

**IRENE P. MARIANO NOW IRENE P. RELUCIO, PETITIONER, VS.
FANCISCO M. BAUTISTA, ENRIQUE ALPAÑO AND THE HONORABLE
COURT OF APPEALS, RESPONDENT.**

G.R. No. 55982. June 18, 1987

Ponente: PARAS, J.

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PARAS, J.:

THESE TWO (2) CASES STEMMED FROM A COMPLAINT FOR RESCISSION (ACTUALLY "RESOLUTION") OF CONTRACT WITH PRAYER FOR ACCOUNTING, PRELIMINARY INJUNCTION AND DAMAGES, FILED BY IRENE MARIANO AGAINST FRANCISCO BAUTISTA IN THE THEN COURT OF FIRST INSTANCE OF CAMARINES SUR, 10TH JUDICIAL DISTRICT, BRANCH IV, THEREIN DOCKETED AS CIVIL CASE NO. 7926.*

G.R. No. L-55982 IS A SPECIAL CIVIL ACTION FOR CERTIORARI ASSAILING THE VALIDITY OF THE DECISION OF THE COURT OF APPEALS IN CA-G.R. No. 10727-SP* PROMULGATED ON NOVEMBER 3, 1980 SETTING ASIDE THE QUESTIONED WRIT OF EXECUTION PENDING APPEAL DATED APRIL 28, 1980 AND THE NOTICE OF SHERIFF'S SALE DATED MAY 2, 1980 BOTH ISSUED IN CONNECTION WITH CIVIL CASE 7926, AND ITS RESOLUTION DATED JANUARY 14, 1981, DENYING PETITIONER'S MOTION FOR RECONSIDERATION.

G.R. No. L-69589, IS A PETITION FOR REVIEW ON CERTIORARI OF THE DECISION OF THE COURT OF APPEALS IN AC-G.R. No. CV No. 67676. *PROMULGATED ON JULY 27, 1984, MODIFYING THE JUDGMENT RENDERED BY THE COURT OF FIRST INSTANCE (CFI) OF CAMARINES SUR IN CIVIL CASE No. 7926 AND ITS RESOLUTION DATED NOVEMBER 21, 1984, DENYING THE MOTION FOR RECONSIDERATION.

THE FACTS ARE AS FOLLOWS:

ON MAY 1, 1972, HEREIN PETITIONER IRENE P. MARIANO (NOW RELUCIO) AND PRIVATE RESPONDENT FRANCISCO M. BAUTISTA ENTERED INTO A "CONTRACT OF JOINT VENTURE" TO ESTABLISH, DEVELOP AND MAINTAIN A MEMORIAL PARK TYPE CEMETERY IN NAGA CITY. IN PURSUANCE THEREOF, IRENE MARIANO (REFERRED TO IN THE CONTRACT AS OWNER) AGREED TO MAKE AVAILABLE A 15-HECTARE PARCEL OF LAND FREE FROM ENCUMBRANCES LOCATED IN NAGA CITY COVERED BY TCT No. 2536 WHILE FRANCISCO M. BAUTISTA (REFERRED TO IN THE CONTRACT AS DEVELOPER) LIKewise AGREED TO MAKE AVAILABLE ALL THE CASH REQUIREMENTS, LABOR, MATERIALS, EQUIPMENTS, GOVERNMENT, PERMITS AND LICENSES AND SUCH OTHER ITEMS NECESSARY FOR THE DEVELOPMENT, OPERATION, BEAUTIFICATION AND MAINTENANCE OF THE AFOREMENTIONED AREA INTO A MEMORIAL TYPE CEMETERY.

THE CONTRACT PROVIDES, AMONG OTHER THINGS, THAT: (A) THE LOTS AS SUBDIVIDED

SHALL BE SOLD TO THE PUBLIC AS BURIAL SPACES; (B) THE BASIS FOR PROFIT SHARING BETWEEN THE OWNER AND THE DEVELOPER SHALL BE THE GROSS RECEIPTS FROM THE SALES INCLUDING INTERESTS, SURCHARGES AND OTHER INCOMES AND SHALL BE DIVIDED BETWEEN THE PARTIES IN THE MANNER PROVIDED THEREIN; (C) THE AMOUNTS PAID AND COLLECTED FOR THE PERPETUAL CARE OF THE PARK SHALL NOT BE INCLUDED IN THE GROSS RECEIPTS BUT SHALL CONSTITUTE THE TRUST FUND OF THE PARK; WHILE AT THE INITIALS STAGES OF OPERATION, THE DEVELOPER SHALL ADVANCE TO THE TRUST FUND SUCH AMOUNT AS IS SUFFICIENT FOR THE CARE AND MAINTENANCE OF THE PARK; (D) A MANAGEMENT COMPANY SHALL BE FORMED WITH THE FIRM NAME OF "STO. NIÑO MEMORIAL PARK" TO TAKE CHARGE OF THE MANAGEMENT OF THE AFFAIRS OF THE PARK AFTER ITS DEVELOPMENT STAGE IS OVER; AND (E) UPON THE SIGNING OF THIS AGREEMENT, THE DEVELOPER SHALL PAY AND DELIVER TO THE OWNER CASH AMOUNTING TO FORTY THOUSAND PESOS (P40,000.00), PHILIPPINE CURRENCY, WHICH AMOUNT SHALL BE CONSIDERED AS ADVANCE DEDUCTIBLE FROM THE SHARE OF THE OWNER IN THE FIRST PROCEEDS OF THE SALES OF LOTS WITHIN THE CONTEMPLATED PARK.

ON MAY 2, 1972, IN COMPLIANCE WITH THE ABOVE PRO-VISIONS OF THE CONTRACT OF JOINT VENTURE, FRANCISCO BAUTISTA ADVANCED THE AMOUNT OF P40,000.00 TO IRENE MARIANO, THE SAID AMOUNT TO BE DEDUCTED FROM THE LATTER'S SHARE IN THE FIRST PROCEEDS OF THE SALE OF LOTS WITHIN THE CONTEMPLATED PARK. FRANCISCO BAUTISTA ALSO PUT UP THE AMOUNT OF P20,000.00, P10,000.00 OF WHICH PERTAINED TO HIS SHARE IN THE CONTRIBUTION FOR THE CAPITAL REQUI-SITE OF INCORPORATING THE MANAGEMENT COMPANY. THE OTHER P10,000.00 PERTAINED TO IRENE MARIANO'S CONTRIBUTION WHICH WAS PAID FOR BY FRANCISCO BAUTISTA.

ON THE SAME DATE, IRENE MARIANO AND FRANCISCO BAUTISTA WITH SIX OTHER DESIGNATED INCORPORATORS FORMED THE ABOVE-MENTIONED STO. NIÑO MEMORIAL PARK, INC., WITH RESPONDENT AS PRESIDENT.

SOMETIME IN 1972, IRENE MARIANO AND FRANCISCO BAUTISTA EXECUTED A "PROJECT PLAN AND PHASE SCHEDULE" OF THE 15-HECTARE LAND FOR THE STO. NIÑO MEMORIAL PARK.

AFTER THE EXECUTION OF THE CONTRACT OF JOINT VENTURE AND AFTER SECURING THE NECESSARY PERMIT TO ESTABLISH, DEVELOP, OPERATE AND MAINTAIN A MEMORIAL PARK TYPE CEMETERY IN NAGA CITY, RESPONDENT FRANCISCO BAUTISTA STARTED DEVELOPING THE PROPERTY.

IN JANUARY, 1973, STO. NIÑO MEMORIAL PARK, INC. STARTED SELLING MEMORIAL LOTS TO THE PUBLIC, AS WELL AS RECEIVING CASH FROM LOT BUYERS (L-55982, ROLLO II, CA DECISION, PP. 1159-1160).

ON JULY 14, 1973, PETITIONER AND RESPONDENT FRANCISCO BAUTISTA EXECUTED AN ADDENDUM TO THE CONTRACT OF JOINT VENTURE AMENDING PAR, 11 THEREOF TO INCLUDE THE FOLLOW-ING:

"THAT, HOWEVER, THAT (SIC) AN AMOUNT NOT TO EXCEED EIGHTEEN (18%) PER CENTUM OF THE GROSS RECEIPTS FROM SALES SHALL BE SET ASIDE TO CONSTITUTE AS THE FUND TO BE USED BY THE MANAGEMENT COMPANY EXCLUSIVELY IN CARRYING OUT ITS FUNCTIONS; PROVIDED, THAT THE DEVELOPER SHALL MAKE AVAILABLE AND SHALL

ADVANCE TO THIS FUND UNTIL SUCH TIME THAT THE MANAGEMENT COMPANY WILL BE IN A POSITION TO REIMBURSE THE DEVELOPER SUCH MOUNT SO ADVANCED, PROVIDED FURTHER, THAT WHATEVER AMOUNT WHICH IS LEFT UNSPENT OR UNUSED BY THE COMPANY OUT OF THE 18% AFORECIATED SHALL BE DIVIDED BY THE PARTIES IN PRO RATA. (L-55982, ROLLO I, PP. 75-76).

ON NOVEMBER 7, 1974, PETITIONER THROUGH HER COUNSEL, SENT A LETTER TO RESPONDENT FRANCISCO BAUTISTA, DEMANDING THAT THE LATTER RENDER A VERIFIED ACCOUNTING OF THE GROSS RECEIPTS FROM SALES AND OTHER INCOME OF THE MEMORIAL PARK BUSINESS FOR THE YEAR 1973 INCLUSIVE AS WELL AS TO RENDER A FORMAL REPORT ON THE DIVISION OF SAID PROCEEDS TO THE PARTIES OF THE JOINT VENTURE CONTRACT, SUBJECT TO COMPENSATION.

ON JUNE 7, 1975, PETITIONER IRENE MARIANO (THEN PLAINTIFF) FILED A COMPLAINT AGAINST RESPONDENT FRANCISCO BAUTISTAT (THEN DEFENDANT) IN THE COURT OF FIRST INSTANCE OF CAMARINES SUR, 10TH JUDICIAL DISTRICT, BRANCH IV, WHICH WAS SUBSEQUENTLY AMENDED ON JULY 2, 1975. THE COMPLAINT WAS DOCKETED AS CIVIL CASE No. 7926 FOR "RECISSION AND RECOVERY OF ACCRUED SHARE OF GROSS RECEIPTS OF SALES AND AMOUNTS FOR PERPETUAL CARE FUND OF STO. NIÑO MEMORIAL PARK, WITH PRAYER FOR ACCOUNTING, PRELIMINARY INJUNCTION AND DAMAGES." IN THE AMENDED COMPLAINT HEREIN PETITIONER ALLEGED THAT RESPONDENT FRANCISCO BAUTISTA FAILED TO COMPLY WITH THE PROVISION OF PAR. 7 OF THE CONTRACT OF JOINT VENTURE BY NOT GIVING HER AGREED SHARE OF THE GROSS RECEIPT FROM THE SALE OF BURIAL LOTS OF THE STO. NIÑO MEMORIAL PARK WHICH SHARE AS OF APRIL, 1975 MAY HAVE REACHED THE TOTAL AMOUNT OF APPROXIMATELY P23,000.00 AFTER DEDUCTING FROM THE TOTAL GROSS RECEIPTS 18% THEREOF FOR MANAGEMENT EXPENSES EFFECTIVE AS OF JULY 11, 1973 AND THE ADVANCE OF P40,000.00 GIVEN TO HEREIN PETITIONER UPON THE SIGNING OF THE CONTRACT OF JOINT VENTURE, AS DEFENDANT HAS BEEN CAUSING THE DISBURSEMENTS OF SUCH GROSS RECEIPTS FOR PURPOSE NOT IN CONSONANCE WITH THE AFORESAID CONTRACT; THAT RESPONDENT FRANCISCO BAUTISTA, AS DEVELOPER, HAS FAILED TO RENDER TO HEREIN PETITIONER, AS OWNER, PROPER ACCOUNTING OF THE TOTAL GROSS RECEIPTS FROM SUCH SALES, INCLUDING INTEREST, SURCHARGES AND OTHER INCOME OF THE STO. NIÑO MEMORIAL PARK, NOTWITHSTANDING REPEATED DEMANDS FROM PETITIONER; THAT RESPONDENT IS STILL CONTINUING DISBURSEMENTS FOR HIS OWN PURPOSES OF THE INCOMING GROSS RECEIPTS OF SALES OF SAID BURIAL LOTS IN THE PARK; THAT RESPONDENT, AS DEVELOPER, IN SPITE OF REPEATED DEMANDS BY PETITIONER, HAS NOT COMPLIED WITH THE STIPULATION ABOVE-STATED TO ADVANCE TO THE TRUST FUND OF THE STO. NIÑO MEMORIAL PARK SUCH AMOUNT SUFFICIENT FOR ITS CARE AND MAINTENANCE UNTIL IT IS IN A POSITION TO REIMBURSE HIM OF SUCH AMOUNT, BUT INSTEAD, RESPONDENT BAUTISTA HAS BEEN USING THE COLLECTED AMOUNTS FOR PURPOSES NOT IN CONSONANCE WITH SAID CONTRACT OF JOINT VENTURE; THAT RESPONDENT BAUTISTA, AS DEVELOPER, HAS LIKEWISE FAILED TO RENDER TO PETITIONER, AS OWNER, PROPER ACCOUNTING OF SUCH COLLECTED AMOUNTS PERTAINING TO THE TRUST FUND OF THE STO. NIÑO MEMORIAL PARK. PETITIONER FURTHER CONTENTS THAT RESPONDENT, IN A FRAUDULENT DESIGN TO PROFIT BY THE SALES OF BURIAL LOTS OF THE STO. NIÑO MEMORIAL PARK WITHOUT INCURRING FURTHER EXPENSES ON HIS PART, HAS SINCE 1974, ALTOGETHER ABANDONED AND CEASED THE DEVELOPMENT, CONSTRUCTION AND BEAUTIFICATION OF SAID PARK, TO THE DAMAGE AND

PREJUDICE OF THE HEREIN PETITIONER. (L-55982, ROLLO I, AMENDED COMPLAINT, PP. 59-61).

THEREIN, PETITIONER PRAYED:

- (1) THAT THE CONTRACT OF JOINT VENTURE ENTERED BY AND BETWEEN HER AND RESPONDENT BE RESCINDED BY VIRTUE OF WHICH, ALL IMPROVE-MENTS INTRODUCED ON THE PREMISES OF SAID PARK BE FORFEITED IN HER FAVOR;
- (2) THAT RESPONDENT BE ORDERED TO REN-DER ACCOUNTING TO HEREIN PETITIONER OF THE GROSS RECEIPTS OF SALES OF BURIAL LOTS AND OF THE COLLECTED AMOUNTS PERTAINING TO THE TRUST FUND OF THE STO. NIÑO MEMORIAL PARK AND TO TURN OVER TO PETITIONER HER SHARE AS OWNER OF SAID GROSS RECEIPTS AND ALL COLLECTED AMOUNTS PERTAINING TO SAID TRUST FUND;
- (3) THAT RESPONDENT BAUTISTA (THEN DEFENDANT-APPELLANT) BE RESTRAINED BY TEMPO-RARY RESTRAINING ORDER AND LATER BY WRIT OF PRELIMINARY PREVENTIVE INJUNCTION DURING THE PENDENCY OF THE CASE, FROM CAUSING DISBURSE-MENTS OF THE GROSS RECEIPTS OF SALES OF THE STO. NIÑO MEMORIAL PARK AND FROM USING THESE COLLECTED AMOUNTS PERTAINING TO ITS TRUST FUND, FOR HIS OWN PURPOSES OR FOR PURPOSES NOT IN CONSONANCE WITH THE CONTRACT OF JOINT VEN-TURE;
- (4) THAT A WRIT OF PRELIMINARY MANDATORY INJUNCTION BE ISSUED DURING THE PENDENCY OF THE SUIT COMMANDING THAT HEREIN PETITIONER BE PLACED TO THE SOLE MANAGEMENT AND ADMINISTRA-TION OF THE STO. NIÑO MEMORIAL PARK, WITHOUT INTERFERENCE FROM HEREIN RESPONDENT AS WELL AS FOR THE AWARD OF DAMAGES IN FAVOR OF PETITIONER (IBID., PP. 62-64).

ON JUNE 26, 1975, THE COURT A QUO ACTING ON THE ORIGINAL COMPLAINT FILED BY PETITIONER PRAYING FOR A WRIT OF PRELIMINARY INJUNCTION, ISSUED AN ORDER RESTRAIN-ING AND ENJOINING RESPONDENT BAUTISTA, HIS LAWYERS, AGENTS AND REPRESENTATIVES FROM SPENDING AND USING OR IN ANY WAY DISBURSING THE FUND OF STO. NIÑO MEMORIAL PARK, OR ANY SALE OF THE LOTS, UNTIL OTHERWISE ORDERED BY THE COURT (L-55982, ROLLO II, CA DECISION, P. 1162).

RESPONDENT BAUTISTA (THEREIN DEFENDANT), IN HIS ANSWER FILED ON AUGUST 4, 1975, DENIED THE ALLEGATIONS INTERPOSED BY HEREIN PETITIONER (THEN PLAINTIFF) AND INSTEAD PUT UP AMONG OTHER THINGS, THE FOLLOWING DEFEN-SES: (A) THAT THE CLAIM OF PLAINTIFF IS NOT YET DUE CON-SIDERING THAT THE CONTRACT OF JOINT VENTURE DOES NOT FIX A PERIOD WITHIN WHICH PLAINTIFF SHALL BE PAID HER SAID SHARE; (B) THAT STO. NIÑO MEMORIAL PARK, INC. HAS BEEN AND IS RENDERING AN ACCOUNTING OF ITS OPERATION WHEREIN THE SHARE OF PLAINTIFF IS REFLECTED; (C) THAT DEFENDANT IS NOT DISBURSING ANY RECEIPTS FROM SALES FOR HIS OWN PURPOSE AS ALL DISBURSEMENTS ARE MADE BY THE TREASURER, MR. TIRSO MARIANO; (D) THAT DEFENDANT HAD BEEN MAKING ADVANCES TO THE COMPANY FOR THE MAINTENANCE OF THE PARK AND IF EVER AN AMOUNT IS ALREADY COLLECTED BY THE CORPORATION TO CONSTITUTE THE TRUST FUND, THE SAME HAS BEEN USED BY THE COMPANY FOR ITS OPERATION; AND (E) THAT DEFENDANT HAS NOT VIOLATED ANY OF THE PROVISIONS OF THE CONTRACT OF JOINT VENTURE AND AS A MATTER OF FACT DEFENDANT HAS INTRODUCED TO THE PARK SITE TREMENDOUS IMPROVEMENTS WHICH ARE FAR BEYOND THE PHASE SCHEDULES OF DEVELOPMENT IN THE TOTAL AMOUNT OF P500.000.00.

DEFENDANT COUNTERED THAT IT WAS PLAINTIFF WHO VIOLATED THE TERMS AND CONDITIONS OF THE CONTRACT OF JOINT VENTURE AS SHOWN FROM THE FOLLOWING:

- 1) THE TITLE OF THE PROPERTY GIVEN AND MADE AVAILABLE BY PLAINTIFF AS THE SUBJECT MATTER OF THE CONTRACT OF JOINT VENTURE HAS ALREADY BEEN CANCELLED;
- 2) PLAINTIFF DOES NOT EVEN HAVE THE AUTHORITY TO GIVE SAID PROPERTY AS THE SUBJECT MATTER OF SAID CONTRACT OF JOINT VENTURE BECAUSE SAID PROPERTY BELONGS TO HER AND TO JOSE P. MARIANO AND ERLINDA MARIANO VILLANUEVA PRO INDIVISO;
- 3) THE CONTRACT OF JOINT VENTURE HAD BEEN DECLARED NULL AND VOID FOR LACK OF AUTHORITY OF PLAINTIFF TO GIVE SAID PROPERTY AS SUBJECT MATTER OF THE JOINT VENTURE;
- 4) PLAINTIFF FAILED AND REFUSED TO HAVE THE CONTRACT OF JOINT VENTURE ANNOTATED ON THE TITLE AS STIPULATED IN THE AFORESAID CONTRACT SINCE SAID TITLE HAS ALREADY BEEN CANCELLED;

DEFENDANT PRAYED THAT JUDGMENT BE RENDERED:

- A) DECLARING THE "CONTRACT OF JOINT VENTURE" ENTERED INTO BY AND BETWEEN PLAINTIFF AND DEFENDANT AS RESCINDED;
- B) ORDERING PLAINTIFF TO REIMBURSE DEFENDANT THE EXPENSES THE LATTER INCURRED IN THE DEVELOPMENT OF THE PARK IN THE AMOUNT OF AT LEAST P500,000.00 PLUS INTEREST OF TWELVE (12%) PERCENT PER ANNUM FROM THE FILING OF THE COMPLAINT UNTIL FULLY PAID;
- C) ORDERING PLAINTIFF TO PAY DEFENDANT THE NET PROFIT WHICH THE LATTER WOULD HAVE EARNED HAD THE CONTRACT OF JOINT VENTURE NOT BEEN RESCINDED, THE AMOUNT OF WHICH SAID DEFENDANT MAY PROVE DURING THE TRIAL OF THE CASE;
- D) ORDERING PLAINTIFF TO PAY: MORAL DAMAGES IN AN AMOUNT THAT MAY BE PROVEN DURING THE TRIAL; P50,000.00 AS ATTORNEY'S FEE AND THE COSTS OF THE SUIT (L-55982, ROLLO I, ANSWER, PP. 78-88).

THE COURT A QUO, ON JULY 24, 1975, UPON MOTION BY RESPONDENT BAUTISTA FOR THE APPOINTMENT OF A RECEIVER, APPOINTED ATTY. ROBERTO RANOLA AS SUCH WITH THE DUTY TO PRESERVE AND ADMINISTER THE PROPERTIES INVOLVED IN THE LITIGATION, SPECIALLY THE OPERATION OF THE STO. NIÑO MEMORIAL PARK (L-55982, ROLLO II, CA DECISION, P. 1164).

ON DECEMBER 14, 1979, THE COURT A QUO RENDERED ITS DECISION AWARDING TO PLAINTIFF THE LAND OBJECT OF THE CONTRACT AND ITS FRUITS, MORE PARTICULARLY ITS INCOME, PRODUCE AND IMPROVEMENTS, SUBJECT TO THE RIGHT OF THE DEFENDANT TO BE REIMBURSED FOR WHATEVER EXPENSES HE MAY HAVE MADE BY VIRTUE OF THE CONTRACT AND OUT OF HIS OWN FUNDS PLUS INTEREST, ASIDE FROM THE RIGHTS OF THIRD PERSONS WHO DID NOT ACT IN BAD FAITH.

THE DISPOSITIVE PORTION OF THE DECISION READS AS FOLLOWS:

"PREMISES CONSIDERED, DECISION IS HEREBY RENDERED AS FOLLOWS:

- A) RESCINDING THE CONTRACT OF JOINT VENTURE AND ADDENDUM THERETO;

B) DISSOLVING THE STO. NIÑO MEMORIAL PARK, INC., AND WHICH AS AGREED WAS SUBJECT TO AND DEPENDENT UPON THE EXISTENCE OF THE CONTRACT OF JOINT VENTURE;

C) DECLARING THE PLAINTIFF THE OWNER AND ENTITLED TO THE POSSESSION OF THE LAND OBJECT OF THE JOINT VENTURE CONTRACT AND ADDENDUM, TOGETHER WITH ALL ITS FRUITS, MORE PARTICULARLY, ALL ITS INCOME, ALL ITS PRODUCE AND ALL IMPROVEMENTS THEREON, WITH THE OBLIGATION ON THE PART OF THE PLAINTIFF TO CONTINUE WITH THE MANAGEMENT OF THE STO. NIÑO MEMORIAL PARK AND TO COMPLY WITH THE AGREEMENTS WITH THE LOT BUYER THEREOF;

D) PLAINTIFF TO RETURN TO THE DEFENDANT THE AMOUNT OF P40,000.00 WITH LEGAL INTEREST FROM RECEIPT THERE-OF UNTIL FULLY PAID; TO RETURN TO THE DEFENDANT THE AMOUNT OF P20,000.00 PAID BY THE DEFENDANT FOR THE FORMATION OF THE MANAGEMENT CORPORATION WITH LEGAL INTEREST FROM THE DATE THE SAME WAS PAID BY THE DEFENDANT UNTIL REPAID; AND TO RETURN TO THE DEFENDANT THE AMOUNT OF P200,000.00, REPRESENTING THE AMOUNT SPENT OF THE STO. NIÑO MEMORIAL PARK AND ADVANCES TO THE MANAGEMENT CORPORATION PLUS LEGAL INTEREST FROM THE FILING OF THIS CASE;

E) FOR DEFENDANT TO RENDER AN ACCOUNTING OF THE AMOUNT OF P403,967.47, REPRESENTING THE DISTRIBUTIVE SHARE OF THE PLAINTIFF AND THE DEFENDANT FROM THE SALES OF THE LOTS OF THE PARK, AND WHICH ENTIRE AMOUNT BELONGS TO THE PLAINTIFF ALONE DUE TO THE RESCISSION, PLUS LEGAL INTEREST FROM TAKING THEREOF UNTIL RETURNED BY THE DEFENDANT TO THE PLAINTIFF;

F) DEFENDANT TO PAY THE PLAINTIFF P20,000.00 AS ACTUAL DAMAGES; P5,000.00 AS MORAL DAMAGES; P5,000.00 AS NOMINAL DAMAGES; P5,000.00 AS EXEMPLARY DAMAGES; AND P5,000.00 AS EXPENSES OF LITIGATION AND ATTORNEY'S FEES, ALL SAID AMOUNTS ARE TO BE DEDUCTED FROM THE AMOUNT TO BE GIVEN TO DEFENDANT STATED UNDER THE ABOVE PARAGRAPH;

G) MAKING THE RESTRAINING ORDER PERMANENT, AS WELL AS THE INJUNCTION PRAYED FOR IN PLAINTIFF'S COMPLAINT;

H) TERMINATING THE RECEIVERSHIP, BUT WITH THE OBLIGATION ON THE PART OF THE RECEIVER TO RENDER HIS FINAL ACCOUNTING. IN THE MEANTIME THE RECEIVER SHALL NOT DELIVER TO THE PLAINTIFF OR DEFENDANT ANY INCOME FROM THE PARK;

I) DISMISSING THE COMPLAINT IN INTERVENTION FOR NOT BEING WELL FOUNDED AND FOR LACK OF MERIT;

J) DISMISSING ALL OTHER CLAIMS AND COUNTERCLAIMS FOR LACK OF MERIT; AND

K) COSTS AGAINST THE DEFENDANT. (L-55982, ROLLO I, PP. 115-129)

"SO ORDERED."

IN AN ORDER DATED MARCH 28, 1980, PARAGRAPH "E" OF THE AFOREMENTIONED DECISION WAS MODIFIED TO READ AS FOLLOWS:

"(E) FOR DEFENDANT TO PAY THE PLAINTIFF THE AMOUNT OF P403,967.47, REPRESENTING THE DISTRIBUTIVE SHARE OF THE PLAINTIFF AND THE DEFENDANT FROM THE SALES OF THE LOTS OF THE PARK, AND WHICH ENTIRE AMOUNT BELONGS TO THE PLAINTIFF ALONE

DUE TO THE RESCISSION, PLUS LEGAL INTEREST FROM TAKING THEREOF UNTIL RETUREND BY THE DEFENDANT TO THE PLAIN-TIFF. (L-55982, ROLLO I, P. 140)"

RESPONDENT BAUTISTA APPEALED TO THE COURT OF APPEALS.

ON APRIL 18, 1980, HEREIN PETITIONER FILED WITH THE CFI OF CAMARINES SUR A "MOTION FOR EXECUTION PENDING APPEAL" (L-55982, ROLLO I, PP. 134-138), STATING AS GROUND THEREOF THAT THE APPEAL TAKEN BY THE DEFENDANT (NOW RESPONDENT) IS ONLY FOR PURPOSES OF DELAY. THIS WAS GRANTED IN AN ORDER DATED APRIL 28, 1980 (L-55982, ROLLO I PP. 139-146). CONSEQUENTLY, THE WRIT OF EXECUTION WAS ISSUED COMMANDING THE PROVINCIAL SHERIFF OF CAMARINES SUR, TO RESTRAIN DEFENDANT BAUTISTA FROM POSSESSING AND BENEFITTING FROM THE LAND SUBJECT OF THE JOINT VENTURE CONTRACT. THE RECEIVER, NO LONGER ATTY. ROBERTO RANOLA BUT A CERTAIN COL. ENRIQUE ALPOÑO, WAS LIKEWISE COMMANDED TO RENDER HIS FINAL ACCOUNTING. ALSO BY REASON OF THIS WRIT OF EXECUTION, THE SHERIFF OF QUEZON CITY CAUSED TO BE SOLD ON MAY 9, 1980, THE PERSONAL PROPERTIES OF DEFENDANT BAUTISTA LOCATED IN QUEZON CITY. (L-55982, ROLLO I, PP. 518-522).

THE SALE WAS HOWEVER, NOT CARRIED OUT BECAUSE OF THE CERTIORARI PROCEEDING FILED BY DEFENDANT BAUTISTA WITH THE COURT OF APPEALS, SEEKING THE NULLIFICATION OF THE WRIT OF EXECUTION PENDING APPEAL AND PRAYING FOR A WRIT OF PRELIMINARY INJUNCTION TO RESTRAIN THE SHERIFF OF QUEZON CITY FROM FURTHER PROCEEDING WITH THE SALE OF HIS PROPERTIES.

THE RESTRAINING ORDER PRAYED FOR WAS ISSUED BY RESPONDENT COURT ON MAY 9, 1980.

IN A DECISION RENDERED ON NOVEMBER 3, 1980, THE COURT OF APPEALS FOUND RESPONDENT JUDGE TO HAVE GRAVELY ABUSED HIS DISCRETION, AN ACT AMOUNTING TO LACK OF JURIS-DICTION, WHEN HE RULED THAT THE APPEAL INTERPOSED BY DEFENDANT (HEREIN RESPONDENT BAUTISTA) "WOULD MERELY BE DILATORY." (L-55982, ROLLO I, CA DECISION, P. 248).

THE DISPOSITIVE PORTION OF THE DECISION READS AS FOLLOWS: (ROLLO, P. 250)

"IN VIEW OF ALL THE FOREGOING, THE QUESTIONED WRIT OF EXECUTION PENDING APPEAL, DATED APRIL 28, 1980 AND THE NOTICE OF SHERIFF'S SALE, DATED MAY 2, 1980 ARE HEREBY SET ASIDE. THE RESTRAINING ORDER HERETOFORE ISSUED ENJOINING RESPONDENTS FROM ENFORCING THE QUESTIONED ORDER AND SALE IS HEREBY MADE PERMANENT.

"MEANWHILE, AS PRAYED FOR, RECEIVER-SHIP OVER THE PROPERTY IN LITIGATION SHOULD BE RESTORED AND COL. ENRIQUE F. ALPOÑO IS HEREBY REAPPOINTED AS THE RECEIVER.

"SO ORDERED."

THE MOTION FOR RECONSIDERATION/RE-HEARING (L-55982, ROLLO I, PP. 251-275) FILED BY RESPONDENT (HEREIN PETITIONER) WAS DENIED IN A RESOLUTION OF THE COURT OF APPEALS DATED JANUARY 14, 1981 (L-55982, ROLLO I, PP. 302-303). IN THE SAME RESOLUTION, THE COURT OF APPEALS ORDERED THE TURN-OVER OF ALL PROPERTIES AS WELL AS ALL PAPERS, DOCUMENTS, CASH ACCOUNTS, EQUIPMENT OF THE STO. NIÑO MEMORIAL PARK, BY HEREIN PETITIONER OR ANY PERSON ACTING IN HER BEHALF TO THE RECEIVER, COL.

ENRIQUE ALPOÑO UNDER PAIN OF BEING CITED FOR CONTEMPT OF COURT.

HENCE, THIS PETITION (L-55982) FILED ON JANUARY 26, 1981 (ROLLO, PP. 1-55).

RESPONDENTS WERE REQUIRED TO ANSWERS THE PETITION (L-55982, ROLLO I, P. 312). A TEMPORARY RESTRAINING ORDER (P. 313) DATED JANUARY 29, 1981, WAS ISSUED BY THIS COURT RESTRAINING RESPONDENT COURT OF APPEALS FROM ENFORCING AND/OR CARRYING OUT ITS DECISION DATED NOVEMBER 3, 1980 AND THE RESOLUTIONS DATED NOVEMBER 21, 1980, NOVEMBER 24, 1980 AND JANUARY 14, 1981.

ON FEBRUARY 16, 1981, RESPONDENTS FILED THEIR "ANSWER TO PETITION" (L-55982, ROLLO I, PP. 344-408) WITH PRAYER, AMONG OTHERS THAT THE TEMPORARY RESTRAINING ORDER ISSUED BY THIS COURT ON JANUARY 29, 1981, BE LIFTED AND COL. ENRIQUE F. ALPOÑO BE ALLOWED TO CONTINUE EXERCISING HIS DUTIES AND RECEIVER OF THE STO. NIÑO MEMORIAL PARK. (ROLLO, P. 318).

PETITIONER OPPOSED THE MOTION TO LIFT THE TEMPORARY RESTRAINING ORDER (L-55982, ROLLO II, PP. 731-734).

ON MARCH 30, 1981, PETITIONER WAS REQUIRED TO SHOW CAUSE WHY THE RECEIVERSHIP ORDERED BY THE COURT OF APPEALS SHOULD NOT BE CONTINUED, AND TO REPLY TO THE ANSWER OF RESPONDENTS (L-55982, ROLLO II, P. 741).

PETITIONER FILED A VOLUMINOUS "REPLY TO RESPONDENTS' ANSWER WITH OPPOSITION TO CONTINUANCE OF RECEIVERSHIP" (ROLLO II, PP. 750-871). A "REJOINDER TO PETITIONER'S REPLY" WAS FILED BY RESPONDENT ON JULY 10, 1981 (ROLLO II, PP. 960-1034) IN COMPLIANCE WITH THE RESOLUTION OF THIS COURT DATED APRIL 27, 1981 (ROLLO II, P. 957).

EVENTUALLY, THE COURT SET THIS CASE FOR HEARING (ROLLO II, P. 1040) ON OCTOBER 21, 1981. AFTER THE HEARING, THE COURT ISSUED THE FOLLOWING RESOLUTION:

"G.R. NO. 55982 (IRENE P. MARIANO, ET AL. VS. FRANCISCO BAUTISTA, ET AL.). - AT THE HEARING OF THIS CASE THIS MORNING, ATTYs. ROGELIO R. UDARBE AND JOSE PEÑAS, JR. APPEARED AND ARGUED FOR PETITIONER, WHILE ATTY. FRANCISCO C. PICO DID SO FOR RESPONDENTS. AFTER EACH COUNSEL WERE GIVEN THE OPPORTUNITY TO EXPLORE THE POSSIBILITY OF AN AMICABLE SETTLEMENT WITH, THE AID OF RESPONDENT FRANCISCO BAUTISTA PERSONALLY, THE PARTIES WERE REQUIRED TO INFORM THE COURT WITHIN FIFTEEN (15) DAYS WHETHER OR NOT THE FOLLOWING TERMS FORMULATED IN THE COURSE OF THE EFFORTS AT COMPROMISE CAN BE FIRMED UP IN AN AGREEMENT TO BE SUBMITTED TO THE COURT: (1) THAT THE POSSESSION AND MANAGEMENT OF THE MEMORIAL IN QUESTION SHALL CONTINUE TO BE LEFT TO THE PETITIONERS EXCLUSIVELY; (2) THAT RESPONDENTS' REQUEST FOR THE APPOINTMENT OF A RECEIVER IS WITHDRAWN; (3) THAT RESPONDENT BAUTISTA WILL BE PAID BY THE PETITIONER MARIANO TWO HUNDRED FIFTY THOUSAND (P250,000.00) PESOS WITHIN SIX (6) MONTHS FROM TODAY, THE SAID AMOUNT TO BE DEEMED AS INCLUDING THE UNDISPUTED ADVANCES MADE BY RESPONDENT BAUTISTA OF FORTY THOUSAND (P40,000.00) PESOS PLUS TWENTY THOUSAND (P20,000.00) PESOS AT THE BEGINNING OF THE JOINT VENTURE HEREIN INVOLVED; (4) THAT SAID PAYMENT SHALL BE WITHOUT PREJUDICE TO THE ACCOUNTING OF WHAT ADDITIONAL EXPENSES, AS WELL AS COLLECTIONS, HAVE BEEN MADE BY RESPONDENT BAUTISTA IN ORDER TO LIQUIDATE ONCE AND FOR ALL WHAT SAID RESPONDENT HAS SPENT FOR IMPROVEMENT OF THE MEMORIAL. AS WELL AS THE AMOUNTS HE HAS

COLLECTED WHEN HE WAS PRESIDENT OF THE MANAGING CORPORATION THEREOF; AND (5) THAT PETITIONER MARIANO SHALL, WITHIN TEN (10) DAYS FURNISH SECURITY SUFFICIENT TO COVER THE AMOUNT OF ONE MILLION (P1,000,000.00) PESOS FOR THE PAYMENT TO RESPONDENT BAUTISTA OF WHATEVER MAY BE THE RESULTING BALANCE IN HIS FAVOR AFTER THE ACCOUNTING HEREIN PROVIDED FOR.

"AS SOON AS THE CORRESPONDING AGREEMENT IS FILED WITH THIS COURT, THIS CASE SHALL BE DEEMED TERMINATED TOGETHER WITH THE PROCEEDINGS IN THE TRIAL COURT," (ROLLO II, P. 1064-A)

IN A VERIFIED MANIFESTATION AND MOTION FILED ON OCTOBER 29, 1981 (ROLLO II, PP. 1046-1049) PETITIONER EXPRESSED HER WILLINGNESS TO DELIVER TO RESPONDENT BAUTISTA THE FOLLOWING:

"(A) A TOTAL AMOUNT OF TWO HUNDRED FIFTY THOUSAND (P250,000.00) PESOS, PHILIP-PINE CURRENCY, PAYABLE TO RESPONDENT BAUTISTA BY CERTIFIED OR MANAGER'S CHECKS IN FOUR (4) EQUAL INSTALLMENTS OF SIXTY-TWO THOUSAND FIVE HUNDRED (P62,500.00) PESOS EACH; THE FIRST INSTALLMENT TO BE PAID WITHIN TEN (10) DAYS FROM NOTICE OF THE COURT ORDER AUTHORIZING THE PAYMENTS HEREIN PROPOSED AND THE OTHERS, EVERY FORTY-FIVE (45) DAYS THEREAFTER, UNTIL THE PROPOSED AMOUNT OF P250,000.00 IS PAID IN FULL; AND

"(B) CERTIFICATE OF OWNERS-IP NOS. SC-55982-001 TO SC 55982-534 FOR FIVE HUNDRED THIRTY-FOUR (534) SPECIFIC MEMORIAL LOTS IN THE SUBJECT PARK, ALL IN THE NAME OF RESPONDENT BAUTISTA, AND EACH CONTAINING THE SPECIAL CONDITION MENTIONED IN ANNEX "B-1" HEREOF, IN RELATION TO PARAGRAPH 4, INFRA, TO BE DELIVERED WITH THE FIRST PAYMENT IN ITEM (A). THE LOCATION AND PARTICULARS OF THE SAID MEMORIAL LOTS ARE INDICATED IN THE LOCATION PLAN AND INVENTORY HERETO ATTACHED AND MADE PARTS HERETO AS ANNEXES "A" AND "A-1", RESPECTIVELY."

ON THE OTHER HAND, RESPONDENT PRESENTED HIS CONDITIONS AS FOLLOWS:

"1.- RE: AMICABLE SETTLEMENT

RESPONDENT FRANCISCO M. BAUTISTA IS AMENABLE FOR AN AMICABLE SETTLEMENT PROVIDED HE WILL BE PAID THE FOLLOWING AMOUNTS WHICH ARE DUE HIM, TO WIT:

(1)

FOR ADVANCES HE GAVE TO

MRS. IRENE P. MARIANO ON

MAY 2, 1972, IN THE

AMOUNT OF

P 40,000.00

(2)

FOR THE ADVANCES IN THE FOR-

MATION OF THE CORPORA-

TION (STO. NIÑO MEMORIAL

PARK, INC.) IN 1972, THE

AMOUNT OF

20,000.00

(3)

FOR HIS EXPENSES INCURRED

IN DEVELOPING THE STO.

NIÑO MEMORIAL PARK, INC.

396,639.84

(4)

FOR ADVANCES HE GAVE TO

STO. NIÑO MEMORIAL PARK,

INC. FROM 1972 UP TO 1975

155,553.81

(5)

FOR HIS NET PROFIT OUT

OF HIS INVESTMENT TOTAL-

LING P612,193.65 FROM

1972 UP TO APRIL 30,

1980

1,480,517.03

TOTAL

P2,192,710.68

=====

"2.- RE: CONTINUATION OF ADMINISTRATION BY PETITIONER IRENE P. RELUCIO OVER THE STO. NIÑO MEMORIAL PARK, INC., UNDER THE FOLLOWING TERMS AND CONDITIONS:

(1) IRENE P. RELUCIO SHALL PAY TO MR. FRANCISCO M. BAUTISTA THE AMOUNT OF P250,000.00 WITHIN TEN (10) DAYS FROM OCTOBER 21, 1981.

(2) IRENE P. RELUCIO SHALL PUT UP A SURETY BOND WITHIN TEN (10) DAYS FROM OCTOBER 21, 1981, OF P1,000,000.00 TO BE EXECUTED IN FAVOR OF FRANCISCO M. BAUTISTA TO ANSWER FOR ANY JUDGMENT THAT WILL BE RENDERED IN HIS FAVOR.

(3) AND THE CASE IN THE COURT OF APPEALS SHALL PROCEED UNTIL FINALLY DECIDED.

"3.- RE: FAILURE OF IRENE P. RELUCIO TO ELECT ANY OF THE TWO PROPOSITIONS, THEN THE CASE WITH HONORABLE COURT SHALL BE CONSIDERED SUBMITTED FOR RESOLUTION." (ROLLO II, PP. 1065-1066)

HOWEVER, ON NOVEMBER 12, 1981, PETITIONER PROPOSED A DEVIATION FROM HER VERIFIED

MANIFESTATION AND MOTION DATED OCTOBER 29, 1981, THAT INSTEAD OF PUTTING UP A SURETY BOND AND OTHER SECURITY IN THE AMOUNT OF P1,000,000.00 FOR OTHER CONTINGENT CLAIMS, SHE BE ALLOWED TO CONDITIONALLY ASSIGN, FOR THE PURPOSE, PORTION OF THE SUBJECT PARK ITSELF CONSISTING OF 534 MEMORIAL LOTS WITH THE TOTAL SELLING PRICE OF P500,000.00 (ROLLO II, P. 1069).

RESPONDENT BAUTISTA WAS REQUIRED TO COMMENT ON THE AFORESAID PROPOSAL OF PETITIONER (ROLLO II, P. 1971).

IN HIS COMMENT (ROLLO II, PP. 1087-1094) RESPONDENT BAUTISTA DID NOT FIND ACCEPTABLE THE MEMORIAL LOTS BEING OFFERED AS A SURETY BOND (P. 1090) BUT ACCEPTED THE SAME LATER ON WITH THE PAYMENT TO RESPONDENT OF P250,000.00, WITH MODIFICATIONS AS FOLLOWS:

“(1) THE ENTIRE UNSOLD LOTS OF THE STO. NIÑO MEMORIAL PARK SHALL BE GIVEN AS SECURITY FOR THE P1,000,000.00;

“(2) THAT STARTING DECEMBER 16, 1981, FIFTY (50%) PERCENT OF THE GROSS RECEIPTS OF THE PROCEEDS OF SALES OF LOTS SHALL BE DEPOSITED WITH THE PHILIPPINE NATIONAL BANK, NAGA CITY BRANCH, BOTH IN THE NAME OF MR. FRANCISCO M. BAUTISTA AND IRENE P. MARIANO UNTIL THE DEPOSIT REACHES THE AMOUNT OF P1,000,000.00, WHICH SHALL BE DISPOSED OF ONLY UPON THE FINAL TERMINATION OF THE CASE NOW PENDING BETWEEN THE PARTIES IN THE COURT OF APPEALS OR UPON ORDER OF THE HONORABLE SUPREME COURT;

“(3) THAT PETITIONER SHALL SUBMIT A MONTHLY REPORT STARTING JANUARY 16, 1982, OF HER SALES OF MEMORIAL LOTS TO THE COURT OF APPEALS AND TO THE SUPREME COURT, COPY FURNISHED RESPONDENT FRANCISCO M. BAUTISTA;

“(4) THAT RESPONDENT FRANCISCO M. BAUTISTA OR HIS DULY AUTHORIZED REPRESENTATIVE SHALL BE AUTHORIZED TO CHECK ON THE SALES THAT WILL BE MADE BY PETITIONER UNTIL THE AMOUNT OF P1,000,000.00 IS DULY DEPOSITED.” (ROLLO II, P. 1098)

IN THIS COURT'S RESOLUTION DATED DECEMBER 2, 1981, THE PARTIES WERE REQUIRED TO ABIDE BY THE RESOLUTION OF OCTOBER 21, 1981 IN THIS WISE:

“(A) PETITIONER, WHO WAS NOT PRESENT AT THE HEARING OF OCTOBER 21, 1981, AND, THEREFORE, DID NOT MAKE ANY PERSONAL COMMITMENT OF HER OWN, SHOULD PAY RESPONDENT BAUTISTA THE SUM OF ONE HUNDRED TWENTY-FIVE THOUSAND (P125,000.00) PESOS WITHIN TEN (10) DAYS FROM NOTICE HEREOF AND ANOTHER ONE HUNDRED TWENTY-FIVE THOUSAND (P125,000.00) PESOS WITHIN SIXTY (60) DAYS THEREAFTER;

“(B) SAID PETITIONER SHOULD EXECUTE WITHIN TEN (10) DAYS FROM NOTICE HEREOF THE APPROPRIATE DOCUMENTS OF ASSIGNMENT TO RESPONDENT BAUTISTA, BY WAY OF A SECURITY, SIMILAR TO A MORTGAGE, OF UNSOLD MEMORIAL LOTS PRICED CURRENTLY IN THE TOTAL AMOUNT OF ONE MILLION (P1M) PESOS, WITH THE ANNOTATED CONDITION ON THE CORRESPONDING TITLE OR TITLES COMPRISING THE CORRESPONDING PORTIONS OF THE MEMORIAL IN QUESTION THAT AS SAID LOTS ARE SOLD, FIFTY PER CENTUM (50%) OF THE PROCEEDS THEREOF SHALL BE DEPOSITED IN A BANK TO BE AGREED UPON BY THE PARTIES (PREFERABLY IN A BRANCH OF THE PHILIPPINE NATIONAL BANK OR THE UNITED COCONUT PLANTERS BANK, IF THERE IS ANY IN NAGA), UNTIL THE SAID DEPOSIT REACHES THE AMOUNT OF P1M, WHICH AMOUNT SHALL BE DISPOSED OF ONLY UPON THE FINAL

TERMINATION OF THE CASE NOW PENDING BETWEEN THE PARTIES IN THE COURT OF APPEALS OR UPON APPROPRIATE ORDERS OF THIS COURT AT ANY TIME AS IN ITS JUDG-MENT THE CIRCUMSTANCES MAY WARRANT;

"(C) ALL OTHER TERMS AND CONDITIONS CONTAINED IN THE RESOLUTION OF OCTOBER 21, 1981 SHALL REMAIN UNALTERED FOR COM-PLIANCE BY THE PARTIES CONCERNED.

"PROOF OF ACCEPTANCE OF THE TERMS OF THIS RESOLUTION AND SUBSEQUENT COMPLIANCE WITH THE SAME MUST BE SUBMITTED TO THIS COURT BY BOTH PARTIES WITHIN TEN (10) DAYS FROM NOTICE HEREOF AS TO ACCEPTANCE AND AS TO COMPLIANCE RESPECTIVELY.

"UPON FAILURE ON THE PART OF ANY OF THE PARTIES TO COMPLY HERewith, THE COURT, AFTER APPROPRIATE HEARING, SHALL ACT ACCORD-INGLY.

"LET A COPY OF THIS RESOLUTION BE SERVED ON THE COURT OF APPEALS FOR ITS INFORMATION AND GUIDANCE, TO THE END THAT THE CASE THEREIN MAY BE RESOLVED AT ITS EARLIEST CONVENIENCE, THE ONLY ISSUES LEFT THEREIN BEING AS TO HOW MUCH RESPONDENT. BAUTISTA HAS ADVANCED IN MAKING THE IMPROVEMENTS ON THE MEMORIAL IN QUESTION AND HOW MUCH HE HAS WITHDRAWN OR TAKEN WHEN HE WAS PRESIDENT OF THE MANAGEMENT CORPORATION, AS ALLEGED BY PETITIONER, AND HOW MUCH OF THE AMOUNT AWARDED BY THE TRIAL COURT TO PETI-TIONER IS JUSTIFIED IN FACT AND IN LAW." (ROLLO II, PP. 1123-1124).

PETITIONER COMPLIED ON THE P1 MILLION BOND IN THE FORM OF MEMORIAL LOTS DULY ANNOTATED ON THE CORRESPONDING CERTIFICATES OF TITLE. (ROLLO II, PP. 1039-1121).

NOTWITHSTANDING THE FOREGOING, THE INTENDED AMICABLE SETTLEMENT WAS NOT REACHED, RESPONDENT BAUTISTA MANIFESTING THAT PETITIONER FAILED TO PAY HIM THE P250,000.00 (ROLLO II, PP. 1126-1127) AS ORDERED BY THE COURT IN ITS RESOLUTION DATED DECEMBER 2, 1981. PETIONER COUNTERED THAT SHE IS WILLING TO PAY SUCH AMOUNT WITHIN FOUR (4) MONTHS AND 25 DAYS IN FOUR (4) EQUAL INSTALLMENTS (ROLLO II, P. 124) BUT SAID OFFER WAS REFUSED BY RESPONDENT, THE LATTER'S INSISTENCE BEING THAT THE FIRST P125,000.00 BE PAID WITHIN TEN (10) DAYS FROM NOTICE OF THE COURT'S RESOLUTION OF DECEMBER 2, 1981, AND THE OTHER P125,000,00 BE PAID WITHIN 60 DAYS THEREAFTER.

MEANWHILE, ON JULY 27, 1984, THE COURT OF APPEALS DECIDED THE APPEALED CASE BROUGHT BEFORE IT BY HEREIN RESPONDENT BAUTISTA (THEN DEFENDANT-APPELLANT FOR THE REVIEW OF THE DECISION OF THE CFI OF CAMARINES SUR DATED DECEMBER 14, 1979 IN CIVIL CASE No. 7926, (ROLLO II, PP. 1153-1173). IN ITS DECISION, RESPONDENT COURT FOUND THE EXTENT OF DEVELOPMENT OF THE PARK AS BETWEEN 75% TO 80% FOR WHICH REASON IT RAISED THE P200,000.00 AWARDED BY THE LOWER COURT TO THE APPELLANT TO P396,639.84 THE AMOUNT CONSIDERED BY RESPONDENT COURT TO BE REASONABLE; ALL ADVANCES MADE BY HEREIN RESPONDENT BAUTISTA WAS FIXED AT P155,553.81; THE PROFITS ARISING FROM THE SALE OF MEMORIAL LOTS WERE DISTRIBUTED AS FOLLOWS:

SHARE DISTRIBUTION

F.M. BAUTISTA

SHARE OF RELUCIO

RATIO

1973-1974

65%

35%

1975-1977

60%

40%

THE DISPOSITIVE PORTION OF THE DECISION READS AS FOLLOWS:

"WHEREFORE, CONSIDERING THE FOREGOING, THE JUDGMENT APPEALED FROM IS HEREBY MODIFIED, AND A NEW ONE IS RENDERED AS FOLLOWS:

(A) RESCINDING THE CONTRACT OF JOINT VENTURE AND ADDENDUM THERETO ON THE GROUND OF MUTUAL VIOLATIONS OF THE SAME BY BOTH CONTRACTING PARTIES;

(B) THE DISSOLUTION OF THE STO. NIÑO MEMORIAL PARK, INC., WHICH WAS CREATED AS A RESULT OF THE CONTRACT BETWEEN THE PARTIES SHALL BE IN ACCORDANCE WITH THE PROCEDURE OUTLINED IN THIS DECISION;

(C) DECLARING THE LAND SUBJECT MATTER OF THE CONTRACT OF JOINT VENTURE AS THE PROPERTY OF THE PLAINTIFF-APPELLEE, TOGETHER WITH ALL THE IMPROVEMENTS THEREON AS WELL AS THE INCOME SUPPOSEDLY ACCRUING TO THE PLAINTIFF-APPELLEE, AS OWNER OF SAID PROPERTY WITHOUT PREJUDICE TO THE RIGHT OF THE OTHER CO-OWNER(S) OF THE LAND IN QUESTION;

(D) PLAINTIFF-APPELLEE TO REIMBURSE DEFENDANT-APPELLANT THE SUM OF P396,639.84 FOR DEVELOPMENT COSTS AND P155,553.81 FOR CASH ADVANCES TO THE STO. NIÑO MEMORIAL PARK, INC. WITH 12% INTEREST FROM THE DATE OF THE JUDGMENT UNTIL FULLY PAID TO WHAT SHALL BE DONE (SIC) WITH THE AMOUNT OF P155,553.81 AS OUTLINED IN THE BODY OF THIS DECISION;

(E) ORDERING THE RECEIVER OF THE STO. NIÑO MEMORIAL PARK, INC. TO RELEASE THE DISTRIBUTIVE SHARES OF THE PARTIES CORRESPONDING TO THE SUM OF P281,287.75 FOR THE APPELLANT AND P175,008.94 FOR THE APPELLEE, TRANSFERRING THE AMOUNT THEREOF TO APPELLANT AND APPELLEE, BUT WITHHOLDING FROM THE LATTER THE AMOUNT OF P155,553.81 OUT OF HER SHARE TO ANSWER FOR THE REIMBURSEMENT TO APPELLANT FOR HIS CASH ADVANCES;

(F) TERMINATING THE RECEIVERSHIP BUT WITH THE OBLIGATION ON THE PART OF THE RECEIVER TO RENDER HIS FINAL ACCOUNTING AND SUBJECT FURTHER TO THE PROCEDURE OUTLINED IN THE BODY OF THIS DECISION FOR THE DISSOLUTION OF THE STO. NIÑO MEMORIAL PARK, INC. AND FOR THE RETENTION AND EVENTUAL TRANSFER OF P155,553.81 THE CASH ADVANCES MADE BY THE APPELLANT TO THE STO. MEMORIAL PARK, INC.;

(G) DISMISSING ALL OTHER CLAIMS AND COUNTERCLAIMS FOR LACK OF MERIT.

WITHOUT PRONOUNCEMENT AS TO COSTS.

"SO ORDERED,"

ON AUGUST 17, 1984 HEREIN PETITIONER MOVED FOR THE RECONSIDERATION OF THE ABOVE DECISION (L-69589, ROLLO, PP. 50-55) BUT THE SAME WAS DENIED IN THE RESPONDENT COURT'S RESOLUTION DATED JANUARY 3, 1985 (STATED IN THE PETITION, L-69589, ROLLO, P. 8)

HENCE, THIS PETITION (L-69589) FOR REVIEW ON CERTIORARI FILED BY PETITIONER IRENE P. RELUCIO ON FEBRUARY 6, 1985 (ROLLO, PP. 8-19),

ON MOTION FOR PETITIONER (ROLLO, P. 7) THE COURT GRANTED THE CONSOLIDATION OF L-55982 WITH L-69589 (ROLLO P. 132).

RESPONDENT BAUTISTA MOVED FOR THE DISMISSAL OF THE APPEAL ON THE GROUND THAT THE SAME WAS FILED OUT OF TIME IN G.R. NO. 69589 (ROLLO, P. 69).

ACTING ON THE PETITION IN THIS CASE, THE MOTION DISMISS OF PRIVATE RESPONDENT AND THE OPPOSITION OF PETITIONER THERETO, THE COURT RESOLVED TO DENY THE PETITION IN G.R. No. 69589 FOR RAISING FACTUAL ISSUES AND FOR LACK OF MERIT. (RESOLUTION OF THE SECOND DIVISION DATED APRIL 15, 1985; ROLLO, P. 132).

ACTING ON PETITIONER'S MOTION FOR RECONSIDERATION IN G.R. No. 69589, THE COURT RESOLVED TO DENY THE MOTION FOR LACK OF MERIT AND THE DENIAL IS FINAL (RESOLUTION DATED JUNE 17, 1985, ROLLO, P.136).

ENTRY OF JUDGMENT WAS MADE ON APRIL 15, 1985 IN G.R. NO. 69589 AND THE SAME HAS BECOME FINAL AND EXECUTORY ON JULY 1, 1985 (ROLLO, P. 137).

ON JULY 24, 1986, PETITIONER FILED AN APPEAL TO THE SUPREME COURT EN BANC IN G.R. No. 69589 (ROLLO, PP. 140-142) WHICH WAS DENIED IN THE RESOLUTION OF THE COURT EN BANC DATED AUGUST 7, 1985, ENTRY OF JUDGMENT HAVING ALREADY BEEN MADE IN THIS CASE (ROLLO, P.146).

ON JANUARY 30, 1986, RESPONDENT BAUTISTA FILED A "MOTION TO CITE PETITIONER IRENE P. RELUCIO, HER HUSBAND ROLANDO S. RELUCIO, AND HER ATTORNEYS ROGELIO UDARBE AND JOSE S. PEÑAS, JR., IN CONTEMPT OF COURT" IN BOTH CASES (G.R. Nos. 55982 AND 69589) ON THE GROUND THAT SINCE RESPONDENT BAUTISTA REFUSES TO APPLY THE CERTIFICATES OF OWNERSHIP OF MEMORIAL LOTS PREVIOUSLY ASSIGNED TO HIM AS EMBODIED IN THE PETITIONER'S NOTICE OF COMPLIANCE DATED DECEMBER 19, 1981, TO PAY PETITIONER'S ADJUDGED OBLIGATION TO HIM, THE PETITIONER IS UNREASONABLY PRESSING THIS ISSUE IN THE LOWER COURT IN HER DESIRE TO FURTHER DELAY THE ENFORCEMENT OF THE WRIT OF EXECUTION ISSUED IN CONNECTION WITH THIS CASE (ROLLO, PP. 147-157).

IN BOTH CASES, PETITIONER'S COUNSEL, ATTY. ROGELIO R. UDARBE, FILED A "SUPPLEMENTAL COMMENT" ON MARCH 17, 1986 (ROLLO, PP. 184-191) WHILE PETITIONER, HER HUSBAND AND THEIR OTHER COUNSEL, ATTY. JOSE S. PEÑAS, JR., FILED AN "AMENDED COMMENT" ON APRIL 1, 1986 (ROLLO, PP. 225-233). THEREAFTER, RESPONDENT BAUTISTA FILED A "REPLY TO THE SUPPLEMENTAL COMMENT OF PETITIONER" (ROLLO, PP. 236-240) AFTER WHICH PETITIONER FILED TWO SEPARATE REJOINDERS (ROLLO, PP. 241-248) ONE ON MAY 20, 1986, AND THE OTHER ON MAY 23, 1986 (ROLLO, PP. 248-250).

ON AUGUST 11, 1986, THE COURT RESOLVED TO DENY THE MOTION TO CITE PETITIONER IN CONTEMPT FOR LACK OF MERIT (ROLLO, P. 254).

IN THE FINAL ANALYSIS, IT WILL BE OBSERVED THAT WHILE BOTH CASES HAVE BEEN CONSOLIDATED, ONLY G.R. No.

69589 HAS BEEN FINALLY RESOLVED IN THE RESOLUTION OF APRIL 15, 1985 WHILE G.R. No. 55982 WHICH INVOLVES THE SAME ISSUES BETWEEN THE SAME PARTIES REMAINS PENDING, BECAUSE OF THE AMICABLE SETTLEMENT WHICH HAS NOT MATERIALIZED. BE IT NOTED HOWEVER THAT SAID PROPOSED AMI-CABLE SETTLEMENT CANNOT SERVE ANY USEFUL PURPOSE ANYMORE, SINCE THE COURT OF APPEALS HAS ALREADY RENDERED A DECISION ON THE MERITS, AND THIS COURT HAS REFUSED TO REVIEW SAID DECISION FOR LACK OF MERIT AND FOR RAISING FACCTUAL ISSUES.

PREMISES CONSIDERED, G.R. NO. 55982, IS HEREBY DISMISSED FOR BEING MOOT AND ACADEMIC.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Padilla, Bidin, and Cortes, JJ., concur.

* PENNED BY JUDGE ALFREDO S. REBUENO, CFI OF CAMARINES SUR, 10TH JUDICIAL DISTRICT, BRANCH IV.

* PENNED BY JUSTICE JOSE A.R. MELO, CONCURRED IN BY JUSTICES B.S. DE LA FUENTE AND CARLOS L. SUNDIAM.

* PENNED BY JUSTICE RAMON G. GAVIOLA, JR., CONCURRED IN BY JUSTICES EDUARDO P. CAGUIOA AND MA. ROSARIO QUETULIOLOSA.

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