

ANTONIO B. RAMOS (DECEASED), SUBSTITUTED BY HIS SURVIVING HEIRS, NAMELY, MA. MARGARITA A. RAMOS, ANTONIO A. RAMOS, MA. REGINA RAMOS DE DIOS, JOSE VICENTE A. RAMOS, MA. POMONA RA...

G.R. No. 171565. July 13, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a Petition for Review under Rule 45 of the Rules of Court challenging: (1) the July 29, 2005 Resolution[1] of the Court of Appeals, in CA-G.R. SP No. 90344,[2] dismissing outright the petition for review (under Rule 42) filed by petitioner Antonio B. Ramos; and (2) the February 14, 2006 Resolution[3] of the same court denying his Motion for Reconsideration.

On January 15, 1999, the petitioner filed an Affidavit-Complaint,[4] pertinent portions of which allege:

1. I am the lawful assignee of shares of stock covered by the following stock certificates: (a) Travellers Life Assurance of the Philippines, Inc. (TLAP) Stock Certificate Nos. 313 and 314, and (b) Travellers Insurance & Surety Corporation (TRISCO) Stock Certificate Nos. 173 and 174, by virtue of a Deed of Assignment executed by the respondent Emerito M. Ramos, Sr. and his wife (my mother) Susana B. Ramos in my favor in August 1994.

x x x x x x x x

2. Sometime in August 13, 1996, Gloria Ramos Lagdameo, EVP/Treasurer of Travellers Insurance & Surety Corporation (TRISCO), and having been entrusted by Antonio B. Ramos with the safekeeping of the aforesaid stock certificates turned over the same to Emerito Ramos, Sr. at his insistence, and as such knew that they were actually indorsed in my name in 1994, as shown in her affidavit, x x x.[5]

3. After receiving the said stock certificates,

3.1 the respondents, Emerito M. Ramos, Sr. and Rogerio H. Escobal, conspiring and conniving with one another altered the four (4) aforementioned stock certificates by the erasure of the entry "ANTONIO B. RAMOS" and the superimposition of the type-written entry "E.M. Ramos & Sons, Inc." on the dorsal side of each of the four questioned stock certificates, as supported by the Questioned Documents Report No. 652-998 of the National Bureau of Investigation, and

3.2 The respondent Escobal upon the prodding of and with the criminal assent of the respondent Ramos, and in his own handwriting, altered the true date when Susana B. Ramos endorsed both TRISCO and TLAP Stock Certificate Nos. 174 and 314 making it falsely appear that Susana B. Ramos indorsed both Stock Certificates with intent to assign the same on "January 19, 1998" when in truth Travelers Insurance & Surety Corporation (TRISCO) Stock Certificate Nos. 173 and 174, by virtue of a Deed of Assignment, was indorsed in my favor, as early as in August 1994.

X X X X X X X X

4. The alteration made on the aforementioned genuine documents by the respondents has changed the meaning of the same, for their own personal use and benefit, by:

4.1. Making it falsely appear that the assignee of the questioned stock certificates is "E.M. Ramos & Sons" instead of "Antonio B. Ramos," as the lawful and legal assignee of the shares of stock covered by the aforesaid stock certificates.

4.2. Making it falsely appear that Susana B. Ramos indorsed both Stock Certificates with intent to assign the same on 'January 19, 1998' when she could not have done so because as early as September 1996, Susana B. Ramos was already physically incapable of signing any documents as supported by the statement of Alberto Alcancia, Ricardo Deliza and Analia Ogario, and Maria Cecilia Santiago, and a Medical Summary made on her medical condition by Martesio C. Perez, M.D., affecting therefore the veracity of the above document purporting an assignment made by her in favor of "E.M. RAMOS & SONS, INC." on the said date.

After the preliminary investigation, the Investigating Prosecutor issued a Resolution, dated April 20, 1999,[6] finding probable cause and recommending that both respondents Emerito M. Ramos, Sr. and Rogerio H. Escobal be indicted for violation of paragraph 1 of Article 172 in relation to

paragraph 6 of Article 171 of the Revised Penal Code (RPC).[7] Specifically, Assistant City Prosecutor Arthur O. Malabaguio pointed out that:

The first issue to be resolved is whether or not probable cause exists for falsification of document.

A thorough and careful examination of the evidence presented would show that there is probable cause for falsification of documents.

Respondent Emerito Ramos admitted in his sworn statement that he caused the erasure of the name of the complainant as the assignee in the dorsal portion of the subject certificates of stock and superimposed therein the name E.M. Ramos & Sons, Inc. as the new assignee.

Respondents tried to justify such action by stating that complainant failed to comply with the prestation required of him in the Deed of Assignment executed on 17 August 1994. In the exercise of [their] right of dominion, as Emerito Ramos Sr. and Susana Ramos were still the registered owners of subject shares of stocks, complainant's name was erased and substituted by another in all four stock certificates.

The defense invoked by the respondents is untenable. In the absence of any evidence to the contrary, the deed of assignment executed on 17 August 1994 between complainant and spouses Ramos should be treated as valid and subsisting. By virtue of the execution of this document, the name of complainant as assignee appeared on subject certificates of stock.

There is no showing that this deed of assignment was later nullified or declared void by failure of the complainant to fulfill his undertaking as declared in the deed of assignment. On the other hand, respondent Emerito Ramos Sr. by his own unilateral action, rescinded the contract and subsequently decided to assign subject shares of stocks to EMRASON. Complainant questioned this action of Emerito Ramos Sr. and even filed with Securities and Exchange Commission an action for nullity of assignment of shares and other reliefs (SEC Case No. 03-98-5955).

In the absence of proof that there was [a] valid rescission of the first Deed of Assignment, [the] validity of the execution of the Second Deed of Assignment is now placed in question. Respondent Emerito Ramos Sr. could not now invoke defense that substitution of Antonio Ramos to E.M. Ramos and Sons, Inc. was made to speak the truth.

In any case, it was established that respondents made the alterations as borne out by their sworn statements making them liable for falsification of documents.

Anent the date "January 19, 1998" in the subject stock certificates, there appears to be a conflict in relation to the allegations of the opposing parties. Complainant claims that respondents erased the original date and superimposed the same with the date January 19, 1998 making them liable under paragraph (5) (altering true dates) of Article 171 in relation to Article 172 of the Revised Penal Code. Respondents maintain that prior to the filling up of the date, there was already a blank space and respondent Rogerio Escobal was required to fill it up with the date January 19, 1998 to conform with the date the second deed of assignment was made.

Complainant failed to have this part of the document examined by the NBI unlike in the case of the name of the assignee wherein the NBI made its findings. In the absence of this, it is safe to assume, as admitted by the respondents themselves, that the date January 19, 1998 was placed by Rogerio Escobal in a blank space appearing on said documents. Therefore, violation of paragraph 6 and not paragraph 5 of Article 171 in relation to Article 172 of the Revised Penal Code was committed.

The second issue to be resolved is whether or not respondents conspired to commit the offense of falsification of document.

It should be noted that respondent Rogerio Escobal occupies [a] high position in EMRASON (Senior Vice-President thereof). As such, he could have known of the details of the special meeting of the Board of Directors of EMRASON held on January 14, 1998 concerning the assignment of shares of stock of spouses Emerito Ramos and Susana Ramos - the very same shares of stock subject matter of this complaint. He could have known that the Board of Directors of EMRASON accepted the offer of payment by spouses Ramos by way of assignment of subject shares of stock to EMRASON.

At the time respondent Rogerio Escobal assigned the different certificates of stock on April 19, 1998[,] it should be assumed that [, as witness] he read the contents of the documents before affixing his signature. Perusal of the documents would remind him of the subject of [the] special meeting held on January 14, 1998.

Moreover, it was shown by the complainant that it was not true that it was only [on] 19 January 1998 that respondent Rogerio Escobal saw [the] subject certificates[,] as he was present along with Col. Nicolas, Mr. & Mrs. Lagdameo and Mr. Romeo Isidro when the deed of assignment, together with the indorsement of subject stocks certificates[,] were executed in complainant's favor in August 1994.

In fine, complainant was able to establish by sufficient evidence that respondents conspired with one another in erasing his name as assignee in subject stock certificates and substituted it with E.M. RAMOS & SONS, INC.[,] and placing the date January 19, 1998 as the date of execution of the first deed of assignment[,] in violation of paragraph 1 of Article 172 in relation to paragraph 6 of Article 172 of the Revised Penal Code.

WHEREFORE, premises considered, it is respectfully recommended that both respondents be indicted for violation of above-mentioned provisions of law.

Corollarily, four (4) separate Informations,[8] charging private respondents Emerito Ramos, Sr. and Rogerio H. Escobal with the crime of Falsification of Commercial Document under paragraph 1 of Article 172 in relation to paragraph 6 of Article 171 of the RPC, were filed. Those were docketed as Criminal Case Nos. 94961-94964, and raffled to the Metropolitan Trial Court (MeTC) of Quezon City, Branch 43.

When these cases were called for arraignment and pre-trial, counsel for the accused manifested that an Omnibus Motion to Dismiss the cases against Ramos, Sr. had been filed on the ground that he already passed away. Counsel also moved for the deferment of the arraignment of the other accused, Rogerio Escobal (Escobal), considering that there was, before the Office of the Assistant City Prosecutor, a pending Motion for Reconsideration[9] of the Resolution (dated April 20, 1999) recommending the filing of these cases. The MeTC

denied the latter motion and ordered the entry of a plea of NOT guilty because private respondent refused to enter a plea.[10]

The Motion for Reconsideration presented two (2) issues, to wit: (1) whether or not probable cause exists for falsification of document; and (2) whether or not respondents conspired to commit the offense of falsification of document.[11]

Anent the first issue, private respondent Escobal argued that Article 1191[12] of the Civil Code finds application. He explained that on the basis of the said provision, private respondent Ramos, Sr. cannot be held criminally liable for the consequences of the performance of a lawful act, i.e., the rescission of the Deed of Assignment executed earlier in favor of complainant (petitioner Ramos), who failed to comply with the prestations required of him under the Deed, which rescission necessarily resulted in the cancellation or erasure of the name of complainant as assignee in the subject stock certificates.

As regards the second issue, private respondent Escobal averred that conspiracy was NOT proved as the crime itself through clear and convincing evidence.

On November 23, 1999, the Office of the City Prosecutor issued a Resolution[13] granting the Motion for Reconsideration and recommending that the Informations against both accused be withdrawn. The Office of the City Prosecutor made the following explanations:

(1) The Deed of Assignment executed on August 17, 1994 clearly indicated the obligation of complainant (petitioner Ramos) to transfer his one-tenth (1/10) share in the real properties located in North Susana and North Olympus subdivisions and one-tenth (1/10) portion in the undivided one-hectare, all in Quezon City. Apparently, the stock certificates were purposely placed in the custody of TRISCO Executive Vice President Gloria R. Lagdameo. No evidence showing that the assignment has been recorded in the company's stock and transfer book. Respondent E. Ramos, therefore, has the authority to rescind the contract unilaterally in the exercise of a right granted under Article 1191 of the New Civil Code.

(2) Respondent E. Ramos, having acted in good faith, never denied authorship of the cancellation or erasure. He even placed his signatures to indicate that he was the one who caused the erasures. Hence, in so doing he acted without malice. Generally, the word alteration has inherent in it the idea of deception of making the instrument speak something which the parties did not intend to speak. To be an alteration in violation of the law, it must be one "which causes the instrument to speak a language different in legal effect from that which it originally spoke." In this case, complainant ceased to be the assignee of the certificates of stock, the corrections made by respondent speaks only of the truth.

(3) As it appears that the liability of respondent Rogerio Escobal only depends on the criminal liability of Ernesto Ramos, there is no reason for further prosecution.

On January 7, 2000, Assistant City Prosecutor Antonio R. Lim, Jr. filed with the MeTC of Quezon City, Branch 43 a Motion with Leave of Court to Withdraw Information.[14]

Petitioner appealed before the Department of Justice (DOJ) and on February 15, 2002, the DOJ sustained the November 23, 1999 Resolution of the Office of the City Prosecutor of Quezon City.[15] Petitioner's Motion for Reconsideration was likewise denied.[16]

On March 14, 2003, the MeTC of Quezon City, Branch 43 dismissed Criminal Case Nos. 94961-64. The trial court was convinced with the finding of the City Prosecutor, which was sustained by the DOJ, that probable cause for the falsification of commercial documents against the remaining accused, Escobal, did not exist.[17]

The MeTC enumerated the elements of falsification of commercial documents under paragraph 6 of Article 171 of

the RPC. Thus:

- That there be an alteration (change) or intercalation (insertion) on a document;
- That it was made on a genuine document;
- That the alteration or intercalation has changed the meaning of the document; and
- That the change made the document speak something false.

The MeTC ruled that the referred alterations committed by accused E. Ramos in changing the name of the indorsee of the stock certificates from that of the complainant Antonio Ramos to E.M. RAMOS & SONS, INC., could not be considered as the falsification contemplated by the law as the change did not make the document speak something false. The commercial documents subject of these cases were admittedly altered by the accused Ramos, Sr., purposely to correct the inequity brought about by the failure of petitioner Ramos to comply with what was incumbent upon him under their agreement.

The private prosecutors filed a Motion for Reconsideration.[18]

Private respondent Escobal filed his Comment/Opposition.[19] Private prosecutors, thereafter, filed their Reply.[20]

On August 15, 2003, the MeTC finally resolved to DENY the Motion for Reconsideration of the private prosecutors.[21]

On November 3, 2003, petitioner Ramos (complainant in the criminal cases) filed a Petition for Certiorari, Prohibition and Mandamus with the Regional Trial Court of Quezon City (RTC). The same was docketed as Civil Case No. Q03-51042.[22] Petitioner presented the following grounds:

(a)

THE RESPONDENT JUDGE GRAVELY ABUSED HER DISCRETION WHEN SHE ORDERED THE DISMISSAL OF THE INSTANT CASE FOR LACK OF PROBABLE CAUSE DESPITE HER PREVIOUS DETERMINATION OF THE EXISTENCE THEREOF WHEN SHE ISSUED A WARRANT OF ARREST.

(b)

THE RESPONDENT JUDGE GRAVELY ABUSED HER DISCRETION BY ALLOWING THE UNDUE INTERFERENCE OF THE DEPARTMENT OF JUSTICE WITH THE INSTANT CASE AFTER HAVING ALREADY MADE A PERSONAL EXAMINATION OF PROBABLE CAUSE FOR THE ISSUANCE OF A WARRANT OF ARREST

(c)

THE RESPONDENT JUDGE'S BASELESS DISMISSAL OF THE INSTANT CASE GROSSLY VIOLATED THE PROSECUTION'S RIGHT TO DUE PROCESS, IN GRAVE ABUSE OF DISCRETION."[23]

On January 3, 2005, the RTC of Quezon City, Branch 215 dismissed the petition for lack of merit.[24] The RTC explained that once an Information or complaint was filed in court, the matter of the disposition of the case would be left to the sound discretion of the court. When the trial court in this case reconsidered or reversed its previous finding of probable cause and granted the motion to dismiss of the public prosecutor, it was acting within its prerogative since the matter rested upon its sound discretion. The ruling made by the MeTC in dismissing the cases before it, was not simply derived from its own whims and caprices but after a judicious reassessment of the

records of the case. The RTC also cited the case of *Crespo v. Mogul*[25] where it was held that "once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court."

On June 8, 2005, the RTC denied the Motion for Reconsideration of the petitioner.[26]

Petitioner then sought relief from the Court of Appeals via a Petition for Review under Rule 42 of the Rules of Court. Petitioner assailed the January 3, 2005 Decision and the June 8, 2005 Resolution of the RTC.

In its challenged July 29, 2005 Resolution,[27] the Court of Appeals dismissed outright the petition filed by petitioner. Specifically, the Court of Appeals pointed out that:

"x x x a petition for review under Rule 42 of the Revised Rules on Civil Procedure may be availed of only if the assailed decision of the Regional Trial Court was rendered in the exercise of the latter's appellate jurisdiction, such as when a plaintiff files an action for ejectment or sum of money, etc. before the Municipal or Metropolitan Trial Court against a defendant and said court renders judgment thereon. If the losing party appeals the decision of the Municipal or Metropolitan Trial Court to the Regional Trial Court and the latter exercising its appellate court, affirms or reverses the decision, then a petition for review filed by the losing party before this Court under Rule 42 of the revised Rules on Civil Procedure is in order.

However, in the case at bench, it clearly appears that the Regional Trial Court of Quezon City that renders the assailed Decision of January 3, 2005 and Order of June 8, 2005 rendered the same pursuant to its original jurisdiction to assume to hear and resolve petitions for certiorari under Rule 65 of the Revised Rules on Civil Procedure. Because the Regional Trial Court of Quezon City herein had assumed jurisdiction and decided the petition for certiorari filed by herein petitioner pursuant to its original jurisdiction as provided by law, the proper mode for petitioner to assail the subject Decision and Order of the Regional Trial Court of Quezon City is by ordinary appeal under Rule 41 of the revised Rules on Civil Procedure by filing a notice of appeal with the Regional Trial Court of Quezon City within the reglementary period as provided under Sec. 3 of Rule 41 of the revised rules on Civil Procedure and when the appeal is perfected, the Court a quo will elevate the entire record of this case to this Court, and thereafter, instead of briefs, the parties will be required to file their respective memorandum pursuant to Section 10 Rule 44 of the revised Rules on Procedure."

In the other challenged Resolution dated February 14, 2006,[28] the Court of Appeals denied the Motion for Reconsideration of petitioner.

Hence, this petition under Rule 45 challenging the above Resolutions of the Court of Appeals anchored on the following grounds:[29]

(A)

THE COURT OF APPEALS ERRED WHEN IT DISMISSED THE PETITION FOR REVIEW FILED UNDER RULE 42 OF THE 1997 REVISED RULES OF CIVIL PROCEDURE DESPITE THE FACT THAT THE SAME IS A PROPER MODE TO QUESTION THE REGIONAL TRIAL COURT'S ORDERS.

(B)

THE COURT OF APPEALS GRAVELY ERRED IN DISMISSING THE PETITION FOR REVIEW FILED UNDER RULE 42 OF THE 1997 RULES OF CIVIL PROCEDURE AS IT DENIED THE PETITIONER OF THE FULL OPPORTUNITY TO ESTABLISH THE MERITS OF HIS CAUSE, RELYING SOLELY ON TECHNICALITY AT THE EXPENSE [OF] THE PETITIONER'S SUBSTANTIVE RIGHTS.

(C)

THE COURT OF APPEALS GRAVELY ERRED IN REFUSING TO RESOLVE THE PETITION FOR

REVIEW ON THE MERITS DESPITE THE CLEAR REVERSIBLE ERROR COMMITTED BY THE REGIONAL TRIAL COURT WHEN IT AFFIRMED THE METROPOLITAN TRIAL COURT'S ORDERS DISMISSING CRIMINAL CASE NOS. 94961 TO 94964 WITHOUT TRIAL ON THE MERITS, THEREBY SANCTIONING A DENIAL OF DUE PROCESS OF LAW.

(D)

THE COURT OF APPEALS GRAVELY ERRED IN REFUSING TO RESOLVE THE PETITION FOR REVIEW ON THE MERITS NOTWITHSTANDING THE PATENT ERROR COMMITTED BY THE REGIONAL TRIAL COURT WHEN IT AFFIRMED THE METROPOLITAN TRIAL COURT'S ORDERS DISMISSING CRIMINAL CASE NOS. 94961 TO 94964 ON THE SOLE BASIS OF THE RESOLUTION OF THE DEPARTMENT OF JUSTICE, THEREBY SANCTIONING AN ABDICATION OF JUDICIAL DUTY AND JURISDICTION.

(E)

THE COURT OF APPEALS GRAVELY ERRED IN DENYING DUE COURSE TO THE PETITION FOR REVIEW DESPITE THE PALPABLE ERROR COMMITTED BY THE REGIONAL TRIAL COURT IN UPHOLDING THE METROPOLITAN TRIAL COURT'S ORDERS DISMISSING CRIMINAL CASE NOS. 94961 TO 94964 FOR LACK OF PROBABLE CAUSE DESPITE OVERWHELMING EVIDENCE SHOWING ITS EXISTENCE.[30]

The grounds raised by the petitioner boil down to one basic issue $\frac{3}{4}$ whether or not the Court of Appeals erred in dismissing the petition under Rule 42 filed by herein petitioner before it.

We resolve the issue in the negative.

The Court of Appeals was correct in dismissing the petition outright. Under the Rules, appeals to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review under Rule 42.[31] What was filed by the petitioner before the RTC was a petition for certiorari under Rule 65.

It has long been settled that certiorari, as a special civil action, is an original action invoking the original jurisdiction of a court to annul or modify the proceedings of a tribunal, board or officer exercising judicial or quasi-judicial functions. It is an original and independent action that is not part of the trial or the proceedings of the complaint filed before the trial court.[32] The petition for certiorari, therefore, before the RTC is a separate and distinct action from the criminal cases resolved by the MeTC.

It is true that litigation is not a game of technicalities and that the rules of procedure should not be strictly followed in the interest of substantial justice. However, it does not mean that the Rules of Court may be ignored at will. It bears emphasizing that procedural rules should not be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed except only for the most persuasive of reasons.[33] In this case, there was nary a cogent reason to depart from the general rule.

Indeed, the ground alone that petitioner resorted to an improper remedy, makes the petition dismissible and undeserving of the Court's attention.

Even if the Court glosses over such infirmity, the petition should nonetheless be dismissed for lack of substantive merit.

Once a criminal action has been instituted by the filing of the Information with the court, the latter acquires jurisdiction and has the authority to determine whether to dismiss the case or convict or acquit the accused. Where

the prosecution is convinced that the evidence is insufficient to establish the guilt of an accused, it cannot be faulted for moving for the withdrawal of the Information. However, in granting or denying the motion to withdraw, the court must judiciously evaluate the evidence in the hands of the prosecution. The court must itself be convinced that there is indeed no satisfactory evidence against the accused and this conclusion can only be reached after an assessment of the evidence in the possession of the prosecution.[34] In this case, the trial court had sufficiently explained the reasons for granting the motion for the withdrawal of the Information. The Court agrees with the dispositions made by the trial court. Corollarily, the RTC did not err in dismissing the petition (under Rule 65) filed by petitioner challenging the ruling of the MeTC.

It bears emphasizing that when the trial court grants a motion of the public prosecutor to withdraw the Information in compliance with the directive of the Secretary of Justice, or to deny the said motion, it does so not out of compliance to or defiance of the directive of the Secretary of Justice, but in sound and faithful exercise of its judicial prerogative. The trial court is the best and sole judge on what to do with the case before it. The rule applies to a motion to withdraw the Information or to dismiss the case even before or after the arraignment of the accused.[35] The prior determination of probable cause by the trial court does not in any way bar a contrary finding upon reassessment of the evidence presented before it.

WHEREFORE, the petition is DENIED. The Resolutions dated July 29, 2005 and February 14, 2006 of the Court of Appeals are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion,[*] Peralta, and Abad, JJ. , concur.

[*] Designated additional member in lieu of Justice Antonio Eduardo B. Nachura per Raffle dated June 16, 2010.

[1] Rollo, pp. 81-84.

[2] Penned by Associate Justice Edgardo F. Sundiam, with Associate Justice Renato C. Dacudao and Associate Justice Japar B. Dimaampao concurring.

[3] Rollo, pp. 86-88.

[4] Id. at 89-90.

[5] Annex "B" of Complaint-Affidavit.

[6] Rollo, pp. 103-107.

[7] "Art. 172. Falsification by private individuals and use of falsified documents. - The penalty of prison correccional in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document;

x x x x x x x x."

"Art. 171. Falsification by public officer, employee, or notary or ecclesiastical minister. - The penalty of prison mayor and a fine not to exceed 5,000 shall be imposed upon any officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x x x x x x

6. Making any alteration or intercalation in a genuine document which changes its meaning.

x x x x x x x x."

[8] Rollo, pp. 108-115.

[9] Id. at 117-127.

[10] Id. at 116.

[11] Id. at 118.

[12] ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment , if the latter should become impossible.

x x x x x x x x.

[13] Rollo, pp. 128-130.

[14] Id. at 131-132.

[15] Id. at 153, 361-364, 365-366.

[16] Id. at 365-366.

[17] Id. at 224-226.

[18] Id. at 155-164.

[19] Id. at 165-172.

[20] Id. at 173-185.

[21] Id. at 186-187.

[22] Id. at 188-223.

[23] Id. at 202-203.

[24] Id. at 420-423.

[25] 235 Phil. 465 (1987).

[26] Rollo, p. 502.

[27] Id. at 81-84.

[28] Id. at 86-88.

[29] After the relevant pleadings have been filed, this Court has directed the parties to submit their respective Memoranda (Rollo, pp. 929-930). Private respondent Escobal filed his Memorandum (Rollo, pp. 1027-1052). The Office of the Solicitor General (OSG), manifested that it is adopting its Comment dated October 10, 2006 as its Memorandum (Rollo, pp. 1060-1061). The heirs of petitioner, likewise, manifested that the petition and related pleadings filed by their deceased father be considered as their Memorandum as per their Motion dated February

12, 2009. The Court granted the motion considering that per Our Resolution dated June 10, 2009, only respondents were required to file Memorandum (Rollo, pp. 1065-1066).

[30] Rollo, pp. 40-41.

[31] SECTION 1. How appeal taken; time for filing.--A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of P500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

[32] *San Miguel Bukid Homeowners Association. Inc. v. The City of Mandaluyong*, G.R. No. 153653, October 2, 2009, 602 SCRA 30.

[33] *Sea Power Shipping Enterprises, Inc. v. Court of Appeals*, 412 Phil. 603 (2001).

[34] *Fuentes v. The Sandiganbayan*, G.R. No. 139618, July 11, 2006, 494 SCRA 478.

[35] *Crespo v. Mogul*, *supra* note 25.

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