

CONGRESSIONAL COMMERCIAL CORPORATION AND BIENVENIDO LIM, PETITIONERS VS. COURT OF APPEALS, COURT OF FIRST INSTANCE OF RIZAL

G.R. No. 59213. November 27, 1986

Ponente: FERNAN, J.

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FERNAN, J.:

Spouses Higino R. Francisco and Norberta Gana are the owners of two adjoining lots with a total area of 1,450 square meters located at 721 Epifanio de los Santos Avenue, Cubao, Quezon City, covered by Transfer Certificates of Title Nos. 30713-A and 140132,

On October 20, 1970, the Francisco spouses entered into a lease contract over said lots with Congressional Commercial Corporation thru its president, Bienvenido Lim.[1] The lease was for a period of twenty [20] years from and after August 31, 1971, at a staggered monthly rental rate as follows:

"[3] - Rental LESSEE agrees to pay the. following monthly rental for said premises: - TWO THOUSAND THREE HUNDRED PESOS (P2,300) from 1st to 5th year; TWO THOUSAND EIGHT HUNDRED PESOS (P2,800) from 6th to 10th year; THREE THOUSAND THREE HUNDRED PESOS (P3,300) from 11th to 15th year; and THREE THOUSAND FIVE HUNDRED PESOS (P3,500) from 16th to 20th year; payable. within the first five (5) days of the month. All in Philippine currency. LESSEE agrees that if any amount thereof shall be due and unpaid thirty (30) days after written notice of such default has actually been delivered to the. General manager of CONGRESSIONAL COMMERCIAL CORPORATION, LESSORS shall have the right to terminate this lease on thirty (30) days" written notice to LESSEE. Any building and other improvements which cannot be removed by LESSEE without damage to the building of the LESSEE shall accrue to the LESSORS if this contract is duly terminated under this paragraph or after the termination of this twenty years lease contract."

Under paragraph 6 of the lease contract, the parties likewise agreed that "In case of any official inflation or deflation which in the future may be declared by the Central Bank of the Philippines regarding the exchange value of Philippine Pesos to U.S. Dollars, then the monthly rental shall be based on the changes of the entrance per ticket price to the movie house of the LESSEE [caused by such new Peso/Dollar exchange rate] and that "the present entrance price for orchestra is P1.75 per individual".

Thereafter, the lessee Congressional Commercial Corporation constructed and operated the Cubao Cinema on the lots.

On January 9, 1973, Higino Francisco wrote to Bienvenido Lim, requesting for an upward adjustment of the agreed monthly rentals. He stated that while it was not within the realm of any possible expectation that the Central Bank would make an official declaration of inflation within the foreseeable future, an upward adjustment of the rent is justified by the fact that the peso, in relation to the dollar as well as the Japanese yen and English pound sterling, had gone down in value and that from the beginning, the lessee had been charging P2.00 per

orchestra seat and not P1. 75 as agreed upon. On the basis of the more than 14% difference between the agreed entrance price and the actual price of P2.25 being charged by the lessee, he requested that he be paid the adjusted monthly rental of P2,950 effective January, 1973.

The lessee refused to heed Francisco's request for a rental adjustment on the ground that the Central Bank had not officially declared the existence of inflation or deflation in the Philippines, nor was it expected to do so as a matter of policy.

On July 17, 1974, Francisco wrote the Director of the Central Bank's Legal Department for an opinion on whether the government's "floating rate policy" was equivalent to an official declaration of the exchange rate value of the peso, together with a request for information on the official exchange rate of the peso to the dollar in October 1970 and in July 1974.

In answer to his query, Director F. E, Evangelista replied:

"Central Bank Circular No. 289 which took effect on February 21, 1970, together with other implementing regulations did not fix the official rate of our currency. The exchange rate is not administratively fixed. On the contrary, the Central Bank has left the determination of the foreign exchange rate to the exchange market on a day-to-day basis.

"Section 8 of said Central Bank Circular No. 289 provides as follows:

'Section 8. The free market rate shall not be administratively fixed but shall be determined through transactions in the foreign exchange market on a day-to-day basis. The authorities shall not intervene in the market except to the extent necessary to compensate for excessive fluctuations but shall not operate against the trend in the market.'

"The foregoing provision specifically states that the free market rate shall not be administratively fixed'. The Central Bank may intervene only when there is excessive fluctuation of the peso value in order to counteract such excessive fluctuation. This is a clear indication of its intention not to fix the official rate.

"The official exchange rate of the peso to the dollar in October, 1970 was P3.90 to \$1.00 as fixed by Executive Order No. 195 dated November 6, 1965. Today, this is the same official exchange rate." [2]

Thereafter, or on September 20, 1976, the Francisco spouses filed before the Court of First Instance of Rizal a petition for declaratory relief [Civil Case No. Q-22056]. Alleging, among others, that the orchestra tickets for all movie houses had been increased to P2.25 and as of 1975 to P3.00, and that inspite of the fact that the leased lots were valued at P1.5 million, the rental was still pegged at a ridiculously low P2,800 a month, the Franciscos submitted to the court the following questions:

"[a] Is the existence of inflation not only worldwide, but also in the Philippines, not a matter of both judicial as well AS public knowledge?

"[b] In the affirmative - or even otherwise, provided the fact of inflation is proven is an official declaration of its existence by the Central Bank indispensable in the enforcement of a contractual provision which would seem to require such an official declaration for its enforcement or

"[c] Considering that the policy of the Central Bank is NOT to make, any official declaration regarding the fact of inflation, may such a qualification in the contractual provision be considered as not written, and therefore, dispensed with under the principles enunciated in Arts 1359, 1362 and 1365 of the Civil Code of the Philippines regarding reformation of contract?"

They prayed that respondents Congressional Commercial Corporation and Bienvenido Lim be ordered:

"[1] To pay petitioners adjusted monthly rental rates proportionate to the increases in the admission prices of orchestra tickets to moviehouses, specifically, in the following manner to wit:(a) a monthly rental rate of P2,950.00 [or an increase of P650.00] from January, 1973, when petitioner first requested for the adjustment, and when the admission price was increased to P2.25;(b) From January, 1974, when admission prices were further increased to P3.00 a monthly rental rate of P3,940.00; and(c) From September, 1976, when under the lease contract, Annex 'A' hereof, an increase of P500.00 is provided for a monthly rental of P4,800;"[2] To pay petitioners the sum of P5,000.00 as and for attorney's fees; and"[3] To pay the costs of the suit."

In their answer, Congressional Commercial Corporation and Lim alleged that they had incorporated paragraphs 3 and 6 in the lease contract because both parties had foreseen the occurrence of inflation or deflation. They contended that there was no legal basis and justification to revise the agreed rentals because the Central Bank had not officially declared the existence of inflation or deflation and the lease contract, for all intents and purposes, reflected the true intention of the parties.

They further averred that the "asking price" for lots around the Cubao Cinema area had been the same for the past five years; that paragraph 3, specifically the provisions that there would be an increase in rentals every five years and an automatic transfer of ownership to the lessor of the building constructed on the leased premises, was agreed upon because of an expected world wide inflation; that there was no cause for the reformation of the lease contract because not only were its terms clear and unequivocal but also because the lessor was himself a lawyer; and that the court could not validly assume jurisdiction over the case in the absence of an official declaration by the Central Bank of the existence of inflation in the Philippines.

As counterclaim, they prayed for the total award of P150,000 as damages and P20,000 as attorney's fees.

At the pre-trial conference on February 17 1977, only the Franciscos appeared. On motion of Higino Francisco, who appeared for himself and his wife, the lower court declared respondents there in as in default and authorized the petitioners to present evidence ex-parte. The Franciscos henceforth presented before a commissioner the lease contract as Exhibit A, Francisco's letter to respondents dated January 9, 1973 as Exhibit B, Francisco's letter to the Central Bank's Legal Department as Exhibit C, and the reply dated July 19, 1974 of the Director of the Central Bank's Legal Department as Exhibit D.

On June 30, 1977 the lower court rendered a decision stating that reformation of the lease contract was not called for as the case was simply one for specific performance and interpretation of said contract, particularly paragraph 6 thereof. In resolving the issue of whether or not petitioners were entitled to an adjustment of rental under paragraph 6 "independently of the rental adjustment provided for by paragraph 3 of the lease contract", the lower court ruled that an official declaration of inflation or deflation did not appear to be mandatory under paragraph 6 as the parties seemed to have agreed that "the increase in admission charges indicate the existence of such inflation".[3] Thus, judgment was rendered in favor of the petitioners [Franciscos] sentencing therein respondents to pay them the following adjusted rentals:

- "1. A monthly rental of, P2,950.00 from January 1973 to December 1973;
2. A monthly rental of P3,940.00 from January 1973 to August 1976;
3. A monthly rental of, P4,800.00 from September 1976 until September 1980; thereafter, the increase in rental under paragraph 3 of the contract shall be observed.

Respondents are also ordered to pay attorney's fees of P 1,000.00.

The counterclaim is dismissed.

SO ORDERED."

On August 25, 1977 the lessee corporation and Lim filed a verified petition for relief from the order of default and the decision of the lower court alleging that their counsel was not served with notice of the pre-trial held on February 17, 1977. Contending that the decision of the lower court was not in complete accord with applicable jurisprudence, they argued that the lower court should have dismissed the case when it found that it was not one for either reformation of contract or declaratory relief because an action for specific performance, by which the lower court characterized the Franciscos' complaint, is a different remedy.

The lower court denied the petition. It stated that the notice of pre-trial was sent to the lessee's counsel but was returned unclaimed. The lower court also noted that the inaction of the lessee from the time it received a copy of the order of default until it filed the petition for relief from judgment, foreclosed any effort on its part to seek relief.

The lessee corporation and Lim appealed to the Court of Appeals, the appeal being docketed as CA-G.R. No. 62924-R. While the case was pending decision in said appellate court, the Franciscos moved for the immediate execution of the decision of the lower court noting that as of March 30, 1979, the accumulated judgment debt of the lessee had amounted to p119,280.00. [4] The Court of Appeals denied said motion.[5]

On December 8, 1980, the Court of Appeals promulgated a decision affirming that of the lower court with the modification that the third paragraph of its dispositive portion, which directs the observance of paragraph 3 of the lease contract, was dispensed with as the rental increase under paragraph 6 had outpaced or exceeded that provided for in paragraph 3, thereby making the latter paragraph functus officio. Noting that the parties had agreed to consider the price of the admission tickets as the index of any inflation or deflation, the appellate court stated that "to close one's eyes to the fact that inflation does exist, as evidenced by the general increase in the prices of commodities, including movie tickets, simply because there has been no 'official declaration' to that effect, would be to sacrifice fact for mere form".[6]

The appellate court also clarified that the "respondents" referred to in the dispositive portion of the lower court's decision should refer only to the lessee corporation to the exclusion of its president who cannot be made personally liable for a transaction he entered into for the lessee corporation.

On the fifteenth day from receipt of a copy of the Court of Appeals decision, the appellants filed a motion for an extension of fifteen days within which to file a motion for reconsideration. After it was granted, they filed a second motion for another extension of ten days to file said motion for reconsideration. The Court of Appeals granted the same but with warning that no further extension would be granted thereafter.

When instead of filing the motion for re consideration, appellants filed a third motion for extension of time to file motion for reconsideration, the Court of Appeals, in its resolution of February 20, 1981, denied the same, declared its decision final and executory, and directed the clerk of court to make an entry of judgment and to remand the records of the case to the court of origin for execution of the judgment.[7]

Accordingly, entry of judgment was made on the date said resolution was issued[8] and the records of the case were remanded to the lower court on February 23, 1981. [9]

Two days later, the Court of Appeals received the appellants' motion for reconsideration. After the Franciscos had filed their opposition thereto or on March 9, 1981 and notwithstanding that entry of judgment had been made, the Court of Appeals took cognizance of said motion for re consideration and issued a resolution denying it for having been filed late and for lack of merit.[10]

In its resolution, the Court of Appeals, stated that Presidential Decree No. 1642 which appellants invoked, cannot be applied in this case because the graduated rentals agreed upon by the parties were fixed in a written contract

and said decree may not apply retroactively. Said court also ruled out the applicability of Proclamation No. 1967 because it was not proven that the leased lots are included in the urban land reform areas.

Consequently, the Franciscos secured a writ for the execution of the "Court of Appeals decision. The appellants moved to quash said writ on the ground that the modified decision was not yet executory as there was still no computation of the rentals in proportion to a future increase in the price of an admission ticket to the orchestra section of the lessee's moviehouse, as prescribed in paragraph 6 of the contract. The lower court denied the motion to quash and ordered the issuance of a second writ of execution although it found that the Franciscos' computation was not in accordance with the judgment.

Hence, the Franciscos returned to the Court of Appeals to seek clarification on their computation of the rentals. [11] In their motion, they alleged that in computing the rental increase, they used as guidepost the admission price to orchestra seats of first class moviehouses inasmuch as the lessee's moviehouse had "meanwhile degenerated in to a low-class moviehouse specializing in lewd [bomba] films and shows charging only P2.00 for an orchestra seat".[12]

According to the Franciscos, should their computation be disregarded, they would be constrained to go to court every time there is an increase in the price of tickets. They also under scored the fact that the contracting parties really intended to use the admission price to first class moviehouses as the guidepost for the future rental adjustments. They, therefore, prayed that the decision be clarified in the sense that the rental adjustments should be based on the proportionate increases in the admission price of orchestra seats to first class moviehouses.

In its resolution of October 19, 1981, the Court of Appeals ruled that the computation of rental adjustment presented by the Franciscos was not wholly in accordance with its decision. It cited as basis for its decision Section 5, Rule 18 of the Rules of Court which states that "a judgment entered against a party in default shall not exceed the amount or be different in kind from that prayed for." [13] It ruled that the rental increases from January 1973 to September 1980 should be computed as follows:

"1. From January 1973 to December 1973, the adjudged increased monthly rental of P2,950 minus the monthly rent of P2,300 fixed in par. 3 of the contract gives a difference of P650, multiplied by twelve months.

Amount of unpaid rent still
due.....P7,800

2. From January 1974 to August 1976, the adjudged increased monthly rent of P3,940 minus basic monthly rent of P2,300 fixed in par. 3 of the contract gives a difference of P1,640 multiplied by thirty-two months.

Amount of unpaid rent
due.....P52,480

3. From September 1976 to September 1980, the adjudged increased monthly rent of P4,800 minus the monthly rent of P2,800 fixed in par. 3 of the contract gives a difference of P2,000 [sic], multiplied by forty-eight months.

Total unpaid rent due P96,000

4, Thereafter, any future adjustment of the rental shall be in proportion to the increase in the price of an admission ticket to the orchestra section computed as follows: the agreed rent under par. 3 of the contract multiplied by the current price of an orchestra ticket in the defendant's movie theater divided by P1.75."

The appellants filed a motion for the re consideration of the October 19, 1981 resolution "on the ground that the clarification made therein on the manner of computing the rental increases from January 1973 to September 1980

is a substantial departure from its original decision of December 8, 1980".[14] They averred that based on the official reports of the City Treasurer of Quezon City and the computation formulated by the Franciscos, the total liability of the appellants amounted to only P41,958.00.

Pursuant to that claim, on November 26, 1981 the lessee corporation consigned to the lower court said' amount under Associated Citizens Bank cashier's check No. CC 000398 dated November 25, 1981 payable to Higino R. Francisco.[15]

Meanwhile, the Franciscos opposed the aforesaid motion for reconsideration of the resolution of October 19, 1981. On December 7, 1981, the Court of Appeals denied it on the ground that the reports of the Taxes and License Division of the Office of the Treasurer of Quezon City were entirely new matters which should have been alleged either in the lessee's answer, in a timely motion for new trial or petition for relief from judgment, or in the appellant's brief, or proven at the trial in the lower court, and not at such a late stage of the case.[16]

On December 28, 1981, the lessee and its president filed the instant petition, with prayer for a writ of preliminary injunction. That the nature of the present petition is not clear even to petitioner's counsel is evident from a reading of page 10 of the petition, the pertinent portion of which states:

"Appeal by certiorari.

Thus the respondent Court of Appeals has decided a question of substance and has decided it in a way probably not in accord with the decisions of this Honorable Court, to the prejudice of the rights of the petitioners, from which the petitioners have no adequate remedy in the ordinary course of law except only this instant petition.

Original certiorari.

Thus, also have, both the respondent trial court and the. respondent COURT of Appeals, both tribunals exercising judicial functions, acted with grave abuse of, discretion tantamount to lack of jurisdiction, if not outright lack of jurisdiction, to the prejudice of the rights of the petitioners, from which they have no adequate remedy in the ordinary COURSE of law, except only this instant petition."[17]

Be that as it may, on the basis of petitioners' allegation that the contractual stipulation in question refers to "changes of the entrance per price [sic] to the moviehouse of the lessee" and not to the general increase among moviehouses, and it appearing that the decision of the Court of Appeals has not touched on that point, this Court issued on January 18, 1982 a temporary restraining order effective immediately, enjoining the execution of the judgments of the respondent courts and setting for January 25, 1982 the hearing on the motion for preliminary injunction."[18]

In this petition for review on certiorari [appeal by certiorari] and/or original petition for certiorari, petitioners seek to set aside the decisions of both the trial and appellate courts as being null and void. They argue that said decisions, having been rendered on the basis of the Franciscos' prayer alone without evidence to support the same, were "fatally tainted with a denial of substantive due process."[19]

The "shot-gun" method employed by petitioners in coming before this Court did not do them any good. Either as an appeal by certiorari or as an original petition for certiorari, the instant petition must fail. It must be noted that the decision of the Court of Appeals in C.A.-G.R. No. 62924-R was promulgated on December 8, 1980. After failure of petitioners to file their motion for reconsideration despite the two extensions granted by the appellate court, the decision was declared final and executory on February 20, 1981. Entry of judgment was made on the same date and the records of the case were remanded to the lower court on February 23, 1981. It was only when the decision was to be executed that a dispute as to the correct amount due the Franciscos arose, prompting the

latter to seek clarification of the decision of the Court of Appeals. By taking cognizance of said motion for clarification, the Court of Appeals, however, did not revive the case. It merely exercised its inherent power to clarify its own decision, in the same manner that it may order an accounting after the complete adjudication and determination of the rights and obligations of the parties, so long as the order is only incidental to its judgment and does not affect its final character. [See *Lagunzad vs. Soto Vda. de Gonzales*, L-32066, August 6, 1979, 92 SCRA 476]. Thus, when petitioners filed their appeal on December 28, 1981, the decision sought to be reviewed had long become final and executory.

Besides, under the principle of estoppel, petitioners are precluded from appealing the decision of the Court of Appeals. Estoppel set in on November 26, 1981, during the pendency of petitioners' motion for reconsideration of the October 19, 1981 resolution of the Court of Appeals, when they consigned to the lower court the amount of P41.958 under Associated Citizens Bank Cashier's Check No. CC-000398 dated November 25, 1981 payable to Higinio Francisco for and "in satisfaction of the Honorable Court's judgment." [20] By this act, petitioners recognized private respondents' entitlement to an increase in rentals, subject only to the reservation that such increase should have been based on the actual admission price to the orchestra section of petitioners' movie house and not on the general orchestra entrance price of first-run movie houses. Except perhaps on said reservation, petitioners can no longer appeal from the decision of the Court of Appeals, for the rule recognized in this jurisdiction is that "a party who voluntarily executes, either partially or in toto a judgment rendered for or against him, or who voluntarily acquiesces in or ratifies, either partially or in toto, the execution of that judgment is not permitted to appeal from it." [21]

Neither is the remedy of certiorari available to petitioners. We have stated in *dela Cruz vs. Intermediate Appellate Court*, 134 SCRA 417:

"Time and again We have dismissed petition for certiorari to annul decisions or orders which could have but have not, been appealed where the COURT has jurisdiction over the subject matter, as respondent judge has in this case, the orders or decision upon all question pertaining to the cause are orders on decision within its jurisdiction, and however erroneous they may be, they cannot be corrected by certiorari. This special civil action does not lie where the remedy by appeal has been lost because said remedy cannot take the place, of an appeal."

Even if we were to take the instant petition as one directed against the appellate court's resolution of December 7, 1981, the same result obtains for the reason that the appellate court's denial of petitioner's motion for reconsideration was neither erroneous nor done with grave abuse of discretion. Indeed, the new matters raised by petitioners in their motion for reconsideration were matters of defense which should have been raised earlier in their petition for relief from judgment, their appeal or at any stage thereof, but not at such belated stage.

For the result thus obtained, petitioners have only themselves to blame. They had all the opportunities to controvert private respondents' claim. Yet, through negligence or design, they failed to avail themselves of these opportunities. Even at the earliest instance, i.e., after receiving their copy of the petition for declaratory relief, petitioners filed three motions for extension of time to file their answer, so that almost three months elapsed before they actually filed it. [22] Notice of the pre-trial was received by petitioners but was returned unclaimed by their counsel. At this point, petitioner Lim should have exercised ordinary diligence, by informing his counsel about the notice and its contents. In having been remiss in this regard, petitioners were declared as in default, losing their chance to successfully set aside the judgment of default for it is mandatory that a defendant who wants to nullify a default judgment must not only demonstrate that he has a meritorious defense, but must likewise be able to cleanse himself of negligence. [23]

In the Court of Appeals, petitioners filed a motion for a 90-day extension of their period to file brief, but failed to

meet the deadline just the same because the printing of said brief was allegedly delayed as their counsel was victimized by someone who representing him self as a Court of Appeals employee, demanded and received P525 from said counsel for the printing of the brief and disappeared without delivering said brief.[24] After the promulgation of the decision of the Court of Appeals, petitioners filed two motions for extension of time to file a motion for reconsideration. These were granted but with warning that no further extension would be given.[25] Petitioners filed a third motion for extension which was, expectedly, denied by the Court of Appeals, which also declared its decision final and executory.[26] Nevertheless, petitioners filed their motion for reconsideration. It was denied.[27]

Petitioners then attempted to elevate the case to this Court. On March 24, 1981 and April 3, 1981, they filed two separate motions for extension of time to file a petition for review on certiorari. Both entitled, "Congressional Commercial Corporation vs. Court of Appeals, Higinio Francisco and Norberta Gana", said motions were docketed as G.R. Nos. 56491 and 56579, respectively. For un explained reasons, however, the movant corporation failed to file any petition in both cases.[28]

After the Franciscos had filed their motion for clarification of the Court of Appeals decision, petitioners, now represented by a new counsel filed a motion for reconsideration of the Court of Appeals' resolution on said motion for clarification. The Court of Appeals denied it. The petitioners then seized the opportunity to elevate the case once more to this Court. Hence, the instant petition which petitioners' new and third counsel even failed to clearly categorize as one under either Rule 45 or Rule 65.[29] But as earlier stated, the shot-gun method employed was to no avail.

It is worth noting that the lease contract signed by the parties was merely copied from "long-term contracts of Caltex" and modified only to suit their purposes.[30] Had the parties been more circumspect in drafting the lease contract and more explicit in expressing their intention to provide for a graduated increase in rentals, then, perhaps, the filing of this case could have been averted.

WHEREFORE, the instant petition is hereby dismissed and the restraining order dated January 18, 1982 is lifted. Costs against petitioners.

SO ORDERED.

Feria (Chairman) Alampay, Gutierrez, Jr., and Paras, JJ., concur.

[1] Exh. A; Annex "A", Petition, p. 18, Rollo.

[2] Exh. D; Rollo, pp. 121-122

[3] Decision, p. 4; Rollo, p. 52.

[4] CA Rollo, p. 26

[5] CA Rollo, p. 49.

[6] Decision, p. 6; Rollo, p. 75.

[7] CA Rollo, p. 67.

[8] CA Rollo, p. 69.

[9] CA Rollo, p. 68.

- [10] CA Rollo, p. 76.
- [11] CA Rollo, p. 86.
- [12] Motion for Clarification, pp. 5-6, CA Rollo. p. 86.
- [13] CA Rollo, p. 88
- [14] CA Rollo, p. 94.
- [15] CA Rollo, p. 101.
- [16] CA Rollo, p. 99.
- [17] p. 14, Rollo.
- [18] Rollo, pp. 102-104.
- [19] Petitioners' Memorandum, Rollo, p. 165.
- [20] p- 101, CA Rollo.
- [21] Tañada vs. Court of Appeals, 139 SCRA 419.
- [22] CA Record on Appeal, pp. 1-2, 45.
- [23] T.J. Wolff & Co., Inc. vs. Moralde, L-21914. February 28, 1978. 81 SCRA 623, 627.
- [24] CA Rollo, pp. 16-19.
- [25] CA Rollo. P. 65.
- [26] CA Rollo, p. 67.
- [27] CA Rollo, p. 76.
- [28] CA Rollo, pp. 83 & 84.
- [29] TSN, January 25, 1982, pp. 37, 42-43.
- [30] TSN, January 25, 1982, p. 4.

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