

JOHANNESBURG PACKAGING CORPORATION AND ROMEO C. CABALINAN, PETITIONERS, VS. HONORABLE COURT OF APPEALS AND DEVELOPMENT BANK OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 95509, December 11, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Petitioners seek the review and pray for the reversal of the Decision[1] of 27 July 1990 of public respondent Court of Appeals in CA-G.R. SP No. 20042,[2] the dispositive portion of which reads:

"Premises considered, judgment is hereby rendered granting the petition.

1. The orders dated September 15, 1989 and December 28, 1989 are hereby declared null and void;
2. The APT is reinstated as a party defendant;
3. The orders dated August 11, 1987 (Annexes "H" and "I"), suspending the period within which to file answer and requiring the parties to maintain the status quo, are ordered lifted and set aside. The petitioner and the other defendants in Civil Case No. 16960 may file their responsive pleadings within fifteen (15) days from notice hereof.

SO ORDERED."[3]

and the Resolution of 25 September 1990[4] denying, for want of cogent reason which would warrant a reversal, petitioners' motion for the reconsideration of the decision.

The pleadings disclose the following essential and material operative facts:

Respondent Development Bank of the Philippines (DBP) offered for sale, through public bidding, a foreclosed paper mill known as the Paragon Paper Mills which is located at Orani, Bataan. The bidding was scheduled for 1 August 1986. Petitioner Johannesburg Packaging Corporation (JPC), one of the qualified bidders which put up a P5 million bond deposit, submitted the highest bid in the amount of P120,479,000.00 and was thus awarded the bid. Pending approval of the award by the Office of the President, JPC was allowed to enter the premises of the Paragon Paper Mills to clean and maintain the machineries. It appears, however, that JPC operated the plant for its exclusive benefit. As per the 9 January 1987 notice of approval sent by the DBP's Executive Officer to JPC, the award was finally approved by the Office of the President on 8 December 1986. Under the terms of the sale, the balance of the purchase price was to be paid within thirty (30) days from receipt of the Notice of Approval. In view thereof, JPC asked that it be given until 6 April 1987 to pay the balance of the consideration (the full amount of the bid less the amount of the deposited bond). The requested extension was granted upon the payment of the extension fee. Having failed to pay on the extended deadline, JPC received a telegram from the DBP demanding full payment of the balance of P115,579,000.00 not later than 9 April 1987. JPC remitted the sum of P5 million to be placed in escrow deposit. On 14 May 1987, DBP wrote JPC a letter granting the latter a final extension of up to

21 May 1987 to pay the balance, or else the sale would be rescinded. JPC failed once again to pay its obligation. Thus, DBP rescinded both the award and sale, and notified JPC thereof in its letter of 22 May 1987. It gave JPC up to 15 June 1987 within which to return the property.

To prevent the implementation of the rescission, JPC and Romeo Cabalanan, its President, filed with the Regional Trial Court of Makati, on 8 June 1987, a complaint for specific performance and damages with a prayer for a restraining order and writ of preliminary injunction against the DBP, Roberto Anonas, Roy Joseph Vinuya and Amanda S. Guiam. The complaint was docketed as Civil Case No. 16960 and raffled off to Branch 148 of the said court. The court issued a temporary restraining order. On 6 July 1987, JPC and Cabalanan filed an Amended Complaint^[5] impleading, as an additional defendant, the "Asset Privatization (sic) Trust" (APT). They allege therein, inter alia, that defendants cannot unilaterally rescind the award and sale approved by the Office of the President, much less take over the facilities of the Paragon Paper Mills; the right to rescind must be invoked judicially; the contract of sale may not be rescinded for slight or casual breach; the court may grant the defaulting party some time to comply with its obligation; and defendants have no valid ground for rescission. Plaintiffs (herein petitioners) then pray that a temporary restraining order be issued to restrain and prohibit the defendants, their deputies, representatives and all other persons acting under them, from implementing the rescission of the award and sale, and from re-possessing/taking over the plant and facilities of Paragon Paper Mills on 15 June 1987 or any later date; that after hearing on the application for a writ of preliminary injunction, such writ be issued immediately; and that after trial on the merits, judgment be rendered (a) declaring the rescission and order of repossession to be null and void; (b) ordering the defendants to furnish the plaintiffs with the required documents and giving the latter sixty (60) days from receipt thereof to pay the outstanding balance; and (c) directing the defendants to pay the petitioners actual and exemplary damages in the amounts of P1,130,790.00 and P500,000.00, respectively, and attorney's fees of P100,000.00.

It appears that before the defendants could file their Answer, APT granted the petitioners' request for an extension of ninety (90) days, or up to 19 August 1987, within which to pay their obligation. As a consequence thereof, the parties filed on 6 August 1987 a motion to suspend the filing of the Answer. They also agreed to maintain the status quo until 19 August 1987.

On 11 August 1987, the trial court issued two (2) separate orders; the first suspended the period within which the defendants should file their answer while the second directed the parties to maintain the status quo until further orders of the court.

In the meantime, the case was re-raffled and assigned to Branch 145 of the Regional Trial Court of Makati.

Because JPC still refused to pay the obligation, DBP filed a Manifestation and Ex-Parte Motion^[6] on 21 October 1987 praying for the lifting of both the status quo order and order suspending the period to file defendants' answer, and asking that the latter be allowed to file their answer within fifteen (15) days from receipt of the order granting said motion.

In a Counter-Manifestation^[7] filed on 4 November 1987, JPC alleged that it was undergoing negotiations with several banks and financial institutions to enable it to pay the remaining balance, amounting to P110,000,000.00, to the DBP and APT, which have been informed of such negotiations; hence, there is no need to alter or lift the status quo order.

On 18 December 1987, the trial court, per Judge Job B. Madayag, issued an order^[8] denying DBP's aforesaid motion and resolving to maintain the status quo order of 11 August 1987.

After almost a year, or on 21 November 1988, APT filed with the trial court an Urgent Manifestation and Motion

To Set Aside Status Quo Order.[9] It alleged therein that despite countless demands, the last of which was on 5 September 1988, JPC still refuses to settle the subject obligation; hence, the maintenance of the status quo order will continue to work damage and prejudice to the National Government and restrain APT in its mission, which is the prompt disposition of government assets. Averring that the proceeds from such disposition are vital to the country's economic recovery program, it then prayed that the 11 August 1987 order directing the parties to maintain the status quo until further orders of the court be set aside.

On 6 December 1988, JPC filed a Counter-Manifestation and Opposition To Motion To Set Aside Status Quo Order.[10] It alleged that its account does not belong to the APT which has no legal personality to participate in this case and that, inter alia, its sourcing of funds to pay the DBP is almost complete. Thus, the setting aside of the status quo order will only lead to a protracted litigation which would be disadvantageous to the parties. On 3 March 1989, JPC filed a Supplemental Opposition to Motion to Set Aside Status Quo Order[11] which insisted on the lack of personality of the APT with respect to the subject account. APT filed a Reply[12] to this motion and JPC filed a Rejoinder[13] thereto.

During the hearing of the above incidents, the trial court allowed JPC to present evidence to prove its allegations that it had spent P70 million for the improvement and rehabilitation of the plantsite of Paragon Paper Mills; reception of the evidence was set for 7 April 1989. A day before the set date, APT manifested that the hearing would be unnecessary since JPC, being a builder in bad faith, is not entitled to reimbursement. On 7 April 1989, the trial court allowed JPC to present evidence on the aforesaid issue.[14]

On 19 April 1989, APT moved for a reconsideration of the 7 April 1989 order; it further prayed that the evidence so adduced be excluded in the resolution of the pending motion to lift the status quo order.[15]

On 15 September 1989, the trial court, per Judge Madayag, issued an Order[16] which decreed that (a) the real party in interest in this case is the DBP, not APT, and (b) in view of the ruling in *Puerto vs. Go Ye Pin*,^[17] the court has discretion in fixing a reasonable period within which JPC may perform its obligation in favor of defendant DBP. Accordingly, it disposed of the pending incidents as follows:

"WHEREFORE, the Court hereby Resolves:

1. To deny defendant APT's motion to set aside status quo order, and for reconsideration, respectively dated November 21, 1988 and April 19, 1989;
2. To dismiss or drop defendant APT from this action for not being a real party in interest; and
3. To order plaintiffs to pay their obligation with defendant DBP, subject to whatever compromise agreement they may arrive at with respect to the payment of the unpaid principal, interests and/or extension fees.

SO ORDERED."[18]

On 25 October 1989, DBP filed a motion to reconsider the above order,[19] which was opposed by JPC[20] on 2 December 1989 principally on the ground that the said motion was filed out of time as the DBP received a copy of the assailed order on 28 September 1989. On the basis of this opposition, the trial court, in its Order of 28 December 1989, denied the motion for reconsideration and declared the Order of 15 September 1989 final as of 14 October 1989.

Hence, the DBP filed with the Court of Appeals a special civil action for certiorari under Rule 65 of the Rules of Court to set aside, for having been rendered with grave abuse of discretion, the aforesaid Orders of 15 September 1989 and 28 December 1989. The petition was docketed as CA-G.R. SP No. 20042. As stated in the introductory paragraph of this ponencia, herein public respondent Court of Appeals promulgated a decision annulling the

aforesaid orders; reinstating the APT as a party defendant; and lifting the 11 August 1987 Order which suspended the period to file the answer and directed the parties to maintain the status quo.

In upholding the DBP's stand, respondent Court held:

"There is no question that under the third paragraph of Article 1124 of the Spanish Civil Code (Article 1191, Civil Code of the Philippines), 'the court is given discretionary power to allow a period within which a person in default may be permitted to perform the stipulation upon which the claim for resolution of the contract is based 'x x x and this discretionary power on the part of the court should be exercised without hesitation in a case where a virtual forfeiture of valuable rights is sought.' (Felipa Puerto et al. vs. Go Ye Pin, No. 2149?R, Vol. 47, O.G. No. 1, Jan. 1951, p. 264). This power of the court, however, must be exercised in the appropriate case and within the bounds of the due process clause.

Due process of law implies that whenever, in a judicial proceeding, a judgment is rendered by a court of justice affecting the liberty or condemning the property of another person, he is entitled to have reasonable notice of such procedure, trial or contest. (City of Manila v. Posadas, 48 Phil. 309; 332). As applied to judicial proceedings due process requires: 1) a court or tribunal clothed with judicial power to hear and determine the matter before it; 2) jurisdiction lawfully acquired over the person of the defendant or over the property subject of the proceeding; 3) an opportunity given to the defendant to be heard; and 4) judgment rendered upon lawful hearing. (Banco Español-Filipino v. Palanca, 37 Phil. 921; 934). This principle simply means that before a party may be held bound by court proceedings, he must have been impleaded therein or notified thereof and thus given an opportunity to defend his rights. (Torres vs. Caluag, L--20906, July 30, 1966; 17 SCRA 808).

The essential elements of the (sic) due process of law are notice and opportunity (sic) to defend. In determining whether such rights have been denied, the courts are governed by the substance of things and not by mere form. (Orlanes & Banaag Transportation Co. v. Public Service Commission, 57 Phil. 634; 646, Abad Santos, dissenting).

The herein petitioner was the original principal defendant in Civil Case No. 16960.

Admittedly, the incidents resolved in the order dated September 15, 1989 were those initiated by APT. In resolving these incidents, however, the respondent Court touched upon the principal controversy between the petitioner and the private respondents. This portion of the order prompted the petitioner to file the motion for reconsideration, dated October 20, 1989, for its own protection.

In the order of September 15, 1989, declaring the defendant APT as not the real party in interest and dropping it from this action, the respondent court, made a finding that defendant DBP (petitioner herein) 'had already waived its right to collect on a cash basis since it had collected partial payment on the principal x x' and thereafter ordered 'plaintiffs to pay their obligation with the defendant DBP, subject to whatever compromise agreement they may arrive at with respect to the payment of the unpaid principal, interests and/or extension fees.'

The portion of the order 'finding defendant DBP (petitioner) as having already waived its right to collect on cash basis x x, and requiring the plaintiff to pay their obligation with the DBP, subject to whatever compromise agreement x x', based upon facts proved during the hearing of APT's motion to lift status quo order is substantially a decision of the main case.

The DBP has not yet filed its answer. The issues have yet to be joined. The resolution of the controversy between the DBP and the private respondents, simultaneously with the resolution of the motion to lift status quo order and to exclude APT from the case, is obviously premature. It deprived the DBP of its right to due process of law.

The DBP has not waived its right to file an answer. The order of September 15, 1989 resolved the merits of the case. Unless DBP questions said order, the filing of its answer would have been rendered moot and academic.

Being injured and/or adversely affected by the order of September 15, 1989, the DBP has a cause of action in filing the motion for reconsideration dated October 20, 1989.

The inclusion of paragraph 3 of the dispositive portion in the order of September 15, 1989, depriving as it did, petitioner of its right to due process of law, was in grave abuse of discretion amounting to lack of jurisdiction.

The (sic) contention that appeal is petitioner's remedy from the order of September 15, 1989, conformably with its contention that 'the merits of the main case was (sic) x x x resolved x x', suffice it to state that such issue is a mere technicality which would accomplish nothing substantial except to deny the petitioner the right to file an answer and to litigate the matters which it may raise therein.

The matters litigated and treated in the pleadings resolved by the September 15, 1989 order were the subject of controversy been the APT, which was declared 'not the real party in interest,' and the private respondents. This is rightly so, for the petitioner DBP has not yet filed an answer. The nature of the controversy between the DBP and the private respondents has yet to be determined after the filing of DBP's answer.

The DBP could not file its answer for as long as the two orders dated August 11, 1987 and the order dated December 18, 1987 are not lifted and/or set aside.

The first order issued on August 11, 1987, suspending the filing of answer, was based upon an ex-parte motion to that effect filed by the defendant, (petitioner herein). The second order, dated August 11, 1987, maintaining the status quo 'ante litem', was also issued upon written manifestation of the defendant. The DBP filed the motion and manifestation for the maintenance of the status quo 'ante litem' and for suspension of the period for filing of answer based upon private respondents' promise to pay their obligation on a fixed period.

Upon failure of private respondents to pay within the period agreed upon, the DBP filed the motion to lift status quo order. This motion was, however, denied in the order of December 18, 1987.

x x x

Since the issuance of the order dated December 18, 1987, the petitioner has not taken any step to question the validity and/or regularity of its issuance. It is being questioned in this proceedings (sic) only after the urgent motion to lift status quo order filed by the APT was denied in the order dated September 15, 1989. The APT is not a party in the present petition for certiorari. By APT's silence and failure to contest the order of September 15, 1989, We are led to believe that APT is abiding thereby.

While apparently the herein petitioner was not the party who filed the Urgent Manifestation and Motion to Set Aside Status Quo Order, which gave rise to the issuance of the order of September 15, 1989, it is but proper that the DBP be allowed and recognized to continue the proceedings inasmuch as the DBP and APT represent the same interest.

The status quo order and the order suspending the filing of answer had lost their reason for existence, in the sense that the period (January, 1988) within which private respondents promised to pay in lump sum, had already lapsed. The said orders do not anymore serve any beneficial purpose other than to prolong action on and delay the resolution of Civil Case No. 16960. Left unacted (sic), Civil Case No. 16960 will forever remain as one of the numerous backlog of (sic) cases in the dockets of the Makati Regional Trial Court.

It will be to the best interest of the speedy administration of justice that the status quo order and the order suspending the filing of answer be lifted.”[21]

Their motion to reconsider said decision[22] having been denied in the respondent Court's Resolution of 25 September 1990,[23] petitioners availed of this recourse under Rule 45 of the Rules of Court; they allege in their petition that the respondent Court of Appeals erred:

“(A) IN GRANTING RELIEF TO ASSET PRIVITIZATION (sic) TRUST (APT) WHICH IS NOT A PARTY

TO THE PETITION FOR CERTIORARI FILED IN THE COURT OF APPEALS; APT BY ITS SILENCE IS NO LONGER WILLING TO LITIGATE;

(B) IN FINDING THAT THERE IS DENIAL OF DUE PROCESS BECAUSE RESPONDENT DBP BY ITS OWN ADMISSION CEASED TO TAKE ACTIVE PARTICIPATION IN THE CASE WHEN APT TOOK OVER; APT IS THE PROPER PARTY TO DECIDE WHAT TO DO WITH ITS OWN CASE;

(C) IN FINDING THAT THE REGIONAL TRIAL COURT OF MAKATI, METRO MANILA, BRANCH 145 (LOWER COURT) COMMITTED GRAVE ABUSE OF DISCRETION IN DENYING RESPONDENT DBP'S MOTION FOR RECONSIDERATION WHICH WAS FILED OUT OF TIME."[24]

After considering the issues raised and the arguments adduced in the petition, as well as the Comment of the respondents and the Reply of the petitioners to the said Comment, this Court, in its Resolution of 15 May 1991,[25] gave due course to the petition and required the parties to submit their respective Memoranda, which they subsequently complied with.

A painstaking review of the pleadings submitted by the parties and a careful reflection on their discussion of the issues in their respective Memoranda unravel the utter lack of merit of this petition.

As to the first grievance, petitioners conveniently forgot that they had amended their complaint in the court a quo precisely to implead the APT as DBP's co-defendant because according to them, the property subject of the bidding and covered by the award in favor of JPC was transferred to the APT on 3 February 1987.[26] Following petitioners' theory, APT became the transferee of the property in question; hence, it is an indispensable party. As a matter of fact, the petitioners, in the said Amended Complaint, considered the rescission of the award and order of repossession as a "unilateral act" of the defendants -- DBP and APT -- and prayed that the latter be ordered, jointly and severally, to pay damages and attorney's fees.[27] Both the DBP and APT did not file any answer because of the trial court's 11 August 1987 orders. The issues therein had not yet been joined at the time of the filing of the petition in CA-G.R. SP No. 20042. Although the latter was filed by the DBP alone, the APT was necessarily benefited thereby. This is plain enough. The right of the DBP to seek remedy from the orders of the trial court via a Rule 65 petition for certiorari is likewise beyond question because it is an original party in Civil Case No. 16960; whether the transfer of the property to APT terminated or diminished JPC's right thereto is then of no moment in view of the fact that as earlier stated, issues in the case had, as yet, not been joined. Only the answer to the amended complaint can provide the preliminary basis for the determination of the nature and extent of the alleged transfer and the legal consequences thereof on the rights of either the DBP or the APT.

By its very nature, the Order of 11 August 1987 suspending the period within which the defendants could file their Answer, is an interlocutory order which could never attain finality. Corollarily, any party can move at any time to set the same aside in order that the answer may be filed, the issues joined, pre--trial and trial had and the case expeditiously terminated, to serve the ends of justice. The same is true with respect to the status quo order issued on the same date which, by the way, states that it is subject to any further orders which the court may issue.

We do not hesitate to state here that the suspension order was improperly issued. It was not necessary for the attainment of the objective of having JPC fulfill its obligation within the extended period that the defendants' own period to file the answer be suspended. Even with the submission of the answer within the reglementary period, the parties could still file a petition to suspend the proceedings with the aim of securing a possible compromise agreement as provided in Section 1, Rule 21 of the Rules of Court. Furthermore, under Rule 20 of the same Rules, the lower court may encourage the parties to amicably settle the controversy at the pre-trial stage of the proceedings. Such settlement may include the restoration of the award (which DBP rescinded) and the grant of a new period to JPC within which to pay the unpaid balance of its obligation under the award. The procedure

adopted by the court betrays a certain weakness which unscrupulous parties could take full advantage of. This is what exactly happened in the case at bar for, as the pleadings reveal, no payment was ever made by JPC. Yet, the trial court remained unmoved by the pleas of the DBP and APT. There was, therefore, an unusual accommodation by the court a quo of JPC's dilatory tactics.

The same impropriety and indiscretion characterized the issuance of the status quo order. As a matter of fact, the said order was issued in circumvention of the legal restriction imposed on restraining orders under Section 5, Rule 58 of the Rules of Court, as amended by Batas Pambansa Blg. 224. Thereunder, a temporary restraining order remains valid only for twenty (20) days. Unless in the meantime, a preliminary injunction is issued by the court after due hearing, the temporary restraining order automatically expires at the end of the twentieth day from its issuance. No judicial declaration to that effect is necessary.[28] In the instant case, no such preliminary injunction was issued; hence, the temporary restraining order earlier issued automatically expired by the sheer force of the aforesaid provision of the Rules of Court. Notwithstanding such expiration, the trial court unduly prolonged the life of the restraining order by issuing the status quo order -- which could be viewed as either a second temporary restraining order or a writ of preliminary injunction without the bond required under Section 4 of the same Rule. The foregoing considered, it is timely to reiterate here what this Court stated in *Prado vs. Veridiano II*:[29]

"In an apparent attempt to be clever, respondent Judge sought to circumvent the above rule[30] by carefully avoiding the use of the term preliminary injunction or temporary restraining order. He just directed the parties to maintain a status quo condition. Unfortunately, such move displayed neither wisdom nor wit, but rather defiance of the rule."

Thus, when the trial court refused to lift both orders by denying, in its challenged Order of 15 September 1989, the 21 November 1988 urgent manifestation and motion to set aside the status quo order, compounded such refusal by ordering instead that APT be dropped from the action on the ground that it is not a real party in interest and, finally, directed JPC to pay defendant DBP subject to whatever compromise agreement which may be arrived at with respect to the payment of the unpaid principal, interests and/or extension fees, it not only maintained an injudicious suspension order and a void status quo order, but likewise committed procedural shortcuts which neither law nor jurisprudence has, as yet, sanctioned. In the first place, JPC, on its own accord, amended the complaint to implead the APT as a co-defendant because the latter is the DBP's transferee of the property subject of the award; as earlier stated, this made APT an indispensable party. Hence, it cannot be subsequently divested of such personality on the mere claim of JPC that it (APT) is not a real party in interest. By allowing JPC to take inconsistent positions, the court placed a premium on bad faith and dilatory strategies. That JPC indeed recognizes the APT to be a real party in interest is even further, albeit unwittingly, revealed in its second assigned error in this petition when it says that the APT is "the proper party to defend the case in view of the transfer of the case to APT." There is certainly some mental dishonesty somewhere which this Court cannot tolerate and must swiftly condemn. Parties must come to this Court, and any court for that matter, with clean hands.

In the second place, the order requiring JPC to pay the obligation to the DBP, subject to whatever compromise agreement that the parties may enter into, amounts to a judgment with respect to the principal issue in the case -- the validity of the rescission of the award. In so issuing it, the court "exercised" its "discretion" in fixing a period for the fulfillment of the obligation. Such judgment is clearly despotic, whimsical and arbitrary for the DBP and APT had not yet filed their respective answers; thus, the court was in no position to determine whether the breach of the obligation was merely slight or casual -- in which case rescission will not be justified -- or substantial and fundamental so as to warrant such a rescission.[31] In view of the allegations of the amended complaint on this point, it is too obvious that the trial court had already accepted JPC's theory and therefore, rather unfortunately, prejudged the case. Such prejudgment is made more lamentable by the fact that the DBP and APT were not even afforded a semblance of due process for there was not even a hearing on this issue. The pending incidents did not

involve the merits of the case -- the resolution of which would have been premature considering that issues therein have not as yet been joined -- but merely dealt on the propriety of the lifting of the suspension and status quo orders.

The respondent Court of Appeals, therefore, did not commit an error in annulling the 15 September 1989 order of the trial court.

The foregoing disposes of the second error.

Neither did respondent Court of Appeals commit any error in holding that the trial court committed grave abuse of discretion in denying DBP's motion for reconsideration on the ground that it was filed out of time, and declaring that the Order of 15 September 1989 became final on 14 October 1989. As We stated earlier, the suspension and status quo orders could not, by their very nature, attain finality in the sense that they cannot be lifted or set aside. In declaring that its 15 September 1989 order had become final, the trial court attempted then to invest said suspension and status quo orders with the status of finality. This cannot be so for the spring cannot rise higher than its source. Just as the suspension and status quo orders could not attain any finality, so must any other order which momentarily rejects their lifting.

WHEREFORE, the instant Petition is DENIED and the challenged Decision of 27 July 1990 and Resolution of 25 September 1990 of respondent Court of Appeals in CA-G.R SP No. 20042 is AFFIRMED.

This decision is immediately executory.

SO ORDERED.

Bidin, Romero, and Melo, JJ., concur.

Gutierrez, Jr., J., (Chairman), in the result.

[1] Rollo, 25-34; per Associate Justice Asaali S. Isnani, concurred in by Associate Justices Jose C. Campos, Jr. and Oscar M. Herrera.

[2] Entitled Development Bank of the Philippines versus Hon. Job B. Madayag, etc., et al.

[3] Rollo, 33.

[4] Id., 36.

[5] Rollo, 44-65.

[6] Rollo, 67-68.

[7] Id., 70-71.

[8] Rollo, 72.

[9] Id. 73-77.

[10] Id. 79-84.

[11] Id., 85-89.

[12] Rollo, 90-97.

[13] Id., 98-102.

[14] Id., 44.

[15] Id.

[16] Annex "C" of Petition; Id., 38-43.

[17] (C.A.) 47 O.G. 264.

[18] Rollo, 43.

[19] Id., 104-110.

[20] Id., 111-115.

[21] Rollo, 30-33.

[22] Rollo, 166-181.

[23] Id., 36-37.

[24] Id., 2-3.

[25] Id., 307.

[26] Paragraph 2, Amended Complaint; Rollo, 45.

[27] Id., 65.

[28] Board of Transportation vs. Castro, 125 SCRA 410 [1983]; Aquino vs. Luntok, 184 SCRA 177 [1990]; Prado vs. Veridiano II, 204 SCRA 654 [1991].

[29] 204 SCRA 654, 670 [1991].

[30] Referring to Section 5, Rule 58 of the Rules of Court, as amended by Batas Pambansa Blg. 224.

[31] Song Fo & Co. vs. Hawaiian Philippine Company, 47 Phil. 821 [1925].

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