

ERMA INDUSTRIES, INC., ERNESTO B. MARCELO AND FLERIDA O. MARCELO, PETITIONERS, VS. SECURITY BANK CORPORATION AND SERGIO ORTIZ-LUIS, JR., RESPONDENTS.

G.R. No. 191274. December 06, 2017

Ponente: LEONEN, J.

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LEONEN, J.:

This Petition for Review[1] is an appeal from the Court of Appeals: (1) Decision[2] dated June 17, 2009, which affirmed in toto the Decision[3] dated May 31, 2004 of Branch 64, Regional Trial Court, Makati City; and (2) Resolution[4] dated February 3, 2010, which denied petitioners' motion for reconsideration.

On May 5, 1992, Erma Industries, Inc. (Erma) obtained from Security Bank Corporation (Security Bank) a credit facility, the conditions for which are embodied in the Credit Agreement[5] executed between the parties.[6]

On the same date, a Continuing Suretyship[7] agreement was executed in favor of Security Bank, and signed by Spouses Ernesto and Flerida Marcelo and Spouses Sergio and Margarita Ortiz-Luis. Under the Continuing Suretyship Agreement, the sureties agreed to be bound by the provisions of the Credit Agreement and to be jointly and severally liable with Erma in case the latter defaults in any of its payments with Security Bank.

Following the execution of the two agreements and during the period covering May 1992 to July 1993, Erma obtained various peso and dollar denominated loans from Security Bank evidenced by promissory notes,[8] as follows:

Promissory Note No.

Principal Amount Loaned

Date Loan was obtained

Maturity Date

(Batch One)

FCDL/82/013/92

US\$175,000.00

5/14/92

8/10/92

FCDL/82/022/92

US\$135,000.00

11/3/92

1/29/93

OACL/82/490/93

P7,300,000.00

7/26/93

10/25/93

OACL/82/509/92

P3,000,000.00

11/9/92

1/29/93

OACL/82/520/92

P1,700,000.00

11/13/92

1/29/93

OACL/82/548/92

P2,000,000.00

11/25/92

1/29/93

(Batch Two)

OACL/82/179/92

P5,580,000.00

8/10/92

11/8/92

OACL/82/341/93

P350,000.00

5/31/93

7/7/93

OACL/82/347/93

P120,000.00

6/2/93

7/7/93

OACL/82/352/93

P479,000.00

6/3/93

7/7/93[9]

The promissory notes uniformly contain the following stipulations:

- Interest on the principal at varying rates (7.5% per annum for dollar obligation and 16.75% or 21% per annum on peso obligation);
- Interest not paid when due shall be compounded monthly from due date;
- Penalty charge of 2% per month of the total outstanding principal and interest due and unpaid; and
- Attorney's fees equivalent to 20% of the total amount due plus expenses and costs of collection.[10]

After defaulting in the payment of the loans, Erma, through its President, Ernesto Marcelo, wrote a letter[11] dated February 2, 1994 to Security Bank, requesting for the restructuring of the whole of Erma's obligations and converting it into a five-year loan.[12] A certain property valued at P12 million covered by TCT No. M-7021 and registered in the name of petitioner Ernesto Marcelo was also offered as security.[13] The title was received by Security Bank and has since then remained in its possession.[14]

In a letter[15] dated April 27, 1994, Security Bank approved the partial restructuring of the loans or only up to P5 million.[16]

On May 10, 1994, Erma reiterated its request for the restructuring of the entire obligation. Erma also stated that the property they offered as collateral could answer for a far bigger amount than what Security Bank had recommended. Nevertheless, Erma suggested that it could add another property as additional security so long as the entire obligation is covered.[17]

Through a letter[18] dated November 8, 1994, Security Bank demanded payment, from Erma and the sureties, of Erma's outstanding peso and dollar obligations in the total amounts of P17,995,214.47 and US\$289,730.10, respectively, as of October 31, 1994.

On January 10, 1995, Security Bank filed a Complaint[19] with the Regional Trial Court of Makati City, for payment of Erma's outstanding loan obligation plus interests and penalties.

Upon the filing of said Complaint and as "it became clear that the Bank would agree only to partial restructuring,"[20] Erma requested the return of the TCT in its letter dated June 10, 1996.[21] However, Security Bank retained possession of TCT M-7021.

On June 24, 1999 (after the case was reraffled to Branch 64 from Branch 143),[22] Security Bank filed its Amended Complaint[23] for Sum of Money praying that Erma, Spouses Marcelo, and Spouses Ortiz be compelled to execute a Real Estate Mortgage in its favor over the property covered by TCT M-7021.

In Erma and Spouses Marcelo's Amended Answer[24] dated November 9, 1999, a counterclaim against Security Bank was included for the return of said title to its rightful owner, petitioner Ernesto Marcelo.

Spouses Ortiz, for their part, essentially denied liability. Sergio claimed that he signed the Suretyship Agreement only as an accommodation party and nominal surety; and his obligation, if any, was extinguished by novation when the loan was restructured without his knowledge and consent. Margarita, on the other hand, claimed that she

signed the Suretyship Agreement only to signify her marital consent.[25]

After trial, the Regional Trial Court rendered its Decision[26] dated May 31, 2004, where it adjudged Erma liable to pay Security Bank the amounts of P17,995,214.47 and US\$289,730.10, inclusive of the stipulated interest and penalty as of October 31, 1994, plus legal interest of 12% per annum from November 1, 1994 until full payment is made.[27] Given Erma's partial payments of its loan obligation, and the serious slump suffered by its export business, the trial court considered iniquitous to still require Erma to pay 2% penalty per month and legal interest on accrued interest after October 1994.[28] The Regional Trial Court further denied Security Bank's prayer for attorney's fees on the ground that "there was no conscious effort to evade payment of the obligation." [29] It likewise denied Erma's prayer for attorney's fees.[30]

Ernesto Marcelo and Sergio Ortiz-Luis were also held liable to Security Bank as sureties.[31] Their spouses, on the other hand, were not held liable as sureties as they affixed their signatures in the Continuing Suretyship Agreement only to signify their marital consent.[32] The trial court further held that there was no novation because the restructuring of Erma's loan obligation whether total or partial, did not materialize.[33] Consequently, Security Bank was ordered to return TCT No. M-7021 to Spouses Marcelo.[34]

The Court of Appeals affirmed the Regional Trial Court's Decision in toto.[35] It held that there was no perfected agreement on the restructuring of the loans because Erma never complied with the condition to submit documentary requirements;[36] and Erma did not accept the partial restructuring of the loan offered by Security Bank.[37] On the issue of Sergio Ortiz's liability, the Court of Appeals held that under the terms of the Continuing Suretyship agreement, Sergio Ortiz undeniably bound himself jointly and severally with Ernesto Marcelo for the obligations of Erma.[38]

Finally, the Court of Appeals agreed with the Regional Trial Court that "the 2% penalty per month ... imposed by the [B]ank: on top of the 20% interest per annum on the peso obligation and 7.5% interest per annum on the dollar obligation was iniquitous[.]"[39] Consequently, the Court of Appeals held that a straight 12% per annum interest on the total amount due would be fair and equitable. In this regard, Erma's prayer to remand the case to the court a quo for reception of additional evidence that would further reduce their outstanding obligation was rejected by the Court of Appeals on the grounds that Erma should have presented all evidence at the trial and that it would unduly delay the case even further.[40]

On April 5, 2010, Erma and Spouses Marcelo filed their Petition for Review. In a Resolution[41] dated April 28, 2010, the Court denied the petition for failure:

(1)

to state the material dates when the assailed decision of the Court of Appeals was received and when petitioners' motion for reconsideration was filed, in violation of Sections 4(b) and 5, Rule 45 in relation to Section 5(d), Rule 56 of the 1997 Rules of Civil Procedure, as amended; and

(2)

to sufficiently show any reversible error committed by the Court of Appeals in its decision and resolution.

However, in a Resolution dated September 27, 2010, the Court granted petitioners' Motion for Reconsideration and reinstated the Petition. Security Bank Corporation and Sergio R. Ortiz-Luis, Jr. filed their respective Comments; and petitioners their Consolidated Reply.[42]

In compliance with the Court's Resolution[43] dated October 8, 2012, petitioners and respondents filed their respective memoranda.

The issues for resolution are:

First, whether the Court of Appeals and the Regional Trial Court erred in finding that petitioners are liable to pay respondent Bank the amounts of P17,995,214.47 and US\$289,730.10, inclusive of interests and penalty charge as of October 31, 1994;

Second, whether the Court of Appeals and the Regional Trial Court erred in finding that petitioners are liable to pay respondent Bank legal interest of twelve percent (12%) per annum from October 1994 until full payment is made;

Third, whether petitioners are entitled to attorney's fees; and

Fourth, whether the Court of Appeals erred in holding respondent Sergio Ortiz - Luis, Jr. solidarily liable with the petitioners to pay the sums of P17,995,214.47 and US\$289,730.10 plus 12% legal interest.

We deny the petition. The Court of Appeals committed no reversible error in affirming in toto the decision of the Regional Trial Court.

I

In its Amended Complaint, Security Bank claimed for payment of the total outstanding peso obligation of P17,995,214.47 and total outstanding dollar obligation of US\$289,730.10 as of October 31, 1994. The Bank additionally claimed for:

(1)

Interest of 20% per annum on the peso obligation and 7.5% per annum on the dollar obligation from November 1, 1994 until fully paid;

(2)

Penalty charges of 2% per month on the total outstanding obligation from November 1, 1994 until fully paid;

(3)

Legal interest on the accrued interest from the filing of the Complaint until fully paid; and

(4)

Attorney's fees equivalent to 20% of total outstanding obligations, including interests and penalties.[44]

The Regional Trial Court denied Security Bank's additional claims for interests and penalty charges for being iniquitous, and imposed instead a 12% legal interest on the total outstanding obligation. Agreeing with the trial court, the Court of Appeals explained that it would only be fair and equitable to impose a straight 12% per annum on the total amount due starting October 1994, rather than the 2% penalty per month on top of the 20% and 7.5% interest on the peso and dollar obligation, respectively, being demanded by the Bank.

Petitioners now contend that since the trial and appellate courts found the stipulated interests and penalty charges to be excessive and iniquitous,[45] then the amounts of P17,995,214.47 and US\$289,730.10 adjudged against them (which already incorporated the interests and penalty charges) should have been reduced to the actual unpaid principals of P12,957,500.00 and US\$209,941.55, respectively, devoid of any interests and penalty charges.[46]

Security Bank counters that petitioners raise purely factual questions, which are not proper in a Rule 45 petition before this Court;[47] and petitioners' arguments were a mere rehash of their arguments before the Court of

Appeals, which have already been judiciously passed upon.[48]

Petitioners are mistaken.

The Regional Trial Court did not delete altogether the 2% monthly penalty charges and stipulated interests of 7.5% (on the dollar obligations) and 20% (on peso obligations). The trial court, in fact, adjudged petitioner Erma liable to pay the amounts of P17,995,214.47 and US\$289,730.10, inclusive of the stipulated interest and penalty as of October 31, 1994, on the basis of Article 1308[49] of the Civil Code and jurisprudential pronouncements on the obligatory force of contracts - not otherwise contrary to law, morals, good customs or public policy - between contracting parties.[50]

The stipulated 7.5% or 21% per annum interest constitutes the monetary or conventional interest for borrowing money and is allowed under Article 1956 of the New Civil Code.[51] On the other hand, the penalty charge of 2% per month accrues from the time of Erma's default in the payment of the principal and/or interest on due date.[52] This 2% per month charge is penalty or compensatory interest for the delay in the payment of a fixed sum of money, which is separate and distinct from the conventional interest on the principal of the loan.[53] In this connection, this Court, construing Article 2209[54] of the Civil Code, held that:

[T]he appropriate measure for damages in case of delay in discharging an obligation consisting of the payment of a sum or money, is the payment of penalty interest at the rate agreed upon; and in the absence of a stipulation of a particular rate of penalty interest, then the payment of additional interest at a rate equal to the regular monetary interest; and if no regular interest had been agreed upon, then payment of legal interest or six percent (6%) per annum.[55]

Furthermore, the promissory notes provide for monthly compounding of interest: "Interest not paid when due shall be compounded monthly from due date." [56] Compounding is sanctioned under Article 1959 of the Civil Code:

Article 1959. Without prejudice to the provisions of Article 2212, interest due and unpaid shall not earn interest. However, the contracting parties may by stipulation capitalize the interest due and unpaid, which as added principal, shall earn new interest. (Emphasis supplied)

What the trial court did was to stop the continued accrual of the 2% monthly penalty charges on October 31, 1994, and to thereafter impose instead a straight 12% per annum on the total outstanding amounts due. In making this ruling, the Regional Trial Court took into account the partial payments made by petitioners, their efforts to settle/restructure their loan obligations and the serious slump in their export business in 1993. The Regional Trial Court held that, under those circumstances, it would be "iniquitous, and tantamount to merciless forfeiture of property" [57] if the interests and penalty charges would be continually imposed. The Regional Trial Court held:

It is no longer disputed that defendant ERMA was paying interest on its loan obligation until October 1994; that defendant ERMA exerted efforts to settle its obligation to SBC, as in fact it proposed to SBC the restructuring of its loan; and delivered to SBC, TCT No. M-7021 to manifest its sincere effort to settle the obligation by way of restructuring its loan obligation into five-year term loan. Additionally, plaintiff- ERMA's export business suffered serious slump in 1993 which prompted it to seek a restructuring of its entire loan. Were it not for said financial crisis, defendant ERMA would not have defaulted in the payment of its obligation, or at least the interest thereon.

Recognizing the predicament which ERMA found itself, it is considered iniquitous, and tantamount to merciless forfeiture of property to require defendant ERMA to continue paying 2% penalty per month as well as payment of legal interest upon all accrued interest after October 1994. This court therefore finds plaintiff SBC not entitled to the recovery of the amount corresponding to 2% penalty per month and to the legal interest on the accrued interest.[58]

The Regional Trial Court, as affirmed by the Court of Appeals, acted in accordance with Article 1229 of the Civil Code, which allows judges to equitably reduce the penalty when there is partial or irregular compliance with the principal obligation, or when the penalty is iniquitous or unconscionable.

Whether a penalty charge is reasonable or iniquitous is addressed to the sound discretion of the courts and determined according to the circumstances of the case.[59] The reasonableness or unreasonableness of a penalty would depend on such factors as "the type, extent and purpose of the penalty, the nature of the obligation, the mode of breach and its consequences, the supervening realities, the standing and relationship of the parties[.]"[60]

For instance, in *Palmares v. Court of Appeals*,[61] the Court eliminated altogether the payment of the penalty charge of 3% per month for being inequitable and unreasonable. It ruled that the purpose of the penalty interest - that is to punish the obligor - have been sufficiently served by the compounded interest of 6% per month on the P30,000 loan.[62]

In *Tan v. Court of Appeals*,[63] the continued monthly accrual of the 2% penalty on the total amount due of about P7.996 million was held to be unconscionable. Considering the debtor's partial payments and offer to settle his outstanding loan in good faith, the Court found it fair and equitable to reduce the 2% penalty charge, compounded monthly, to a straight twelve (12%) per annum.[64]

Similarly, in this case, the Regional Trial Court and the Court of Appeals found it reasonable to reduce the 2% penalty charges, compounded monthly as to interests due and unpaid, to 12% per annum of the total outstanding obligations, in light of petitioners' partial payments and their good faith to settle their obligations. This reduction is essentially discretionary with the trial court and, in the absence of any abuse of discretion will not be disturbed.

Furthermore, we find no cogent reason to disturb the sums of P17,995,214.47 and US\$289,730.10 adjudged against the petitioners in favor of Security Bank. Time and again, this Court has held that factual determinations of the Regional Trial Court, especially when adopted and confirmed by the Court of Appeals, are final and conclusive[65] barring a showing that the findings were devoid of support or that a substantial matter had been overlooked by the lower courts, which would have materially affected the result if considered. This case does not fall within any of the recognized exceptions justifying a factual review in a Rule 45 petition.[66]

Petitioners further assert that they should be awarded at least P50,000.00 as attorney's fees for having been forced to defend themselves in needless litigation.[67]

The Court is not persuaded.

The award of attorney's fees under Article 2208 of the Civil Code demands factual, legal and equitable justification. Even when a claimant is compelled to litigate to defend himself/herself, still attorney's fees may not be awarded where there is no sufficient showing of bad faith of the other party.[68] It is well within Security Bank's right to institute an action for collection and to claim full payment.[69] Absent any proof that respondent Bank intended to prejudice or injure petitioners when it rejected petitioners' offer and filed the action for collection, we find no basis to grant attorney's fees.

II

For his part, respondent Sergio Ortiz-Luis, Jr. insists that he is not liable to Security Bank because he merely signed the Suretyship Agreement as an accommodation party being the Administrative Vice President of Erma at that time; and there was novation of the Credit Agreement.[70]

Respondent Ortiz's position had been consistently rejected by the Regional Trial Court and the Court of Appeals. The lower courts found that while respondent Ortiz signed the Credit Agreement as an officer of Erma, as shown

by his signature under Erma Industries Inc. (Borrower),^[71] this does not absolve him from liability because he subsequently executed a Continuing Suretyship agreement^[72] wherein he guaranteed the "due and full payment and performance"^[73] of all credit accommodations granted to Erma and bound himself solidarily liable with Ernesto Marcelo for the obligations of Erma. Sections 3 and 11 of the Continuing Suretyship clearly state as follows:

3. Liability of the Surety. - The liability of the Surety is solidary and not contingent upon the pursuit by the Bank of whatever remedies it may have against the Debtor or the collaterals/lien it may possess. If any of the Guaranteed Obligations is- not paid or performed on due date (at stated maturity or by acceleration), the Surety shall, without need for any notice, demand or any other act or deed, immediately become liable therefor and the Surety shall pay and perform the same.

....

11. Joint and Several Suretyship. - If the Surety is more than one person, all of their obligations under this Suretyship shall be joint and several with the Debtor and with each other. The Bank may proceed under this Suretyship against any of the sureties for the entire Guaranteed Obligations, without first proceeding against the Debtor or any other surety or sureties of the Guaranteed Obligations, and without exhausting the property of the Debtor, the Surety hereby expressly waiving all benefits under Article 2058 and Article 2065 and Articles 2077 to 2081, inclusive, of the Civil Code.^[74] (Emphasis supplied)

Furthermore, respondent Ortiz's claim that he is a mere accommodation party is immaterial and does not discharge him as a surety. He remains to be liable according to the character of his undertaking and the terms and conditions of the Continuing Suretyship, which he signed in his personal capacity and not in representation of Erma.

The Court has elucidated on the distinction between an accommodation and a compensated surety and the reasons for treating them differently:

The law has authorized the formation of corporations for the purpose of conducting surety business, and the corporate surety differs significantly from the individual private surety. First, unlike the private surety, the corporate surety signs for cash and not for friendship. The private surety is regarded as someone doing a rather foolish act for praiseworthy motives; the corporate surety, to the contrary, is in business to make a profit and charges a premium depending upon the amount of guaranty and the risk involved. Second, the corporate surety, like an insurance company, prepares the instrument, which is a type of contract of adhesion whereas the private surety usually does not prepare the note or bond which he signs. Third, the obligation of the private surety often is assumed simply on the basis of the debtor's representations and without legal advice, while the corporate surety does not bind itself until a full investigation has been made. For these reasons, the courts distinguish between the individual gratuitous surety and the vocational corporate surety. In the case of the corporate surety, the rule of *strictissimi juris* is not applicable, and courts apply the rules of interpretation . . . of appertaining to contracts of insurance.^[75]

Consequently, the rule of strict construction of the surety contract is commonly applied to an accommodation surety but is not extended to favor a compensated corporate surety.

The rationale of this doctrine is reasonable; an accommodation surety acts without motive of pecuniary gain and, hence, should be protected against unjust pecuniary impoverishment by imposing on the principal duties akin to those of a fiduciary. This cannot be said of a compensated corporate surety which is a business association organized for the purpose of assuming classified risks in large numbers, for profit and on an impersonal basis, through the medium of standardized written contractual forms drawn by its own representatives with the primary aim of protecting its own interests.^[76]

The nature and extent of respondent Ortiz's liability are set out in clear and unmistakable terms in the Continuing Suretyship agreement. Under its express terms, respondent Ortiz, as surety, is "bound by all the terms and conditions of the credit instruments." [77] His liability is solidary with the debtor and co-sureties; and the surety contract remains in full force and effect until full payment of Erma's obligations to the Bank. [78]

Respondent Ortiz's claim of novation was likewise rejected by the lower courts. The Regional Trial Court and the Court of Appeals were in agreement that while there were ongoing negotiations between Erma and Security Bank for the restructuring of the loan, the same did not materialize. [79] Erma offered to restructure its entire outstanding obligation and delivered TCT No. M-7021 as collateral, to which Security Bank counter-offered a partial restructuring or only up to P5,000,000. This counter-offer was not accepted by Erma. There was no new contract executed between the parties evidencing the restructured loan. Neither did Erma execute a real estate mortgage over the property covered by TCT No. M-7021.

WHEREFORE, the Petition is DENIED. The Decision dated June 17, 2009 and Resolution dated February 3, 2010 of the Court of Appeals are AFFIRMED.

SO ORDERED.

Velasco, Jr., (Chairperson), and Martires, JJ., concur.
Bersamin, [*] J., on official leave.
Gesmundo, J., on leave.

March 7, 2018

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on December 6, 2017 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on March 7, 2018 at 1:56 p.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] On official leave per S.O. No. 2529 dated December 1, 2017.

[1] Rollo, pp. 7-22.

[2] Id. at 24-52. The Decision was penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Josefina Guevara-Salonga and Arcangelita M. Romilla-Lontok of the Eighth Division, Court of Appeals, Manila.

[3] Id. at 141-154. The Decision was penned by Judge Delia H. Panganiban.

[4] Id. at 54-55. The Resolution was penned by Associate Justice Romeo F. Barza and concurred in by Associate Justices Josefina Guevara-Salonga and Arcangelita M. Romilla-Lontok of the Former Eighth Division, Court of Appeals, Manila.

[5] Id. at 82-85.

[6] Id. at 25.

[7] Id. at 86-89.

[8] Id. at 90-109.

[9] Id. at 26.

[10] The promissory notes (rollo, pp. 90-109) have substantially similar provisions except for the due dates, the amounts of the principal and the monetary interest rate. See for example, PN FCDL/82/013/92 (rollo, p. 90).

[11] Rollo, p. 133.

[12] Id. at 30.

[13] Id.

[14] Id. at 31.

[15] Id. at 134-137.

[16] Id. at 30-31.

[17] Id. at 31.

[18] Id. at 114-120.

[19] Id. at 59-70.

[20] Id. at 364.

[21] Id. at 31.

[22] Id. at 363.

[23] Id. at 71-81.

[24] Id. at 128-132.

[25] Id. at 29-30.

[26] Id. at 141-154.

[27] Id. at 147.

[28] Id. at 153.

[29] Id.

[30] Id.

[31] Id. at 148.

[32] Id.

[33] Id. at 149.

[34] Id. at 154.

[35] Id. at 51.

[36] Id. at 41.

[37] Id. at 42.

[38] Id. at 45.

[39] Id. at 50.

[40] Id. at 50-51.

[41] Id. at 219.

[42] Id. at 307-311.

[43] Id. at 316-317.

[44] Id. at 79.

[45] Id. at 370.

[46] Id. at 371.

[47] Id. at 352-353.

[48] Id. at 354.

[49] CIVIL CODE, art. 1308 provides:

Article 1308. The contract must bind both contracting parties, its validity or compliance cannot be left to the will of one of them.

[50] Rollo, p. 147.

[51] *Spouses Abella v. Spouses Abella*, 763 Phil. 372, 382 (2015) [Per J. Leonen, Second Division]; *Tan v. Court of Appeals*, 419 Phil. 857, 865 (2001) [Per J. De Leon, Jr., Second Division].

[52] See for example PN No. FCDL/82/013/92 (rollo, p. 90).

[53] *Tan v. Court of Appeals*, 419 Phil. 857, 865 (2001) [Per J. De Leon, Jr., Second Division].

[54] CIVIL CODE, art. 2209 provides:

Article 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent per annum.

[55] *State Investment House, Inc. v. Court of Appeals*, 275 Phil. 433, 444 (1991) [Per J. Feliciano, Third Division].

[56] Rollo, pp. 90, 92, 94, 96, 98, 100, 102, 104, 106 & 108.

[57] Id. at 153.

[58] Rollo, p. 153.

[59] Land Bank of the Phils. v. David, 585 Phil. 167, 174 (2008) [Per J. Carpio Morales, Second Division].

[60] Ligutan v. Court of Appeals, 427 Phil. 42, 52 (2002) [Per J. Vitug, Third Division].

[61] 351 Phil. 664, 690-691 (1998) [Per J. Regalado, Second Division].

[62] Id. at 690-691.

[63] 419 Phil. 857 (2001) [Per J. De Leon, Jr., Second Division].

[64] Id. at 865.

[65] Polotan, Sr. v. Court of Appeals, 357 Phil. 250, 256-257 (1998) [Per J. Romero, Third Division].

[66] THE INTERNAL RULES OF THE SUPREME COURT, Rule 3, sec. 4 enumerates the following exceptions:

Section 4. Cases when the Court May Determine Factual Issues. - The Court shall respect the factual findings of lower courts, unless any of the following situations is present:

(a)

the conclusion is a finding grounded entirely on speculation, surmise and conjecture;

(b)

the inference made is manifestly mistaken;

(c)

there is grave abuse of discretion;

(d)

the judgment is based on a misapprehension of facts;

(e)

the findings of fact are conflicting;

(f)

the collegial appellate courts went beyond the issues of the case, and their findings are contrary to the admissions of both appellant and appellee;

(g)

the findings of fact of the collegial appellate courts are contrary to those of the trial court;

(h)

said findings of fact are conclusions without citation of specific evidence on which they are based;

(i)

the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents;

(g)

the findings of fact of the collegial appellate courts are premised on the supposed evidence, but are contradicted by the evidence on record; and

(k)

all other similar and exceptional cases warranting a review of the lower courts' findings of fact.

[67] Rollo, p. 371.

[68] PNCC v. APAC Marketing Corp., 710 Phil. 389, 395 (2013) [Per C.J. Sereno, First Division].

[69] Barons Marketing Corp. v. Court of Appeals, 349 Phil. 769, 775 (1998) [Per J. Kapunan, Third Division].

[70] Rollo, p. 323.

[71] Id. at 85.

[72] Id. at 45 and 148-149.

[73] Id. at 86.

[74] Id. at 87-88.

[75] Laurente v. Rizal Surety and Ins. Co., 123 Phil. 359, 364-365 (1966) [Per J. Regala, En Banc] citing Slovenko, Suretyship, 39 TUL. L. REV. 427, 442-443 (1965).

[76] Pacific Tobacco Corp. v. Lorenzana, 102 Phil. 234, 242 (1957) [Per J. Felix, First Division].

[77] Rollo, p. 87.

[78] Id. at 88.

[79] Id. at 40-42 and 149.

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