ZENAIDA G. MENDOZA, PETITIONER, VS. ENGR. EDUARDO PAULE, ENGR. ALEXANDER COLOMA AND NATIONAL IRRIGATION ADMINISTRATION (NIA MUÑOZ, NUEVA ECIJA), RESPONDENTS.

G.R. No. 175885. February 13, 2009

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

These consolidated petitions assail the August 28, 2006 Decision[1] of the Court of Appeals in CA-G.R. CV No. 80819 dismissing the complaint in Civil Case No. 18-SD (2000),[2] and its December 11, 2006 Resolution[3] denying the herein petitioners' motion for reconsideration.

Engineer Eduardo M. Paule (PAULE) is the proprietor of E.M. Paule Construction and Trading (EMPCT). On May 24, 1999, PAULE executed a special power of attorney (SPA) authorizing Zenaida G. Mendoza (MENDOZA) to participate in the pre-qualification and bidding of a National Irrigation Administration (NIA) project and to represent him in all transactions related thereto, to wit:

> - To represent E.M. PAULE CONSTRUCTION & TRADING of which I (PAULE) am the General Manager in all my business transactions with National Irrigation Authority, Muñoz, Nueva Ecija.
>
> - To participate in the bidding, to secure bid bonds and other documents pre-requisite in the bidding of Casicnan Multi-Purpose Irrigation and Power Plant (CMIPPL 04-99), National Irrigation Authority, Muñoz, Nueva Ecija.
>
> - To receive and collect payment in check in behalf of E.M. PAULE CONSTRUCTION & TRADING.
>
> - To do and perform such acts and things that may be necessary and/or required to make the herein authority effective.[4]

On September 29, 1999, EMPCT, through MENDOZA, participated in the bidding of the NIA-Casecnan Multi-Purpose Irrigation and Power Project (NIA-CMIPP) and was awarded Packages A-10 and B-11 of the NIA-CMIPP Schedule A. On November 16, 1999, MENDOZA received the Notice of Award which was signed by Engineer Alexander M. Coloma (COLOMA), then Acting Project Manager for the NIA-CMIPP. Packages A-10 and B-11 involved the construction of a road system, canal structures and drainage box culverts with a project cost of P5,613,591.69.

When Manuel de la Cruz (CRUZ) learned that MENDOZA is in need of heavy equipment for use in the NIA project, he met up with MENDOZA in Bayuga, Muñoz, Nueva Ecija, in an apartment where the latter was holding office under an EMPCT signboard. A series of meetings followed in said EMPCT office among CRUZ, MENDOZA and PAULE.

On December 2 and 20, 1999, MENDOZA and CRUZ signed two Job Orders/Agreements[5] for the lease of the latter's heavy equipment (dump trucks for hauling purposes) to EMPCT.

On April 27, 2000, PAULE revoked[6] the SPA he previously issued in favor of MENDOZA; consequently, NIA refused to make payment to MENDOZA on her billings. CRUZ, therefore, could not be paid for the rent of the equipment. Upon advice of MENDOZA, CRUZ addressed his demands for payment of lease rentals directly to NIA but the latter refused to acknowledge the same and informed CRUZ that it would be remitting payment only to EMPCT as the winning contractor for the project.

In a letter dated April 5, 2000, CRUZ demanded from MENDOZA and/or EMPCT payment of the outstanding rentals which amounted to P726,000.00 as of March 31, 2000.

On June 30, 2000, CRUZ filed Civil Case No. 18-SD (2000) with Branch 37 of the Regional Trial Court of Nueva Ecija, for collection of sum of money with damages and a prayer for the issuance of a writ of preliminary injunction against PAULE, COLOMA and the NIA. PAULE in turn filed a third-party complaint against MENDOZA, who filed her answer thereto, with a cross-claim against PAULE.

MENDOZA alleged in her cross-claim that because of PAULE's "whimsical revocation" of the SPA, she was barred from collecting payments from NIA, thus resulting in her inability to fund her checks which she had issued to suppliers of materials, equipment and labor for the project. She claimed that estafa and B.P. Blg. 22 cases were filed against her; that she could no longer finance her children's education; that she was evicted from her home; that her vehicle was foreclosed upon; and that her reputation was destroyed, thus entitling her to actual and moral damages in the respective amounts of P3 million and P1 million.

Meanwhile, on August 23, 2000, PAULE again constituted MENDOZA as his attorney-in-fact –

> - To represent me (PAULE), in my capacity as General Manager of the E.M. PAULE CONSTRUCTION AND TRADING, in all meetings, conferences and transactions exclusively for the construction of the projects known as Package A-10 of Schedule A and Package No. B-11 Schedule B, which are 38.61% and 63.18% finished as of June 21, 2000, per attached Accomplishment Reports x x x;
>
> - To implement, execute, administer and supervise the said projects in whatever stage they are in as of to date, to collect checks and other payments due on said projects and act as the Project Manager for E.M. PAULE CONSTRUCTION AND TRADING;
>
> - To do and perform such acts and things that may be necessary and required to make the herein power and authority effective.[7]

At the pre-trial conference, the other parties were declared as in default and CRUZ was allowed to present his evidence ex parte. Among the witnesses he presented was MENDOZA, who was impleaded as defendant in PAULE's third-party complaint.

On March 6, 2003, MENDOZA filed a motion to declare third-party plaintiff PAULE non-suited with prayer that she be allowed to present her evidence ex parte.

However, without resolving MENDOZA's motion to declare PAULE non-suited, and without granting her the opportunity to present her evidence ex parte, the trial court rendered its decision dated August 7, 2003, the dispositive portion of which states, as follows:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff as follows:
>
> - Ordering defendant Paule to pay the plaintiff the sum of P726,000.00 by way of actual damages or compensation for the services rendered by him;
>
> - Ordering defendant Paule to pay plaintiff the sum of P500,000.00 by way of moral damages;

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- Ordering defendant Paule to pay plaintiff the sum of P50,000.00 by way of reasonable attorney's fees;

- Ordering defendant Paule to pay the costs of suit; and

- Ordering defendant National Irrigation Administration (NIA) to withhold the balance still due from it to defendant Paule/E.M. Paule Construction and Trading under NIA-CMIPP Contract Package A-10 and to pay plaintiff therefrom to the extent of defendant Paule's liability herein adjudged.

SO ORDERED.[8]

In holding PAULE liable, the trial court found that MENDOZA was duly constituted as EMPCT's agent for purposes of the NIA project and that MENDOZA validly contracted with CRUZ for the rental of heavy equipment that was to be used therefor. It found unavailing PAULE's assertion that MENDOZA merely borrowed and used his contractor's license in exchange for a consideration of 3% of the aggregate amount of the project. The trial court held that through the SPAs he executed, PAULE clothed MENDOZA with apparent authority and held her out to the public as his agent; as principal, PAULE must comply with the obligations which MENDOZA contracted within the scope of her authority and for his benefit. Furthermore, PAULE knew of the transactions which MENDOZA entered into since at various times when she and CRUZ met at the EMPCT office, PAULE was present and offered no objections. The trial court declared that it would be unfair to allow PAULE to enrich himself and disown his acts at the expense of CRUZ.

PAULE and MENDOZA both appealed the trial court's decision to the Court of Appeals.

PAULE claimed that he did not receive a copy of the order of default; that it was improper for MENDOZA, as third-party defendant, to have taken the stand as plaintiff CRUZ's witness; and that the trial court erred in finding that an agency was created between him and MENDOZA, and that he was liable as principal thereunder.

On the other hand, MENDOZA argued that the trial court erred in deciding the case without affording her the opportunity to present evidence on her cross-claim against PAULE; that, as a result, her cross-claim against PAULE was not resolved, leaving her unable to collect the amounts of P3,018,864.04, P500,000.00, and P839,450.88 which allegedly represent the unpaid costs of the project and the amount PAULE received in excess of payments made by NIA.

On August 28, 2006, the Court of Appeals rendered the assailed Decision which dismissed CRUZ's complaint, as well as MENDOZA's appeal. The appellate court held that the SPAs issued in MENDOZA's favor did not grant the latter the authority to enter into contract with CRUZ for hauling services; the SPAs limit MENDOZA's authority to only represent EMPCT in its business transactions with NIA, to participate in the bidding of the project, to receive and collect payment in behalf of EMPCT, and to perform such acts as may be necessary and/or required to make the said authority effective. Thus, the engagement of CRUZ's hauling services was done beyond the scope of MENDOZA's authority.

As for CRUZ, the Court of Appeals held that he knew the limits of MENDOZA's authority under the SPAs yet he still transacted with her. Citing Manila Memorial Park Cemetery, Inc. v. Linsangan,[9] the appellate court declared that the principal (PAULE) may not be bound by the acts of the agent (MENDOZA) where the third person (CRUZ) transacting with the agent knew that the latter was acting beyond the scope of her power or authority under the agency.

With respect to MENDOZA's appeal, the Court of Appeals held that when the trial court rendered judgment, not only did it rule on the plaintiff's complaint; in effect, it resolved the third-party complaint as well;[10] that the trial court correctly dismissed the cross-claim and did not unduly ignore or disregard it; that MENDOZA may not claim, on appeal, the amounts of P3,018,864.04, P500,000.00, and P839,450.88 which allegedly represent the

unpaid costs of the project and the amount PAULE received in excess of payments made by NIA, as these are not covered by her cross-claim in the court a quo, which seeks reimbursement only of the amounts of P3 million and P1 million, respectively, for actual damages (debts to suppliers, laborers, lessors of heavy equipment, lost personal property) and moral damages she claims she suffered as a result of PAULE's revocation of the SPAs; and that the revocation of the SPAs is a prerogative that is allowed to PAULE under Article 1920[11] of the Civil Code.

CRUZ and MENDOZA's motions for reconsideration were denied; hence, these consolidated petitions:

> G.R. No. 175885 (MENDOZA PETITION)
>
> a) The Court of Appeals erred in sustaining the trial court's failure to resolve her motion praying that PAULE be declared non-suited on his third-party complaint, as well as her motion seeking that she be allowed to present evidence ex parte on her cross-claim;
>
> b) The Court of Appeals erred when it sanctioned the trial court's failure to resolve her cross-claim against PAULE; and,
>
> c) The Court of Appeals erred in its application of Article 1920 of the Civil Code, and in adjudging that MENDOZA had no right to claim actual damages from PAULE for debts incurred on account of the SPAs issued to her.
>
> G.R. No. 176271 (CRUZ PETITION)
>
> CRUZ argues that the decision of the Court of Appeals is contrary to the provisions of law on agency, and conflicts with the Resolution of the Court in G.R. No. 173275, which affirmed the Court of Appeals' decision in CA-G.R. CV No. 81175, finding the existence of an agency relation and where PAULE was declared as MENDOZA's principal under the subject SPAs and, thus, liable for obligations (unpaid construction materials, fuel and heavy equipment rentals) incurred by the latter for the purpose of implementing and carrying out the NIA project awarded to EMPCT.

CRUZ argues that MENDOZA was acting within the scope of her authority when she hired his services as hauler of debris because the NIA project (both Packages A-10 and B-11 of the NIA-CMIPP) consisted of construction of canal structures, which involved the clearing and disposal of waste, acts that are necessary and incidental to PAULE's obligation under the NIA project; and that the decision in a civil case involving the same SPAs, where PAULE was found liable as MENDOZA's principal already became final and executory; that in Civil Case No. 90-SD filed by MENDOZA against PAULE,[12] the latter was adjudged liable to the former for unpaid rentals of heavy equipment and for construction materials which MENDOZA obtained for use in the subject NIA project. On September 15, 2003, judgment was rendered in said civil case against PAULE, to wit:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff (MENDOZA) and against the defendant (PAULE) as follows:
>
> - Ordering defendant Paule to pay plaintiff the sum of P138,304.00 representing the obligation incurred by the plaintiff with LGH Construction;
>
> - Ordering defendant Paule to pay plaintiff the sum of P200,000.00 representing the balance of the obligation incurred by the plaintiff with Artemio Alejandrino;
>
> - Ordering defendant Paule to pay plaintiff the sum of P520,000.00 by way of moral damages, and further sum of P100,000.00 by way of exemplary damages;
>
> - Ordering defendant Paule to pay plaintiff the sum of P25,000.00 as for attorney's fees; and

- To pay the cost of suit.[13]

PAULE appealed[14] the above decision, but it was dismissed by the Court of Appeals in a Decision[15] which reads, in part:

> As to the finding of the trial court that the principle of agency is applicable in this case, this Court agrees therewith. It must be emphasized that appellant (PAULE) authorized appellee (MENDOZA) to perform any and all acts necessary to make the business transaction of EMPCT with NIA effective. Needless to state, said business transaction pertained to the construction of canal structures which necessitated the utilization of construction materials and equipments. Having given said authority, appellant cannot be allowed to turn its back on the transactions entered into by appellee in behalf of EMPCT.
>
> The amount of moral damages and attorney's fees awarded by the trial court being justifiable and commensurate to the damage suffered by appellee, this Court shall not disturb the same. It is well-settled that the award of damages as well as attorney's fees lies upon the discretion of the court in the context of the facts and circumstances of each case.
>
> WHEREFORE, the appeal is DISMISSED and the appealed Decision is AFFIRMED.
>
> SO ORDERED.[16]

PAULE filed a petition to this Court docketed as G.R. No. 173275 but it was denied with finality on September 13, 2006.

MENDOZA, for her part, claims that she has a right to be heard on her cause of action as stated in her cross-claim against PAULE; that the trial court's failure to resolve the cross-claim was a violation of her constitutional right to be apprised of the facts or the law on which the trial court's decision is based; that PAULE may not revoke her appointment as attorney-in-fact for and in behalf of EMPCT because, as manager of their partnership in the NIA project, she was obligated to collect from NIA the funds to be used for the payment of suppliers and contractors with whom she had earlier contracted for labor, materials and equipment.

PAULE, on the other hand, argues in his Comment that MENDOZA's authority under the SPAs was for the limited purpose of securing the NIA project; that MENDOZA was not authorized to contract with other parties with regard to the works and services required for the project, such as CRUZ's hauling services; that MENDOZA acted beyond her authority in contracting with CRUZ, and PAULE, as principal, should not be made civilly liable to CRUZ under the SPAs; and that MENDOZA has no cause of action against him for actual and moral damages since the latter exceeded her authority under the agency.

We grant the consolidated petitions.

Records show that PAULE (or, more appropriately, EMPCT) and MENDOZA had entered into a partnership in regard to the NIA project. PAULE`s contribution thereto is his contractor's license and expertise, while MENDOZA would provide and secure the needed funds for labor, materials and services; deal with the suppliers and sub-contractors; and in general and together with PAULE, oversee the effective implementation of the project. For this, PAULE would receive as his share three per cent (3%) of the project cost while the rest of the profits shall go to MENDOZA. PAULE admits to this arrangement in all his pleadings.[17]

Although the SPAs limit MENDOZA's authority to such acts as representing EMPCT in its business transactions with NIA, participating in the bidding of the project, receiving and collecting payment in behalf of EMPCT, and performing other acts in furtherance thereof, the evidence shows that when MENDOZA and CRUZ met and discussed (at the EMPCT office in Bayuga, Muñoz, Nueva Ecija) the lease of the latter's heavy equipment for use in the project, PAULE was present and interposed no objection to MENDOZA's actuations. In his pleadings,

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PAULE does not even deny this. Quite the contrary, MENDOZA's actions were in accord with what she and PAULE originally agreed upon, as to division of labor and delineation of functions within their partnership. Under the Civil Code, every partner is an agent of the partnership for the purpose of its business;[18] each one may separately execute all acts of administration, unless a specification of their respective duties has been agreed upon, or else it is stipulated that any one of them shall not act without the consent of all the others.[19] At any rate, PAULE does not have any valid cause for opposition because his only role in the partnership is to provide his contractor's license and expertise, while the sourcing of funds, materials, labor and equipment has been relegated to MENDOZA.

Moreover, it does not speak well for PAULE that he reinstated MENDOZA as his attorney-in-fact, this time with broader powers to implement, execute, administer and supervise the NIA project, to collect checks and other payments due on said project, and act as the Project Manager for EMPCT, even after CRUZ has already filed his complaint. Despite knowledge that he was already being sued on the SPAs, he proceeded to execute another in MENDOZA's favor, and even granted her broader powers of administration than in those being sued upon. If he truly believed that MENDOZA exceeded her authority with respect to the initial SPA, then he would not have issued another SPA. If he thought that his trust had been violated, then he should not have executed another SPA in favor of MENDOZA, much less grant her broader authority.

Given the present factual milieu, CRUZ has a cause of action against PAULE and MENDOZA. Thus, the Court of Appeals erred in dismissing CRUZ's complaint on a finding of exceeded agency. Besides, that PAULE could be held liable under the SPAs for transactions entered into by MENDOZA with laborers, suppliers of materials and services for use in the NIA project, has been settled with finality in G.R. No. 173275. What has been adjudged in said case as regards the SPAs should be made to apply to the instant case. Although the said case involves different parties and transactions, it finally disposed of the matter regarding the SPAs - specifically their effect as among PAULE, MENDOZA and third parties with whom MENDOZA had contracted with by virtue of the SPAs - a disposition that should apply to CRUZ as well. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required but merely identity of issues.[20]

There was no valid reason for PAULE to revoke MENDOZA's SPAs. Since MENDOZA took care of the funding and sourcing of labor, materials and equipment for the project, it is only logical that she controls the finances, which means that the SPAs issued to her were necessary for the proper performance of her role in the partnership, and to discharge the obligations she had already contracted prior to revocation. Without the SPAs, she could not collect from NIA, because as far as it is concerned, EMPCT – and not the PAULE-MENDOZA partnership – is the entity it had contracted with. Without these payments from NIA, there would be no source of funds to complete the project and to pay off obligations incurred. As MENDOZA correctly argues, an agency cannot be revoked if a bilateral contract depends upon it, or if it is the means of fulfilling an obligation already contracted, or if a partner is appointed manager of a partnership in the contract of partnership and his removal from the management is unjustifiable.[21]

PAULE's revocation of the SPAs was done in evident bad faith. Admitting all throughout that his only entitlement in the partnership with MENDOZA is his 3% royalty for the use of his contractor's license, he knew that the rest of the amounts collected from NIA was owing to MENDOZA and suppliers of materials and services, as well as the laborers. Yet, he deliberately revoked MENDOZA's authority such that the latter could no longer collect from NIA the amounts necessary to proceed with the project and settle outstanding obligations.

From the way he conducted himself, PAULE committed a willful and deliberate breach of his contractual duty to his partner and those with whom the partnership had contracted. Thus, PAULE should be made liable for moral damages.

> Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of a sworn duty through some motive or intent or ill-will; it partakes of the nature of fraud (Spiegel v. Beacon Participation, 8 NE 2nd Series, 895, 1007). It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes (Air France v. Carrascoso, 18 SCRA 155, 166-167). Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage.[22]

Moreover, PAULE should be made civilly liable for abandoning the partnership, leaving MENDOZA to fend for her own, and for unduly revoking her authority to collect payments from NIA, payments which were necessary for the settlement of obligations contracted for and already owing to laborers and suppliers of materials and equipment like CRUZ, not to mention the agreed profits to be derived from the venture that are owing to MENDOZA by reason of their partnership agreement. Thus, the trial court erred in disregarding and dismissing MENDOZA's cross-claim – which is properly a counterclaim, since it is a claim made by her as defendant in a third-party complaint – against PAULE, just as the appellate court erred in sustaining it on the justification that PAULE's revocation of the SPAs was within the bounds of his discretion under Article 1920 of the Civil Code.

Where the defendant has interposed a counterclaim (whether compulsory or permissive) or is seeking affirmative relief by a cross-complaint, the plaintiff cannot dismiss the action so as to affect the right of the defendant in his counterclaim or prayer for affirmative relief. The reason for that exception is clear. When the answer sets up an independent action against the plaintiff, it then becomes an action by the defendant against the plaintiff, and, of course, the plaintiff has no right to ask for a dismissal of the defendant's action. The present rule embodied in Sections 2 and 3 of Rule 17 of the 1997 Rules of Civil Procedure ordains a more equitable disposition of the counterclaims by ensuring that any judgment thereon is based on the merit of the counterclaim itself and not on the survival of the main complaint. Certainly, if the counterclaim is palpably without merit or suffers jurisdictional flaws which stand independent of the complaint, the trial court is not precluded from dismissing it under the amended rules, provided that the judgment or order dismissing the counterclaim is premised on those defects. At the same time, if the counterclaim is justified, the amended rules now unequivocally protect such counterclaim from peremptory dismissal by reason of the dismissal of the complaint.[23]

Notwithstanding the immutable character of PAULE's liability to MENDOZA, however, the exact amount thereof is yet to be determined by the trial court, after receiving evidence for and in behalf of MENDOZA on her counterclaim, which must be considered pending and unresolved.

WHEREFORE, the petitions are GRANTED. The August 28, 2006 Decision of the Court of Appeals in CA-G.R. CV No. 80819 dismissing the complaint in Civil Case No. 18-SD (2000) and its December 11, 2006 Resolution denying the motion for reconsideration are REVERSED and SET ASIDE. The August 7, 2003 Decision of the Regional Trial Court of Nueva Ecija, Branch 37 in Civil Case No. 18-SD (2000) finding PAULE liable is REINSTATED, with the MODIFICATION that the trial court is ORDERED to receive evidence on the counterclaim of petitioner Zenaida G. Mendoza.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, Nachura, and Peralta, JJ., concur.

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[1] Rollo in G.R. No. 175885, pp. 44-58; penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices Bienvenido L. Reyes and Fernanda Lampas Peralta.

[2] Entitled "Manuel dela Cruz v. Engr. Eduardo Paule, Engr. Alexander Coloma and the National Irrigation Administration (Muñoz, Nueva Ecija)."

[3] Rollo in G.R. No. 175885, pp. 60-61.

[4] Id. at 68.

[5] Id. at 69

[6] Id. at 71.

[7] Id. at 122; Special Power of Attorney executed by PAULE in favor of MENDOZA notarized on August 23, 2000.

[8] Id. at 177.

[9] G.R. No. 151319, November 22, 2004, 443 SCRA 377.

[10] Citing Firestone Tire and Rubber Company of the Philippines v. Tempongko, G.R. No. L-24399, March 28, 1969, 27 SCRA 418.

[11] Article 1920. The principal may revoke the agency at will, and compel the agent to return the document evidencing the agency. Such revocation may be express or implied.

[12] Instituted on August 15, 2001 with the RTC of Nueva Ecija, Branch 37.

[13] Rollo in G.R. No. 176271, pp. 50-51.

[14] Docketed as CA-G.R. CV No. 81175 and assigned to the Sixth Division of the Court of Appeals.

[15] Rollo in G.R. No. 176271. Dated December 12, 2005, and penned by Associate Justice Magdangal M. de Leon and concurred in by Associate Justices Portia Aliño-Hormachuelos and Mariano C. del Castillo.

[16] Id. at 57.

[17] Rollo in G.R. No. 175885, pp. 84 and 110; PAULE's Answer to the CRUZ Complaint, and his Third-Party Complaint against MENDOZA.

[18] Article 1818.

[19] Article 1801.

[20] Heirs of Clemencia Parasac v. Republic, G.R. No. 159910, May 4, 2006, 489 SCRA 498, 517-518, citing Nabus v. Court of Appeals, G.R. No. 91670, February 7, 1991, 193 SCRA 732.

[21] Id., Article 1927.

[22] Canson v. Garchitorena, SB-99-9-J, July 28, 1999, 311 SCRA 268.

[23] Pinga v. Heirs of German Santiago, G.R. No. 170354, June 30, 2006, 494 SCRA 393, 416; 421.

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