

**ADELA FRANCISCO, PETITIONER, VS. HON. ALFREDO M. GORGONIO,
AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL,
BRANCH XXXV, CALOOCAN CITY, DEPUTY SHERIFF DANILO P.
NORBE...**

G.R. No. 59519. July 20, 1982

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari seeking the setting aside of the orders of respondent court of August 15, 1980, November 7, 1980, March 2, 1981, October 27, 1981 and December 16, 1981, particularly insofar as said orders require petitioner to pay interest at the rates stated therein in addition to the amount of P150,000.00 which has already been paid to private respondents.

The case below stemmed from a contract of lease entered into on July 5, 1977 between Zenaida E. Boiser "representing her parents, spouses Luis F. Francisco and Adela Blas Francisco" (p. 26, Record)[1] of a piece of land one hundred thirty-five square meters, more or less, situated at No. 691 (Old) Rizal Avenue Extension, Caloocan City, with the following pertinent provisions:

"1. That the amount of ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00), Philippine Currency, shall be deposited by the Lessee in favor of the Lessor upon signing of this agreement;

"2. That out of the deposit of P150,000.00, the amount of P30,000.00 equivalent to twenty per cent (20%) of said deposit shall represent the goodwill of the store space;

"3. That the monthly rental shall be THREE THOUSAND SEVEN HUNDRED FIFTY PESOS (P3,750.00), Philippine Currency, and the amount of P2,500.00 shall be deducted against the aforesaid deposit and the amount of P1,250.00 shall be in post-dated monthly checks for 12 months. It is understood and agreed that the monthly rental aforesaid shall begin upon final occupancy of said store space by the Lessee;

"4. That the proposed building shall be constructed and to be finished by the Lessor within 6 months from execution of this agreement;

"5. That the terms of the lease contract shall be ten (10) years from execution hereof, to be renewed for a 5 year period upon agreement of both parties, subject however for a reasonable increase of monthly rental after five (5) years from execution hereof;

"6. That in case the parties hereof will not agree as to the conditions and terms to be set up in the final contract of lease, then the Lessor agrees to return and refund the amount of P150,000.00 as deposit in full with legal interest to the Lessee and this agreement shall be considered null and void and without force and effect, if however, it is the Lessee who will back out from this agreement, then the amount of P30,000.00 shall be forfeited."

On May 30, 1978, private respondents filed a complaint, Civil Case No. C-6935, precisely the case below, against

Zenaida F. Boiser, as attorney-in-fact of the spouses Luis F. Francisco and Adela Francisco, alleging that in spite of their having paid the P120,000.00 advanced rentals and P30,000.00 goodwill stipulated in the agreement, and the promise of said defendant to deliver to them the leased premises within six months from the signing of the contract, she failed to do so without any legal justification, and instead was about to turn over possession thereof to Ginza Telamart, and, therefore, prayed thus:

"WHEREFORE, in view of all the foregoing it is most respectfully prayed as a preliminary matter that a writ of preliminary prohibitory injunction be issued by this court pending the final termination of this case ordering defendant to desist from awarding the leased premises to another and that after due hearing judgment be rendered:

"1. Making preliminary prohibitory injunction final and permanent;

"2. That plaintiff be entitled to the described leased portion of the building and ordering defendant to deliver the same;

"3. Ordering defendant to pay an amount reasonably assessed by the Honorable Court for moral damages;

"4. Ordering the defendant to pay actual damage as may be proven, plus legal interest;

"5. And further ordering defendant to pay the sum of P15,000.00 as and for attorney 's fees.

"Plaintiffs herein further pray for such other reliefs and remedies just and equitable in the premises." (Pp. 24-25, Record)

After being summoned, on June 29, 1978, defendant Boiser (who was the only one served with summons) filed her answer alleging and praying:

"10. That the agreement to lease was subject to the following conditions:

"(a) the resolutory condition contained in paragraph 6 thereof quoted in paragraph 2 of this answer;

"(b) the specific area of the building to be constructed was still to be agreed upon and it was not provided in the agreement what specific area of the building was to be leased by plaintiff;

"11. That plaintiff and defendant could not agree on the specific area of the new building to be leased, the choice of which was made difficult by the fact that the frontage as required by the city government; consequently, defendant opted to consider the agreement null and void and of no force and effect; that defendant tendered payment to plaintiff before the complaint was filed of the sum of P150,000.00 with interest at the legal rate as provided in paragraph 6 of the agreement, which tender of payment was refused by the plaintiff;

"12. That defendant is ready, willing and able to refund or reimburse the amount of P150,000.00 with interest at the legal rate as provided in paragraph 6 of the agreement;

"And as counterclaim, defendant respectfully alleges:

"13. That defendant reiterates the foregoing allegations to form integral part of this counterclaim;

"14. That defendant is lawfully entitled to consider the agreement null and void and of no force and effect and to make a consignment of the amount of P150,000.00 with interest at the legal rate under paragraph 6 of the agreement and to be released from any further liability thereon;

"15. That due to the unfounded suit filed by plaintiff, defendant has been compelled to litigate to protect her interest and avail of the services of counsel at an agreed fee of P5,000.00.

"WHEREFORE, it is respectfully prayed:

"1. That the prayer for a writ of preliminary injunction contained in the complaint be denied and the temporary restraining order be set aside;

"2. After trial, that judgment be rendered dismissing the complaint for lack of merit;

"3. On the counterclaim, that the Agreement dated July 5, 1977 between plaintiff and defendant be declared null and void and of no force and effect pursuant to paragraph 6 thereof, that the consignment of the amount of P150,000.00 with interest at the legal rate from July 5, 1977 until its deposit in court be accepted by the court; and that defendant be declared released from any further liability or obligation under the said Agreement;

"4. Likewise on the counterclaim, that plaintiff be ordered to pay defendant attorney's fees in the amount of P5,000.00, such expenses of litigation as may be proven, and to pay the costs, if any.

"Defendant respectfully prays for such other relief as the court may deem just and proper in the premises." (Pp. 29-31, Record)

Evidently, the court a quo must have issued the restraining order prayed for in private respondent's complaint, for on July 24, 1978, defendant Boiser filed a motion praying:

"1. That the restraining order contained in the order of June 26, 1978 be lifted and set aside; and

"2. That plaintiff be allowed to deposit with the clerk of court, or with such other depository as the court may determine, the sum of P150,000.00 subject to the disposition of the court in its judgment." (Page 33, Record.)

Acting on the foregoing motion, on August 10, 1978 Judge Alberto Q. Ubay, who was then still the judge in charge of the case, issued the following order:

"O R D E R

"The 'Omnibus Motion' filed by defendant, thru counsel, on July 25, 1978, is hereby GRANTED, it appearing from the records of this case and from the testimony of plaintiff Ching Siao that when on June 26, 1978 the Court issued a restraining order requiring defendant 'to desist and refrain from awarding the leased premises to Ginza Telamart', the premises in question had already been leased to the said Ginza Telamart and has been actually occupied by it, contrary to the allegation and contention of the herein plaintiffs. Hence, the continuance of said restraining order is no longer justified.

"As regards the consignment of the sum of P150,000.00, the Court believes that no valid reason has been advanced by plaintiffs why the same should not be accepted or granted, subject to the outcome of this case on the merits and subject to the orders of this Court.

"WHEREFORE, the restraining order issued by the Court dated June 26, 1978 is hereby lifted and set aside; and the defendant Zenaida F. Boiser is hereby authorized to deposit with the Clerk of Court the sum of P150,000.00 subject to the disposition of the Court, as may be provided in the decision to be rendered in this case.

"SO ORDERED." (Page, 35, Record.)

However, on August 22, 1978, the following motion appears to have been filed by defendant:

"NOW COMES defendant, by undersigned counsel, and to the Court respectfully moves for a partial reconsideration of the Order of August 10, 1978 insofar as said Order states that:

""xxx the defendant Zenaida F. Boiser is hereby authorized to deposit with the Clerk of Court the sum of P150,000.00 subject to the disposition of the court, as may be provided in the decision to be rendered in this

case.'

on the following grounds:

"1. That as early as July 18, 1978, Adela B. Francisco, one of defendant's principals (who is also defendant's mother) had deposited with the Associated Citizen's Bank, Sangandaan Branch, the amount of P150,000.00 intended to be refunded to plaintiffs, as provided in paragraph 6 of the Agree-ment of July 5, 19 77 (Annex 'A' of the Complaint);

"2. That the said deposit earns interest of 14% per annum;

"3. That the said Adela Blas Francisco, as signified by her conformity to this motion, is willing to keep the said deposit and make it subject to the disposition of this court, as may be provided in the decision to be rendered in this case;

"4. That no prejudice would be caused to plaintiffs under the foregoing arrangement; on the other hand, it will earn for the parties interest at 14% per annum until disposed of under the judgment of this court;

"5. That as evidence of the deposit alleged in paragraph 1 hereof, there is attached to this motion a xerox copy of a certificate of time deposit issued by the Associated Citizens Bank, Sangandaan Branch, as Annex 'A' hereof.

"WHEREFORE, it is respectfully prayed that the portion of the Order dated August 10, 1978 quoted in the opening paragraph of this motion be amended to read as follows:

""x x x that the defendant Zenaida F. Boiser is hereby authorized to deposit in the name of Adela B. Francisco, one of the principals in entering into contract with plaintiffs, the sum of P150,000.00 with the Associated Citizens Bank, Sangandaan Branch, subject to the disposition of the court, as may be provided in the decision to be rendered in this case.'

" Quezon City for Caloocan City, August 22, 1978.

""(SGD.) ANACLETO S. MAGNO

Attorney for the Defendant
113 Mendez, Baesa
Quezon City

""WITH MY CONFORMITY:

""ADELA B. FRANCISCO" (Pp. 38-39, Record.)

Consequently, Judge Ubay ordered on September 13, 1978 that:

""O R D E R

""Acting on the 'Motion for Reconsideration', dated August 22, 1978 and filed by counsel for defendants, the Court, after a careful consideration of the grounds stated therein, as well as the arguments advanced by counsel for plaintiff, is of the opinion that the said motion should be, as it is hereby, GRANTED.

""WHEREFORE, the Order of this Court dated August 10, 1978 is hereby amended to read as follows:

""that the defendant Zenaida F. Boiser is hereby authorized to deposit in the name of Adela S. Francisco, one of her principals, in entering into contract with the Associated Citizens Bank, Sangandaan Branch, subject to the disposition of the Court, as may be provided in the decision to be rendered in this case, amount shall be made without an order from the Court.' (sic)

"SO ORDERED." (Page 41, Record.)

Apparently, as a counter-move, respondents filed on June 10, 1980, a Motion to Withdraw Deposit, asking the court that:

"WHEREFORE, premises considered, it is respectfully so prayed that Lim O. Chu be allowed to withdraw the P150,000.00 previously deposited in bank upon order of this Honorable Court, plus legal rate of interest (14% per annum) from July 5, 1977, the date of the contract, Annex 'A' of complaint." (Page 43, Record.)

Acting on this motion, on August 15, 1980, the now respondent judge who had replaced Judge. Ubay, after the latter retired, issued an order pertinently ordering that:

"Considering the foregoing antecedents and subsequent developments in this case and in the broad interest of justice and equity, this Court hereby grants said motion of the plaintiffs to withdraw from the Associated Citizens Bank, Caloocan City Branch, the amount of P150,000. 00 plus the legal interests accruing thereon deposited in the name of defendant Adela B. Francisco by way of refund to plaintiffs spouses Ching Siao and Lim O. Chu and hereby orders the said bank and defendant Zenaida Boiser and/or Adela B. Francisco in whose name said amount had been deposited to comply with this Order, directing Zenaida Boiser and/or Adela Francisco to withdraw from said bank the amount of P150,000.00, together with all the interests due thereon, and further to turn over said amount to the plaintiffs spouses within five (5) days from receipt of this Order.

"Meanwhile and brushing aside legal technicalities raised by the parties, this Court will hold in abeyance resolution on other matters raised in the pleadings of the parties (Motion to Withdraw Deposit and Opposition to Withdrawal of Rentals) until such further steps that may henceforth be taken by the parties-litigants in this case in the prosecution of their respective side of this case." (Pp. 45-46, Record.)

This order was followed by another dated November 7, 1980, portions of which read:

"The delivery of the principal amount of P150,000.00 to the plaintiffs now being a *fait accompli* what remains now to be resolved by this Court is the amount of the interest to be paid the plaintiffs. The defendants maintain that it should be the legal rate of six (6%) percent per annum while the plaintiffs claim their legal rate of interest should be twelve percent (12%) per annum.

"Before resolving this issue, this Court finds it illuminating that the subject amount of P150,000.00 as admitted by the Associated Citizens Bank through their counsel, Atty. Teresita L. Nuguid in her Manifestation filed with this Court on September 3, 1980, was deposited by defendant Adela B. Francisco thru her attorney-in-fact, Zenaida F. Boiser in the form of time deposit (Account No. 7270, ACB). Hence, this Court can take judicial notice of the fact that as time deposit said amount of P150,000.00 earned aggregate interest far above the legal rates of 12% and 14% per annum allowed by law. Furthermore, as can be seen from Annex 'A' of said Manifestation of the Associated Citizens Bank, defendant Adela B. Francisco made an assignment of said time deposit in favor of Engr. Laureano R. Arcadio and no doubt the said bank profited from the interest by reason of the time deposit far and above said legal rates.

"Said interest derived by the defendants by virtue of said time deposit is of no moment in this case and what is controlling as heretofore stated is the agreement not contrary to law, morals and public policy between the parties which in this case is and should be the legal rate of interest which is twelve percent (12%) per annum computed from the date of the aforesaid Agreement executed on July 5, 1977 and to deny the plaintiffs that the rate of interest due them (12%) would amount to allowing a party to enrich himself at the expense of the other. It cannot also be said that defendants-depositor suffered losses by reason of making such time deposit because the difference between the legal rates of interest and the aggregate interests in time deposits is substantial.

"WHEREFORE, premises considered, the defendants Adela B. Francisco and/or Zenaida F. Boiser, is hereby ordered:

"1. to pay the plaintiffs the legal rate of interest of twelve (12%) per annum on the deposit of P150,000.00 computed from July 5, 1977 (date when Agreement was executed) up to September 13, 1978 when the money was deposited with the Associated Citizens Bank on Time Deposit pursuant to the Order of then Presiding Judge, the Hon. Alberto Q. Ubay; and

"2. to pay the plaintiffs the legal rate of interest of twelve percent (12%) per annum on the deposit of P150,000.00 from September 13, 1978 (date when money was deposited with the Bank) up to August 29, 1980 , when the said deposited money was refunded to the plaintiffs." (Pp. 48-50, Record.)

And on March 2, 1981, again respondent judge ordered:

"Before this Court is plaintiffs' Motion for Execution of the Order dated November 7, 1980 , to which the defendants file their opposition with Motion for Reconsideration on January 29, 1981 , and as a rejoinder the plaintiffs filed their Opposition to Defendants' Motion for Reconsideration on February 13, 1981 .

"Brushing aside all legal technicalities and niceties of the law raised by the respective counsels in their respective pleadings, this Court has to resolve the issue as to the proper rate of legal interest due to the plaintiffs and to reckon the period from which said interest should run in consonance with the antecedent facts and circumstances of this case in the broad interest of justice and equity.

"This Court observes that the parties in the prosecution of their respective claims are motivated with a desire to get the maximum of what is due him on the one hand and the desire of the other to give the least or minimum of what he is bound to pay. At first blush considering that the bone of contention revolves in the determination of the proper rate of interest and the period to be covered, the issue seems inconsequential but considering the amount involved which is to the tune of P150,000.00 the respective positions taken by the parties in the instant case is quite understandable. Hence, this Court will resolve the issue on the basis of the time-honored legal dictum that 'no one shall enrich himself at the expense of another' in conjunction with the facts and circumstances of this case in the broad interest of justice and equity.

"Premises considered, this Court hereby reconsiders its Order dated November 7, 1980 and hereby orders the defendants Adela B. Francisco and/or Zenaida F. Boiser:

"1. To pay the plaintiffs the legal rate of interest of nine (9%) percent per annum on the deposit of P150,000.00 computed from July 5, 1977 (date of execution of Agreement) up to September 13, 1978 when the money was deposited with the Associated Citizens Bank on Time Deposit pursuant to the Order of then Presiding Judge of this Court, Hon. Alberto Q. Ubay; and

"2. To pay the plaintiffs the legal rate of interest of twelve (12%) percent per annum on the deposit of P150,000.00 from September 13, 1978 (date when money was deposited with the Bank) up to August 29, 1980 (date of refund of the money to the plaintiffs)." (Pp. 51-53, Record)

On July 31, 1981, petitioner filed a motion to quash the writ of execution issued pursuant to the above order, contending that she was not properly made a party to the case, since the only defendant was her daughter Zenaida F. Boiser. On October 27, 1981, respondent judge denied said motion holding that said movant had by certain actuations related to the case virtually submitted her person to its jurisdiction although she was not properly made a party thereto. On October 16, 1981, respondent denied petitioner's motion for reconsideration, hence the instant petition before Us.

From a reading of the pleadings of both parties and looking at the case as a whole, We feel that somehow both counsel have centered, even with vehemence, on two points, which could be off-tangent, namely: (1) petitioner insists that the lower court had not acquired jurisdiction over her person and (2) respondents, for their part, maintain that they should be paid interest.

As far as petitioner is concerned, she evidently overlooks the fact that the record reveals that she gave her express conformity to the motion of defendant Boiser dated August 22, 1978, We have quoted earlier. Although technically, her contention is correct that she is not a party to the case below, she voluntarily formally manifested to the court "her conformity to this motion (of defendant Boiser) (and) is willing to keep the said deposit (made by her on July 18, 1978 in her own name in the Associated Citizens Bank, Sangandaan Branch) and make it subject to the disposition of this court, as may be provided in the decision to be rendered in this case." Under this circumstance, her being a party or not in the case has become immaterial. The fact is that she bound herself to an obligation with the court and the respondents, albeit, in this connection, it is very clear that her obligation is premised on the "decision to be rendered in this case" exclusively. And that decision has not materialized, hence she has nothing to answer for.

On the other hand, the insistence of respondents to recover interests on the P150,000.00, can hardly have any legal basis, as things developed when they first demanded from defendant Boiser compliance with the agreement. According to the answer filed by said defendant, it is alleged therein, and this allegation has not been denied by respondents, "that defendant tendered payment to the plaintiff before the complaint was filed (on May 30, 1978) of the sum of P150,000.00 with interest at the legal rate as provided in paragraph 6 of the agreement, which tender of payment was refused by the plaintiffs." On this score, We hold to be well taken the following posture of defendant Boiser, which, of course, benefits equally her mother:

**"DAMAGES CANNOT BE AWARDED
WITHOUT PRIOR DETERMINATION
OF THE MERITS OF THE CASE.
IN ANY EVENT, DEFENDANT
BOISER HAVING TENDERED THE
AMOUNT, DAMAGES CANNOT BE
ADJUDGED AGAINST HER**

"The award for interests in an action for the recovery of a sum of money partakes of a nature of an award for damages. Thus, Article 2209 of the Civil Code provides:

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

"Clearly, the indemnity for interest on a monetary obligation attaches only when the obligor incurs delay, that is, when he is in default, it being a fundamental principle of law that:

'Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.' (Art. 1169, Civil Code.)

"In the case at bar, it is not disputed that no demands, judicial or extrajudicial, were made by private respondents on defendant Boiser for the return of the amount of P150,000.00. There could not have been any because of the nature of the action filed by private respondents, which is for specific performance. Hence, there is no delay of the latter's obligation, assuming that she be eventually required in the decision of the Court to

return the same. Upon the contrary, it was private respondents who were in mora accipiende from the time defendant Boiser tendered and consigned the amount in Court.

'Art. 1256. If the creditor to whom tender of payment has been made refuses without just cause to accept, the debtor shall be released from the responsibility by the consignment of the thing or sum done.' (Art. 1256, Civil Code).

"Tender and consignment having been properly made by defendant Boiser, she should therefore be released from paying the interests on the sum so deposited.

"In *Gregorio Araneta, Inc. vs. Tuazon de Paterno, et al.*, 91 Phil. 786, it was held that tender of payment alone suspends the running of the interest on the obligation. Thus –

"The matter of the suspension of the running of interest on the loan is governed by principles which regard reality rather than technicality, substance rather than form. Good faith of the offeror or ability to make good the offer should in simple justice excuse the debtor from paying interest after the offer was rejected. A debtor cannot be considered delinquent who offered checks backed by sufficient deposit or ready to pay cash if the creditor chose that means of payment. Technical defects of the offer cannot be adduced to destroy its effects when the objection to accept the payment was based on entirely different grounds. Thus, although the defective consignment made by the debtor did not discharge the mortgage debt, the running of interest on the loan is suspended by the offer and tender of payment.'" (Pp. 17-18, Record.)

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered in favor of petitioner absolving her from the payment of the interests claimed by respondents beyond the date when defendant Boiser made her tender, not only because the decision on the merits contemplated in her obligation aforementioned and on which her conformity to defendant Boiser's motion of August 22, 1978 was based has not materialized because respondents opted to get their money back instead of insisting on being given possession of the premises; which was the original nature of their action,[2]but also because, in consequence of Boiser's tender to return the P150,000.00 prior to the filing of the respondents' complaint, and the refusal of the latter to accept the same, no obligation to pay any interest could attach after the tender was made. In other words, defendant Boiser and/or petitioner should pay 12% interest only from January 5, 1978, that is, six months after the signing of the contract[3] up to, at the latest, May 30, 1978, when the respondents' complaint was filed, roughly a little less than four months.

No costs.

Concepcion, Jr., Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.
Aquino, J., see dissent.

[1] No actual power of attorney has been shown by any of the parties.

[2] Considering that the amount of interests petitioner would have to pay under this judgment is rather small, it would serve public interests if We terminated this case with this arrangement rather than await the decision referred to, thereby helping in the unclogging of the dockets of the courts, specially having in mind Our view on the lack of basis of Boiser's alleged liability on interests.

[3] Per paragraph 4 of the contract of lease, the obligation of Boiser to return the P150,000.00 started only after the six months period during which the completion of the building subject of the lease was to be finished and she failed upon such completion to deliver possession to respondents. The interest stipulated in paragraph 6 should be construed to begin from the time of default, not from the time of the making of the deposit.

DISSENTING OPINION

AQUINO, J.:

I dissent. Lim O. Chu, as lessee, deposited on July 5, 1977 with Adela Blas Francisco, the lessor, through her daughter, Zenaida Francisco Boiser, the sum of P150,000 to cover the rentals and goodwill for the lease to Lim O. Chu of Adela B. Francisco's 135-square-meter lot located at 691 Rizal Avenue Extension, Caloocan City.

It was stipulated that if the lease is not consummated Adela B. Francisco would return to Lim O. Chu the P150,000 "in full with legal interest". The lease was not consummated. Adela did not deliver possession of the lot to Lim O. Chu.

On June 1, 1978 Lim O. Chu sued Zenaida F. Boiser, as attorney-in-fact of her parents, for specific performance and damages. In her answer dated June 29, 1978 Zenaida alleged that before Lim O. Chu filed his complaint she tendered to him the sum of P150,000 with legal rate of interest but he refused to accept the amount.

Zenaida prayed that the lease be declared void and that the consignment of the sum of P150,000 with legal rate of interest from July 5, 1977 "until its deposit in court be accepted by the court" (p. 31, Rollo).

Thus, at the beginning, Lim O. Chu was insisting on specific performance while Zenaida F. Boiser wanted to rescind the lease and return the P150,000 to Lim O. Chu with legal rate of interest as agreed upon between them in paragraph 6 of the lease contract.

It should be recalled that the said amount was paid to Zenaida's mother, Adela Blas Francisco, on July 5, 1977 but it was only on July 18, 1978 or after she was sued by Lim O. Chu that the said amount was deposited in the Sangandaan Branch of the Associated Citizens Bank with interest at 14% per annum. On September 13, 1978, the said amount was placed on time deposit.

The trial court in its order of September 13, 1978 granted the motion of Zenaida F. Boiser and her mother' Adela B. Francisco that the said amount remain on time deposit in the bank (instead of being consigned in court) subject to the outcome of the case.

In the meantime, Lim O. Chu had changed his mind about specific performance and became interested in getting hold of the P150,000. About twenty months after the trial court had authorized the deposit of that amount in the bank, or on June 10, 1980, Lim O. Chu filed a motion for the withdrawal of that amount from the bank plus 14% interest a year from July 5, 1977.

The trial court in its order of August 15, 1980 granted the motion and allowed Lim O. Chu to withdraw the P150,000 from the bank "plus legal interests accruing thereon" and directed Zenaida and her mother within five days from notice "to withdraw from said bank the amount of P150,000, together with all the interests due thereon" and "to turn over the said amount to" Lim O. Chu.

That sum of P150,000 was paid to Lim O. Chu by Zenaida on August 29, 1980 but without the accrued interests. She did not comply fully with the trial court's order of August 15, 1980. Thus, a controversy arose as to the amount of interests that should be paid to Lim O. Chu.

In its order of November 7, 1980, the trial court ordered Adela B. Francisco and Zenaida to pay Lim O. Chu 12% interest a year on the said amount from July 5, 1977 up to August 29, 1980 when it was returned to Lim O. Chu. Zenaida F. Boiser and her mother filed a motion for the reconsideration of that order.

The trial court in its order of March 2, 1981 modified its prior order. It held that Adela and Zenaida should pay Lim O. Chu 9% interest a year on the P150,000 from July 5, 1977 up to September 13, 1978 , when the said amount was placed on time deposit, and 12% interest a year from September 13, 1978 up to August 29, 1980 when the amount was returned to Lim O. Chu. That order of March 2, 1981 became final and executory.

I vote for the enforcement of that order. It is dictated by elementary justice and is in consonance with the agreement of the parties. Mrs. Boiser and her mother had all along mani-fested a desire to pay the legal rate of interest on the amount of P150,000 which, having been deposited in the bank, actually earned interest.

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