

**REALTY SALES ENTERPRISES, INC. AND MACONDRAY FARMS. INC.,
PETITIONERS, VS. INTERMEDIATE APPELLATE COURT (SPECIAL
THIRD CIVIL CASES DIVISION) HON. RIZALINA BONIFACIO VERA, AS
JUD...***G.R. No. 67451. April 25, 1989*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-67451/>**PER CURIAM:**

Respondent Morris Carpo filed on July 23, 1988 an Omnibus Motion (1) to annul the Resolution dated March 20, 1985, (2) to annul the Decision dated September 28, 1987 and (3) to maintain the Resolution filed January 30, 1985. Thereafter, he also filed a motion for the issuance of a restraining order to enjoin execution during the pendency of his omnibus motion.

Respondent Carpo maintains that the Decision, dated September 28, 1987, reversing the Intermediate Appellate Court is void because: (1) the Resolution dated January 30, 1985 dismissing the instant petition, affirmed in the Resolution dated March 6, 1985, had already become final and executory. As in fact entry of judgment was made on March 18, 1965, and (2) consequently, the Resolution dated March 20, 1985, which set aside the entry of judgment and gave due course to the petition is void.

After a thorough review of the records of the case and extensive deliberation on the issues raised in the Omnibus Motion, the Court finds the motion devoid of merit.

I

Records show that the instant petition was filed on May 23, 1984. Thereafter, as required by the Court through the former Second Division, comments were filed by the Quezon City Development and Financing Corporation, by respondent Carpo and by the Solicitor General for the Commissioner of Land Registration on different dates. On October 3, 1984; petitioner filed a reply. As required, respondent Carpo replied to the Solicitor General's comment. Petitioners filed a motion to set the case for oral argument on January 24, 1985.

In an unsigned minute resolution dated January 30, 1985, the petition was denied by the Second Division of the old Court for lack of merit. The full text of the resolution reads:

Acting on the petition for review on certiorari in G.R. No. 67451, as well as the comment of the respondent thereon, and the reply of petitioners to said comment, the Court Resolved to DENY the petition for lack of merit. The motion for oral argument by counsel for petitioners dated January 18, 1985 is NOTED. [Rollo. p. 304.]

Notice of the resolution was received by petitioners' counsel on February 14, 1985 [Rollo, p. 305.] On the fourteenth (14th) day after receiving the notice, petitioners filed on February 28, 1985 a "Motion for Reconsideration with Petition to the Supreme Court En Banc for Rehearing" in view of alleged fundamental deviations from established doctrines of the Supreme Court, which could not be done except by the Court sitting en banc [Rollo. pp. 305-320.] This was however denied by a resolution of the Second Division dated March 6, 1985, reading as follows:

Acting; on the motion of counsel for petitioners for reconsideration of the resolution of January 30, 1985 which denied the petition for review on certiorari in G.R. No. 67451, with petition to the Supreme Court en banc for re-hearing and consideration en banc of the issues raised in the petition for review on certiorari relative to fundamental deviations of established doctrines of the Supreme Court made by appellate court in its appealed resolution, the Court Resolved to DENY both motion and petition for lack of merit and this denial is FINAL. Let entry of final judgment be made in this case, (Makasiasar. J., voted to REFER the cases to the Court En Banc, because they affect existing jurisprudence.) [Rollo, p. 323.]

At that time March 6, 1985, the January 30, 1985 resolution was not yet final and executory. A motion for reconsideration thereof had been presented by the parties adversely affected thereby on the fourteenth (14th) day after notice thereof in accordance with Sec. 1, Rule 52 (in relation to Sec. 1. Rule 56) of the Rules of Court, authorizing the filing of a motion for re-hearing or reconsideration ex parte within fifteen (15) days from notice of final order or judgment. The effect of the motion was of course, to stay the final order or judgment sought to be re-examined [Sec. 3, Rule 52.] Since the petitioners' motion for reconsideration and re-hearing had been presented on the fourteenth (14th) day of the fifteen (15) day period granted by law for its filing, the petitioners therefore had one (1) more day within which to present a second motion for reconsideration pursuant to the case Dec. 1. Rollo 52, to wit:

SECTION 1. Motion for re-hearing - No more than one motion for reconsideration shall be filed without express leave of court. A second motion for reconsideration may be presented within fifteen (15) days from notice of the order or judgment deducting the time in which the first motion has been pending.

By established rule and practice (Rule 1 in relation to Rule 49), the term of one day remaining to the petitioners -- within which to file a second motion for reconsideration or re-hearing -- had to be reckoned only from service on their counsel of the notice of the order or resolution denying their first motion for reconsideration, i.e., the March 6, 1985 resolution. Notice of that resolution, as the record indicates was not served on petitioners' counsel until March 20, 1985 [Rollo, pp. 333, 335] hence, as of that day of service, March 20, 1985, the petitioners had one more day within which to move for leave to file a second motion for reconsideration or re-hearing. More importantly, as of that day of service, March 20, 1985 the January 30, 1985 resolution was not and could not properly be deemed to have become final and executory with regard to the petitioners.

The March 6, 1985 resolution denying reconsideration of the "January 30, 1985 resolution was, to repeat, not served on the petitioners until March 20, 1985 — and therefore the January 30, 1985 resolution could not be deemed, final and executory until one (1) full day (March 21) had elapsed, or on March 22, 1985 (assuming inaction on petitioners' part.) The entry of judgment relative to the January 30, 1985 resolution, made on March 18, 1985, was therefore premature and inefficacious. An entry of judgment does not make the judgment so entered final and executory when it is not so- in truth. An entry of judgment merely records the fact that a judgment, order or resolution, has become final and executory; but it is not the operative act that makes the judgment, order or resolution final and executory. In the case at bar, the entry of judgment on March 18, 1985 did not make the January 30, 1985 resolution subject of the entry, final and executory. As of the date of entry, March 18, 1985, notice of the resolution denying reconsideration of the January 30, 1985 resolution had not yet been served on the petitioners or any of the parties since March 18, 1985 was also the date of the notice (and release) of the March 6, 1985 resolution denying reconsideration.

Now, the March 6, 1985 resolution was not unanimously adopted. Mr. Justice Makasiasar had voted against denial of the petitioners' motion and had proposed referral thereof to the Court en banc. The matter continued to be discussed in the Second Division even after promulgation of the March 6, 1985 resolution, the reason being that petitioners' Urgent Motion for leave of Court En Banc for Oral Argument dated March 4, 1985 was included in

the agenda of March 20, 1985.

On March 20, 1985, the Second Division issued the assailed resolution, which reads:

Acting on the urgent motion of counsel for petitioners for leave of court en banc and for oral argument in G.R. No. 67451 as well as all subsequent pleadings filed, the Court Resolved: (a) to RECALL and/or SET ASIDE the entry of final judgment ordered in this case in the resolution of March 6, 1985, and made on March 10, 1985; (b) to give DUE COURSE to the petition for review in said G.R. No. 67451: and (c) to consider respondents' comment thereon as ANSWER to the said petition. . .

No impropriety attended this resolution. For one thing, as already pointed out, the January 30, 1985 resolution (dismissing the petition) had not yet attained finality as of that time, March 20, 1985, the entry of judgment of March 10, 1985 notwithstanding. For another, the Second Division must have come to a realization not only that the directive for such entry was erroneous, since the resolution, ordered entered was not yet final but also, and more importantly, that the issues raised did deserve fuller ventilation and more extensive consideration:

The recall was indeed entirely consistent with the inherent power of every court inter alia "to amend and control its process and orders so as to make them conformable to law and justice" (Sec. 5(g), Rule 135. Rules of Court.) a power that could be exercised motu proprio. That the recall has in fact served to achieve a verdict conformable to law and justice to clear from the judgment subsequently rendered on the merits.

The formulation of the March 20, 1985 resolution is to be sure less than felicitous. But its meaning and intent are clear. While the resolution recalled the entry of judgment without explicitly setting aside the prior resolutions of January 30, 1985 and March 6, 1985, it did give due course to the petition for review and considered respondents comment thereon as answer to the petition, a disposition that reversed the earlier denial of the petition. The admittedly ambiguous advertence to "subsequent pleadings" as basis for the recall (together with the urgent motion for leave of Court en banc for oral argument,) obviously refers to prior pleadings, i.e. those subsequent to the initiation of G.R. No. 67451 but before promulgation of the March 20, 1985 resolution. It is evident in any event that the semantic flaws in the March 20, 1985 resolution do not and cannot invalidate it since the import and intent thereof are otherwise discernible from a reading of the entire text.

The January 30, 1985 resolution in fine, never become final and executory, having been seasonably recalled and set aside. There is consequently no occasion whatsoever to speak of any decision other than that rendered by the (new) Third Division on September 20, 1987; or of two (2) entries of judgment, one on March 10, 1985 and the other on May 9, 1980 because the first was void and had been properly recalled.

II

The incident is the presiding which respondent Carpo finds suspicious happened before the reorganization of the Supreme Court in the aftermath of the February 1986 revolution. Not one of the present members of the Court had any part therein, then the members of the present Court assumed office, the instant petition had long been given due course and was for all intents and purposes submitted for decision, with the filing of the parties respectively memoranda on January 2, 1986 and February 5, 1986 and the Solicitor General's manifestation on February 26, 1986. The instant case was among the unfinished business of the old Court which the new Court inherited. After the Court was reorganized, motions for early resolution were filed on July 3, 1986 by petitioners and on March 12, 1987 by respondent Carpo. These motions, together with the memoranda previously filed, indicated the common desire of both petitioners and private respondents for a resolution of the case on the merits. Thus, all that was left for the Court to do was to decide the case, and this is exactly what it did when it took up the case from where the old Court left off and on the basis of the record, rendered the Decision promulgated on September 26, 1987 resolving the issues raised by the parties.

III

Apart from the fact that the March 20, 1985 resolution was a proper exercise of power and discretion, as already pointed out, grounds for the denial of the Omnibus Motion have been supplied by respondent Carpo himself.

Even on the assumption that there was some irregularity, (which as already demonstrated is non-existent) in the recall of the entry of judgment and in giving the petition due course as respondent Carpo now implies in his Omnibus Motion, the fact is that he never raised as an issue the alleged lack of jurisdiction of the old Court to recall entry of judgment and give due course to the petition in his motion for reconsideration of the March 20, 1985 resolution, the motion dwelling largely on the substantive issues of the case. (The Court denied the motion for reconsideration on December 4, 1985 after the parties had filed pleadings in support of their respective positions.) Neither did he raise the issue of the nullity of the recall of entry of judgment and the grant of due course to the petition in his memorandum dated December 31, 1985 nor in his two motions for reconsideration filed after the Decision of the Court adverse to him was promulgated on September 28, 1987. All along, his arguments were concentrated on the substantive issues. The challenge was made for the first time in the instant Omnibus Motion dated July 20, 1988 (through collaborating counsel Ongkiko Bucoy & Associates) only after judgment had already become final and entry of judgment had been made on May 9, 1988. It is beyond dispute that respondent Carpo, who was represented by two law firms, i.e., N. J. Quisumbing & Associates and Alampay Alvero & Alampay, and Atty. Leonardo Rodriguez throughout the proceedings before the Court, had all the opportunities to raise the issue he now raises in his Omnibus Motion, but he did not do so and instead moved for the early resolution of the case on the basis of the issues raised in the pleadings filed by the parties. Likewise, that he fully accepted the recall of the entry of judgment and the granting of due course to the petition and the jurisdiction of the Court to decide the case is evident from his Motion to Resolve dated March 12, 1987, which states, *inter alia*:

* * *

- Under date May 22, 1984, petitioner Realty Sales Enterprises Inc. filed petition for review docketed as G.R. No. 67451.
- Extended comments were filed in the Supreme Court.
- On February 11, 1985 (sic), the Supreme Court denied the petition for lack of merit.
- Petitioner Realty Sales Enterprises Inc. filed a motion for reconsideration with petition to the Court en banc for hearing.
- On March 8, 1985 (sic), the Supreme Court denied both motion and petition for lack of merit and declared that this denial is FINAL".
- On March 20, 1985, however, the Supreme Court recalled entry of final judgment and gave due course to the petition for review docketed as G.R. 67451.
- All the parties have submitted their respective memoranda.
- These petitions are now ready for resolution by the Court.

(At p. 2 of the Motion to Resolve; underscoring supplied.)

Thus, private respondent Carpo, by his acts and omissions, is already barred by laches and/or acquiescence from raising the issue at this very late stage. After submitting the case on the issues raised in the pleadings and encountering an adverse decision, it is too late for respondent Carpo to question the jurisdiction of the Court and cry foul of. *Tijam v. Sibonghanoy*, G.R. No. L-21450. April 15, 1968, 23 SCRA 29.

The foregoing clearly establishes that:

- It was well within the power of the Court to issue its resolution of March 20, 1985 recalling the entry of judgment of March 18, 1985, as the judgment had not yet become final and executory, and giving the petition due course; and
- Even assuming that respondent Carpo's allegation of irregularity has basis (which the record has, however, disproved,) he is already barred by laches and/or acquiescence from raising it at this late stage,

WHEREFORE, the Court Resolved to DENY (1) the Omnibus Motion dated July 20, 1988; (2) the Motion for Issuance of Restraining Order/Injunction dated November 17, 1988; and (3) the Motion (To Create a Fact-Finding Committee) dated March 17, 1989.

The Court shall not entertain or consider any further motions or pleadings filed in this case.

SO ORDERED.

Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Sarmiento, Cortes, Grino-Aquino, Medialdea and Regalado, JJ., concur.

Fernan, C.J., no part, due to Entry of Quasha Asperilla Ancheta Peña and Nolasco as Counsel for Macondray Farms, Inc.

Gutierrez, Jr., no part, participated in an allied case in the respondent court as an Assist. Solicitor General.

Padilla, J., no part, formerly director of Ayala Corporation and stockholder of Ayala Ventures, buyer of land in dispute.

Bidin, J., no part, participated in the decision of the Court of Appeals appealed from.

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