

DCD CONSTRUCTION, INC., PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, RESPONDENT.*G.R. No. 179978. August 31, 2011*

Ponente: VILLARAMA, JR., J.

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Before us is a petition for review on certiorari under Rule 45 which seeks to set aside the Decision[1] dated June 25, 2007 and Resolution[2] dated September 10, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 77868. The CA reversed the Decision[3] dated August 22, 2002 of the Regional Trial Court (RTC) of Danao City, Branch 25 in LRC No. 147 (LRA Rec. No. N-73333).

On January 19, 2001, petitioner DCD Construction, Inc., through its President and CEO Danilo D. Dira, Jr., filed a verified application for registration[4] of a parcel of land situated in Taytay, Danao City with an area of 4,493 square meters designated as Cadastral Lot No. 5331-part, CAD 681-D. It was alleged that applicant which acquired the property by purchase, together with its predecessors-in-interest, have been in continuous, open, adverse, public, uninterrupted, exclusive and notorious possession and occupation of the property for more than thirty (30) years. Thus, petitioner prayed to have its title judicially confirmed.

After compliance with the jurisdictional requirements, the trial court through its clerk of court conducted hearings for the reception of petitioner's evidence. Based on petitioner's documentary and testimonial evidence, it appears that although designated as Cadastral Lot No. 5331-part, the approved technical description indicated the lot number as Lot 30186, CAD 681-D which is allegedly identical to Lot 21225-A, Csd-07-006621 consisting of 3,781 square meters. Lot 5331-part (4,493 sq. ms.) was subdivided into two (Lots 21225-A and 21225-B) so that the 712 square meters (Lot 21225-B) can be segregated as salvage zone pursuant to DENR Administrative Order No. 97-05.[5]

Andrea Batucan Enriquez, one of the six (6) children of Vivencio and Paulina Batucan, testified that her parents originally owned the subject land which was bought by her father after the Second World War. Vivencio and Paulina died on April 2, 1967 and November 11, 1980, respectively. Upon the death of their parents, she and her siblings inherited the land which they possessed and declared for tax purposes. On December 22, 1993, they executed a Deed of Extrajudicial Settlement With Absolute Sale whereby they sold the property to Danilo C. Dira, Sr., petitioner's father.[6]

Danilo D. Dira, Jr. testified that the subject land declared under Tax Declaration (TD) No. 0400583 in the name of Danilo C. Dira, Sr. was among those properties which they inherited from his father, as shown in the Extrajudicial Settlement of Estate With Special Power of Attorney dated May 28, 1996 and Supplemental Extrajudicial Settlement of Estate dated February 27, 1997. On June 26, 2000, his mother, brothers and sisters executed a Deed of Absolute Sale whereby the subject land was sold to petitioner. Thereafter, petitioner declared the property for tax purposes and also paid realty taxes. His father had possessed the land beginning 1992 or 1994, and presently petitioner is in possession thereof. Petitioner also assumed the P3.8 million mortgage obligation with Land Bank

of the Philippines as evidenced by the Deed of Undertaking/Agreement dated March 30, 2000.[7]

On August 22, 2002, the trial court rendered its decision, the dispositive portion of which reads:

WHEREFORE, from all of the foregoing undisputed facts, this Court finds and so holds that the applicant DCD CONSTRUCTION INC., has a registerable title to Lot No. 5331-A with an area of 3,781 square meters as part of Lot 5331, CAD-681-D, under Csd-072223-003891 which is identical to Lot No. 21225-A as part of Lot No. 21225, CAD-681-D, under Csd-07-006621, and is covered by Tax Declaration No. 0-0400469 situated in Taytay, Danao City, hereby confirming the same and ordering its registration under Act 496, as amended by Presidential Decree No. 1529, strictly in line with the Technical Description of Lot 30186, Danao, CAD-681-D, identical to Lot 21225-A, Csd-07-006621, upon finality of this decision.

SO ORDERED.[8]

On appeal by respondent Republic of the Philippines, the CA reversed the trial court. The CA ruled that the evidence failed to show that the land applied for was alienable and disposable considering that only a notation in the survey plan was presented to show the status of the property. The CA also found that petitioner's evidence was insufficient to establish the requisite possession as the land was bought by Vivencio Batucan only after the Second World War or in 1946, further noting that the earliest tax declaration submitted was issued only in 1988. As to the testimony of witness Andrea Batucan Enriquez, the CA held that it did not prove open, continuous, exclusive and notorious possession under a bona fide claim of ownership since June 12, 1945.

Its motion for reconsideration having been denied, petitioner is now before this Court raising the following arguments:

I

IN RULING THAT PETITIONER FAILED TO PROVE THAT THE LAND APPLIED FOR IS ALIENABLE AND DISPOSABLE, THE COURT OF APPEALS COMMITTED A GROSS MISAPPREHENSION OF FACTS, WHICH WARRANTS A REVIEW BY THE HONORABLE SUPREME COURT, IN ACCORDANCE WITH THE RULING IN MEGAWORLD AND HOLDINGS, INC. VS. HON. JUDGE BENEDICTO G. COBARDE, ET AL. AND SUPERLINES TRANSPORTATION COMPANY, INC. VS. PHILIPPINE NATIONAL CONSTRUCTION COMPANY, ET AL.

(A)

THE BUREAU OF LANDS VERIFIED AND CERTIFIED THE SUBJECT LOT AS "ALIENABLE AND DISPOSABLE".

(B)

THE DENR CERTIFIED THAT ITS OWN LAND CLASSIFICATION MAP SHOWS THAT SUBJECT LOT IS "WITHIN THE ALIENABLE AND DISPOSABLE AREA".

II

THE COURT OF APPEALS DECIDED THE CASE IN A WAY NOT IN ACCORD WITH LAW AND SETTLED DECISION OF THE HONORABLE SUPREME COURT, WHEN IT RULED THAT PETITIONER FAILED TO PROVE THAT THE REQUIREMENT OF OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION AND OCCUPATION OF THE SUBJECT LAND FOR THE PERIOD REQUIRED BY LAW HAS BEEN COMPLIED WITH, DESPITE THE FACT THAT:

(A)

WITNESS ANDREA ENRIQUEZ'S TESTIMONY SHOWS THAT PETITIONER'S

PREDECESSORS-IN-INTEREST ACQUIRED AND POSSESSED SUBJECT LOT IN 1942.

(B)

IN REPUBLIC OF THE PHILS. VS. SPOUSES ENRIQUEZ, THE SUPREME COURT CATEGORICALLY RULED THAT POSSESSION FOR 34 YEARS IS SUFFICIENT COMPLIANCE WITH THE LEGAL REQUIREMENT FOR REGISTRATION.[9]

We deny the petition.

In *Megaworld Properties and Holdings, Inc. v. Cobarde*,^[10] the Court held that as an exception to the binding effect of the trial court's factual findings which were affirmed by the CA, a review of such factual findings may be made when the judgment of the CA is premised on a misapprehension of facts or a failure to consider certain relevant facts that would lead to a completely different conclusion. In the same vein, we declared in *Superlines Transportation Company, Inc. v. Philippine National Construction Company*,^[11] that while it is settled that this Court is not a trier of facts and does not, as a rule, undertake a re-examination of the evidence presented by the parties, a number of exceptions have nevertheless been recognized by the Court, such as when the judgment is based on a misapprehension of facts, and when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Petitioner invokes the foregoing exceptions urging this Court to pass upon anew the CA's findings regarding the status of the subject land and compliance with the required character and duration of possession by an applicant for judicial confirmation of title.

After a thorough review, we find no reversible error committed by the CA in ruling that petitioner failed to establish a registrable title on the subject land.

Applicants for confirmation of imperfect title must prove the following: (a) that the land forms part of the disposable and alienable agricultural lands of the public domain and (b) that they have been in open, continuous, exclusive and notorious possession and occupation of the same under a bona fide claim of ownership either since time immemorial or since June 12, 1945.^[12]

Under Section 2, Article XII of the Constitution, which embodies the Regalian doctrine, all lands of the public domain belong to the State - the source of any asserted right to ownership of land.^[13] All lands not appearing to be clearly of private dominion presumptively belong to the State.^[14] Accordingly, public lands not shown to have been reclassified or released as alienable and disposable agricultural land or alienated to a private person by the State remain part of the inalienable public domain.^[15] Incontrovertible evidence must be presented to establish that the land subject of the application is alienable or disposable.^[16]

In support of its contention that Lot 5331-A, CAD-681-D under Csd-072223-003891 is alienable and disposable, petitioner presented the following notation appearing in the survey plan which reads:

CONFORMED PER LC MAP NOTATION

LC Map No. 1321, Project No. 26-A certified
on June 07, 1938, verified to be within Alienable
& Disposable Area

(SGD.) CYNTHIA L. IBÁÑEZ
Chief, Map Projection Section^[17]

Petitioner assailed the CA in refusing to give weight to the above certification, stressing that the DENR-Lands Management Services (LMS) approved the survey plan in its entirety, "without any reservation as to the

`inaccuracy' or `incorrectness' of Cynthia L. Ibañez'[s] annotation found therein."[18] Petitioner relies on the statement of Rafaela A. Belleza, Chief, Surveys Assistance Section, DENR-LMS, who testified (direct examination) as follows:

Atty. Paylado continues:

Q

Before this is given to the surveyor, did these two (2) documents pass your office?

A

Yes, sir.

Q

When you said it passed your office, it passed your office as you have to verify all the entries in these documents whether they are correct?

A

Yes, sir.

Q

Were you able to have a personal look and verification on these Exhibits "P" and "Q" and will you confirm that all the entries here are true and correct?

A

Yes, sir.

Q

Based on the records in your office?

A

As a whole.

x x x x[19] (Emphasis supplied)

Petitioner contends that the foregoing declaration of Belleza conclusively proves that the LMS itself had approved and adopted the notation made by Ibañez on the survey plan as its own. Such approval amounts to a positive act of the government indicating that the land applied for is indeed alienable and disposable.

We do not agree.

First, it must be clarified that the survey plan (Exhibit "Q") was not offered by petitioner as evidence of the land's classification as alienable and disposable. The formal offer of exhibits stated that said document and entries therein were offered for the purpose of proving the identity of the land, its metes and bounds, boundaries and adjacent lots; and that the survey has passed and was approved by the DENR-LMS. And while it was also stated therein that the evidence is also being offered as part of the testimony of Belleza, nowhere in her testimony do we find a confirmation of the notation concerning the land's classification as correct. In fact, said witness denied having any participation in the actual approval of the survey plan. This can be gleaned from her testimony on cross-examination which immediately followed the afore-quoted portion of her testimony that the survey plan "passed" their office, thus:

CROSS-EXAMINATION: (FISCAL KYAMKO TO THE WITNESS)

Q

Madam Witness, you said that Exhibits "P" and "Q" passed before your office, now, the question is, could you possibly inform the Court whether you have some sort of an initial on the two (2) documents or the two (2) exhibits?

A

Actually, sir, I am not a part of this approval because this will undergo in the isolated survey and my section is I am the Chief, Surveys Assistant Section, which concerns of the LRA, issuance of Certified Sketch Plans, issuance of certified Technical Descriptions of Untitled Lots to correct the titles for judicial purpose.

Q

In other words, since Exhibits "P" and "Q" are originals, they did not actually pass your office, is it not?

A

Our office, yes, but not in my section, sir.

Q

So it passed your office but it did not pass your section?

A

Yes, sir.

Q

In other words, you had [no] hand in re-naming or renumbering of the subject lots, is it not?

A

It is in the Isolated Survey Section, sir.

Q

In other words, you cannot possibly testify with authority as to the manner by which the numbering of the subject lot was renumbered, is it not?

A

Yes, sir.

x x x x[20] (Emphasis supplied.)

Clearly, the testimony of the officer from DENR-LMS, Rafaela Belleza, did not at all attest to the veracity of the notation made by Ibañez on the survey plan regarding the status of the subject land. Hence, no error was committed by the CA in finding that the certification made by DENR-LMS pertained only to the technical correctness of the survey plotted in the survey plan and not to the nature and character of the property surveyed.

In Republic v. Court of Appeals,[21] this Court noted that to prove that the land subject of an application for registration is alienable, an applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; and administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute.[22] A certification issued by a Community Environment and

Natural Resources Officer in the Department of Environment and Natural Resources (DENR) stating that the lots involved were found to be within the alienable and disposable area was deemed sufficient to show the real character of the land.[23]

As to notations appearing in the subdivision plan of the lot stating that it is within the alienable and disposable area, the consistent holding is that these do not constitute proof required by the law.[24] In *Menguito v. Republic*,[25] the Court declared:

x x x petitioners cite a surveyor-geodetic engineer's notation x x x indicating that the survey was inside alienable and disposable land. Such notation does not constitute a positive government act validly changing the classification of the land in question. Verily, a mere surveyor has no authority to reclassify lands of the public domain. By relying solely on the said surveyor's assertion, petitioners have not sufficiently proven that the land in question has been declared alienable.[26]

The above ruling equally applies in this case where the notation on the survey plan is supposedly made by the Chief of Map Projection Unit of the DENR-LMS. Such certification coming from an officer of the DENR-LMS is still insufficient to establish the classification of the property surveyed. It is not shown that the notation was the result of an investigation specifically conducted by the DENR-LMS to verify the status of the subject land. The certifying officer, Cynthia L. Ibañez, did not testify on her findings regarding the classification of the lot as reflected in her notation on the survey plan. As to the testimonial evidence presented by the petitioner, the CA noted that Engr. Norvic Abella who prepared the survey plan had no authority to reclassify lands of the public domain, while Rafaela A. Belleza who is the Chief of the Surveys Assistance Section, admitted on cross-examination that she had no part in the approval of the subdivision plan, and hence incompetent to testify as to the correctness of Ibañez's notation. More important, petitioner failed to establish the authority of Cynthia L. Ibañez to issue certifications on land classification status for purpose of land registration proceedings.

Our pronouncement in *Republic v. T.A.N. Properties, Inc.*[27] is instructive:

In this case, respondent submitted two certifications issued by the Department of Environment and Natural Resources (DENR). The 3 June 1997 Certification by the Community Environment and Natural Resources Offices (CENRO), Batangas City, certified that "lot 10705, Cad-424, Sto. Tomas Cadastre situated at Barangay San Bartolome, Sto. Tomas, Batangas with an area of 596,116 square meters falls within the ALIENABLE AND DISPOSABLE ZONE under Project No. 30, Land Classification Map No. 582 certified [on] 31 December 1925." The second certification in the form of a memorandum to the trial court, which was issued by the Regional Technical Director, Forest Management Services of the DENR (FMS-DENR), stated "that the subject area falls within an alienable and disposable land, Project No. 30 of Sto. Tomas, Batangas certified on Dec. 31, 1925 per LC No. 582."

The certifications are not sufficient. DENR Administrative Order (DAO) No. 20, dated 30 May 1988, delineated the functions and authorities of the offices within the DENR. Under DAO No. 20, series of 1988, the CENRO issues certificates of land classification status for areas below 50 hectares. The Provincial Environment and Natural Resources Offices (PENRO) issues certificate of land classification status for lands covering over 50 hectares. DAO No. 38, dated 19 April 1990, amended DAO No. 20, series of 1988. DAO No. 38, series of 1990 retained the authority of the CENRO to issue certificates of land classification status for areas below 50 hectares, as well as the authority of the PENRO to issue certificates of land classification status for lands covering over 50 hectares. In this case, respondent applied for registration of Lot 10705-B. The area covered by Lot 10705-B is over 50 hectares (564,007 square meters). The CENRO certificate covered the entire Lot 10705 with an area of 596,116 square meters which, as per DAO No. 38, series of 1990, is beyond the authority of the CENRO to certify as alienable and disposable.

The Regional Technical Director, FMS-DENR, has no authority under DAO Nos. 20 and 38 to issue

certificates of land classification. x x x

x x x x

Hence, the certification issued by the Regional Technical Director, FMS-DENR, in the form of a memorandum to the trial court, has no probative value.

Further, it is not enough for the PENRO or CENRO to certify that a land is alienable and disposable. The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable. Respondent failed to do so because the certifications presented by respondent do not, by themselves, prove that the land is alienable and disposable.

Only Torres, respondent's Operations Manager, identified the certifications submitted by respondent. The government officials who issued the certifications were not presented before the trial court to testify on their contents. The trial court should not have accepted the contents of the certifications as proof of the facts stated therein. Even if the certifications are presumed duly issued and admissible in evidence, they have no probative value in establishing that the land is alienable and disposable.

x x x x

Applying Section 24 of Rule 132, the record of public documents referred to in Section 19(a), when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy x x x. The CENRO is not the official repository or legal custodian of the issuances of the DENR Secretary declaring public lands as alienable and disposable. The CENRO should have attached an official publication of the DENR Secretary's issuance declaring the land alienable and disposable.

x x x x

The CENRO and Regional Technical Director, FMS-DENR, certifications do not fall within the class of public documents contemplated in the first sentence of Section 23 of Rule 132. The certifications do not reflect "entries in public records made in the performance of a duty by a public officer," such as entries made by the Civil Registrar in the books of registries, or by a ship captain in the ship's logbook. The certifications are not the certified copies or authenticated reproductions of original official records in the legal custody of a government office. The certifications are not even records of public documents. The certifications are conclusions unsupported by adequate proof, and thus have no probative value. Certainly, the certifications cannot be considered prima facie evidence of the facts stated therein.

The CENRO and Regional Technical Director, FMS-DENR, certifications do not prove that Lot 10705-B falls within the alienable and disposable land as proclaimed by the DENR Secretary. Such government certifications do not, by their mere issuance, prove the facts stated therein. Such government certifications may fall under the class of documents contemplated in the second sentence of Section 23 of Rule 132. As such, the certifications are prima facie evidence of their due execution and date of issuance but they do not constitute prima facie evidence of the facts stated therein.

x x x x[28] (Emphasis supplied.)

In the light of the foregoing, it is clear that the notation inserted in the survey plan (Exhibit "Q") hardly satisfies the incontrovertible proof required by law on the classification of land applied for registration.

The CA likewise correctly held that there was no compliance with the required possession under a bona fide claim of ownership since June 12, 1945.

The phrase "adverse, continuous, open, public, peaceful and in concept of owner," are mere conclusions of law requiring evidentiary support and substantiation. The burden of proof is on the applicant to prove by clear, positive and convincing evidence that the alleged possession was of the nature and duration required by law.[29] The bare statement of petitioner's witness, Andrea Batucan Enriquez, that her family had been in possession of the subject land from the time her father bought it after the Second World War does not suffice.

Moreover, the tax declaration in the name of petitioner's father, TD No. 0400583 was issued only in 1994, while TD No. 0-0400469 in its own name was issued in 2000. Petitioner's predecessors-in-interest were able to submit a tax declaration only for the year 1988, which was long after both spouses Vivencio and Paulina Batucan have died. Although tax declarations or realty tax payments of property are not conclusive evidence of ownership, nevertheless, they are good indicia of possession in the concept of owner.[30] And while Andrea Batucan Enriquez claimed knowledge of their family's possession since she was just ten (10) years old - although she said she was born in 1932 -- there was no clear and convincing evidence of such open, continuous, exclusive and notorious possession under a bona fide claim of ownership. She never mentioned any act of occupation, development, cultivation or maintenance over the property throughout the alleged length of possession.[31] There was no account of the circumstances regarding their father's acquisition of the land, whether their father introduced any improvements or farmed the land, and if they established residence or built any house thereon.

We have held that the bare claim of the applicant that the land applied for had been in the possession of her predecessor-in-interest for 30 years does not constitute the "well-nigh inconvertible" and "conclusive" evidence required in land registration.[32]

As the Court declared in *Republic v. Alconaba*: [33]

The law speaks of possession and occupation. Since these words are separated by the conjunction and, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word occupation, it seeks to delimit the all-encompassing effect of constructive possession. Taken together with the words open, continuous, exclusive and notorious, the word occupation serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction. Actual possession of a land consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property.[34] (Emphasis supplied.)

WHEREFORE, the petition for review on certiorari is DENIED. The Decision dated June 25, 2007 and Resolution dated September 10, 2007 of the Court of Appeals in CA-G.R. CV No. 77868 are AFFIRMED.

With costs against the petitioner.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Del Castillo, JJ., concur.

[1] Rollo, pp. 27-37. Penned by Associate Justice Francisco P. Acosta with Associate Justices Pampio A. Abarintos and Agustin S. Dizon concurring.

[2] *Id.* at 39-40.

[3] Records, pp. 188-193. Penned by Judge Sylva G. Aguirre Paderanga.

- [4] Id. at 2-6.
- [5] Records, p. 171; TSN, Geodetic Engineer Norvic Abella, March 21, 2002, pp. 4-11; TSN, Rafaela A. Belleza, March 21, 2002, pp. 17-18, 21-25.
- [6] TSN, February 14, 2002, pp. 3-17; records, pp. 167-169.
- [7] TSN, March 21, 2002, pp. 31-43; records, pp. 8-9, 14-18, 177-185.
- [8] Records, p. 193.
- [9] Rollo, pp. 11-12.
- [10] G.R. No. 156200, March 31, 2004, 426 SCRA 689, 694.
- [11] G.R. No. 169596, March 28, 2007, 519 SCRA 432, 441.
- [12] Carlos v. Republic, G.R. No. 164823, August 31, 2005, 468 SCRA 709, 714-715, citing Republic v. Alconaba, G.R. No. 155012, April 14, 2004, 427 SCRA 611, 617 and Republic v. Court of Appeals, G.R. No. 127060, November 19, 2002, 392 SCRA 190, 200.
- [13] Republic v. Naguiat, G.R. No. 134209, January 24, 2006, 479 SCRA 585, 590, citing Seville v. National Development Company, G.R. No. 129401, February 2, 2001, 351 SCRA 112, 120.
- [14] Id., citing Bracewell v. Court of Appeals, G.R. No. 107427, January 25, 2000, 323 SCRA 193, 199.
- [15] Id. at 590-591.
- [16] Republic v. Tri-Plus Corporation, G.R. No. 150000, September 26, 2006, 503 SCRA 91, 102.
- [17] Records, p. 172.
- [18] Rollo, p. 15.
- [19] TSN, March 21, 2002, p. 19.
- [20] Id. at 20-21.
- [21] G.R. No. 127060, November 19, 2002, 392 SCRA 190.
- [22] Id. at 201.
- [23] Id.
- [24] See Republic v. Barandiaran, G.R. No. 173819, November 23, 2007, 538 SCRA 705, 710, citing Republic v. Tri-Plus Corporation, *supra* note 16.
- [25] G.R. No. 134308, December 14, 2000, 348 SCRA 128.
- [26] Id. at 140.
- [27] G.R. No. 154953, June 26, 2008, 555 SCRA 477.
- [28] Id. at 486-491.
- [29] Director, Lands Management Bureau v. Court of Appeals, G.R. No. 112567, February 7, 2000, 324 SCRA 757, 767, citing Republic v. Lee, G.R. No. 64818, May 13, 1991, 197 SCRA 13, 20-21.
- [30] Cuenco v. Cuenco Vda. de Manguerra, G.R. No. 149844, October 13, 2004, 440 SCRA 252, 264-265.

[31] See *Wee v. Republic*, G.R. No. 177384, December 8, 2009, 608 SCRA 72, 83.

[32] *Arbias v. Republic*, G.R. No. 173808, September 17, 2008, 565 SCRA 582, 595, citing *Republic of the Philippines v. Lee, et al.*, 274 Phil. 284, 291 (1991) cited in *Turquesa v. Valera*, 379 Phil. 618, 631 (2000).

[33] *Supra* note 12.

[34] *Id.* at 619-620.

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