FULGENCIO S. FACTORAN, JR., SECRETARY, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, VICENTE A. ROBLES AND NESTOR GAPUZAN, PETITIONERS, VS. COURT OF APPEALS (THIRD DIVISION),...

G.R. No. 93540. December 13, 1999

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for review on certiorari of the Decision and Resolution of the Court of Appeals dated March 30, 1990 and May 18, 1990, respectively, dismissing petitioners' charge that Honorable Benigno T. Dayaw, Presiding Judge of Branch 80 of the Regional Trial Court (RTC) of Quezon City, committed grave abuse of discretion in ordering them to deliver to private respondents the six-wheeler truck and its cargo, some 4,000 board feet of narra lumber which were confiscated by the Department of Environment and Natural Resources (DENR) and forfeited in favor of the government.[1]

The antecedent facts:

On August 9, 1988, two (2) police officers of the Marikina Police Station, Sub-Station III, intercepted a six-wheeler truck, with Plate No. NJT-881, carrying 4,000 board feet of narra lumber as it was cruising along the Marcos Highway. They apprehended the truck driver, private respondent Jesus Sy, and brought the truck and its cargo to the Personnel Investigation Committee/Special Actions and Investigation Division (PIC/SAID) of the DENR Office in Quezon City. There, petitioner Atty. Vicente Robles of the PIC/SAID investigated them, and discovered the following discrepancies in the documentation of the narra lumber:[2]

> "a. What were declared in the documents (Certificate of Timber Origin, Auxiliary Invoices and various Certifications) were narra flitches, while the cargo of the truck consisted of narra lumber;
>
> "b. As appearing in the documents, the Plate Numbers of the truck supposed to carry the forest products bear the numbers BAX-404, PEC-492 or NSN-267, while the Plate Number of the truck apprehended is NVT-881;
>
> "c. Considering that the cargo is lumber, the transport should have been accompanied by a Certificate of Lumber Origin, scale sheet of said lumber and not by a Certificate of Timber Origin, which merely covers only transport of logs and flitches;
>
> "d. The Log Sale Purchase Agreement presented is between DSM Golden Cup International as the seller and Bonamy Enterprises as the buyer/consignee and not with Lily Francisco Lumber and Hardware,"[3]

which are in violation of Bureau of Forestry Development (BFD) Circular No. 10. The said BFD Circular requires possession or transportation of lumber to be supported by the following documents: (1) Certificate of Lumber Origin (CLO) which shall be issued only by the District Forester, or in his absence, the Assistant District Forester; (2) Sales Invoice; (3) Delivery Receipt; and (4) Tally Sheets.[4] Such omission is punishable under Sec. 68 of Presidential Decree (P.D.) No. 705 otherwise known as the Revised Forestry Code.[5] Thus, petitioner Atty.

Robles issued a temporary seizure order and seizure receipt for the narra lumber and the six-wheeler truck.[6]

On January 20, 1989, petitioner Fulgencio S. Factoran, then Secretary of Environment and Natural Resources (hereinafter referred to as petitioner Secretary) issued an order for the confiscation of the narra lumber and the six-wheeler truck.[7]

Private respondents neither asked for reconsideration of nor appealed, the said order to the Office of the President. Consequently, the confiscated narra lumber and six-wheeler truck were forfeited in favor of the government. They were subsequently advertised to be sold at public auction on March 20, 1989.[8]

On March 17, 1989, private respondents filed a complaint with prayer for the issuance of writs of replevin and preliminary injunction and/or temporary restraining order for the recovery of the confiscated lumber and six-wheeler truck, and to enjoin the planned auction sale of the subject narra lumber, respectively.[9] Said complaint was docketed as Civil Case No. Q-89-2045 and raffled to Branch 80 of the RTC of Quezon City.

On the same day, the trial court issued an Order directing petitioners to desist from proceeding with the planned auction sale and setting the hearing for the issuance of the writ of preliminary injunction on March 27, 1989.[10]

On March 20, 1989, the scheduled date of the auction sale, private respondents filed an Ex-Parte Motion for Release and Return of Goods and Documents (Replevin) supported by an Affidavit for Issuance of Writ of Replevin and Preliminary Injunction and a Replevin Bond in the amount of P180,000.00.[11] The trial court granted the writ of replevin on the same day and directed the petitioners "to deliver the xxx [n]arra lumber, original documents and truck with plate no. NJT 881 to the custody of the plaintiffs and/or their representative x x x".[12]

On March 22, 1989, the trial court issued a writ of seizure. However, petitioners refused to comply therewith.[13] David G. Brodett, Sheriff of Branch 80 of the RTC of Quezon City (hereinafter referred to as the Sheriff) reported that petitioners prevented him from removing the subject properties from the DENR Compound and transferring them to the Mobil Unit Compound of the Quezon City Police Force. To avoid any unwarranted confrontation between them, he just agreed to a constructive possession of the properties in question.[14] In the afternoon of the same day, petitioners filed a Manifestation stating their intention to file a counterbond under Rule 60 of the Rules of Court to stay the execution of the writ of seizure and to post a cash bond in the amount of P180,000.00. But the trial court did not oblige petitioners for they failed to serve a copy of the Manifestation on private respondents. Petitioners then immediately made the required service and tendered the cash counterbond in the amount of P180,000.00, but it was refused, petitioners' Manifestation having already been set for hearing on March 30, 1989. [15]

On March 27, 1989, petitioners made another attempt to post a counterbond which was, however, denied for the same reason. [16]

On the same day, private respondents filed a motion to declare petitioners in contempt for disobeying the writ of seizure.[17] The trial court gave petitioners twenty-four (24) hours to answer the motion. Hearing thereon was scheduled on March 30, 1989.

However, on March 29, 1989, petitioners filed with the Court of Appeals a Petition for Certiorari, Prohibition and/or Mandamus to annul the Orders of the trial court dated March 20, 1989 and March 27, 1989.[18]

On March 30, 1989, the Court of Appeals granted petitioners temporary relief in the form of a temporary restraining order (TRO).

On September 11, 1989, the Court of Appeals converted the TRO into a writ of preliminary injunction upon filing

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by petitioners of a bond in the amount of P180,000.00.[19]

However, on March 30, 1990, the Court of Appeals lifted the writ of preliminary injunction and dismissed the petition. It declared that as the complaint for replevin filed by private respondents complied with the requirements of an affidavit and bond under Secs. 1 and 2 of Rule 60 of the Revised Rules of court, issuance of the writ of replevin was mandatory.[20]

As for the contempt charges against petitioners, the Court of Appeals believed the same were sufficiently based on a written charge by private respondents and the report submitted by the Sheriff.[21]

On April 25, 1990, petitioners filed a motion for reconsideration of the foregoing decision. However, that motion was denied by the Court of Appeals in its Resolution dated May 18, 1990.[22]

Hence this petition.

On the one hand, petitioners contend, thus:

> (1) "Confiscated lumber cannot be subject of replevin".[23]
>
> (2) "Petitioners not compelled to criminally prosecute private respondents but may opt only to confiscate lumber".[24]
>
> (3) "Private respondent charged criminally in court".[25] and
>
> (4) "Writ of Replevin issued in contravention of PD #605".[26]

On the other hand, private respondents argue that:

> (1) "The respondent Judge had jurisdiction to take cognizance of the complaint for recovery of personal property and, therefore, had jurisdiction to issue the necessary orders in connection therewith."[27]
>
> (2) "The issuance of the order for the delivery of personal property upon application, affidavit and filing of replevin bond by the plaintiff is mandatory and not discretionary, hence, no abuse of discretion can be committed by the trial court in the issuance thereof."[28]
>
> (3) "The Order of March 20, 1989 was in accordance with Section 4, Rule 60 of the Rules of Court and is, therefore, valid."[29]
>
> (4) "The private respondents have not been proven to have violated Section 68 of the Revised Forestry Code."[30]
>
> (5) "The petitioners do not have the authority to keep private respondents' property for an indefinite period, more so, to dispose of the same without notice and hearing or without due process."[31]
>
> (6) "Contrary to the allegation of petitioners, no formal investigation was conducted by the PIC with respect to the subject lumber in this case."[32]
>
> (7) "The alleged Order dated January 20, 1989 of the petitioner Secretary Fulgencio Factoran, Jr. of the DENR is not valid and does not make the issuance of the order of replevin illegal."[33] and
>
> (8) "The subject properties were not in custody of the law and may be replevied."[34]

At the outset we observe that herein respondents never appealed the confiscation order of petitioner Secretary to the Office of the President as provided for in Sec. 8 of P.D. No. 705 which reads:

> "All actions and decisions of the Director are subject to review, motu propio or upon appeal of any person aggrieved thereby, by the Department Head whose decision shall be final and executory after the lapse of thirty

> (30) days from receipt by the aggrieved party of said decision unless appealed to the President x x x. The decision of the Department Head may not be reviewed by the courts except through a special civil action for certiorari and prohibition."

The doctrine of exhaustion of administrative remedies is basic. Courts, for reasons of law, comity and convenience, should not entertain suits unless the available administrative remedies have first been resorted to and the proper authorities have been given an appropriate opportunity to act and correct their alleged errors, if any, committed in the administrative forum.[35] As to the application of this doctrine in cases involving violations of P.D. No. 705, our ruling in Paat v. Court of Appeals, is apropos:

> "Moreover, it is important to point out that the enforcement of forestry laws, rules and regulations and the protection, development and management of forest lands fall within the primary and special responsibilities of the Department of Environment and Natural Resources. By the very nature of its function, the DENR should be given a free hand unperturbed by judicial intrusion to determine a controversy which is well within its jurisdiction. The assumption by the trial court, therefore, of the replevin suit filed by private respondents constitutes an encroachment into the domain of the administrative agency's prerogative. The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. In Felipe Ismael, Jr. and Co. vs. Deputy Executive Secretary, which was reiterated in the recent case of Concerned Officials of MWSS vs. Vasquez, this Court held:
> `Thus, while the administration grapples with the complex and multifarious problems caused by unbridled exploitation of these resources, the judiciary will stand clear. A long line of cases establish the basic rule that the courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.'"[36]

However, petitioners did not file a motion to dismiss based on the ground of non-exhaustion of administrative remedies. Thus, it is deemed waived.[37]

Nonetheless, the petition is impressed with merit.

First. A writ of replevin does not just issue as a matter of course upon the applicant's filing of a bond and affidavit, as the Court of Appeals has wrongly put it. The mere filing of an affidavit, sans allegations therein that satisfy the requirements of Sec. 2, Rule 60 of the Revised Rules of Court, cannot justify the issuance of a writ of replevin. Said provision reads:

> "Affidavit and bond. - Upon applying for such order the plaintiff must show by his own affidavit or that of some other person who personally knows the facts:
>
> "(a) That the plaintiff is the owner of the property claimed, particularly describing it, or entitled to the possession thereof;
> "(b) That the property is wrongfully detained by the defendant, alleging the cause of detention thereof to his best knowledge, information, and belief;
> "(c) That it has not been taken for a tax assessment or fine pursuant to law, or seized under an execution, or an attachment against the property of the plaintiff, or, if so seized, that it is exempt from such seizure; and
> "(d) The actual value of the property.
>
> "x x x x x x x x x ."

Wrongful detention by the defendant of the properties sought in an action for replevin must be satisfactorily established. If only a mechanistic averment thereof is offered, the writ should not be issued.

In the case at bar, the subject narra lumber and six-wheeler truck were confiscated by petitioner Secretary

pursuant to Section 68-A of P.D. No. 705, as amended by Executive Order (E.O.) No. 277, to wit:

> "SEC. 68-A. Administrative Authority of the Department Head or His Duly Authorized Representative to Order Confiscation. - In all cases of violations of this Code or other forest laws, rules and regulations, the Department Head or his duly authorized representative, may order the confiscation of any forest products illegally cut, gathered, removed, or possessed or abandoned, and all conveyances used either by land, water, or air in the commission of the offense and to dispose of the same in accordance with pertinent laws, regulations or policies on the matter."[38]

As the petitioner Secretary's administrative authority to confiscate is clearly provided by law, the taking of the subject properties is not wrongful and does not warrant the issuance of a writ of replevin prayed for by private respondents.

Second. Issuance of the confiscation order by petitioner Secretary was a valid exercise of his power under Sec. 68-A of P.D. No. 705. By virtue of said order, the narra lumber and six-wheeler truck of private respondents were held in custodia legis and hence, beyond the reach of replevin.

Property lawfully taken by virtue of legal process is deemed to be in custodia legis.[39] When a thing is in official custody of a judicial or executive officer in pursuance of his execution of a legal writ, replevin will not lie to recover it.[40] Otherwise, there would be interference with the possession before the function of law had been performed as to the process under which the property was taken.[41] So basic is this doctrine that it found inclusion in the 1997 amendments introduced to the Rules of Civil Procedure. Thus, Sec. 2(c), Rule 60 of the 1997 Rules of Civil Procedure provides that:

> "Affidavit and bond. - Upon applying for such order the plaintiff must show by his own affidavit or that of some other person who personally knows the facts:
>
> "x x x x x x x x x;
> "(c) That the property has not been distrained or taken for a tax assessment or fine pursuant to law, or seized under a writ of execution, or preliminary attachment or otherwise placed under custodia legis, or if so seized, that it is exempt from such seizure or custody; x x x
>
> "x x x x x x x x x."[42]

Third. Petitioner Secretary's authority to confiscate forest products under Sec. 68-A of P.D. No. 705 is distinct from and independent of the confiscation of forest products in a criminal action provided for in Section 68 of P.D. No. 705. Thus, in Paat, we held that:

> "`x x x precisely because of the need to make forestry laws `more responsive to present situations and realities' and in view of the `urgency to conserve the remaining resources of the country,' that the government opted to add Section 68-A. This amendatory provision is an administrative remedy totally separate and distinct from criminal proceedings. x x x. The preamble of EO 277 that added Section 68-A to PD 705- is most revealing:
> `WHEREAS, there is an urgency to conserve the remaining forest resources of the country for the benefit and welfare of the present and future generations of Filipinos;
>
> WHEREAS, our forest resources may be effectively conserved and protected through the vigilant enforcement and implementation of our forestry laws, rules and regulations;
>
> WHEREAS, the implementation of our forestry laws suffers from technical difficulties, due to certain inadequacies in the Penal provisions of the Revised Forestry Code of the Philippines; and
>
> WHEREAS, to overcome this [sic] difficulties, there is a need to penalize certain acts more responsive to present situations and realities;'

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`It is interesting to note that Section 68-A is a new provision authorizing the DENR to confiscate, not only `conveyances' but forest products as well. On the other hand, confiscation of forest products by the `court' in a criminal action has long been provided for in Section 68. If as private respondents insist, the power of confiscation cannot be exercised except only through the court under Section 68, then Section 68-A would have no purpose at all. Simply put, Section 68-A would not have provided any solution to the problem perceived in EO 277, x x x.'"[43]

Sec. 68-A was added precisely to supplant the inadequacies and supplement criminal enforcement of forestry laws.

Fourth. Sec. 80 of P. D. No. 705 which requires delivery of the seized forest products within six (6) hours from the time of the seizure to the appropriate official designated by law to conduct preliminary investigations applies only to criminal prosecutions provided for in Sec. 68, and not to administrative confiscation provided for in Section 68-A.

> Sec. 80 of P.D. No. 705 provides:
>
> "SEC. 80. Arrest; Institution of criminal actions. - A forest officer or employee of the Bureau shall arrest even without a warrant any person who has committed or is committing in his presence any of the offenses defined in this Chapter. He shall also seize and confiscate, in favor of the Government, the tools and equipment used in committing the offense, and the forest products cut, gathered or taken by the offender in the process of committing the offense. The arresting officer or employee shall thereafter deliver within six (6) hours from the time of arrest and seizure, the offender and the confiscated forest products, tools and equipment to, and file the proper complaint with, the appropriate official designated by law to conduct preliminary investigations and file informations in court.
>
> "x x x x x x x x x."

The title of Sec. 80 - "Arrest; Institution of Criminal Actions" - bespeaks this intendment of the law. The fact, too, that Secs. 68 and 80 were co-existing prior to the introduction of Sec. 68-A, proves that Sec. 80 applies to the criminal prosecutions subject of Sec. 68 and not to the administrative confiscation subject of Sec. 68-A. Sec. 68-A, therefore, should not be interpreted in relation to Sec. 80 as to require that criminal charges be filed with and seized forest products be immediately delivered to, the fiscal in case of administrative confiscation, for this renders nugatory the purpose sought to be achieved thereby. Statutes should always be construed in the light of the object to be achieved and the evil or mischief to be suppressed, and they should be given such interpretation as will advance the object, suppress the mischief, and secure the benefits intended.[44]

Fifth. Nothing in the records supports private respondents' allegation that their right to due process was violated as no investigation was conducted prior to the confiscation of their properties.

On the contrary, by private respondents' own admission, private respondent Sy who drove the six-wheeler truck was properly investigated by petitioner Atty. Robles at the PIC/SAID Office of the DENR. Thereafter, private respondent Sy and his witnesses were given full opportunity to explain the deficiencies in the documents.[45] Private respondents categorically stated that they made a "continuous and almost daily follow-up and plea x x x with the PIC for the return of the truck and lumber x x x."[46] Finally in a letter dated December 30, 1989, private respondent Lily Francisco Uy requested petitioner Secretary for "immediate resolution and release of the impounded narra sawn lumber."[47]

Undoubtedly, private respondents were afforded an opportunity to be heard before the order of confiscation was issued. There was no formal or trial type hearing but the same is not, in all instances, essential in administrative proceedings. It is settled that due process is satisfied when the parties are afforded fair and reasonable opportunity

to explain their side of the controversy or an opportunity to move for a reconsideration of the action or ruling complained of.[48]

Moreover, respondents claim that the order of confiscation was antedated and not the product of the investigation supposedly conducted by the PIC of the DENR. However, they proffer no proof to support that allegation. On the other hand, there is the legal presumption that official duty has been regularly performed. The presumption of regularity in the performance of official duties is even particularly strong with respect to administrative agencies like the DENR which are vested with quasi-judicial powers in enforcing the laws affecting their respective fields of activity, the proper regulation of which requires of them such technical mastery of all relevant conditions obtaining in the nation.[49]

Finally. The writ of seizure and the writ of replevin were issued by the trial court in grave abuse of its discretion. Thus, disobedience thereto cannot constitute indirect contempt of court which presupposes that the court order thereby violated was valid and legal. Without a lawful order having been issued, no contempt of court could be committed.[50]

WHEREFORE, the instant petition is hereby GRANTED. The Decision of the Court of Appeals dated March 30, 1990 and its Resolution dated May 18, 1990 in CA-G.R. SP No. 17194 are hereby SET ASIDE and REVERSED. Respondent Presiding Judge Benigno T. Dayaw, of the Regional Trial Court of Quezon City, is PERMANENTLY ENJOINED from enforcing the Orders dated March 20, 1989 and March 22, 1989 in Civil Case No. Q-89-2045, or if said orders have already been enforced, the said respondent Judge is directed to render judgment of forfeiture on the replevin bond filed by private respondents. Finally, the said respondent Judge is PERMANENTLY ENJOINED from further acting on the Motion for Contempt filed by private respondents against the petitioners.

Costs against private respondents.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing and Buena, JJ., concur.

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[1] Petitioners' Memorandum, p. 1, Rollo, p. 276.

[2] Petition , pp. 4-5; Rollo, pp. 9-10.

[3] Annex "A" of Petition; Rollo, p. 35.

[4] See note 2, supra, p.16; Rollo, p.21.

[5] "SEC. 68. Cutting, Gathering and/or collecting Timber or Other Forest Products Without License.- Any person who shall cut, gather, collect, remove timber and other forest products from any forest land, or timber from alienable or disposable public land, or from private land, without any authority, or possess timber or other forest products without the legal documents as required under existing forest laws and regulations, shall be punished with the penalties imposed under Article 309 and 310 of the Revised Penal Code: Provided, That in the case of partnerships, associations, or corporations, the officers who ordered the cutting, gathering, collection or possession shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.

"The Court shall further order the confiscation in favor of the government of the timber or any forest products cut, gathered, collected, removed or possessed, as well as the machinery, equipment, implements and tools illegally used in the area where the timber or forest products are found."

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[6] Annex "1" of Comment, Rollo, p. 165.

[7] See note 3, supra.

[8] See note 1, supra, pp. 5-6; Rollo, pp. 280-281.

[9] Annex "4" of Comment; Rollo, pp. 170-171.

[10] Annex "5" of Comment; Rollo, 179-180.

[11] Annex "M" of Petition, p. 3; Rollo, p. 105.

[12] Annex "7-A" of Comment; Rollo, p. 191.

[13] See note 11, supra, p. 4; Rollo, p. 106.

[14] Annex "9-B" of Comment, pp. 2-3; Rollo, pp. 195-196.

[15] Annex "I" of the Petition, pp. 7-8; Rollo, pp. 57-58.

[16] Annex "12" of Comment; Rollo, p. 199.

[17] Private Respondents' Memorandum, pp. 11-12; Rollo, pp. 312-313.

[18] Id., p. 12, Rollo, p. 313.

[19] See note 11, supra, pp. 4-5; Rollo, pp. 106-107.

[20] Id., pp. 5-7, Rollo, pp. 107-109.

[21] Id., pp. 7-9; Rollo, pp. 109-111.

[22] See note 2, supra, pp. 22, 25; Rollo, pp. 27, 30.

[23] See note 1, supra, p. 10; Rollo, p. 285.

[24] Id., p. 15; Rollo, p. 290.

[25] Id., p. 17; Rollo, p. 292.

[26] Id., p. 18; Rollo, p. 293.

[27] See note 17, supra, pp. 13-14; Rollo, pp. 314-315.

[28] Id., pp. 14-15; Rollo, pp. 315-316.

[29] Id., p. 18; Rollo, p. 319.

[30] Id., p. 19; Rollo, p.320.

[31] Id., p. 22; Rollo, p. 323.

[32] Id., p. 24; Rollo, p.325.

[33] Id., p. 25; Rollo, p. 326.

[34] Id., p. 29; Rollo, p. 330.

[35] University of the Philippines et al. vs. Hon. Elpidio M. Catungal, Jr. etc., et al., 272 SCRA 221, 240 (1997); Hon. Bartolome Carale vs. Hon. Pampio A. Abarintos, et al., 269 SCRA 132, 141 (1997).

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[36] Paat vs. Court of Appeals, 266 SCRA 167, 181 (1997); Soledad Dy vs. Court of Appeals, et al., G.R. No. 121587, March 9, 1999.

[37] Soto vs. Jareno, 144 SCRA 116, 119 (1986); C.N. Hodges vs. Municipal Board of Iloilo, 19 SCRA 28, 34 (1967).

[38][38] Underscoring provided.

[39] Chua vs. Court of Appeals, 222 SCRA 85, 89 (1993); Bagalihog vs. Fernandez, 198 SCRA 614; 621 (1991); Auyong Hian vs. Court of Tax Appeals, 59 SCRA 110, 134 (1974).

[40] Chua vs. Court of Appeals, supra.

[41] Ibid.

[42] Underscoring provided.

[43] Paat vs. Court of Appeals, supra, pp. 181-182.

[44] Ibid.

[45] Annex "I" of Petition, pp. 5-6; Rollo, pp. 72-73.

[46] Id., p. 6; Rollo, p. 73.

[47] Annex "3" of Comment; Rollo, p. 167.

[48] Paat vs. Court of Appeals, supra, p. 179; Navarro vs. Damasco, 246 SCRA 260, 265 (1995); Stayfast Philippines Corp. vs. NLRC, 218 SCRA 596, 601 (1993).

[49] Beautifont, Inc. vs. Court of Appeals, et al., 157 SCRA 481, 493 (1988).

[50] Francisco, The Revised Rules of Court in the Philippines, Annotated and Commented, Vol. IV-B, Part II, p. 305; Angel Jose Realty Corporation vs. Galao, 76 Phil. 201, 204-205 (1946); Weigall vs. Shuster, 11 Phil. 340, 345 (1908); Chanco vs. Madrilejos, 9 Phil. 356, 361 (1908).

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