

**SANTIAGO SYJUCO, INC., PETITIONER, VS. HON. JOSE P. CASTRO, AS
PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF THE
NATIONAL CAPITAL JUDICIAL REGION, BRANCH LXXXV, QUEZON
CITY, TH...**

G.R. No. 70403. July 07, 1989

Ponente: NARVASA, J.

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NARVASA, J.:

This case may well serve as a textbook example of how judicial processes, designed to promote the swift and efficient disposition of disputes at law, can be so grossly abused and manipulated as to produce precisely the opposite result; how they can be utilized by parties with small scruples to forestall for an unconscionably long time so essentially simple a matter as making the security given for a just debt answer for its payment.

The records of the present proceedings and of two other cases already decided by this Court expose how indeed the routine procedure of an extrajudicial foreclosure came -- by dint of brazen forum shopping and other devious maneuvering -- to grow into a veritable thicket of litigation from which the mortgagee has been trying to extricate itself for the last twenty years.

Back in November 1964, Eugenio Lim, for and in his own behalf and as attorney-in-fact of his mother, the widow Maria Moreno (now deceased) and of his brother Lorenzo, together with his other brothers, Aramis, Mario and Paulino, and his sister, Nila, all hereinafter collectively called the Lims, borrowed from petitioner Santiago Syjuco, Inc. (hereinafter, Syjuco only) the sum of P800,000.00. The loan was given on the security of a first mortgage on property registered in the names of said borrowers as owners in common under Transfer Certificates of Title Numbered 75413 and 75415 of the Registry of Deeds of Manila. Thereafter additional loans on the same security were obtained by the Lims from Syjuco, so that as of May 8, 1967, the aggregate of the loans stood at P2,460,000.00, exclusive of interest, and the security had been augmented by bringing into the mortgage other property, also registered as owned pro indiviso by the Lims under two titles: TCT Nos. 75416 and 75418 of the Manila Registry.

There is no dispute about these facts, nor about the additional circumstance that as stipulated in the mortgage deed the obligation matured on November 8, 1967; that the Lims failed to pay it despite demands therefor; that Syjuco consequently caused extra-judicial proceedings for the foreclosure of the mortgage to be commenced by the Sheriff of Manila; and that the latter scheduled the auction sale of the mortgaged property on December 27, 1968.[1] The attempt to foreclose triggered off a legal battle that has dragged on for more than twenty years now, fought through five (5) cases in the trial courts,[2] two (2) in the Court of Appeals,[3] and three (3) more in this Court,[4] with the end only now in sight.

1. CIVIL CASE NO. 75180, CFI MANILA, BR. 5; CA-G.R. NO. 00242-R; G.R. NO. L-34683

To stop the foreclosure, the Lims -- through Atty. Marcial G. Mendiola, who was later joined by Atty. Raul

Correa -- filed Civil Case No. 75180 on December 24, 1968 in the Court of First Instance of Manila (Branch 5). In their complaint they alleged that their mortgage was void, being usurious for stipulating interest of 23% on top of 11% that they had been required to pay as "kickback." An order restraining the auction sale was issued two days later, on December 26, 1968, premised inter alia on the Lims' express waiver of "their rights to the notice and re-publication of the notice of sale which may be conducted at some future date." [5]

On November 25, 1970, the Court of First Instance (then presided over by Judge Conrado M. Vasquez [6]) rendered judgment finding that usury tainted the mortgage without, however, rendering it void, declaring the amount due to be only P1,136,235.00 and allowing the foreclosure to proceed for satisfaction of the obligation reckoned at only said amount. [7]

Syjuco moved for new trial to enable it to present additional evidence to overthrow the finding of usury, and the Court ordered the case reopened for that purpose. The Lims tried to negate that order of reopening in the Court of Appeals, the proceedings being docketed as CA-G.R. No. 00242-R. They failed. The Court of Appeals upheld the Trial Court. The Lims then sought to nullify this action of the Appellate Court; towards that end, they filed with this Court a petition for certiorari and prohibition, docketed as G.R. No. L-34683. But here, too, they failed; their petition was dismissed. [8]

Thereafter, and on the basis of the additional evidence adduced by Syjuco on remand of the case from this Court, the Trial Court promulgated an amended decision on August 16, 1972, reversing its previous holding that usury had flawed the Lims' loan obligation. It declared that the principal of said obligation indeed amounted to P2,460,000.00, exclusive of interest at the rate of 12% per annum from November 8, 1967, and, that obligation being already due, the defendants (Syjuco and the Sheriff of Manila) could proceed with the extrajudicial foreclosure of the mortgage given to secure its satisfaction. [9]

2. APPEAL FROM CIVIL CASE NO. 75180; CA-G. R. NO. 51752; G. R. NO. L-45752

On September 9, 1972, Atty. Paterno R. Canlas entered his appearance in Civil Case No. 75180 as counsel for the Lims in collaboration with Atty. Raul Correa, and on the same date appealed to the Court of Appeals from the amended decision of August 16, 1972. [10] In that appeal, which was docketed as CA-G.R. No. 51752, Messrs. Canlas and Correa prayed that the loans be declared usurious; that the principal of the loans be found to be in the total amount of P1,269,505.00 only, and the interest thereon fixed at only 6% per annum from the filing of the complaint; and that the mortgage be also pronounced void ab initio. [11]

The appeal met with no success. In a decision promulgated on October 25, 1976, the Court of Appeals affirmed in toto the Trial Court's amended decision. [12]

The Lims came to this Court seeking reversal of the appellate Court's decision. However, their petition for review -- filed in their behalf by Canlas, and Atty. Pio R. Marcos, and docketed as G.R. No. L-45752 -- was denied for lack of merit in a minute resolution dated August 5, 1977. The Lims' motion for reconsideration was denied and entry of judgment was made on September 24, 1977. [13] Here the matter should have ended; it marked only the beginning of Syjuco's travails.

3. CIVIL CASE NO. 112762, CFI MANILA BRANCH 9

Syjuco then resumed its efforts to proceed with the foreclosure. It caused the auction sale of the mortgaged property to be scheduled on December 20, 1977, only to be frustrated again by another action filed by the Lims on December 19, 1977, docketed as Civil Case No. 112762 of the Court of First Instance of Manila. [14] The action sought to stop the sale on the ground that the notice of foreclosure had not been republished; this, notwithstanding that as earlier stressed, the restraining order of December 26, 1968 issued in Civil Case No. 75180 explicitly

declared itself to be predicated on the Lims' waiver of "their rights to the notice and republication of the notice of sale which may be conducted at some future date." [15] An order restraining the sale issued in the case, although the petition for preliminary injunction was subsequently denied. A supplemental complaint was also filed by the Lims seeking recovery of some P1 million in damages allegedly suffered by reason of said lack of republication. [16]

4. CIVIL CASE NO. 75180

That very same claim -- that there had been no republication of the notice of sale, which was the foundation of the Lims' action in Civil Case No. 112762 as aforesaid -- was made by the Lims the basis of an urgent motion filed on December 15, 1977 in Civil Case No. 75180, in which, as earlier narrated, the judgment authorizing the foreclosure had been affirmed by both the Court of Appeals and this Court, and had become final and executory. And that motion sought exactly the same remedy prayed for in Civil Case No. 112762 (filed by the Lims four [4] days later, on December 19, 1977), i.e., the prevention of the auction sale. The Court -- Branch 5, then presided over by Judge Jose H. Tecson -- granted the restraining order on December 19, 1977, [17] the very same day that the Lims commenced Civil Case No. 112762 in the same Court and in which subsequent action they asked for and obtained a similar restraining order.

The Lims' counsel thus brought about the anomalous situation of two (2) restraining orders directed against the same auction sale, based on the same ground, issued by different courts having cognizance of two (2) separate proceedings instituted for identical objectives. This situation lasted for all of three (3) years, despite the republication of the notice of sale caused by Syjuco in January, 1978 in an effort to end all dispute about the matter, and despite Judge Tecson's having been made aware of Civil Case No. 112762. It should have been apparent to Judge Tecson that there was nothing more to be done in Civil Case No. 75180 except to enforce the judgment, already final and executory, authorizing the extrajudicial foreclosure of the mortgage, a judgment sanctioned, to repeat, by both the Court of Appeals and the Supreme Court; that there was in truth no need for another publication of the notice since the Lims had precisely waived such republication, this waiver having been the condition under which they had earlier obtained an order restraining the first scheduled sale; that, in any event, the republication effected by Syjuco had removed the only asserted impediment to the holding of the same; and that, finally, the Lims were acting in bad faith: they were maintaining proceedings in two (2) different courts for essentially the same relief. [18] Incredibly, not only did Judge Tecson refuse to allow the holding of the auction sale, as was the only just and lawful course indicated by the circumstances, [19] he authorized the Lims to sell the mortgaged property in a private sale, [20] with the evident intention that the proceeds of the sale, which he directed to be deposited in court, would be divided between Syjuco and the Lims; this, in line with the patently specious theory advocated by the Lims' counsel that the bond filed by them for the postponement of the sale, set at P6 million by the Court (later increased by P3 million) had superseded and caused novation of the mortgage. [21] The case lay fallow for a year, certain other incidents arising and remaining unresolved on account of numerous postponements.

5. G.R. No. L-56014

Finally, on January 28, 1981, Syjuco betook itself to this Court, presumably no longer disposed to await Judge Tecson's pleasure or the Lims' convenience. It filed a petition for certiorari and prohibition, docketed as G.R. No. L-56014, alleging that in Civil Case No. 75180, Judge Tecson had gravely abused discretion in:

- (1) unreasonably delaying the foreclosure of the mortgage;
- (2) entertaining the Lims' motion to discharge said mortgage grounded on the theory that it had been superseded and novated by the Lims' act of filing the bond required by Judge Tecson in connection with the postponement of

the foreclosure sale, and unreasonably delaying resolution of the issue; and

(3) authorizing the Lims to negotiate and consummate the private sale of the mortgaged property and motu proprio extending the period granted the Lims for the purpose, in disregard of the final and executory judgment rendered in the case.

By judgment rendered on September 21, 1982, after due proceedings, this Court[22] issued the writ prayed for and nullified the orders and actuations of Judge Tecson in Civil Case No. 75180. The judgment declared that:

(1) the republication by Syjuco of the notice of foreclosure sale rendered the to complaint in Civil Case No. 112762 moot and academic; hence, said case could not operate to bar the sale;

(2) the Lims' bonds (of P6 million and P3 Million), having by the terms thereof been given to guarantee payment damages to Syjuco and the Sheriff of Manila resulting from the suspension of the auction sale, could not in any sense and from any aspect have the effect of superseding the mortgage or novating it;

(3) in fact, the bonds had become worthless when, as shown by the record, the bondsman's authority to transact non-life insurance business in the Philippines was not renewed, for cause, as of July 1, 1981.

The decision consequently decreed that the Sheriff of Manila should proceed with the mortgage sale, there being no further impediment thereto.[23]

Notice of the decision was served on the Lims, through Atty. Canlas, on October 2, 1982. A motion for reconsideration was filed,[24] but the same was denied with finality for lack of merit and entry of final judgment was made on March 22, 1983.[25]

6. THE SECRET ACTION: CIVIL CASE NO. Q-36845 OF THE REGIONAL TRIAL COURT, QUEZON CITY, JUDGE JOSE P. CASTRO, PRESIDING

Twelve (12) days after the Lims were served, as above mentioned, with notice of this Court's judgment in G.R. No. 56014, or on October 14, 1982, they caused the filing with the Regional Trial Court at Quezon City of still another action, the third, also designed. Like the first two, to preclude enforcement of the mortgage held by Syjuco.

This time the complaint was presented, not in their individual names, but in the name of a partnership of which they themselves were the only partners: "Heirs of Hugo Lim." The complaint advocated the theory that the mortgage which they, together with their mother, had individually constituted (and thereafter amended during the period from 1964 to 1967) over lands standing in their names in the Property Registry as owners pro indiviso, in fact no longer belonged to them at that time, having been earlier deeded over by them to the partnership, "Heirs of Hugo Lim," more precisely, on March 30, 1959, hence, said mortgage was void because executed by them without authority from the partnership.

The complaint was signed by a lawyer other than Atty. Canlas, but the records disclose that Atty. Canlas took over as counsel as of November 4, 1982. The case, docketed as Civil Case No. Q-39295, was assigned to Branch 35 of the Quezon City Regional Trial Court, then presided over by Judge Jose P. Castro.

Judge Castro issued a restraining order on October 15, 1982. Then, Sheriff Perfecto G. Dalangin submitted a return of summons to the effect that on December 6, 1982 he -

"* * served personally and left a copy of summons together with a copy of Complaint and its annexes * * upon defendant's office formerly at 313 Quirino Ave., Paranaque, Metro-Manila and now at 407 Doña Felisa Syjuco Building, Remedios St., corner Taft Avenue, Manila, through the Manager, a person of sufficient age and

discretion, duly, authorized to receive service of such nature, but who refused to accept service and signed receipt thereof.”[26]

A vaguer return will be hard to find. It is impossible to discern from it where precisely the summons was served, whether at Quirino Avenue, Paranaque, or Taft Avenue, Manila; and it is inexplicable that the name of the person that the sheriff had been able to identify as the manager is not stated, the latter being described merely as “a person of sufficient age and discretion.” In any event, as it was to claim later, Syjuco asserts that it was never so served with summons, or with any other notice, pleading, or motion relative to the case, for that matter.

On February 10, 1983, Atty. Canlas filed an ex parte motion to declare Syjuco in default. The order of default issued the next day, also directing the plaintiff partnership to present evidence ex parte within three (3) days. On February 22, 1983, judgment by default was rendered, declaring void the mortgage in question because executed by the Lims without authority from the partnership which was and had been since March 30, 1959 the exclusive owner of the mortgaged property, and making permanent an injunction against the foreclosure sale that had issued on January 14, 1983.[27] Service of notice of the default judgment was, according to the return of the same Sheriff Perfecto Dalangin, effected on the following day, February 23, 1983. His return is a virtual copy of his earlier one regarding service of summons: it also states the place of service as the defendant's office, either at its former location, 313 Quirino Avenue, Paranaque, or at the later address, 407 Dona Felisa, Syjuco Building, Taft Avenue, Manila; and it also fails to identify the person on whom service was made, describing him only as “the clerk or person in charge” of the office.[28]

Unaccountably, and contrary to what might be expected from the rapidity with which it was decided -- twelve (12) days from February 10, 1983, when the motion to declare defendant Syjuco in default was filed -- the case was afterwards allowed by Atty. Canlas to remain dormant for seventeen (17) months. He made no effort to have the judgment executed, or to avail of it in other actions instituted by him against Syjuco. The judgment was not to be invoked until sometime in or after July, 1984, again to stop the extrajudicial mortgage sale scheduled at or about that time at the instance of Syjuco, as shall presently be recounted.

7. Other Actions in the Interim:

a. CIVIL CASE NO. 83-19018, RTC MANILA

While the Lims, through their partnership (“Heirs of Hugo Lim”), were prosecuting their action in the sala of Judge Castro, as above narrated, Syjuco once again tried to proceed with the foreclosure after entry of judgment had been made in G.R. No. 56014 on March 22, 1983. It scheduled the auction sale on July 30, 1983. But once again it was frustrated. Another obstacle was put up by the Lims and their counsel, Atty. Canlas. This was Civil Case No. 83-19018 of the Manila Regional Trial Court. The case was filed to stop the sale on the theory that what was sought to be realized from the sale was much in excess of the judgment in Civil Case No. 75180, and that there was absence of the requisite notice. It is significant that the judgment by default rendered by Judge Castro in Civil Case No. Q-36485 was not asserted as additional ground to support the cause of action. Be this as it may, a restraining order was issued on July 20, 1983 in said Civil Case No. 83-19018.[29]

b. CIVIL CASE NO. Q-32924, RTC QUEZON CITY

What the outcome of this case, No. 83-19018, is not clear. What is certain is (1) that the auction sale was re-scheduled for September 20, 1983, (2) that it was aborted because the Lims managed to obtain still another restraining order in another case commenced by their lawyer, Atty. Canlas: Civil Case No. Q-32924 of the Court of First Instance of Quezon City, grounded on the proposition that the publication of the notice of sale was defective; and (3) that the action was dismissed by the Regional Trial Court on February 3, 1984.[30]

No other salient details about these two (2) cases are available in the voluminous records before the Court, except that it was Atty. Canlas who had filed them. He admits having done so unequivocally: "Thus, the undersigned counsel filed injunction cases in Civil Case No. 83-19018 and Civil Case No. 39294, Regional Trial Courts of Manila and Quezon City. * **"[31]

7. REACTIVATION OF CIVIL CASE NO. Q-36485, RTC, QUEZON CITY, BRANCH XXXV

Upon the dismissal of Civil Case No. 39294, Syjuco once more resumed its efforts to effect the mortgage sale which had already been stymied for more than fifteen (15) years. At its instance, the sheriff once again set a date for the auction sale. But on the date of the sale, a letter of Atty. Canlas was handed to the sheriff drawing attention to the permanent injunction of the sale embodied in the judgment by default rendered by Judge Castro in Civil Case No. Q-36485.[32] Syjuco lost no time in inquiring about Civil Case No. Q-36485, and was very quickly made aware of the judgment by default therein promulgated and the antecedent events leading thereto. It was also made known that on July 9, 1984, Judge Castro had ordered execution of the judgment; that Judge Castro had on July 16, 1984 granted Atty. Canlas' motion to declare cancelled the titles to the Lims' mortgaged properties and as null and void the annotation of the mortgage and its amendments on said titles, and to direct the Register of Deeds of Manila to issue new titles, in lieu of the old, in the name of the partnership, "Heirs of Hugo Lim." [33]

On July 17, 1984, Syjuco filed in said Civil Case No. Q-36485 a motion for reconsideration of the decision and for dismissal of the action, alleging that it had never been served with summons; that granting *arguendo* that service had somehow been made, it had never received notice of the decision and therefore the same had not and could not have become final; and that the action should be dismissed on the ground of bar by prior judgment premised on the final decisions of the Supreme Court in G.R. No. L-45752 and G.R. No. 56014.

Two other motions by Syjuco quickly followed. The first, dated July 20, 1984, prayed for abatement of Judge Castro's order decreeing the issuance of new certificates of title over the mortgaged lands in the name of the plaintiff partnership.[34] The second, filed on July 24, 1984, was a supplement to the motion to dismiss earlier filed, asserting another ground for the dismissal of the action, i.e., failure to state a cause of action, it appearing that the mortgaged property remained registered in the names of the individual members of the Lim family notwithstanding that the property had supposedly been conveyed to the plaintiff partnership long before the execution of the mortgage and its amendments, and that even assuming ownership of the property by the partnership, the mortgage executed by all the partners was valid and binding under Articles 1811 and 1819 of the Civil Code.[35]

The motions having been opposed in due course by the plaintiff partnership, they remained pending until January 31, 1985 when Syjuco moved for their immediate resolution. Syjuco now claims that Judge Castro never acted on the motions. The latter however states that he did issue an order on February 22, 1985 declaring that he had lost jurisdiction to act thereon because, *petitio principii*, his decision had already become final and executory.

8. G.R. L-70403; THE PROCEEDING AT BAR

For the third time Syjuco is now before this Court on the same matter. It filed on April 3, 1985 the instant petition for certiorari, prohibition and mandamus. It prays in its petition that the default judgment rendered against it by Judge Castro in said Civil Case No. Q-36485 be annulled on the ground of lack of service of summons, *res judicata* and laches, and failure of the complaint to state a cause of action; that the sheriff be commanded to proceed with the foreclosure of the mortgage on the property covered by Transfer Certificates of Title Numbered 75413, 75415, 75416 and 75418 of the Manila Registry; and that the respondents -- the Lims, Judge Castro, the Sheriff and the Register of Deeds of Manila, the partnership known as "Heirs of Hugo Lim," and Atty. Paterno R. Canlas, counsel for the Lims and their partnership -- be perpetually enjoined from taking any further steps to

prevent the foreclosure.

The comment filed for the respondents by Atty. Canlas in substance alleged that (a) Syjuco was validly served with summons in Civil Case No. Q-36485, hence, that the decision rendered by default therein was also valid and, having been also duly served on said petitioner, became final by operation of law after the lapse of the reglementary appeal period; (b) finality of said decision removed the case from the jurisdiction of the trial court, which was powerless to entertain and act on the motion for reconsideration and motion to dismiss; (c) the petition was in effect an action to annul a judgment, a proceeding within the original jurisdiction of the Court of Appeals; (d) the plea of *res judicata* came too late because raised after the decision had already become final; moreover, no identity of parties existed between the cases invoked, on the one hand, and Civil Case No. Q-36485, on the other, the parties in the former being the Lims in their personal capacities and in the latter, the Lim partnership, a separate and distinct juridical entity; and the pleaded causes of action being different, usury in the earlier cases and authority of the partners to encumber partnership property in the case under review; (e) the plea of laches also came too late, not having been invoked in the lower court; and (f) the property involved constituted assets of the Lim partnership, being registered as such with the Securities and Exchange Commission.[36]

On his own behalf Atty. Canlas submitted that he had no knowledge of the institution of Civil Case No. Q-36485 (though he admitted being collaborating counsel in said case); that he did not represent the Lims in all their cases against Syjuco, having been counsel for the former only since 1977, not for the last seventeen years as claimed by Syjuco; and that he had no duty to inform opposing counsel of the pendency of Civil Case No. Q-36485.[37]

Respondent Judge Castro also filed a comment[38] disclaiming knowledge of previous controversies regarding the mortgaged property. He asserted that Syjuco had been properly declared in default for having failed to answer the complaint despite service of summons upon it, and that his decision in said case which was also properly served on Syjuco became final when it was not timely appealed, after which he lost jurisdiction to entertain the motion for reconsideration and motion to dismiss. He also denied having failed to act on said motions, adverting to an alleged order of February 22, 1985 where he declared his lack of jurisdiction to act thereon.

The respondent Register of Deeds for his part presented a comment wherein he stated that by virtue of an order of execution in Civil Case No. Q-36485, he had cancelled TCT's Nos. 75413, 75415, 75416 and 75418 of his Registry and prepared new certificates of title in lieu thereof, but that cancellation had been held in abeyance for lack of certain registration requirements and by reason also of the motion of Syjuco's Atty. Formoso to hold in abeyance enforcement of the trial court's order of July 16, 1984 as well as of the temporary restraining order subsequently issued by the Court.[39]

It is time to write *finis* to this unedifying narrative which is notable chiefly for the deception, deviousness and trickery which have marked the private respondents' thus far successful attempts to avoid the payment of a just obligation. The record of the present proceeding and the other records already referred to, which the Court has examined at length, make it clear that the dispute should have been laid to rest more than eleven years ago, with entry of judgment of this Court (on September 24, 1977) in G. R. No. L-45752 sealing the fate of the Lim's appeal against the amended decision in Civil Case No. 75180 where they had originally questioned the validity of the mortgage and its foreclosure. That result, the records also show, had itself been nine (9) years in coming, Civil Case No. 75180 having been instituted in December 1968 and, after trial and judgment, gone through the Court of Appeals (in CA-G. R. No. 00242-R) and this Court (in G.R. No. 34683), both at the instance of the Lims, on the question of reopening before the amended decision could be issued.

Unwilling, however, to concede defeat, the Lims moved (in Civil Case No. 75180) to stop the foreclosure sale on the ground of lack of republication. On December 19, 1977 they obtained a restraining order in said case, but this

notwithstanding, on the very same date they filed another action (Civil Case No. 117262) in a different branch of the same Court of First Instance of Manila to enjoin the foreclosure sale on the same ground of alleged lack of republication. At about this time, Syjuco republished the notice of sale in order, as it was later to manifest, to end all further dispute.

That move met with no success. The Lims managed to persuade the judge in Civil Case No. 75180, notwithstanding his conviction that the amended decision in said case had already become final, not only to halt the foreclosure sale but also to authorize said respondents to dispose of the mortgaged property at a private sale upon posting a bond of P6,000,000.00 (later increased by P3,000,000.00) to guarantee payment of Syjuco's mortgage credit. This gave the Lims a convenient excuse for further suspension of the foreclosure sale by introducing a new wrinkle into their contentions -- that the bond superseded the mortgage which should, they claimed, therefore be discharged instead of foreclosed.

Thus from the final months of 1977 until the end of 1980, a period of three years, Syjuco found itself fighting a legal battle on two fronts: in the already finally decided Civil Case No. 75180 and in Civil Case No. 117262, upon the single issue of alleged lack of republication, an issue already mooted by the Lims' earlier waiver of republication as a condition for the issuance of the original restraining order of December 26, 1968 in Civil Case No. 75180, not to mention the fact that said petitioner had also tried to put an end to it by actually republishing the notice of sale.

With the advent of 1981, its pleas for early resolution having apparently fallen on deaf ears, Syjuco went to this Court (in G. R. No. L-56014) from which, on September 21, 1982, it obtained the decision already referred to holding, in fine, that there existed no further impediment to the foreclosure sale and that the Sheriff could proceed with the same.

Said decision, instead of deterring further attempts to derail the foreclosure, apparently gave the signal for the clandestine filing -- this time by the Partnership of the Heirs of Hugo Lim -- on October 14, 1982 of Civil Case No. Q-36485, the subject of the present petition, which for the first time asserted the claim that the mortgaged property had been contributed to the plaintiff partnership long before the execution of the Syjuco's mortgage in order to defeat the foreclosure.

Syjuco now maintains that it had no actual knowledge of the existence and pendency of Civil Case No. Q-36485 until confronted, in the manner already adverted to, with the *fait accompli* of a "final" judgment with permanent injunction therein, and nothing in the record disabuses the Court about the truth of this disclaimer. Indeed, considering what had transpired up to that denouement, it becomes quite evident that actuations of the Lims and their lawyer had been geared to keeping Syjuco in the dark about said case. Their filing of two other cases also seeking to enjoin the foreclosure sale (Civil Case No. 83-19018, Regional Trial Court of Manila in July 1983, and Civil Case No. Q-32924, Regional Trial Court of Quezon City in September of the same year) after said sale had already been permanently enjoined by default judgment in Civil Case No. Q-36485, appears in retrospect to be nothing but a brace of feints calculated to keep Syjuco in that state of ignorance and to lull any apprehensions it may have harbored about encountering further surprises from any other quarter.

Further credence is lent to this appraisal by the unusually rapid movement of Civil Case No. Q-36485 itself in its earlier stages, which saw the motion to declare Syjuco in default filed, an order of default issued, evidence *ex parte* for the plaintiffs received and judgment by default rendered, all the brief span of twelve days, February 10-22, 1983. Notice of said judgment was "served" on February 23, 1983, the day after it was handed down, only to be followed by an unaccountable lull of well over a year before it was ordered executed on July 9, 1984 -- unaccountable, considering that previous flurry of activity, except in the context of a plan to rush the case to

judgment and then divert Syjuco's attention to the Lims' moves in other directions so as to prevent discovery of the existence of the case until it was too late.

The Court cannot but condemn in the strongest terms this trifling with the judicial process which degrades the administration of justice, mocks, subverts and misuses that process for purely dilatory purposes, thus tending to bring it into disrepute, and seriously erodes public confidence in the will and competence of the courts to dispense swift justice.

Upon the facts, the only defense to the foreclosure that could possibly have merited the full-blown trial and appeal proceedings it actually went through was that of alleged usury pleaded in Civil Case No. 75180 and finally decided against the respondent Lims in G.R. No. L-45752 in September 1977. The other issues of failure to republish and discharge of mortgage by guarantee set up in succeeding actions were sham issues, questions without substance only raised for purposes of delay by the private respondents, in which they succeeded only too well. The claim urged in this latest case: that the mortgaged property had been contributed to the respondent partnership and was already property of said partnership when the individual Lims unauthorizedly mortgaged it to Syjuco, is of no better stripe, and this, too, is clear from the undisputed facts and the legal conclusions to be drawn therefrom.

The record shows that the respondent partnership is composed exclusively of the individual Lims in whose name all the cases herein referred to, with the sole exception of Civil Case No. Q-36485, were brought and prosecuted, their contribution to the partnership consisting chiefly, if not solely, of the property subject of the Syjuco mortgage. It is also a fact that despite its having been contributed to the partnership, allegedly on March 30, 1959, the property was never registered with the Register of Deeds in the name of the partnership, but to this date remains registered in the names of the Lims as owners in common. The original mortgage deed of November 14, 1964 was executed by the Lims as such owners, as were all subsequent amendments of the mortgage. There can be no dispute that in those circumstances, the respondent partnership was chargeable with knowledge of the mortgage from the moment of its execution. The legal fiction of a separate juridical personality and existence will not shield it from the conclusion of having such knowledge which naturally and irresistibly flows from the undenied facts. It would violate all precepts of reason, ordinary experience and common sense to propose that a partnership, as such, cannot be held accountable with knowledge of matters commonly known to all the partners or of acts in which all of the latter, without exception, have taken part, where such matters or acts affect property claimed as its own by said partnership.

If, therefore, the respondent partnership was inescapably chargeable with knowledge of the mortgage executed by all the partners thereof, its silence and failure to impugn said mortgage within a reasonable time, let alone a space of more than seventeen years, brought into play the doctrine of estoppel to preclude any attempt to avoid the mortgage as allegedly unauthorized.

The principles of equitable estoppel, sometimes called estoppel in pais, are made part of our law by Art. 1432 of the Civil Code. Coming under this class is estoppel by silence, which obtains here and as to which it has been held that:

"* * * an estoppel may arise from silence as well as from words. 'Estoppel by silence' arises where a person, who by force of circumstances is under a duty to another to speak, refrains from doing so and thereby leads the other to believe in the existence of a state of facts in reliance on which he acts to his prejudice. Silence may support an estoppel whether the failure to speak is intentional or negligent.

"Inaction or silence may under some circumstances amount to a misrepresentation and concealment of the facts, so as to raise an equitable estoppel. When the silence is of such a character and under circumstances that

it would become a fraud on the other party to permit the party who has kept silent to deny what his silence has induced the other to believe and act on, it will operate as an estoppel. This doctrine rests on the principle that if one maintains silence, when in conscience he ought to speak, equity will debar him from speaking when in conscience he ought to remain silent. He who remains silent when he ought to speak cannot be heard to speak when he should be silent." [40]

And more to the point:

"A property owner who knowingly permits another to sell or encumber the property, without disclosing his title or objecting to the transaction, is estopped to set up his title or interest as against a person who has been thereby misled to his injury.

* * *

"An owner of real property who stands by and sees a third person selling or mortgaging it under claim of title without asserting his own title or giving the purchaser or mortgagee any notice thereof is estopped, as against such purchaser or mortgagee, afterward to assert his title; and, although title does not pass under these circumstances, a conveyance will be decreed by a court of equity. Especially is the rule applicable where the party against whom the estoppel is claimed, in addition to standing by, takes part in making the sale or mortgage." [41]

"More specifically, the concept to which that species of estoppel which results from the nondisclosure of an estate or interest in real property has ordinarily been referred is fraud, actual or constructive. * * * Although fraud is not an essential element of the original conduct working the estoppel, it may with perfect propriety be said that it would be fraudulent for the party to repudiate his conduct, and to assert a right or claim in contravention thereof." [42]

Equally or even more preclusive of the respondent partnership's claim to the mortgaged property is the last paragraph of Article 1819 of the Civil Code, which contemplates a situation duplicating the circumstances that attended the execution of the mortgage in favor of Syjuco and therefore applies foursquare thereto:

"Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property."

The term "conveyance" used in said provision, which is taken from Section 10 of the American Uniform Partnership Act, includes a mortgage.

"Interpreting Sec. 10 of the Uniform Partnership Act, it has been held that the right to mortgage is included in the right to convey. This is different from the rule in agency that a special power to sell excludes the power to mortgage (Art. 1879)." [43]

As indisputable as the propositions and principles just stated is that the cause of action in Civil Case No. Q-36485 is barred by prior judgment. The right subsumed in that cause is the negation of the mortgage, postulated on the claim that the parcels of land mortgaged by the Lims to Syjuco did not in truth belong to them but to the partnership. Assuming this to be so, the right could have been asserted at the time that the Lims instituted their first action on December 24, 1968 in the Manila Court of First Instance, Civil Case No. 75180, or when they filed their subsequent actions: Civil Case No. 112762, on December 19, 1977; Civil Case No. 83-19018, in 1983, and Civil Case No. Q-39294, also in 1983. The claim could have been set up by the Lims, as members composing the partnership, "Heirs of Hugo Lim." It could very well have been put forth by the partnership itself, as co-plaintiff in the corresponding complaints, considering that the actions involved property supposedly belonging to it and were being prosecuted by the entire membership of the partnership, and therefore, the partnership was in actuality, the real party in interest. In fact, consistently with the Lims' theory, they should be regarded, in all the actions

presented by them, as having sued for vindication, not of their individual rights over the property mortgaged, but those of the partnership. There is thus no reason to distinguish between the Lims, as individuals, and the partnership itself, since the former constituted the entire membership of the latter. In other words, despite the concealment of the existence of the partnership, for all intents and purposes and consistently with the Lims' own theory, it was that partnership which was the real party in interest in all the actions; it was actually represented in said actions by all the individual members thereof, and consequently, those members' acts, declaration and omissions cannot be deemed to be simply the individual acts of said members, but in fact and in law, those of the partnership.

What was done by the Lims -- or by the partnership of which they were the only members -- was to split their cause of action in violation of the well known rule that only one suit may be instituted for a single cause of action.[44] The right sought to be enforced by them in all their actions was, at bottom, to strike down the mortgage constituted in favor of Syjuco, a right which, in their view, resulted from several circumstances, namely that the mortgage was constituted over property belonging to the partnership without the latter's authority; that the principal obligation thereby secured was usurious; that the publication of the notice of foreclosure sale was fatally defective, circumstances which had already taken place at the time of the institution of the actions. They instituted four (4) actions for the same purpose on one ground or the other, making each ground the subject of a separate action. Upon these premises, application of the sanction indicated by law is called for, i.e., the judgment on the merits in any one is available as a bar in the others.[45]

The first judgment -- rendered in Civil Case No. 75180 and affirmed by both the Court of Appeals (CA-G.R. No. 51752) and this Court (G.R. No. L-45752) should therefore have barred all the others, all the requisites of res judicata being present. The judgment was a final and executory judgment; it had been rendered by a competent court; and there was, between the first and subsequent cases, not only identity of subject-matter and of cause of action, but also of parties. As already pointed out, the plaintiffs in the first four (4) actions, the Lims, were representing exactly the same claims as those of the partnership, the plaintiff in the fifth and last action, of which partnership they were the only members, and there was hence no substantial difference as regards the parties plaintiff in all the actions. Under the doctrine of res judicata, the judgment in the first was and should have been regarded as conclusive in all other actions not only "with respect to the matter directly adjudged," but also "as to any other matter that could have been raised in relation thereto." [46] It being indisputable that the matter of the partnership's being the owner of the mortgaged properties "could have been raised in relation" to those expressly made issuable in the first action, it follows that that matter could not be re-litigated in the last action, the fifth.

Though confronted with the facts thus precluding the respondent partnership's claim to the property under both the principle of estoppel and the provisions of Article 1819, last paragraph, of the Civil Code, as well as the familiar doctrine of res judicata, the respondent Judge refused to act on Syjuco's motions on the ground that he no longer had jurisdiction to do so because they were filed after judgment by default against Syjuco, which failed to answer the complaint despite valid service of summons, had been rendered and become final. The sheriff's return, however, creates grave doubts about the correctness of the Judge's basic premise that summons had been validly served on Syjuco. For one thing, the return[47] is unspecific about where service was effected. No safe conclusion about the place of service can be made from its reference to a former and a present office of Syjuco in widely separate locations, with nothing to indicate whether service was effected at one address or the other, or even at both. A more serious defect is the failure to name the person served who is, with equal ambiguity, identified only as "the Manager" of the defendant corporation (petitioner herein). Since the sheriff's return constitutes primary evidence of the manner and incidents of personal service of a summons, the Rules are quite specific about what such a document should contain:

"SEC. 20. Proof of service. -- The proof of service of a summons shall be made in writing by the server and shall set forth the manner, place and date of service; shall specify any papers which have been served with the process and the name of the person who received the same; and shall be sworn to when made by a person other than a sheriff or his deputy."[48]

In the case of *Delta Motor Sales Corporation vs. Mangosing*[49] it was held that:

"(a) strict compliance with the mode of service is necessary to confer jurisdiction of the court over a corporation. The officer upon whom service is made must be one who is named in the statute; otherwise the service is insufficient. So, where the statute requires that in the case of a domestic corporation summons should be served on 'the president or head of the corporation, secretary, treasurer, cashier or managing agent thereof', service of summons on the secretary's wife did not confer jurisdiction over the corporation in the foreclosure proceeding against it. Hence, the decree of foreclosure and the deficiency judgment were void and should be vacated (*Reader vs. District Court*, 94 Pacific 2nd 858).

"The purpose is to render it reasonably certain that the corporation will receive prompt and proper notice in an action against it or to insure that the summons be served on a representative so integrated with the corporation that such person will know what to do with legal papers served on him. In other words, 'to bring home to the corporation notice of the filing of the action'. (35 A C.J.S. 288 citing *Jenkins vs. Lykes Bros. S.S. Co.*, 48 F. Supp. 848; *MacCarthy vs. Langston*, D.C. Fla., 23 F.R.D. 249).

"The liberal construction rule cannot be invoked and utilized as a substitute for the plain legal requirements as to the manner in which summons should be served on domestic corporation (*U. S. vs. Mollenhauer Laboratories, Inc.*, 267 Fed. Rep. 2nd 260)."

The rule cannot be any less exacting as regards adherence to the requirements of proof of service, it being usually by such proof that sufficiency of compliance with the prescribed mode of service is measured. Here the only proof of service summons is the questioned sheriff's return which, as already pointed out, is not only vague and unspecific as to the place of service, but also neglects to identify by name the recipient of the summons as required by Rule 20, Section 14, of the Rules of Court. Where the sheriff's return is defective the presumption of regularity in the performance of official functions will not lie.[50] The defective sheriff's return thus being insufficient and incompetent to prove that summons was served in the manner prescribed for service upon corporations, there is no alternative to affirming the petitioner's claim that it had not been validly summoned in Civil Case No. Q-36485. It goes without saying that lacking such valid service, the Trial Court did not acquire jurisdiction over the petitioner Syjuco, rendering null and void all subsequent proceedings and issuances in the action from the order of default up to and including the judgment by default and the order for its execution.[51]

The respondents' contention that the petition is in effect an action to annul a judgment which is within the exclusive original jurisdiction of the Court of Appeals[52] has already been answered in *Matanquihan vs. Tengco*[53] where, by declaring that an action for annulment of judgment is not a plain, speedy and adequate remedy, this Court in effect affirmed that certiorari is an appropriate remedy against judgments or proceedings alleged to have been rendered or had without valid service of summons.[54]

Respondent Judge Castro begged the question when, instead of resolving on the merits the issue of the invalidity of his default judgment and of the proceedings leading thereto because of absence of valid service of summons on the defendant, which had been expressly raised in the defendant's motion for reconsideration, he simply refused to do so on the excuse that he had lost jurisdiction over the case. This refusal was, in the premises, a grave abuse of judicial discretion which must be rectified.

What has been said makes unnecessary any further proceedings in the Court below, which might otherwise be indicated by the consideration that two of the postulates of petitioner's unresolved motions which the Court

considers equally as decisive as *res judicata*, to wit: estoppel by silence and Article 1819, last paragraph, of the Civil Code, do not constitute grounds for a motion to dismiss under Rule 16 of the Rules of Court. Such a step would only cause further delay. And delay has been the bane of petitioner's cause, defying through all these years all its efforts to collect on a just debt.

The undenied and undisputable facts make it perfectly clear that the claim to the mortgaged property belatedly and in apparent bad faith pressed by the respondent partnership is foreclosed by both law and equity. Further proceedings will not make this any clearer than it already is. The Court is clothed with ample authority, in such a case, to call a halt to all further proceedings and pronounce judgment on the basis of what is already manifestly of record.

So much for the merits; the consequences that should attend the inexcusable and indefensible conduct of the respondents Lims, the respondent partnership and their counsel, Atty. Paterno R. Canlas, should now be addressed. That the Lims and their partnership acted in bad faith and with intent to defraud is manifest in the record of their actuations, presenting as they did, piecemeal and in one case after another, defenses to the foreclosure or claims in derogation thereof that were available to them from the very beginning -- actuations that were to stave off the liquidation of an undenied debt for more than twenty years and culminated in the clandestine filing and prosecution of the action subject of the present petition.

What has happened here, it bears repeating, is nothing less than an abuse of process, a trifling with the courts and with the rights of access thereto, for which Atty. Canlas must share responsibility equally with his clients. The latter could not have succeeded so well in obstructing the course of justice without his aid and advice and his tireless espousal of their claims and pretensions made in the various cases chronicled here. That the cause to which he lent his advocacy was less than just or worthy could not have escaped him, if not at the start of his engagement, in the years that followed when with his willing assistance, if not instigation, it was shuttled from one forum to another after each setback. This Court merely stated what is obvious and cannot be gainsaid when, in *Surigao Mineral Reservation Board vs. Cloribel*[55] it held that a party's lawyer of record has control of the proceedings and that "(w)hatever steps his client takes should be within his knowledge and responsibility."

In *Prudential Bank vs. Castro*,[56] strikingly similar actuations in a case, which are described in the following paragraph taken from this Court's decision therein:

"Respondents' foregoing actuations reveal an 'unholy alliance' between them and a clear indication of partiality for the party represented by the other to the detriment of the objective dispensation of justice. Writs of Attachment and Execution were issued and implemented with lightning speed; the case itself was railroaded to a swift conclusion through a similar judgment; astronomical sums were awarded as damages and attorney's fees; and topping it all, the right to appeal was foreclosed by clever maneuvers,"

and which, the Court found, followed a pattern of conduct in other cases of which judicial notice was taken, were deemed sufficient cause for disbarment.

Atty. Canlas even tried to mislead this Court by claiming that he became the Lims' lawyer only in 1977,[57] when the record indubitably shows that he has represented them since September 9, 1972 when he first appeared for them to prosecute their appeal in Civil Case No. 75180.[58] He has also quite impenitently disclaimed a duty to inform opposing counsel in Civil Case No. Q-39294 of the existence of Civil Case No. Q-36485 as plaintiffs' counsel in both actions, even while the former, which involved the same mortgage, was already being litigated when the latter was filed, although in the circumstances such disclosure was required by the ethics of his profession, if not indeed by his lawyer's oath.

A clear case also exists for awarding at least nominal damages to petitioner, though damages are not expressly

prayed for, under the general prayer of the petition for "such other reliefs as may be just and equitable under the premises," and the action being not only of certiorari and prohibition, but also of mandamus -- in which the payment of "damages sustained by the petitioner by reason of the wrongful acts of the defendant" is expressly authorized.[59]

There is no question in the Court's mind that such interests as may have accumulated on the mortgage loan will not offset the prejudice visited upon the petitioner by the excruciatingly long delay in the satisfaction of said debt that the private respondents have engineered and fomented.

These very same considerations dictate the imposition of exemplary damages in accordance with Art. 2229 of the Civil Code.

WHEREFORE, so that complete justice may be dispensed here and, as far as consistent with that end, all the matters and incidents with which these proceedings are concerned may be brought to a swift conclusion:

(1) the assailed judgment by default in Civil Case No. Q-36485, the writ of execution and all other orders issued in implementation thereof, and all proceedings in the case leading to said judgment after the filing of the complaint are DECLARED null and void and are hereby SET ASIDE; and the complaint in said case is DISMISSED for being barred by prior judgment and estoppel, and for lack of merit;

(2) the City Sheriff of Manila is ORDERED, upon receipt of this Decision, to schedule forthwith and thereafter conduct with all due dispatch the sale at public auction of the mortgaged property in question for the satisfaction of the mortgage debt of the respondents Lims to petitioner, in the principal amount of P2,460,000.00 as found in the amended decision in Civil Case No. 75180 of the Court of First Instance of Manila, interests thereon at the rate of twelve (12%) percent per annum from November 8, 1967 until the date of sale, plus such other and additional sums for commissions, expenses, fees, etc. as may be lawfully chargeable in extrajudicial foreclosure and sale proceedings;

(3) the private respondents, their successors and assigns, are PERPETUALLY ENJOINED from taking any action whatsoever to obstruct, delay or prevent said auction sale;

(4) the private respondents (the Lims, the Partnership of the Heirs of Hugo Lim and Paterno R. Canlas) are sentenced, jointly and severally, to pay the petitioner P25,000.00 as nominal damages and P100,000.00 as exemplary damages, as well as treble costs; and

(5) let this matter be referred to the Integrated Bar of the Philippines for investigation, report, and recommendation insofar as the conduct of Atty. Canlas as counsel in this case and in the other cases hereinabove referred to is concerned.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Record on Appeal, Civil Case No. 75180, pp. 3-4, 10, 35; Rollo, G.R. No. 45752, p. 197

[2] Civil Cases Numbered 75180 (CFI, Manila), 112762 (CFI, Manila), 83-19018 (RTC, Manila), Q-32924 (RTC, QC), and Q-36485 (RTC, QC)

[3] CA-G.R. No. 00242-R; CA-G.R. No. 51752

[4] G.R. No. L-34683; G.R. No. L-45752; G.R. No. L-56014

[5] Record on Appeal, Civil Case No. 75180, pp. 1-13, 32, 33; Rollo G.R. No. L-45752, p. 197

- [6] Later Associate Justice of the Supreme Court and now Ombudsman
- [7] Rollo, G.R. No. L-45752, pp. 316-338
- [8] Rollo, G.R. No. L-45752, pp. 211-214
- [9] Record on Appeal, Civil Case No. 75180, pp. 683-737; Rollo, G.R. No. L-45752, p. 197
- [10] Record on Appeal, Civil Case No. 75180, pp. 737-740; Rollo, G.R. No. L-45752, p. 197
- [11] Rollo, G.R. No. L-45752, p. 198
- [12] *Id.*, pp. 105-134
- [13] *Id.*, at pp. 244 et seq.
- [14] Branch 9, presided over by Hon. Manuel Reyes, later Associate Justice, C.A.
- [15] SEE footnote 5 at p. 3, *supra*
- [16] Rollo, G.R. No. L-56014, p. 5
- [17] Referred to in the later Order of February 19, 1979 in Civil Case No. 75180; Rollo, G.R. No. 56014, p. 27
- [18] His Honor was made aware of Civil Case No. 112762 when the Lims filed a motion for the consolidation of that case with Civil Case No. 75180
- [19] Rollo, G.R. No. 56014, p. 27 (Order, Feb. 19, 1979, *supra*; p. 28 (Order March 6, 1979)
- [20] *Id.*, pp. 103-106 (Order, Aug. 10, 1979); pp. 151-152 (Orders, Nov. 26, 1979 and Jan. 28, 1980)
- [21] *Id.*, pp. 89-93, 94-97
- [22] Second Division, per Barredo, J.
- [23] Rollo, G.R. No. 56014, pp. 415-423
- [24] *Id.*, pp. 424-442
- [25] *Id.*, pp. 498-500
- [26] Rollo, G.R. No. 70403, p. 65
- [27] Rollo, G.R. No. 70403, pp. 66-68 (Annex E, Petition)
- [28] *Id.*, p. 69
- [29] Rollo, G.R. No. 70403, p. 222
- [30] *Id.* p. 223
- [31] His comment dated June 7, 1985; Rollo, G.R. No. 70403, p. 226
- [32] Rollo, G.R. No. 70403, p. 9
- [33] Rollo, G.R. No. 70403, pp. 191-194
- [34] *Id.*, pp. 83-85
- [35] *Id.*, pp. 86-93

[36] Rollo, G.R. No. L-70403, pp. 221-250

[37] Id., at pp. 223, 225, 227

[38] Id., pp. 265-271

[39] Rollo, G.R. No. L-70403, pp. 171-172

[40] 31 C.J.S. pp. 490-494

[41] Id., pp. 498-499

[42] 28 Am.Jur. 2d pp. 727

[43] Padilla, Civil Code, 1987 ed., Vol. VI, p. 153; see also Tolentino, Civil Code, 1959 ed., Vol. V, p. 303, citing *Bosler vs. Sealfon*, 82 Pa. Sup. Ct., 254

[44] Sec. 3, Rule 2, Rules of Court

[45] Sec. 4, Rule 2, Rules of Court

[46] Sec. 49, Rule 39, Rules of Court, which provides that the effect of a judgment rendered by a court having jurisdiction is, in proceedings other than those in rem, "with respect to the matter directly adjudged or as any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity."

[47] SEE footnote 26 at p. 12, *supra*

[48] Rule 14, Rules of Court (underscoring supplied)

[49] 70 SCRA 598, 602-603

[50] *Venturanza vs. CA*, 156 SCRA 305, 313

[51] I Moran, *Comments on the Rules of Court*, 1979 ed., p. 435, citing *Salmon, et al. vs. Tan Cuenco*, 36 Phil. 556, *Echevarria vs. Parsons Hardware Co.*, 51 Phil. 980, and *Reyes vs. Paz*, 60 Phil. 440; see also *Keister vs. Navarro*, 77 SCRA 209, citing *Pantaleon vs. Asuncion*, 105 Phil. 761, *Gov't. vs. Bator*, 69 Phil. 130, *Caneda vs. CA*, 116 Phil. 283, and *Trimica, Inc. vs. Polaris Marketing Corp.*, 60 SCRA 321,325; I *Francisco's Revised Rules of Court*, 2nd ed., p. 761

[52] Sec. 9 (2) B.P. 129, The Judiciary Reorganization Act of 1980

[53] 95 SCRA 478, 485

[54] See also the following cases where the Court took cognizance of, and resolved, similar petitions without regard to the question of whether or not an action for annulment was the appropriate recourse: *Ang. vs. Navarro*, 81 SCRA 458; *Olar vs. Cuna*, 90 SCRA 114; *Cavili vs. Vamenta, Jr.*, 114 SCRA 343; and *Filmerco Commercial Co., Inc. vs. IAC*, 149 SCRA 193

[55] 31 SCRA 1, 23

[56] 155 SCRA 604, 621

[57] Rollo, G.R. No. L-70403, p. 225

[58] SEE footnote 10 on p. 5, supra

[59] Rule 65, Sec. 3, Rules of Court

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