

## **ALBAY ELECTRIC COOPERATIVE, INCORPORATED, PETITIONER, VS. SECURITY PACIFIC ASSURANCE CORPORATION, RESPONDENT.**

*G.R. No. 174189. October 05, 2007*

Ponente: GARCIA, J.

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### **GARCIA, J.:**

Assailed and sought to be set aside in this petition for review under Rule 45 of the Rules of Court are the Decision[1] dated May 26, 2006 of the Court of Appeals (CA), in CA-G.R. SP No. 85324, and its modificatory resolution[2] of July 21, 2006 which denied the herein petitioner's motion for reconsideration. As thus modified, the assailed decision nullified (a) the orders of the Regional Trial Court (RTC) of Quezon City basically allowing execution against the counter-bond; and (b) the supplemental writs of execution and the notices of garnishment implementing said orders.

Records yield the following relevant facts:

Herein petitioner Albay Electric Cooperative, Inc. (ALECO), during the period material, operated the Polangui, Albay 10 MVA electric substation, while herein respondent Security Pacific Assurance Corporation (SPAC) is an insurance firm engaged in non-life insurance business.

The case started when, on September 24, 2001, in the RTC of Quezon City, ALECO, represented by Gil B. Medina, filed a complaint[3] for a sum of money and breach of contract with prayer for a writ of preliminary attachment against Roberto D. Tuazon and/or R.D. Tuazon Construction (individually or collectively Tuazon, hereinafter). The contract[4] Tuazon allegedly breached despite his receipt of a cash advance payment related to the construction of a power station project. The complaint was docketed in the said court as Civil Case No. Q-O1-45171, which was eventually raffled to Branch 77 thereof.

On October 9, 2001, upon the submission of the required attachment bond, the trial court issued a writ of preliminary attachment against Tuazon's properties to satisfy ALECO's demand in the amount of P9,000,000.00. Following the issuance by the Quezon City sheriff of a notice of levy on attachment, Tuazon posthaste sought the dissolution of the attachment writ by filing and requesting approval of a counter-bond in the sum of P9,000,000.00. The offered dissolving bond - SPAC BOND No. 01163/2001- was under the signature of Aurora C. Galvez (Galvez), former president of SPAC. ALECO's opposition to the dissolution aforementioned, rooted on the alleged financial incapability of SPAC to undertake the counter-bond, prompted the trial court to schedule hearings on the matter.

Before the trial court could act on the request for approval of the counter-bond, Galvez, purportedly upon authority of the SPAC Board, filed on November 28, 2001 a Manifestation[5] therein serving notice of the cancellation, effective as of said date, of SPAC BOND No. 01163/2001. She further manifested that SPAC effected the cancellation with Tuazon's prior conformity to enable him to secure the requisite bond from another surety acceptable to all parties concerned.

Galvez, by herself, would later reverse course as, on January 18, 2002, she filed an “Urgent Motion for Withdrawal of the Manifestation dated 28 November 2001,”[6]therein praying for the revival of the cancelled bond, and declaring that there is no other bonding company that can acceptably assume the obligation of a surety for this particular case and that Tuazon has posted ample security for said bond. In connection with the hearing of this urgent motion, the SPAC board adopted on January 21, 2002 a resolution[7] that the corporation shall participate in the case and that “Mr. Ponce be authorized ... to represent [SPAC] in the proceedings of said case [but only] to attest the authenticity of the bond issued in favor of R.R. Tuazon Construction.”

Subsequently, Tuazon secured a new counter-bond, i.e., SPAC BOND No. 01332/2002, in the amount of P9 Million. He then filed a new motion to approve counter-bond and for the discharge of the writ of preliminary attachment. On February 6, 2002, the trial court, over the objection of ALECO, issued an order[8] therein granting Tuazon’s motion to lift attachment. ALECO moved for reconsideration of the said order.

The intervening legal skirmishes, inclusive of the preliminary referral of the case to an arbitrator, are not material to this narration. The bottom line is that on August 26, 2003, the trial court, on the basis of the arbitrator’s finding, rendered judgment[9] for ALECO, as plaintiff, Tuazon being ordered, as defendant, to pay ALECO the amount of P9,000,000.00, as actual and compensatory damages, plus interest; P100,000.00 as and by way of exemplary damages; P100,000.00 as attorney’s fees; and the costs of suit.

From the above August 26, 2003 decision, a copy of which he claimed receiving on August 28, 2003, Tuazon filed, on September 12, 2003, a motion for reconsideration, while ALECO filed, on September 13, 2003, a motion for execution of the August 26, 2003 decision[10] which the trial court set to be heard on September 19, 2003.

At the September 19, 2003 hearing, the trial court, in an open court order, denied[11] Tuazon’s motion for reconsideration under the pro forma rule, failing as it did to indicate a particular time and date for the hearing thereof. Tuazon would, three days later – September 22, 2003 – file a motion for reconsideration[12]of the September 19, 2003 denial order, noting that the court allowed the parties to argue on his September 12, 2003 motion for consideration on the September 19, 2003 hearing.

Meanwhile, during the same September 19, 2003 hearing, SPAC moved for time – and was granted 10 days - within which to file a comment/opposition to ALECO’s motion for execution.[13] Another similar extension motion would later follow.

By Order[14] of October 3, 2003, the trial court reconsidered and vacated its September 19, 2003 order denying Tuazon’s motion for reconsideration, disposing as follows:

WHEREFORE, the Order, dated 19 September 2003, which found the defendant’s [Tuazon’s] motion for reconsideration pro forma, is hereby reconsidered and set aside. Accordingly, the plaintiff [Aleco] is hereby given ten (10) days from notice of this Order within which to file its comment on or opposition to the defendant’s motion for reconsideration of the decision rendered in this case.

SO ORDERED. (Emphasis added and words in brackets.)

The reconsideration thus granted did not, as to be expected, sit well with ALECO as it filed on October 28, 2003 its own motion to have the October 3, 2003 order reconsidered.

Meanwhile, on December 8, 2003, the trial court issued an order[15] declaring SPAC to have waived its right to submit comment or opposition to the motion for execution, having failed to submit the necessary pleading “despite two (2) extensions granted by the Court.”

Subsequent developments saw the trial court issuing another order[16] dated February 16, 2004, granting

ALECO's: (a) motion for reconsideration of the court's order of October 3, 2003[17]reconsidering the denial, for being pro forma, of Tuazon's motion to reconsider the decision dated August 26, 2003;[18] and (b) September 13, 2003 motion for execution of the August 26, 2003 decision. With respect to item (b), the trial court ordered that a writ of execution issue for the enforcement of the August 26, 2003 decision rendered against Tuazon and SPAC, as surety.

What transpired next is summarized in the appealed CA decision as follows:

On February 26, 2004, Branch Clerk of Court Joy Manalang Bulautitan issued a writ of execution[19] for the enforcement of the August 26, 2003 judgment adverted to, basically commanding Deputy Sheriff Angel L. Doroni, ...

On February 27, 2004, ALECO in a letter addressed to [the] Branch Clerk of Court ... requested for "immediate issuance of a supplemental writ of execution to include the enforcement of the judgment against SPAC which issued the counter-attachment bond, conformably to the order of execution dated February 16, 2004 and Section 17, Rule 57 of tile Rules of Court." On March 1, 2004, ... Atty. Joy Manalang Bulautitan issued a supplemental writ of execution against SPAC, the material portions of which are quoted hereunder, thus:

"WHEREAS, in an Order, dated February 16, 2004, the Court ruled as follows:

'(1) The plaintiff's [ALECO's] motion for reconsideration is hereby granted. Accordingly, the Order, dated October 3, 2003, is hereby reconsidered and set aside;

(2) The plaintiff's motion for execution is hereby granted. Accordingly, let a writ of execution issue for the enforcement of the Judgment, dated August 26, 2003, rendered in this case against the defendant [Tuazon] and [SPAC].

WHEREAS, in a Writ of Execution, dated February 26, 2004, you [Sheriff Doroni] were directed ... to enforce the Judgment, dated August 26, 2003, against defendant [Tuazon] ....;

WHEREAS, in a Partial Sheriffs Return, dated February 27, 2004, ... [Tuazon] failed to satisfy the judgment.

WHEREAS, ...[ALECO has] requested for the immediate issuance of a Supplemental Writ of Execution to include the enforcement of the Judgment against ...[SPAC].

NOW THEREFORE, in accordance with: (1) the Judgment dated August 26, 2003; (2) the Order dated February 16, 2004; (3) the terms of the counter-bond executed between the defendant and [SPAC] on January 5, 2002; and (4) Section 17, Rule 57 the 1997 Rules of Civil Procedure, as amended, we command you to enforce the aforecited Judgment in this case against the Counter -Bond No. 00133, issued by the [SPAC], up to the amount stated therein which is Nine Million Pesos (P9,000,000.00).

As a result of the enforcement of the supplemental writ of execution and notices of garnishment, private respondent ALECO managed to get P2,000,000.00 from [SPAC's] funds with the PCIB, Quezon Ave. Branch and remittances due petitioners from Toyota Cubao, Inc., including that garnished from the Bureau of Treasury.[20] (Emphasis and words in brackets added.)

From the aforesaid February 16, 2004 Order,[21] SPAC moved for reconsideration but the trial court denied the motion per its Order[22] of May 20, 2004. In still another Order[23]of July 2, 2004, the trial court denied due course to SPAC's "Notice of Appeal" on the ground that the order covered by the notice of appeal, i.e., granting the motion to execute and issuance of the corresponding writ, is not subject to appeal.

Aggrieved, SPAC went to the CA on July 16, 2004 via a petition for certiorari in CA-G.R. SP No. 85324, thereunder ascribing to the trial court the commission of grave abuse of discretion in allowing execution on the

subject counter-bond notwithstanding the fact –

- xxx THAT AT THE TIME THE MOTION TO EXECUTE ON THE BOND WAS FILED, THE DECISION SOUGHT TO BE EXECUTED HAS NOT YET BECOME FINAL AND EXECUTORY.

- xxx THAT PETITIONER [SPAC] WAS NOT NOTIFIED OF THE RECONSIDERATION SOUGHT BY [ALECO] ON THE ORDER DATED 3 OCTOBER 2003 GIVING DUE COURSE TO R.D. TUAZON'S MOTION FOR RECONSIDERATION OF THE DECISION OF 26 AUGUST 2003; WITHOUT CONDUCTING A SUMMARY HEARING WITH NOTICE TO THE SURETY PURSUANT TO SECTION 17, RULE 57, OF THE 1997 RULES AND UPHOLDING THE ACT OF THE BRANCH CLERK OF COURT WHO ISSUED THE ASSAILED SUPPLEMENTAL WRIT UPON A MERE LETTER OF PLAINTIFF, WHICH FAILURE, EFFECTIVELY DEPRIVED PETITIONER THE, RIGHT TO DUE PROCESS FOR LACK. OF NOTICE ON THE ILLEGAL AND UNJUST ISSUANCES OF WRIT AND SUPPLEMENTAL WRIT OF EXECUTION, AND NOTICES OF GARNISHMENT, ....

- xxx MS. GALVEZ ..., THE PERSON WHO ISSUED THE BOND, WAS NOT CLOTHED WITH POWER OR AUTHORITY TO DO SO THEREBY MAKING HER ACT ULTRA VIRES AND THEREFORE, NULL AND VOID AND OF NO FORCE AND EFFECT.

To the petition, ALECO filed its Comment[24] with a plea for summary dismissal, accusing SPAC of forum shopping by resorting to two (2) modes of review to nullify the assailed orders of the trial court.

The CA eventually issued its herein assailed decision[25]granting the petition of SPAC, the appellate court predicating its ruling on the first two issues alone. It left the third issue untouched predicating its non-action thereon on the notion that the question delving on the validity of the counter-bond is factual which would thus require presentation of evidence, a proceeding that is beyond the scope of a certiorari action. In full, the fallo of the assailed CA's decision reads:

WHEREFORE, the petition is GRANTED. The Orders dated February 16, 2004, May 20, 2004 and July 2, 2004, rendered by the RTC of Quezon City, Branch 77 in Civil Case No. Q-01-45171 and the supplemental writ of execution and the notices of garnishment issued and implemented pursuant to the said Orders are ANNULLED and SET ASIDE.

SO ORDERED. (Emphasis in the original)

On June 20, 2006, ALECO filed a motion for reconsideration, raising anew the issue of forum shopping and claiming that the trial court's decision dated August 26, 2003 was ripe for execution when it filed, on September 13, 2003, the corresponding motion for execution. For its part, SPAC interposed an intervening motion to amend the dispositive portion of the May 26, 2006 decision to include the return of the SPAC's funds garnished by ALECO. By Resolution[26] of July 21, 2006, the appellate court denied the reconsideration sought, but granted the desired modification, thus:

WHEREFORE, respondent ALECO'S Motion for Reconsideration is DENIED for lack of merit. Petitioner's Urgent Motion is GRANTED and the dispositive portion of the May 26, 2006 decision of this Court is modified, and shall read, as follows:

WHEREFORE, the petition is GRANTED. The Orders dated February 16, 2004, May 20, 2004 and July 2, 2004, rendered by the RTC of Quezon City, Branch 77 in Civil Case No. Q-01-45171 and the supplemental writ of execution and the notices of garnishment issued and implemented pursuant to the said Orders are ANNULLED and SET ASIDE. Accordingly, respondent ALECO is ordered to immediately return to petitioner SPAC the illegally garnished funds in the total amount of P3,033,053.17.

Hence, ALECO's instant petition for review on its submission that the CA committed grave error of law:

- xxx IN HOLDING THAT SPAC DID NOT COMMIT FORUM SHOPPING WHEN IT AVAILED OF TWO MODES OF REVIEW, FIRST BY WAY OF APPEAL AND WHEN DENIED BY CERTIORARI, TO NULLIFY NOT THE DENIAL OF APPEAL BUT SAME ORDERS ALLOWING EXECUTION SUBJECT MATTER OF THE FAILED APPEAL.

- xxx IN HOLDING THAT SPAC CANNOT BE LIABLE FOR FORUM SHOPPING IN FILING A SEPARATE ACTION BEFORE A DIFFERENT COURT SEEKING INJUNCTIVE RELIEF AND COMPLETELY IGNORING THE “DISCLOSURE UNDERTAKING” IN ITS CERTIFICATION OF NON-FORUM SHOPPING EVEN IF THE SEPARATE CLAIM FOR RELIEF WAS DEEMED INCLUDED OR COULD HAVE BEEN INCLUDED IN THE PENDING CASE, SEEKING SUBSTANTIALLY THE SAME RELIEF FROM THE SAME ORDERS OF EXECUTION AND GARNISHMENT.

- THE [CA] , IN NULLIFYING THE ORDERS OF EXECUTION FOR BEING ALLEGEDLY PREMATURE, COMMITTED SERIOUS ERROR IN LAW, THE INTERVENING MOTIONS FOR RECONSIDERATION OF THE JUDGMENT BEING FATALLY DEFECTIVE AND PRO-FORMA AND, HENCE DID NOT TOLL THE REGLEMENTARY PERIOD, THEREBY ALLOWING THE JUDGMENT TO BECOME FINAL AND EXECUTORY AT THE TIME THE MOTON FOR EXECUTION ON THE COUNTER-BOND WAS FILED AND GRANTED.

We DENY.

At the outset, it must be stated that the appellate court failed to duly take into account certain facts appearing on record which would have had put things in the proper perspective. We shall consider the relevant ones in this disposition.

The first two issues raised by the petitioner, relating as they do to the alleged forum shopping committed by herein respondent SPAC, are closely intertwined and, thus, may be resolved jointly.

Petitioner argues that the respondent is guilty of forum shopping in, firstly, appealing the February 16, 2004 order as effectively reiterated in the May 20, 2004 order of the trial court, and then in subsequently filing a petition for certiorari when the trial court denied due course to its notice of appeal.

The Court is unable to sustain the above view of the petitioner. When the trial court denied due course to respondent SPAC’s notice of appeal for being erroneous – certiorari being the proper remedy - it filed a timely petition for certiorari with the appellate court. There was nothing legally amiss with this legal strategy. SPAC was not precluded from resorting to the proper judicial remedy – certiorari – when the first one taken, which is appeal, was erroneous.

Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other.[27] In the present case, there was no final order yet and SPAC was still within its rights in availing itself of the proper remedy, i.e., to elevate the trial court’s orders to the higher court, having been apprised of its erroneous resort to the wrong remedy of appeal. Furthermore, forum shopping presupposes the availment of two or more simultaneous remedies,[28] not to successive ones arising out of an error that may have been committed in good faith. Besides, the wrong remedy, as well as the correct one, was addressed to one and the same court, the CA, which was the correct forum to which the matter should be elevated. Raising a matter to the correct forum employing the wrong mode or remedy, and later resorting to the correct one, does not make an instance of forum shopping. The remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[29] In a case, we held that the rule on forum shopping applies only where a party seeks a favorable opinion in another forum through means other than appeal or certiorari.[30]

This brings us to the third issue which pivots on the finality of the trial court’s decision sought to be executed. In

this regard, petitioner faults the CA for holding that the issuance by the trial court of the underlying order of execution is premature, the finality of the August 26, 2003 decision of the trial court sought to be executed not having set in at the time of such issuance.

The appellate court's rulings on prematurity and its resulting legal implication commend themselves for concurrence.

We shall again focus on the factual antecedents and the attending dizzying twists and turns of the case which lead to the CA's conclusion on prematurity.

As may be recalled, the trial court rendered on August 26, 2003 a money judgment in favor of ALECO and against Tuazon. On August 28, 2003, Tuazon received a copy of the said decision, thus giving him until September 12, 2003, the expiration of the 15 days period, within which to appeal the decision or move for a reconsideration of the same. He opted to file, on September 12, 2003, a motion for reconsideration. On September 13, 2003, however, ALECO filed a motion for execution of the August 26, 2003 decision which motion was set for hearing on September 19, 2003, during which setting the trial court denied, in open court, Tuazon's motion for reconsideration, the same, according to the court, being pro forma.

At the September 19, 2003 hearing, SPAC sought and, there and then, secured a 10-day period within which to submit an opposition to the motion for execution. Thereafter, Tuazon sought reconsideration of the September 19, 2003 order. On October 3, 2003, the trial court issued an Order vacating and setting aside its Order dated September 19, 2003 insofar as it summarily denied Tuazon's motion to reconsider the court's August 26, 2003. In net effect, the trial court revived Tuazon's heretofore denied motion for reconsideration.

In the light of the trial court's October 3, 2003 Order, it would appear that, at that stage of the proceedings, the underlying August 26, 2003 decision of the trial court was not yet final and executory. Hence, the filing on September 13, 2003 by ALECO of the motion for execution of the judgment against Tuazon and the counter-bond and the issuance, on the basis of such motion, of the corresponding writ of execution, was premature.

The twist in the proceedings below became more complicated when ALECO filed, without notice to SPAC, a motion for reconsideration of the October 3, 2003 order which, to stress, reconsidered the summary denial of Tuazon's motion for reconsideration of the August 26, 2003 decision. ALECO acknowledges, in page 65, par. 6.31 of its petition,<sup>[31]</sup> that it indeed did not notify SPAC of its counter-motion for reconsideration of the Order of October 3, 2004, but reasoned out that its failure is not of such nature as would render the order of execution void.

We are not persuaded. As aptly held by the CA:

Acting on [petitioner] ALECO's motion, the RTC issued the order of February 16, 2004 reversing its October 3, 2003 order and granting ALECO's motion for execution. This is a not only a grave procedural flaw. The RTC, in issuing the aforesaid order granting ALECO's motion for execution ignored the fact that the August 26, 2003 decision had not yet become final and executory. It should be stressed that the order granting the motion for execution is unsupported by any finding or entry of judgment that the decision had become final and executory. The fact remains that on October 3, 2003, TUAZON's motion for reconsideration was given due course rendering the order granting ALECO's motion for execution ill-timed and premature. xxx . Inevitably the conclusion follows that the period within which to appeal the decision was tolled leaving the decision not yet executory.<sup>[32]</sup>

And lest it be overlooked, a recovery against the surety's counter-bond may be allowed present the element of finality of the judgment, and provided that the statutory requirements on demand, notice and hearing are complied with. Section 17, Rule 57 of the Rules of Court prescribes these requirements, thus:

SEC. 17. Recovery upon the counter-bond- When the judgment has become executory, the surety or sureties on any counter-bond given pursuant to the provisions of this Rule to secure the payment of the judgment shall become charged on such counter-bond and bound to pay the judgment obligee upon demand the amount due under the judgment, which amount may be recovered from such surety or sureties after notice and summary hearing in the same action. (Emphasis added.)

As determined by the appellate court, however, the trial court, in grave abuse of discretion, proceeded to issue the desired order of execution against the counter-bond – and then effectively reiterated it – notwithstanding the absence of demand and the corresponding notice and hearing in Civil Case No. Q-O1-45171. Wrote the CA, citing cases:[33]

xxx But contrary to the mandate of the aforesaid section [Sec. 17, Rule 57 of the Rules of Court], [respondent SPAC] was not furnished with a copy of ALECO's motion for reconsideration of the Order dated October 3, 2003. It was imperative that [SPAC] be furnished with a copy of the aforesaid motion for reconsideration because in the event that ALECO's motion for reconsideration is granted, the subject counter-bond will eventually be the subject for execution for the satisfaction of the judgment. Consequently in view of the lack of notice, it was impossible for [SPAC] to know that ALECO was instituting an action against the counter-bond to answer for TUAZON's liability under the judgment. Thus, following the settled rule, a writ of execution for recovery on the counter-bond issued against the surety who was not given notice and an opportunity to be heard is invalid.[34] (Words in brackets added.)

In all, the Court finds no reversible error committed by the appellate court in granting herein respondent SPAC's petition for certiorari in CA-G.R. SP No. 85324, as clearly the assailed order, as effectively reiterated later, of the trial court granting the writ and supplemental writ of execution against SPAC was issued in grave abuse of discretion because the decision against Tuazon was not yet final when that court granted the motion for execution against the counter-bond. This disposition, it should be stressed, should be taken in the above light, and not as exempting SPAC, as surety, or its counter-bond, from the liability of the principal debtor.

WHEREFORE, the instant petition is DENIED and the assailed decision of the Court of Appeals, dated May 26, 2006, and its Resolution dated July 21, 2006 in CA-G.R. SP No. 85324 are AFFIRMED in toto.

Costs against the petitioner.

### **SO ORDERED.**

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

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[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Remedios Salazar- Fernando and Sesinando E. Villon concurring; rollo, pp. 86 et seq.

[2] Id. at 99 et seq.

[3] Id. at 102 et seq.

[4] Id. at 115 et seq.

[5] Id. at 141-142.

[6] Id. at 147 et seq.

[7] Per Secretary Certificate dated January 29, 2002; id. at 159

[8] Id. at 183 et seq.

- [9] Id. at 212 et seq.; The trial court's judgment, except for a reduction in the respective amounts originally awarded by the arbitrator, practically sustains the latter's decision in all respects.
- [10] CA Decision, p. 3; id. at 88.
- [11] CA Decision, p. 10; id. at 95.
- [12] Id. at 233 et seq.
- [13] CA Decision, p. 10; rollo, p. 95.
- [14] Id. at 238 et seq.
- [15] Id. at 274.
- [16] Id. at 275.
- [17] Supra note 14.
- [18] Supra note 9.
- [19] Rollo, pp. 278-280.
- [20] Id. at 89-91.
- [21] Supra note 16.
- [22] Rollo, pp. 298 et seq.
- [23] Id. at 314 et seq.
- [24] Annex "RR" of the Petition, id. at 375 et seq.
- [25] Supra note 1.
- [26] Supra note 2.
- [27] Philippine Woman's Christian Temperance Union, Inc. v. Abiertas House Of Friendship, Inc., G.R. No. 125571, July 22, 1998, 292 SCRA 785.
- [28] Victronics Computers, Inc. v. Regional Trial Court of Makati, G.R. No. 104019, January 25, 1993, 217 SCRA 517.
- [29] Rigor v. 10<sup>th</sup> Division of the Court of Appeals, G.R. No. 167400, June 30, 2006, 494 SCRA 375.
- [30] Ligon v. Court of Appeals, G.R. No. 127683, August 7, 1998, 294 SCRA 73.
- [31] Rollo, p. 77.
- [32] Pages 10 & 11 of the CA's Decision; id. at 95-96.
- [33] Vanguard Assurance v. CA, G.R. No. L-25921, May 27, 1975, 64 SCRA 148.
- [34] Pages 11-12 of the CA's Decision; rollo, pp. 96-97.

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