OLIMPIO O. OLIDANA, PETITIONER, VS. JEBSENS MARITIME, INC., RESPONDENT.

G.R. No. 215313. October 21, 2015

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the September 3, 2014 Decision[1] and the November 10, 2014 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 130988, which modified the May 28, 2013 Award[3] of the Panel of Voluntary Arbitrators (VA), involving a claim for permanent and total disability benefits by a seafarer.

The Facts

Petitioner Olimpio O. Olidana (Olidana) was employed by respondents Jebsens Maritime, Inc. (Jebsens) as chief cook since 2007 under different employment contracts. As chief cook, Olidana was tasked to provision the ship, prepare its meals, take care and control of the refrigerated stores, clean the gallery, and maintain an inventory of catering and provisions.

Employee's Position

On March 22, 2011, Olidana again entered into an employment contract with Jebsens as chief cook of M/V Seoul Express for a duration of six (6) months. M/V Seoul Express was covered by the GIS Fleet Agreement Collective Bargaining Agreement (CBA) between the ITF London, Vereinte Dienstlestlungsgewerkschaft and Hapag Lloyd AG, represented by Jebsens.

According to Olidana, sometime in September 2011, while he was cooking in the ship's kitchen, he accidentally bumped a kettle full of hot water injuring his left hand. He reported the matter to the vessel's master, who simply advised him to buy an ointment.

On October 8, 2011, while the vessel was docked at Ensanada, British Columbia, Olidana's medical condition manifested when he felt an acute pain and swelling on his left hand. He was brought to the clinic for a check up. There, he was diagnosed to be suffering from Tendinitis on his left hand, but he was allowed to go back to duty. His condition, however, worsened as his left hand became swollen with numbness of the fingers.

When the vessel docked at Yokohama, Japan, Olidana was brought to the nearest hospital for treatment where abscess of the left palm with infection of the whole hand was noted. Incision and drainage of abscess under local anesthesia was done at the emergency room. He was then admitted to the hospital. He was discharged after a week and then repatriated to the Philippines on November 18, 2011.

Within three (3) working days from his arrival, Olidana reported to Jebsens and he was immediately referred to Shiphealth, Inc. for medical treatment. Olidana was placed under the care of Dr. Anna Pamella Lagrosa-Elbo (Dr. Elbo) and Dr. Maria Gracia K. Gutay (Dr. Gutay), the company-designated physicians.

On March 27, 2012, the company-designated physicians issued two separate reports. One report, titled "DISABILITY GRADING"[4] (disability report), stated that:

> Mr. Olidana is a diagnosed case of Central Space Abscess, Palmar Aspect of Left Hand s/p Incision and Drainage (October 27, 2011, Japan) s/p 30 session of Physical Therapy.
>
> Based on POEA Contract of the HANDS, Section 32 No. 4, the closest classification that answers the condition of Mr. Olimpio Olidana is Loss of grasping power for small objects between the fold of the finger of one hand which is a GRADE 10.

Conversely, the other report, titled "11[th] and FINAL SUMMARY MEDICAL REPORT"[5] (final medical report), recapped Olidana's medical history, the clinical course undertaken, and provided the following diagnosis and recommendations:

> Diagnosis:
>
> - Central Space Abscess, Palmar Aspect of Left Hand s/p Incision and Drainage (October 27, 2011, Japan)
> - s/p 12 sessions of Physical Therapy
> - s/p 10 sessions of Physical Therapy
> - s/p 8 sessions of Physical Therapy
>
> Recommendations:
>
> - NOT FIT FOR DUTY
> - CASE CLOSURE

Olidana asked Jebsens for his disability benefits, but the latter only offered him US $10,000.00 based on the POEA Standard Employment Contract (POEA-SEC).

Olidana sought a second medical opinion from Dr. Renato P. Runas (Dr. Runas), the doctor of his choice. In a Medical Evaluation Report,[6] dated August 14, 2012, Dr. Runas opined that Olidana had a permanent disability, to wit:

> Seaman Olidana has a permanent disability affecting his left hand. The tendons of the affected 3 fingers are damaged by the massive palmar infection. Tendons are easily damaged and necrosed when surrounded by pus. Thus, the resulting flexion deformity of the fingers. Extended physiotherapy will not improve the finger movements. Scars and fibrous tissue also limit movements. The left hand function is totally lost. Since he works as Chief Cook he needs his hand in holding [food] and utensils during food preparations. With this impediment now affecting him, he is no longer expected to perform well in his job as a cook. He is physically unfit to continue with his job as a seaman/cook or in whatever capacity with permanent disability.

The parties failed to settle their dispute in accordance with the arbitration clause in their CBA. Consequently, Olidana filed a complaint with the VA, docketed as AC-008-NCMB-NCR-97-09-11-12.

Employer's Position

For its part, Jebsens asserted that, on March 21, 2011, Olidana underwent the mandatory pre-employment medical examination (PEME) before boarding M/V Seoul Express. It claimed that Olidana did not disclose that he was suffering from Diabetes Mellitus. On October 27, 2011, Olidana was admitted to the Honmuko Hospital in Japan because of the pain he felt on his left hand. His wound, however, healed very slowly because of his Diabetes Mellitus and he was not taking any maintenance medication.

Jebsens argued that Diabetes Mellitus was a major risk factor in the development of Olidana's skin abscesses and was not work-related. Jebsens, nonetheless, shouldered Olidana's medical treatment out of pure humanitarian

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reasons, despite the concealment of his disease.

Accordingly, Olidana underwent meticulous medication and physical therapy sessions to address the injury on his left hand. Thus, on March 27, 2012, the company-designated physicians properly assessed his condition with a Grade 10 rating under Section 32 of the POEA-SEC. Jebsens offered Olidana the amount of US$10,075.00 equivalent to his Grade 10 disability rating, but the latter unjustifiably rejected the same.

After the parties had filed their respective position papers, reply and rejoinder, the case was submitted to the VA for decision.

The VA Ruling

In an award, dated May 28, 2013, the VA ruled that Olidana was entitled to permanent total disability benefits under the loss of profession clause in their CBA. The VA opined that it was unlikely that Olidana could have concealed his Diabetes Mellitus because he had been working for Jebsens for five (5) years with constant medical examinations. Even assuming that Olidana concealed his Diabetes Mellitus, he was still entitled to disability benefits because such disease was not connected with Tendinitis.

The VA continued that Olidana suffered from a permanent total disability because he had not been employed since his medical repatriation on November 18, 2011. Also, the test of whether an employee suffered from a permanent total disability depended on the capacity of the employee to continue performing his work notwithstanding the disability incurred. Thus, if by reason of injury or illness, the employee was unable to perform his customary job for more than 120 days, then the said employee undoubtedly suffered from total permanent disability regardless of whether he loses the use of any part of his body. The dispositive portion reads:

> WHEREFORE, award is hereby rendered ordering respondent Jebsens Maritime, Inc. and the principals it represent Hapag Lloyd to jointly and severally pay complainant his disability compensation benefit in the amount of US$120,000.00 as provided by the parties existing Collective Bargaining Agreement (CBA) or its peso equivalent at the time of actual payment and ten (10%) percent of the total monetary award as and by way of attorney's fees.
>
> All other claims are dismissed for lack of basis and merit.
>
> SO ORDERED.

Aggrieved, Jebsens filed a petition for review before the CA.

The CA Ruling

In its assailed decision, dated September 3, 2014, the CA modified the award of the VA by reducing Olidana's disability benefits. At the outset, the CA agreed with the VA that Olidana's Diabetes Mellitus did not negate his claim for disability benefits. Notably, the said disease was never indicated in the company-designated physicians' diagnosis. What was specified in their medical reports was that Olidana suffered from Central Space Abscess, Palmar Aspect of Left Hand.

Yet, the CA held that Olidana's disease did not merit the award of total permanent disability benefits because he only suffered a Grade 10 impediment based on the company-designated physicians' disability report. The CA relied on Splash Philippines, Inc., v. Ruizo[7] stating that the seafarer should be compensated in accordance with the schedule of benefits and governed by the rates and rules of compensation applicable at the time the illness or disease was contracted.

The CA gave more credence to the company-designated physicians' disability report over that of Dr. Runas'

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diagnosis, as the former's treatment was more extensive. Thus, the CA concluded that Olidana only had a Grade 10 disability and that he was entitled to US$24,180.00 for the loss of grasping power for small objects between the fold of the finger of one hand. The decretal portion of the CA decision reads:

> WHEREFORE, the petition is PARTLY GRANTED. The assailed Award of the Panel of Voluntary Arbitrators of the NCMB is MODIFIED such that Jebsens, together with its principal Hapag-Lloyd, shall be jointly and severally liable to pay Olidana disability compensation in the sum of US $24,180.00 or its peso equivalent at the time of actual payment.
>
> IT IS SO ORDERED.[8]

Olidana filed a motion for reconsideration,[9] dated September 18, 2014, arguing that the CA completely disregarded the company-designated physicians' final medical report recommending that he was not fit for duty, and that the final medical report prevailed over the disability report.

In its assailed resolution, dated November 10, 2014, the CA denied the motion for reconsideration. The CA opined that the company-designated physicians' two reports, both dated March 27, 2012, were consistent with each other because these documents equally assessed Olidana's illness as Central Space Abscess, Palmar Aspect of Left Hand, which merited a Grade 10 disability rating.

Hence, this petition.

> ISSUES
>
> I.
> WHETHER THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT APPLY THE LOSS OF PROFESSION CLAUSE IN THE CBA.
>
> II.
> WHETHER THE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR IN LAW WHEN IT RULED THAT THE PETITIONER IS ONLY ENTITLED TO [US$24,180.00 AS DISABILITY BENEFITS].[10]

In advocacy of his positions, Olidana argues that he is entitled to permanent and total disability benefits; that the meaning of disability does not completely depend on the company-designated physician's declaration but also on what the law says; that permanent disability is the inability of a worker to perform his job for more than 120 days, regardless whether he loses the use of any part of his body; and that considering that both the company-designated physicians and his doctor of choice confirmed that he was already unfit for duty, he is certainly entitled to permanent and total disability benefits.

In its Comment,[11] Jebsens contended that Olidana's injury was not due to a work-related accident because it stemmed from his concealed Diabetes Mellitus; that a Grade 10 partial disability rating was proper because Olidana only suffered a loss of grasping power for small objects under Section 32 of the POEA-SEC; and that the 120-day rale was inapplicable because, under the 2010 POEA-SEC, the declaration of disability should no longer be based on the number of days the seafarer was treated, but on the disability grading provided.

In his Reply,[12] Olidana stressed that his permanent disability had foreclosed any opportunity to acquire gainful employment as a seafarer. With his career as a seafarer finished, Olidana implored that his compensation should at least approximate his loss.

The Court's Ruling

The petition is impressed with merit.

The company-designated physicians

issued conflicting medical reports

Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether he loses the use of any part of his body. Total disability, on the other hand, means the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do.[13]

Accordingly, permanent total disability does not mean a state of absolute helplessness but the inability to do substantially all material acts necessary to the prosecution of a gainful occupation without serious discomfort or pain and without material injury or danger to life. In disability compensation, it is not the injury per se which is compensated but the incapacity to work.[14]

To determine whether a seafarer is entitled to permanent and total disability benefits, the Court takes into account both the law and the contract which govern his overseas employment. Recently, amendments were placed in the POEA-SEC which is the primary contract that regulates a seafarer's employment. Section 20 (A) (6) of the 2010 POEA-SEC now provides that "[t]he disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid."[15]

The Court, nevertheless, is of the view that before the disability gradings under Section 32 should be considered, these disability ratings should be properly established and contained in a valid and timely medical report of a company-designated physician. Thus, the foremost consideration of the courts should be to determine whether the medical assessment or report of the company-designated physician was complete and appropriately issued; otherwise, the medical report shall be set aside and the disability grading contained therein cannot be seriously appreciated.

Jurisprudence is replete of cases where the Court did not hesitate to strike down a medical assessment of the company-designated physician for being tardy, incomplete and doubtful.

In Libang, Jr. v. Indochina Ship Management, Inc.,[16] the seafarer therein experienced numbness on the left side of his face, difficulty in hearing from his left ear, blurred vision of his left eye, and speech problem while aboard the vessel. Upon repatriation, he was treated by the company-designated physician. The latter then issued a medical certificate indicating that it was difficult to state whether both the seafarer's diabetes mellitus and small pontine were pre-existing conditions. In that case, the Court ruled that the company-designated physician's medical certificate must be set aside as the "[a]ssessment was evidently uncertain and the extent of his examination for a proper medical diagnosis was incomplete."[17]

In Carcedo v. Maine Marine Phils., Inc.,[18] the seafarer's foot was wounded while on duty. When he was repatriated, the company-designated physician subjected him to a medical examination. Subsequently, the latter issued a disability assessment stating that the seafarer merely had an "[i]mpediment disability grading of 8% Loss of first toe (big toe) and some of its metatarsal bone."[19] Yet, the seafarer required further medical treatments, underwent amputation, and subsequently passed away. The Court concluded that the company-designated physician's disability assessment was not definitive and, because it failed to issue a final assessment, the seafarer therein was certainly under permanent total disability.

In Maunlad Trans, Inc., v. Camoral,[20] which has a similar factual milieu with the present case, the seafarer

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therein suffered from a cervical disc herniation and radiculopathy while on the ship. Upon disembarkation and after 150 days of treatment, the company-designated physician therein issued a medical report indicating that the seafarer only suffered a Grade 10 disability. Curiously, a separate medical report of the company-designated physician stated that the seafarer was unfit for sea duty. The Court disregarded the belated medical assessment containing the partial disability grading, and declared that the seafarer suffered permanent and total disability. Undoubtedly, he was found unfit to work by the company-designated physician and the seafarer's doctor of choice.

In the case at bench, the company-designated physicians issued two medical reports, both dated March 27, 2012. The disability report, on one hand, stated that Olidana only suffered loss of grasping power for small objects between the fold of the finger of one hand, which was a Grade 10 disability or a partial disability rating. The company-designated physicians' final medical report, on the other hand, recommended that Olidana was unfit for duty. Glaringly, these two medical reports contradicted each other.

As observed in Maunlad Trans, Inc. v. Camoral,[21] it cannot be conclusively stated that a seafarer merely suffered a partial permanent disability when, at the same time, he was declared unfit for duty. A partial disability, which signifies a continuing capacity to perform his customary tasks, is starkly incompatible with the finding that a seafarer is unfit for duty. Evidently, the partial disability rating provided by the company-designated physician's disability report could not be given weight as its credibility has been tarnished by a contrary report issued by the same doctors on the same date. Jebsens did not even bother to validly explain the reports' obvious discrepancies.

Interestingly, the final medical report, which stated that Olidana was unfit for duty, concurred with Dr. Runas' medical evaluation report. The latter report stated that Olidana was physically unfit to continue with his job as a seaman or cook, or in whatever capacity, due to his permanent disability.

Between the Grade 10 disability rating, arising from the contradicted disability report, and the declaration of unfitness for duty, as noted in the substantiated final medical report, the Court is more inclined to uphold that Olidana suffered from a permanent total disability as he is not fit for duty.

The medical assessment must be

issued within the 120-day period

or the extended 240-day period.

It must be remembered that the POEA-SEC merely provides the minimum acceptable terms in a seafarer's employment contract, and that in the assessment of whether a seafarer's injury is partial and permanent, the same must be so characterized not only under the Schedule of Disabilities found in Section 32 of the POEA SEC, but also under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code. Article 192 (c) of the Labor Code provides that temporary total disability lasting continuously for more than 120 days, except as otherwise provided in the AREC, shall be deemed total and permanent.[22] Section 2 (b) of Rule VII of the AREC also provides that:

> [Disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided under Rule X of these Rules.

In the recent case of Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.,[23] the Court summarized the rules regarding the company-designated physician's duty to issue a final medical assessment on the seafarer's disability grading, as follows:

> 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
>
> 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
>
> 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
>
> 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

Here, Olidana was repatriated on November 18, 2011. Within three (3) days, he was referred to the company-designated physicians. It was only on March 27, 2012, or after a period of 130 days, that the company-designated physicians issued the questionable disability report beyond the 120-day period. Although Section 20 (A) (6) of the 2010 POEA-SEC instructs that disability shall not be measured or determined by the number of days a seafarer is under treatment, equally significant is our pronouncement in Carcedo v. Maine Marine Phils., Inc.,[24] that while "[t]he determination of the fitness of a seafarer for sea duty is the province of the company-designated physician, it is still subject to the periods prescribed by law."[25]

Even assuming that Jebsens properly raised the extended 240-day period due to prolonged physical therapy sessions, Olidana still has a valid claim against his employer. In C.F. Sharp Crew Management, Inc. v. Taok,[26] the Court held:

> xxx Thus, a seafarer may pursue an action for total and permanent disability benefits if: (a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification being issued by the company-designated physician; (c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 2O-B(3) of the POEA-SEC are of a contrary opinion; (d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well; (e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading; (f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 2O-B(3) of the POEA-SEC found otherwise and declared him unfit to work; (g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and (h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.[27]
>
> (Emphasis Supplied)

In the present case, it has been established that, in spite the lapse of the extended 240-day period, Olidana was still incapacitated to perform his sea duties. Due to the injury he sustained, he could no longer perform his usual tasks as chief cook in any vessel. Thus, it resulted to his unemployment until this very day. As correctly held by the VA, this clearly indicate Olidana's permanent disability.

In addition, it must be reiterated that the company-designated physicians' disability report should be set aside for

being contradictory. Necessarily, it cannot be said that the company-designated physicians issued a valid and final medical assessment within the 120-day or 240-day period. The Court in Kestrel Shipping Co., Inc. v. Munar[28] held that the declaration by the company-designated physician is an obligation, the abdication of which transforms the temporary total disability to permanent total disability, regardless of the disability grade, viz:

> Indeed, under Section 32 of the POEA-SEC, only those injuries or disabilities that are classified as Grade 1 may be considered as total and permanent. However, if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally and permanently disabled. In other words, an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC but should be so under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code. That while the seafarer is partially injured or disabled, he is not precluded from earning doing the same work he had before his injury or disability or that he is accustomed or trained to do. Otherwise, if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed totally and permanently disabled.
>
> Moreover, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition remains unresolved, the seafarer shall be deemed totally and permanently disabled.[29]

In fine, it cannot be said with certainty whether Olidana could resume his seafaring profession in the future. He must accept the inevitable that his distressing injury had practically ruined his career and he must carry its burden for the rest of his life. Nevertheless, at present, it is clear is that Olidana suffered from a permanent total disability resulting in a loss of earning capacity, which should be compensated accordingly.

WHEREFORE, the petition is GRANTED. The September 3, 2014 Decision and the November 10, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 130988 are REVERSED and SET ASIDE. The May 28, 2013 Award of the Panel of Voluntary Arbitrators is hereby REINSTATED.

SO ORDERED.

Leonardo-De Castro,[*] Brion,[**] (Acting Chairperson), Peralta,[***] and Leonen, JJ., concur.

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[*] Per Special Order No. 2250, dated October 14, 2015.

[**] Per Special Order No. 2222, dated September 29, 2015.

[***] Per Special Order No. 2223, dated September 29, 2015.

[1] Penned by Associate Justice Apolinario D. Bruselas, Jr. with Presiding Justice Andres B. Reyes, Jr., and Associate Justice Samuel H. Gaerlan, concurring; rollo, pp. 22-43.

[2] Id. at 52-54.

[3] Id. at 91-97.

[4] Id. at p. 168.

[5] Id. at p. 200-202.

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[6] Id. at 203-204.

[7] G.R. No. 193628, March 19, 2014, 719 SCRA 496.

[8] Rollo, p. 21.

[9] Id. at 44-50.

[10] Id. at 12.

[11] Id. at 275-294.

[12] Id. at 350-357.

[13] Maersk Filipinos Crewing, Inc. v. Mesina, G.R. No. 200837, June 5, 2013, 697 SCRA 601, 619.

[14] Eyana v. Philippine Transmarine Carriers, Inc., G.R. No. 193468, January 28, 2015.

[15] See Magsaysay Maritime Corp. v. Simbajon, G.R. No. 203472, July 9, 2014, 729 SCRA 631, 652-653 where the Court acknowledged the said amendment to the POEA-SEC.

[16] G.R. No. 189863, September 17, 2014, 735 SCRA 404.

[17] Id. at 417.

[18] G.R. No. 203804, April 15, 2015.

[19] Id.

[20] G.R. No. 211454, February 11, 2015.

[21] Id.

[22] Supra note 20, citing Kestrel Shipping Co., Inc. v. Munar, G.R. No. 198501, January 30, 2013, 689 SCRA 795.

[23] G.R. No. 211882 , July 29, 2015.

[24] Supra note 18.

[25] Id.

[26] G.R. No. 193679, July 18, 2012, 677 SCRA 296.

[27] Id. at 315.

[28] Kestrel Shipping Co., Inc. v. Munar, G.R. No. 198501, January 30, 2013, 689 SCRA 795.

[29] Id. at 809.

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