the partial satisfaction of the writ of execution. On November 18, 2005, respondent (plaintiff therein) filed an ex-Parte Motion to Release the Remaining Garnished Amount.[54] The RTC, in its Order[55] dated January 27, 2006, granted the same and held that since the plaintiff (respondent herein) is entitled to all interests that the deposit earned up to the present, and as the decision of the court was executed only on September 19, 2005, the former is entitled to all interests not covered by the earlier manager's check. Defendant's motion for reconsideration was denied on March 10, 2006.[56] The Bank remitted the amount to the plaintiff. Several orders were likewise issued by the RTC directing the LBP to inform it of the actual remaining interests of the escrow deposit,[57] to submit a ledger of the garnished amount,[58] as well as to comply with the order of the court by releasing the remaining garnished amount.[59]

The Present Petition

The City of Cebu filed the instant petition for certiorari, contending that:

I

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT HOLDING THAT THE PRIVATE RESPONDENT IS ENTITLED TO AN EXECUTION PENDING APPEAL BY POSTING A PERFORMANCE BOND IN THE AMOUNT OF P9,846,760.27. THE GRANT OF EXECUTION PENDING APPEAL BY THE LOWER COURT CITING IT HAS GOOD REASON, IS WITHOUT ANY URGENT BASIS AND WOULD ONLY PRE-EMPT THE REVIEW OF THE DECISION OF THE CASE WHICH WAS TIMELY RAISED ON APPEAL;

II

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT FORUM SHOPPING WAS COMMITTED BY THE PETITIONER.[60]

Petitioner avers that the RTC committed grave abuse of discretion amounting to excess or lack of jurisdiction when it issued the assailed Orders, Writ and Amended Writ of Execution and Notice of Garnishment and that the appellate court erred in affirming the same. Petitioner maintains that respondent failed to establish "good reasons" for execution pending appeal. The bare fact that petitioner had been in actual possession of the property for 18 years and that the purchase price, inclusive of interests, had been deposited in escrow with the PNB, later with the LBP, are not good reasons to allow execution pending appeal. After all, if respondent would prevail in petitioner's appeal from the RTC decision, respondent would be entitled to the amount deposited in escrow, including the interests already earned by the account. The fact of the matter is that, even if the property had been placed in its possession, it has not been able to use nor profit from it, since it is part of the property which had been placed under receivership in Civil Case No. 17236 (for partition) between the heirs of Vicente S. del Rosario. Petitioner further points out that one of his heirs even leased a portion of the property from which he earned income.

Petitioner further contends that the delivery of the deposit in escrow which is a public fund cannot be delivered to respondent without prior authorization from the COA, considering further that the titles to the property had not been issued under its name. Petitioner insists that the delivery of the proceeds of the escrow account to respondent is illegal, and a violation of the provisions of the Contract to Buy and Sell, as well as the Agreement. In fact, it had paid P167,353.00 to Vicente S. del Rosario on February 10, 1986 after the titles to two of the lots were delivered to petitioner.

Petitioner points out that, if the decision of the RTC declaring the rescission of the Contract to Buy and Sell and Agreement is sustained by the appellate court and this Court, and respondent would be ordered to withdraw the amount deposited with the Land Bank of the Philippines, petitioner would find it difficult to collect the amount from respondent. The bare fact that respondent posted a surety bond is not a good reason for execution pending appeal. It was justified in opposing the execution pending appeal because respondent's right to a rescission of the said contract is the subject of its appeal from the decision of the RTC. Contrary to the ruling of the appellate court, petitioner was not guilty of forum shopping when it filed its petition for certiorari before it.

The threshold issues for resolution are the following: (1) whether the RTC has jurisdiction to issue orders after the transmittal of the records of the case to the CA; (2) whether petitioner is guilty of forum shopping; and, (3) whether "good reasons" exist to justify the grant of execution pending appeal in this case.

The Ruling of the Court

On the first issue, we hold that the RTC has jurisdiction to take cognizance respondent's motion for execution pending appeal. We quote, with approval, the following ruling of the appellate court:

Trial Court's Residual Jurisdiction despite the loss of its jurisdiction as a result of the appeal, the Court before the transmission of the original record or the record on appeal may issue orders: (a) for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal; (b) approved compromises; (c) permit appeal of indigent litigants; and (d) order execution pending appeal (Section 9, Rule 41 of the Revised Rules of Court).

After perfection of the appeal by either mode, the trial court loses jurisdiction over the case or the subject matter involved in the appeal, as the case may be. In either instance, and before the transmittal to the appellate court of the original record or the record on appeal, the trial court still retains its so called residual jurisdiction to issue protective orders, approve compromises, permit appeals of indigent litigants and as has been added by amendment of this section (Section 9 of Rule 41) to order discretionary execution and to allow withdrawal of

the appeal.

The records of this petition does not show nor has petitioner duly established that on August 20, 2004 the public respondent indeed had ordered and transferred the records of the case as well as its complete transcript of stenographic notes to the Court of Appeals. All we have before us is a mere allegation which we cannot give due credit.[61]

On the second issue, however, we agree with petitioner's contention that it did not indulge in nor commit forum shopping by filing its petition for certiorari assailing the Orders of the RTC granting execution pending appeal, and questioning the writ of execution and garnishment while the appeal of the decision of the RTC was pending in the appellate court.

Forum shopping exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari), in another, or when he institutes two or more actions or proceedings grounded on the same cause, on the gamble that one or the other court would make a favorable disposition.[62] The test for determining whether a party violates the rule against forum shopping is where a final judgment in one case will amount to res judicata in the action under consideration or where the elements of *litis pendentia* are present.[63] What is truly important to consider in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts or administrative agencies to rule on the same or related causes or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issues.[64]

In the present case, petitioner interposed an appeal before the CA of the decision of the RTC dated May 28, 2004 declaring the contract to buy and sell rescinded and finding petitioner liable for the payment of rentals, attorney's fees and litigation expenses. Petitioner, likewise, filed a petition for certiorari before the same tribunal which sought to nullify the orders of the RTC granting execution pending appeal, as well as the writ of execution and the notice of garnishment, where it was alleged that the trial court committed grave abuse of discretion amounting to excess or lack of jurisdiction and that it had no appeal, nor any plain, speedy or adequate remedy in the ordinary course of law to nullify such orders.

This issue had already been settled by the Court in *Marcopper Mining Corporation v. Solidbank Corporation*[65] and *International School, Inc. (Manila) v. Court of Appeals*. [66] There can be no forum shopping when in one petition a party questions the order granting the motion for execution pending appeal, as in the case at bar, and, in a regular appeal before the appellate court, the party questions the decision on the merits. After all, the merits of the main case are not to be determined in a petition questioning execution pending appeal and vice-versa. Hence, the CA erred in finding that petitioner is guilty of forum shopping.

On the third issue, we agree with petitioner's contention that respondent failed to establish any "good reason" to justify execution of the trial court's decision pending appeal. We likewise agree with petitioner's contention that the RTC committed grave abuse of its discretion amounting to excess or lack of jurisdiction when it granted respondent's motion for execution pending petitioner's appeal of the RTC decision. It must be stressed that by granting execution pending appeal, the RTC prejudged the merits of petitioner's appeal. The well-established rule is that it is not for the trial court to determine the merits of the decision it rendered and use the same as basis for an order allowing execution of its decision pending appeal. The determination of the merits of the trial court's decision is lodged in the appellate court. To reiterate, the trial court cannot preempt the decision of the appellate court or the merits of petitioner's appeal of the trial court's decision and use it as basis for affirming the trial court's order of execution pending appeal.[67] Neither is the finding of the trial court that the appeal is dilatory a good reason for granting execution pending appeal (if the appellate court cannot appreciate the dilatory intent of an appeal).[68]

As gleaned from the assailed Orders, the RTC granted execution pending appeal on its finding that petitioner enriched itself at the expense of the respondent because it had been in possession of the property for 18 years but respondent had not been able to use the deposit in escrow nor was paid compensation by petitioner; it also held and that respondent was entitled to the amount of P2,156,400.00 and interests, or the total amount of P9,846,760.27. The RTC used these findings and rulings in its decision as the "good reasons" for execution pending appeal.

Petitioner assailed the trial court's findings and its rulings on the legal issues. Petitioner pointed out that it had actual possession of the eight parcels of land since January 7, 1986 up to March 30, 1998 when the RTC placed the property under receivership. Be it remembered however, that petitioner acquired possession of the properties only on January 7, 1986 after it had deposited in escrow the purchase price of the property as agreed upon by the parties under the Contract to Buy and Sell and Agreement. Petitioner commenced the construction of the modern abattoir which was about 40% complete, until the 1986 EDSA revolution took place.

Petitioner maintained that while it is true that the vendors had not received the purchase price of the properties in the interim, except for the torrens titles for two (2) of the eight parcels of land, the titles for the six other lots had not been transferred nor delivered to it. Under the Contract to Buy and Sell executed by petitioner and the vendor Vicente S. del Rosario and his son, Pantaleon U. del Rosario, the vendees were entitled to the purchase price only after the titles to the lots shall have been registered in the name of petitioner, and pursuant to COA regulations. Under the Agreement dated January 7, 1986, the vendors may not withdraw any amount from the deposit with the PNB until the vendors shall have delivered to petitioner, as vendee, clean titles to the properties. Petitioner is mandated to facilitate the release of the deposit only as soon as the clean titles under its name shall have been delivered to it.

Indeed, the vendor, Vicente S. del Rosario, was able to deliver to petitioner only two clean titles over two of the eight parcels of land covered by said Contract of Buy and Sell, namely TCT No. 55557 and TCT No. 40590. Petitioner remitted to the spouses Vicente S. del Rosario and Ceferina del Rosario the amount of P167,353.00 for said lots. Being the registered owner of the two lots, petitioner is entitled to the possession thereof. Petitioner asserted that, from January 7, 1986 to July 2, 1986, the vendors failed to deliver clean titles to the six parcels of land. Had the vendors delivered clean titles to petitioner over the six parcels of land on or before July 2, 1986, they could have been paid the balance of the purchase price of the properties.

Admittedly, a rather complex controversy ensued between the vendors and petitioner when John Osmeña proposed, on July 3, 1986, that the property be used as relocation site for squatters instead of for the construction of a modern abattoir; and for the renegotiation of the purchase price which Vicente S. del Rosario rejected even as John Osmeña requested the vendors to deliver clean titles to the City. It appears that petitioner had decided to construct a modern abattoir at the reclamation area instead of on the eight (8) parcels of land subject of the Contract of Buy and Sell. Even during the pendency of Civil Case No. 5705, filed by Vicente S. del Rosario against petitioner in the RTC of Cebu City, he agreed to petitioner's proposal, through City Mayor Tomas Osmeña, for the reduction of the area of the property sold to petitioner from 10,000 sq m to only 5,945 sq m; for petitioner to return to the vendors Lot 4147, to be taken from the 5,945 sq m; and petitioner to remit to the vendors the interests of the PNB escrow account as of September. However, the parties did not arrive at any settlement. Even as the complaint of Vicente S. del Rosario was dismissed on February 26, 1992 following the death of Vicente S. del Rosario on October 16, 1991, the parties failed to compromise.

If there was a delay, the same was occasioned in part by the earnest efforts of the parties to settle the matter amicably. As gleaned from the records, petitioner had not used the six parcels of land after the construction of the abattoir was stopped in 1986. On the other hand, respondent had not denied the claim of the heirs of Vicente S.

del Rosario in Civil Case Ceb-17236 that the property had been placed under receivership by order of the court on March 30, 1998; and that Carlos del Rosario, one of the surviving children of Vicente S. del Rosario, was able to lease the Asinan property on July 16, 1998. Petitioner argued that it could not be liable for rentals since the property was under receivership.

While admittedly, the vendors failed to use the deposit, in the interim, neither was the petitioner able to use the money.

The trial court declared in its decision that it was respondent, not the heirs of Vicente S. del Rosario, who is entitled to reasonable rentals for the property and to rescind the Contract to Buy and Sell and Agreement because of the letter-agreement between Vicente S. del Rosario and his son Pantaleon U. del Rosario dated August 25, 1985,[69] that the sale subject of the said contract and agreement shall be taken only from the 1/2 share of Teresita de Leon per the January 20, 1985 deed of absolute sale between her and the plaintiff; and that the proceeds in connection with the sale of said properties "shall accrue in your (Pantaleon U. del Rosario) favor only." The letter referred to by the RTC is that sent by Vicente S. del Rosario to his son, Pantaleon U. del Rosario which bears the conformity of the latter, and not of the respondent.[70] The RTC ruled that the heirs of Vicente S. del Rosario are bound by the aforesaid letter-agreement entered into by their father, Vicente S. del Rosario, and that his heirs have no business or interest in the Contract to Buy and Sell since they are not parties thereto. Moreover, the heirs, as of May 28, 2004, had not intervened in the case. The RTC ruled that being the owner of the property sold to petitioner, respondent was deprived not only of the use of the properties covered by the Contract to Buy and Sell but also the income that could have been derived therefrom, including rentals for the use, by the petitioner, of the properties for 19 years. It concluded that the deposit with the PNB in escrow including earned interests amounting to P2,156,040.00, including interests as of May 28, 2004, should be paid to respondent as rentals, based on the law against unjust enrichment. In fine, the RTC relied solely on the findings and conclusions in its own decision, and ordered execution pending appeal.

Petitioner opposed respondent's motion for execution pending appeal and appealed the decision of the trial court. It pointed out that the respondent had no cause of action for rescission of the Contract to Buy and Sell and Agreement, and for damages including claims for rentals for the properties for the reason that the respondent is not a party to the said Contract and Agreement. The parties to the contract, as owners-vendors of the properties, were Vicente S. del Rosario, and his son, Pantaleon U. del Rosario, the grandfather and father, respectively, of respondent. Vicente S. del Rosario, was the co-owner of an undivided one-half portion of the lots sold to petitioner until Pantaleon U. del Rosario became the owner of the other half under the December 13, 1985 Contract of Sale executed by Teresita de Leon.

Based on the records, upon the death of Vicente S. del Rosario on May 9, 1987, his compulsory heirs were his children, including Pantaleon U. del Rosario, Carlos and Manuel del Rosario, and his surviving spouse, Ceferina del Rosario. Although Teresita executed the deed of absolute sale over her 1/2 share of the parcels of land to respondent on January 20, 1985, Teresita had earlier executed, on December 23, 1987, the said Contract of Sale over said rights in favor of Pantaleon U. del Rosario. The January 20, 1985 deed of sale executed by Teresita and respondent was entered into subsequent to the Contract to Buy and Sell executed by Pantaleon U. del Rosario and Vicente S. del Rosario on August 24, 1984.

Significantly, Vicente S. del Rosario and Pantaleon U. del Rosario agreed in the aforesaid letter-agreement that all the proceeds of the sale of the property to the petitioner shall accrue in favor of Pantaleon U. del Rosario only and not to the respondent.

- THAT the areas sold to the City of Cebu for its abattoir project, the subject of the above contract, will be entirely taken from the share of Teresita R. Reyes de Leon bought by your son Vicente B. del Rosario per

Deed of Absolute Sale dated January 20, 1985, entered as Doc. 490, page 98, Book 52, series of 1985 of the Notarial Registry of Notary Public Carlito P. Valente;

- THAT all proceeds in connection with the sale of the above mentioned properties shall accrue in your favor only;[71]

Not to be brushed aside is the fact that from January 7, 1986 up to January 21, 2002, or for a period of 16 years, respondent did not assail the Contract to Buy and Sell and Agreement, nor demand the receivership thereof and for petitioner to pay rentals. In the negotiations for the settlement of the controversy relative to said deeds, Vicente S. del Rosario and the respondent negotiated with the petitioner. It was Vicente S. del Rosario, not the respondent, who wrote John Osmeña, on July 8, 1986, rejecting the latter's proposal. It was Vicente S. del Rosario, not the respondent, who filed the complaint against petitioner on January 22, 1987, for specific performance and/or receivership of contract and agreement, docketed as Civil Case No. 7705. On October 16, 1991, it was Pantaleon U. del Rosario, not the respondent, who, acting as attorney-in-fact of the heirs of Vicente S. del Rosario, who represented them before the Office of City Mayor Tomas Osmeña for amicable settlement. There is no showing in the records that petitioner ever recognized respondent to be the owner of the properties subject of the Contract to Buy and Sell and the Agreement.

Moreover, the issue of who are the lawful owners of the property had yet to be resolved with finality by the RTC in Civil Case No. 17230. We are not saying that the Summary Judgment of the trial court is erroneous and that the petitioner's appeal from the decision of the trial court is correct. What we do rule and so declare is that the RTC committed grave abuse of its discretion when it ordered execution pending appeal based on the merits of its decision despite petitioner's appeal, and considering the contentions, factual and legal issues involved therein.

The trial court granted execution thereof pending appeal from the decision and ordered the payment, by petitioner, of rentals for the property from January 7, 1986 up to May 28, 2004 equivalent to the deposit in escrow including the interests earned, or in the total amount of P7,858,073.27. The relevant portion of the RTC decision reads:

The court also believes that the payment of rentals is in keeping with the law against unjust enrichment. It has noted that the defendant has been in possession and control of subject lots for nineteen (19) years, thereby depriving the plaintiff not only of the use of subject lots but also the income that could be derived therefrom. In addition, defendant had destroyed the fishponds and salt beds when it constructed the buildings and other civil works on subject lots. To compensate the plaintiff, the court believes that the amount deposited by defendant in escrow with the Philippine National Bank intended as purchase considerations of subject lots should be paid to the plaintiff as rentals to include the interest earned from said deposit.[72]

Petitioner objected to respondent's motion for execution on the ground that respondent failed to present a shred of evidence to prove that the reasonable compensation by way of rentals for the property from January 7, 1986 up to May 28, 2004, was P2,156,040.00 plus interests of P7,858,073.27. Petitioner posited that there is no showing in the decision how the trial court computed and arrived at the reasonable compensation for the property. It was only in the September 6, 2004 Order of the RTC granting the motion of respondent for execution pending appeal that the RTC declared, for the first time, that the monthly rental of P45,786.85 or in the total amount of P9,846,760.27 was reasonable simply because the property is located in Cebu City.

In the Decision, dated May 28, 2004, the court considered the fact that the subject real properties, consisting of eight (8) lots with a total area of 21,000 square meters or more than two hectares, are in the absolute possession and control of defendants since January 6, 1986 to the present on the basis of a stipulation in the contract of buy and sell between herein parties that defendant would pay them in the amount of P2,156,040.00 placed in escrow deposit with the Philippine National Bank, Cebu City. Until now or for a period of eighteen (18) years, the defendant has not paid a single centavo to the plaintiff. So the court believes the defendant should pay

reasonable rentals to the plaintiff in keeping with the law against unjust enrichment, although the plaintiff made an express waiver of its claim for damages.

In short, the forgoing facts are the "good reason" that the court considers in granting the execution pending appeal. Moreover, it could not be disputed that the eight (8) lots subject matter of the contract between the plaintiff and defendant City of Cebu are located within the city proper of Cebu City, so the yearly rental of P547,042.237 which is only P45,586.85 a month, appears just and reasonable under the circumstances. Thus, the original amount in escrow deposit with PNB, Cebu City, has now accumulated to P9,846,760.27 (as per addendum) to include the increments, which amount was already transferred to Land Bank of the Philippines, Banilad Branch, Cebu City. The rentals should be taken from the aforesaid amount.[73]

In *Badillo v. Tayag*,^[74] the Court ruled that the fair rental value is the reasonable compensation for the use and compensation of property. There is no hard and fast rule in determining the reasonableness of rental for a property. However, the court ruled that a court may fix the reasonable rental but must still base its action on the evidence adduced by the parties. It behooved respondent to prove his claim for entitlement to reasonable rentals for the property. As the Court ruled in *Josef a v. San Buenaventura*:^[75]

In *Asian Transmission Corporation v. Canlubang Sugar Estates*, the Court ruled that the reasonable compensation contemplated under said Rule partakes of the nature of actual damages. While the trial court may fix the reasonable amount of rent, it must base its action on the evidence adduced by the parties. The Court also ruled that "fair rental value is defined as the amount at which a willing lessee would pay and a willing lessor would receive for the use of a certain property, neither being under compulsion and both parties having a reasonable knowledge of all facts, such as the extent, character and utility of the property, sales and holding prices of similar land and the highest and best use of the property. The Court further held that the rental value refers to "the value as ascertained by proof of what the property would rent or by evidence of other facts from which the fair rental value may be determined."^[76]

While location of the property may be considered in determining, the reasonableness of rentals, other factors must be considered, such as (a) the prevailing rates in the vicinity; (b) use of the property; (c) inflation rate; and (d) testimonial evidence.^[77]

Petitioner maintained that, since respondent failed to adduce evidence to prove the fair rental as compensation for the property from 1986 to 2004, the RTC committed grave abuse of its discretion in granting execution pending appeal.

Petitioner's escrow account with the LBP was for the payment of the purchase price of the property, and under Contract to Buy and Sell and the Agreement, the said account would be remitted to the vendors only after delivery of clean titles over the property to petitioner and only after compliance with COA regulations. However, the RTC ordered that the proceeds of the escrow account be remitted to respondent as reasonable rentals for the property, and even without compliance with COA regulations. As pointed out by petitioner, this is contrary to the terms and conditions of the Contract to Buy and Sell and Agreement. Even before the appeal of its decision had been resolved by the CA, the RTC already authorized the use of the deposit for a purpose other than that intended by the parties to the deed.

We note that in its Order dated March 17, 2004, the RTC declared that the case was submitted for decision only for the interpretation of the contract to buy and sell and not for damages, presumably because such claim must be supported by evidence. Indeed, the RTC declared that the case could not be submitted for summary judgment unless the respondent waived his claim for damages,^[78] and the latter did waive his claim therefor and submitted the case for decision.^[79] Nevertheless, the trial court granted respondent's claim for damages by way of rentals of the property and worse, allowed execution pending appeal. It bears stressing that reasonable compensation or

rental partakes of the nature of actual damages, and for a party to be entitled to actual damages, he must adduce the best evidence obtainable.[80]

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The Decision of the Court of Appeals is REVERSED and SET ASIDE. The assailed Orders of the Regional Trial Court of Cebu City, Branch V, dated September 6, 2004 and October 26, 2004 denying petitioner's Motion for Reconsideration, the Writ of Execution, the Amended Writ of Execution, and the Notice of Garnishment issued by the RTC, are SET ASIDE. Respondent Vicente B. Del Rosario is ORDERED to return to the Land Bank of the Philippines, Independencia Branch, the amount of P9,864,760.27 and all other amounts remitted to respondent by the LBP based on the Orders of the RTC within ten (10) days from the finality of this Decision.

SO ORDERED.

Panganiban, C.J., Ynares-Santiago, Austria-Martinez and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Enrico A. Lanzas, with Associate Justices Arsenio J. Magpale and Sesinando E. Villon, concurring; rollo, pp. 31-53.

[2] Rollo, pp. 54-55.

[3] Records, pp. 169-172.

[4] Id. at 8-10.

[5] Id. at 141-143.

[6] Id. at 13.

[7] Id. at 11. (Emphasis supplied)

[8] Id. at 404.

[9] Id. at 192.

[10] Id. at 236; Annex "D."

[11] Id. at 238-241.

[12] Id. at 242.

[13] Id. at 243.

[14] Id. at 190.

[15] Reyes-de Leon v. Del Rosario, G.R. No. 152862, July 26, 2004, 435 SCRA 232.

[16] Rollo, pp. 405-406

[17] Id. at 144-154.

[18] Id. at 62.

[19] Id. at 64-65.

[20] Id. at 106-109.

[21] Id. at 212.

[22] id. at 218.

[23] id. at 133-154.

[24] Id. at 221-222.

[25] Id. at 186-191.

[26] Id. at 198-199. (Emphasis supplied)

[27] Id. at 247.

[28] Id. at 248.

[29] Id. at 258.

[30] Id. at 259.

[31] Id. at 282-283.

[32] Id. at 306-307.

[33] id. at 327.

[34] 65 Phil. 536(1938).

[35] 210 Phil. 276(1983).

[36] Records, pp. 350-351.

[37] Id. at 359-360.

[38] Id. at 361-362.

[39] Id. at 363-364.

[40] id. at 372.

[41] Id. at 348-349.

[42] Id. at 381-382.

[43] Id. 413-414. (Emphasis supplied)

[44] Id. at 434.

[45] Records, pp. 421-423.

[46] Amended Writ of Execution, records, pp. 433-437.

[47] Rollo, p. 65.

[48] Records, p. 462.

[49] Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Mercedes Gozo-Dadole and Vicente L. Yap, concurring; records, pp. 462-463.

[50] Supra note 1.

[51] Rollo, pp. 43-44.

[52] Id. at 509-510.

[53] Records, p. 1000.

[54] Id. at 963-965.

[55] Id. at 1027-1030.

[56] Id. at 1092-1094.

[57] Id. at 1132.

[58] Id. at 1150-1151.

[59] Id. at 1177.

[60] Rollo, p. 18.

[61] Rollo, pp. 50-51.

[62] Municipality of Taguig v. Court of Appeals, G.R. No. 142619, September 13, 2005, 469 SCRA 588, 594-595.

[63] Marcopper Mining Corporation v. Solidbank Corporation, G.R. No. 134049, June 17, 2004, 432 SCRA 360(2004).

[64] Municipality of Taguig v. Court of Appeals, *supra* note 62, at 595.

[65] *Supra*.

[66] 368 Phil. 791 (1999).

[67] Philippine Bank of Communications v. Court of Appeals, 344 Phil. 777 (1997); Marcopper Mining Corporation v. Solidbank Corporation, *supra* note 63, at 391; Heirs of Macabangkit Sangkay v. National Power Corporation, G.R. No. 141447, May 4, 2006, 489 SCRA 401 (2006).

[68] Manacop v. Equitable PCI Bank, G.R. Nos. 162814-17, August 25, 2005, 468 SCRA 256, 277, citing BF Corporation v. EDSA Shangrila Hotel and Resort, Inc., 355 Phil. 541 (1998).

[69] Annex "C" of the complaint.

[70] Records, p. 13.

[71] Records, p. 13. (Emphasis supplied)

[72] Records, p. 258.

[73] Id. at 381-382.

[74] 448 Phil. 606, 623 (2003).

[75] G.R. No. 163429, March 3, 2006, 484 SCRA 49.

[76] Id. at 63.

[77] Id.

[78] Records, p. 247.

[79] Id. at 248.

[80] Tsai v. Court of Appeals, 418 Phil. 606, 621 (2001).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.