

PIO BARRETTO REALTY DEVELOPMENT, INC., PETITIONER, VS. THE HON. COURT OF APPEALS (SIXTH DIVISION) AND HONOR MOSLARES, RESPONDENTS.

G.R. Nos. 62431-33. August 31, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for certiorari to review the decision of the Court of Appeals promulgated on June 30, 1982 in CA-G.R. Nos. 12599-R, 12600-R, and 12601-R entitled "Honor P. Moslares, petitioner v. Honorable Reynaldo P. Honrado, et al., respondents," was filed as part of the effort to expedite the final settlement of the estate of the deceased NICOLAI DREPIN.

The dispositive portion of the decision of the respondent Court of Appeals reads as follows:

"WHEREFORE, all the foregoing considered, judgment is hereby rendered:

"(a) making permanent the temporary restraining order issued;

"(b) declaring null and void the impugned orders of April 15, 1980, July 2, 1980, September 30, 1980, and October 20, 1980, for having been issued in grave abuse of discretion and in excess of jurisdiction, with the September and October orders having the additional defect of due process violation;

"(c) declaring null and void the Deed of Undertaking and Deed of Sale in favor of respondent Pio Barretto Realty Development, Inc., for being mere consequences of null orders;

"(d) ordering the Register of Deeds of Rizal to cancel the transfer certificates of title issued to Pio Barretto Realty Development, (TCT Nos. N-50539, N-50540, N-50541) and to transfer the same to the Estate of Nicolai Drepin with the annotation that this transfer to the estate is subject to the final decision in Civil Case No. 41287 of the CFI of Pasig, Metro Manila; and

"(e) denying the prayer for the exclusion of the three titled lots involved from Special Proceedings Nos. 7257, 7261 and 7269 of the CFI of Makati Branch, Civil Case No. 41287 above-mentioned."

The proceedings for the settlement of the estate of Drepin were initiated shortly after his death on July 29, 1972 with the filing of a petition for probate of his holographic will on August 23, 1972.

In this holographic will, the late Drepin listed twenty-two (22) persons as his alleged creditors, and within the six (6) months after publication within which to file claims against the estate, twelve (12) persons filed their respective claims. The total amount of obligations that may be chargeable against the Drepin Estate is P1,299,652.66.

The only asset of the testate estate of Drepin consists of three (3) parcels of titled land with an area of approximately eighty (80) hectares, and another parcel with an area of eighty-one (81) hectares still pending registration. The estate is saddled with claims of creditors named in the Drepin will and creditors who have filed

their claims within the reglementary period. The only way to pay their claims is to sell the Drepin lots, so that from the proceeds of the sale, the debts of the estate could be paid, and any remaining balance distributed to the Drepin heirs.

Since the filing of the petition for probate of the Drepin will, on August 23, 1972, nine (9) offers had been made for the purchase of the Drepin lands, among them, that of GM Management Phils., dated August 15, 1978, through its President Honor P. Moslares. Basis for Moslares' letter proposal is a deed of sale with mortgage executed by the decedent in his favor on October 9, 1970. It appears that on said date, the deceased sold 80,3980 hectares of land absolutely and perpetually to Honor P. Moslares for the sum of P2,600,000.00 with a downpayment of P300,000.00. To secure the payment of the remaining P2,300,000.00, the latter mortgaged the land to the former. The parties further agreed not to register the sale yet until P1,300,000.00 shall have been paid to Drepin and P1,000,000.00 paid to Drepin's creditors.

Subsequently, on June 25, 1971, Drepin and Moslares entered into a "Joint Venture Agreement." Said agreement listed Drepin as the registered "owner" of the lots and denominated Moslares as "developer" tasked with converting the lands into a residential subdivision. The agreement specified:

"(h) That the Developer agrees to reserve the right of the registered Owner of the land to ask for immediate CASH payment against an 'Absolute Deed of Sale' on the said above mentioned properties, subject to this 'Joint Venture Agreement' on the amount of not less than TWO MILLION THREE HUNDRED THOUSAND (P2,300,000.00) PESOS, after the big loan is granted to the Developer in or about thirty (30) days to forty-five (45) days from the signing of this Joint Venture Agreement and the 'Special Power of Attorney';

"(i) However, if the Owner of the property Mr. Nicolai Drepin will not choose to be paid on this said above mentioned property in CASH of TWO MILLION THREE HUNDRED THOUSAND (P2,300,000.00) PESOS, this joint venture agreement is still in full force and effect. OTHERWISE if full payment of TWO MILLION THREE HUNDRED THOUSAND (P2,300,000.00) PESOS receipt is acknowledged by the said Mr. Nicolai Drepin, the 'Joint Venture Agreement' is automatically cancelled and declared no force and effect."

Before the agreement could be implemented, Nicolai Drepin died.

Upon learning of the existence of Special Proceedings No. 7257, 7261 and 7269 herein respondent Moslares, on August 15, 1978, informed the Judicial Administrator Atty. Tomas Trinidad that he is already the owner of the properties made subject matter of the Special Proceedings and proposed that he be permitted to pay the balance on the sale with mortgage in accordance with the terms of his written proposal. The probate court, on August 17, 1978 issued an order approving respondent Moslares' proposal and authorizing administrator Tnmddad to enter into the appropriate agreement. This was reiterated by the court in its order dated January 9, 1979, with the condition that GM Management Phils, had only up to February 28, 1979 to comply with its letter-offer dated August 15, 1978 and "failure on their part to comply with the same within the period specified, the contract with the decedent shall be deemed resolved and ineffective." Counsel for heir-claimant Cornelia Tejano was likewise given up to said date to make and submit a more beneficial offer. Neither GM Management nor counsel for Tejano was able to perform as required.

Requests for revision of payment and extension of period within which to pay the balance of P1,600,000.00 were made by Moslares. Further, he filed a Manifestation and Urgent Motion proposing transfer of the certificate of titles over the land subject of the proceedings so as to enable him to generate funds to liquidate the payable balance. The same were left unacted upon by the probate court.

Meanwhile, on September 25, 1979, A Deed of Undertaking was entered into by respondent Moslaies and the Administrator to implement the Contract of Sale with Mortgage. Such deed provided for the mode of payment

which Moslares was to follow as well as the clearing and transfer of the certificates of title in the name of Moslares. The latter proviso was to enable Moslares to secure the loan needed to pay for the balance of the purchase price. Postdated checks were issued by Moslares to cover the amount embraced in said undertaking. Approval of the agreement with Moslares was strongly urged by the Administrator. No action was taken by the court thereon. At the hearing of October 19, 1979, Moslares tendered P15,600,000.00 to the Judicial Administrator. This was opposed by counsel for heir Tejano, Atty. Ramon Encarnacion, on the ground that respondent Moslares had only until February 28, 1979 within which to pay the same. Attorney Encarnacion thereupon brought to the attention of the court an offer to buy the properties for P3,000,000.00 by herein petitioner Pio Barretto Realty Development, Inc. Because of the differing contentions and the new offer, the probate court ordered the parties to submit memoranda and set a conference on November 28, 1979 to discuss the new offer.

On November 12, 1979, respondent Moslares submitted his memorandum containing three points to wit:

"1.

Actually, Honor P. Moslares is already owner of the Property, subject matter of this proceedings, and as such, could no longer be the subject matter of this testate proceedings. The payment made by Honor P. Moslares to the Judicial Administrator through this Honorable Court on 19 October, 1979, is in compliance with the Contract entered into between him and the late Nicolai Drepin, in 1970;

"2.

The Order of this Honorable Court dated 9 January, 1979, particularly with reference to the period, mentioned in No. 1, page 2 of the Order of this Honorable Court giving Honor P Moslares up to 28 February, 1979, within which to comply with his letter-offer to the Court dated 15 August, 1978, is not yet final, said period having been extended;

"3.

The Order of this Honorable Court dated 9 January, 1979, particularly No. 2, Page 2 thereof, barred Counsel for Cornelia B. Tejano from making any further offer, his right to do so having expired on 28 February, 1979."

Thereupon, the probate court judge directed Moslares through the administrator Any. Trinidad, to furnish copies of - (1) Deed of Absolute Sale; (2) Special Power of Attorney; and (3) Joint Venture Agreement. The same were promptly submitted.

On February 28, 1979, March 6, 1980 and April 15, 1980, letters to Judicial Administrator Trinidad were sent by respondent Moslares seeking further extension of time within which to pay the balance of his obligation to the estate, and for favorable recommendations to the probate court in his reports saying: "Help me now, this is ours. We can make money of all this sacrifice we had on the pass (sic)."

On April 15, 1980, the probate court reiterated its order dated August 17, 1978 authorizing the Administrator to finalize the sale with GM Management, Phils, and giving respondent Moslares ten (10) days from date to deposit the necessary amount to cover the value of the checks as each falls due. Failure to do so would result in the automatic rescission of the authority to sell to GM Management Phils., and the Administrator would be permitted to accept other offers in the best interest of the Estate. This order was the probate court's prompt action on a "Report with Motion for Cancellation of Order Approving Sale to GM Management, Phils." Honor P. Moslares, if it fails to make good the April 15, 1980 check "As Token Payment in Good Faith," filed by administrator Trinidad on the same day, April 15, 1980.

GM Management sought reconsideration and amendment of the Order of April 15, 1980 to conform to the

provisions of the Deed of Undertaking.

On May 23, 1980, administrator Trinidad filed a "Report with Motion to Authorize Administrator to Screen Offers to Purchase Estate and Others."

On May 31, 1980, respondent Moslares filed another manifestation praying that his pending motions be acted upon and that the motion of administrator Trinidad be denied for lack of merit.

On June 30, 1980, administrator Trinidad made the following Observation and Report on the Motion of Buyer GM Management Phils, for reconsideration" -

"2.

Two checks, one for P50,000.00 and one for P250,000.00 were deposited on April 28, 1980 after the Order of the Probate Court. BOTH BOUNCED. DAIF (Drawn against insufficient funds).

"3.

Another check for P300,000.00 is now held by the Administrator, postdated for today, June 30, 1980 and Administrator just received, June 29, 1980 a telegram asking to withhold deposit until after 30 days from amendatory order of the Probate Court.

xxx xxx xxx

"6.

The motion of Administrator is reiterated."

On July 2, 1980, the probate court issued the following order:

"Finding the Motion of the Administrator well-taken and in the best interests of the Estate, the administrator is authorized to enter into agreement with any other interested parties on a first paid first served basis without prejudice to G.M. Management Philippines to continue with its offer and make good the same in as an ordinary buyer on the same first paid first served basis."

Respondent Moslares filed a motion for reconsideration of said July 2, 1980 order on the ground that:

"1.

The Honorable Probate Court has no jurisdiction over the three (3) parcels of land, consisting of 80,3980 hectares subject matter of the Deed of Sale which the late Nicolai Drepin, conveyed to Movant Honor P. Moslares. The only right which pertains to the ESTATE, is the right to demand from Honor P. Moslares, the balance of the Deed of Sale, which has been fixed by this Honorable Court at ONE MILLION SIX HUNDRED THOUSAND (P1,600,000.00) PESOS, Philippine Currency;

"2.

As of November, 1979, the law that governs between the ESTATE and MOVANT, Honor P. Moslares, is the DEED OF UNDERTAKING executed by the Administrator in favor of Movant Honor P. Moslares, pursuant to the authority given by the Honorable Probate Court to the Administrator contained in the Order dated August 15, 1978, reiterated in the Order dated January 9, 1979, and in the Order dated 15 April 1980; and

"3.

The Honorable Probate Court has no jurisdiction to decree rescission of the Contract into (sic) between the decedent and Movant Honor P. Moslares on the 9th day of October, 1970."

This motion for reconsideration was opposed by administrator Trinidad as well as the Tezano heirs through counsel, arguing that the probate court has jurisdiction to issue the questioned orders because petitioner submitted himself to the court's jurisdiction and his checks bounced; also that the Deed of Undertaking was validly cancelled as a result of the valid rescission of Trinidad's authority to sell to petitioner.

On September 30, 1980, the probate court issued an order denying respondent Moslares motion for reconsideration for lack of merit. And on October 10, 1980 administrator Trinidad executed the Deed of Sale in favor of Pio Barretto Realty, Inc. transferring the titles to the properties in question in the name of the latter. The same was duly registered. On October 20, 1980, the probate court approved the report of administrator Trinidad dated October 16, 1980, with xerox copies of the Deed of Sale in favor of Pio Barretto Realty, Inc. of the estate of Nicolai Drepin pursuant to respondent court's order authorizing the sale, and of the approved Deed of Undertaking with the vendee.

An urgent Motion and Manifestation was filed by respondent Moslares on April 8, 1981 praying that his motion for reconsideration of the orders be already resolved, followed by an Omnibus Motion on April 27, 1981 to resolve all pending motions and praying that the Deed of Sale and Deed of Undertaking in favor of Pio Barretto be cancelled. The same remained unacted upon.

On May 18, 1981 respondent filed Civil Case No. 41287 before the Court of First Instance of Rizal in Pasig, Metro Manila to determine title and ownership over the Drepin lands.

On June 23, 1981, a petition for certiorari was filed by respondent Moslares before the Court of Appeals which issued a temporary restraining order. Judgment was rendered by respondent court in favor of respondent Moslares, the dispositive portion of which has been quoted.

Barretto filed a motion for reconsideration which was denied on November 12, 1982. Hence, this petition.

In its decision, the Court of Appeals laid down the two principal issues involved in the case, as follows: (1) whether or not the respondent judge (Judge R. Honrado) acted without or in excess of jurisdiction or with grave abuse of discretion in refusing to exclude the parcels of land involved from the testate proceedings of the Drepin estate; and (2) whether or not the respondent judge acted without or in excess of jurisdiction or with grave abuse of discretion in issuing the impugned orders dated April 15, 1980, July 2, 1980, September 30, 1980, and October 20, 1980.

We are in full accord with the respondent court's resolution of the first issue, and we quote:

"For continually presuming that the three titled lots were part of the Drepin estate and for refusing to provisionally pass upon the question of exclusion, did the respondent court act without or in excess of jurisdiction or with grave abuse of discretion?

"We hold that even with such presumption and refusal, the respondent court still acted within its jurisdiction and not with grave abuse of discretion. After all, the jurisprudence and rule are both to the effect that the probate court 'may' provisionally pass upon the question of exclusion, not 'should.' The obvious reason is the probate court's limited jurisdiction and the principle that questions of title or ownership, which result to inclusion in or exclusion from the inventory of the property, can only be settled in a separate action. Hence, even if respondent court presumed all the way that the properties sold by Drepin to petitioner were part of Drepin's estate, that would not prevent nor defeat petitioner's remedy in a separate suit.

"And We hold that Civil Case No. 41287 is just such a suit instituted to settle the question of ownership over the lots covered originally by TCTs Nos. 259060, 259061 and 259062, despite the claim for damages, because of the composite effect of the prayer in the complaint thereof x x x.

xxx xxx xxx

"In effect, We are saying that the question of whether the properties sold by Drepin to Petitioner should be excluded from the probate proceedings below, can not be determined with finality by Us in this case, because in this petition We are merely reviewing the acts of the respondent CFI as a probate court. Any ruling by the probate court to include those properties is only provisional in character and is without prejudice to a judgment in a separate action on the issue of title or ownership (*Sebial v. Sebial* L-23419, June 27, 1975, 64 SCRA 385). Consequently, in reviewing the exercise of such limited probate jurisdiction, We cannot order an unqualified and final exclusion of the properties involved, as prayed for; to do so would expand the probate court's jurisdiction beyond the perimeters set by law and jurisprudence. It is fitting and proper that this issue be ventilated and finally resolved in the already instituted Civil Case No. 41287, even as We hold that respondent court's act of not excluding the lots involved did not constitute grave abuse of discretion. In view of this limitation, We need not resolve the issue of whether there was novation of the Deed of Sale with Mortgage, or not."

This same elemental principle, we found occasion to reiterate in the cases of *Junquera v. Borromeo* (19 SCRA 656); *Borromeo v. Canonoy* (19 SCRA 667); *Recto v. dela Rosa* (75 SCRA 226); *Lachenal v. Salas* (71 SCRA 202); *Bolisay v. Alcid* (85 SCRA 213); *Vda. de Rodriguez v. Court of Appeals* (91 SCRA 540).

However, from here, the road forks as we disagree with the respondent court's findings on the second issue.

In his petition for certiorari before the Court of Appeals, respondent Moslares assails the issuance of the four impugned orders by the probate court on the ground that the court had no jurisdiction to rescind the Deed of Sale with the Mortgage entered into by the deceased during his lifetime, due to the limited jurisdiction of the probate court merely to settle and liquidate the estates of a decedent and not to pass upon questions of title to property.

On the other hand, the petitioner argues that in voiding and nullifying the four orders of the probate court, the Court of Appeals, in effect, would have the former court recognize the alleged ownership of Mr. Moslares over the three titled Drepin lots involved in this case contrary to its pronouncement in settling the first issue.

It is to be noted that the last agreement entered into by the deceased prior to his death, that is, the Joint Venture Agreement listing Drepin as owner of the properties in question, and the surrender to administrator Trinidad of the certificates of title, had led the probate court to enter or include said properties in its inventory of the deceased's estate. Thus, provisionally, ownership thereof was recognized as vested in the estate. Subsequently, in the course of the probate proceedings, the sale of the properties was found to be necessary to settle the deceased's obligations. It was then that herein private respondent Moslares submitted himself to the jurisdiction of the court in an "Offer to Buy" said properties, based on his previous agreement with the deceased during the latter's lifetime.

It is noteworthy that contrary to Moslares' assertion of ownership, he had offered to buy the Drepin lands from the probate court. Surely, this is not conduct ordinarily expected of one who is the owner of the property. Further, the fact that subsequent to the Deed of Sale, the deceased as buyer and as absolute owner entered into an agreement with the respondent merely as developer of the lands in question evidences a change of cause or object as well as a change of relation between the parties. Moslares' own acts negate his claims in this petition that he had acquired ownership of the properties. Thus, the transparency of respondent's argument becomes readily apparent.

Having submitted his letter-proposal to the court, the same was approved, allowing Moslares to pay the balance of the purchase price agreed upon by respondent and the decedent in the amount of One Million Six Hundred Thousand Pesos (P1,600,000.00) specifying the time and manner of payment thereof. Thus, he was given preference and priority over other persons or groups offering to buy the estate. Having failed to comply with the

conditions of payment of the contract, the same was rescinded by the probate court. Now, respondent questions this rescission which he maintains to be beyond the jurisdiction of the court.

Estoppel works to preclude respondent from questioning the jurisdiction of the court. By offering to buy the properties in question, respondent has clearly recognized the jurisdiction of the probate court to which he had effectively submitted himself. It is well settled that a party is estopped from disputing the jurisdiction of the court after invoking it himself (*Tible y. Aquino*, 65 SCRA 207). After voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court (*People v. Munar*, 53 SCRA 278; *Capilitan v. dela Cruz*, 55 SCRA 706; *Summit Guaranty and Insurance Co., Inc. v. Court of Appeals*, 110 SCRA 241; *Tajonera v. Lamoroza*, 110 SCRA 438). A party will not be allowed to make a mockery of justice by taking inconsistent positions. Doctrine of estoppel bars a party from trifling with the courts (*Depositario v. Hervias*, 121 SCRA 756).

The merits of the case likewise lead to similar conclusions.

It cannot but be conceded that the limited jurisdiction of a probate court prohibits it from determining rights to property left by a decedent which depends on the contract (*Goodin v. Casselman*, 200 N. W. 94, 51 N. D. 543). However, actions of the probate court, in the case at bar, do not refer to the adjudication of rights under the contract entered into by the deceased during his lifetime. It is to be noted that the dealings of the respondent with the court arose out of the latter's bid to sell property under its authority to sell, mortgage or otherwise encumber property of the estate to pay or settle claims against the estate (Rule 89, Revised Rules of Court). Thus, respondent bound himself under an agreement with the court separate and distinct from that which he had with the decedent. In rescinding such contract, the court merely seeks to enforce its right to put an end to an agreement which had ceased to be a working proposition. Surely, this is well within the power of the probate court. Though of limited and special jurisdiction, it cannot be denied, however, that when the law confers jurisdiction upon a court, the latter is deemed to have all the necessary powers to exercise such jurisdiction to make it effective (*Zuniga v. Court of Appeals*, 95 SCRA 740).

We cannot allow an absurd situation to arise where the Drepin estate will never be settled and liquidated because even if Moslares cannot pay the agreed purchase price of the Drepin lands, still the probate court can no longer sell the lands to other prospective buyers. Under the theory of respondent it is insisted that the probate court has no authority to cancel his unfulfilled offer to buy, notwithstanding the fact that he failed miserably to comply with the terms of his own offer to buy. It is to be remembered that Moslares had already been granted undue leniency by the probate court to meet his obligations to pay. But, the saga of Moslares' bouncing checks remains. Three reports of Administrator Trinidad had been submitted as annexes to the petition for certiorari. The report, dated June 30, 1980 showed that two of Moslares' checks were dishonored, having been drawn against insufficient funds. The August 18, 1980 report stated that: "All the checks submitted to the probate court for payment bounced." And in the report dated April 15, 1981, it was further averred by the administrator that "x x x believing that the bouncing checks were not intended to defraud the Estate," "he refrained from prosecuting Honor P. Moslares criminally under the law on dishonored checks."

It is also to be emphasized that it was not respondent's contract of sale with decedent that had been invalidated but rather the administrator's authority to sell to respondent. Although the court recognized the Deed of Sale with Mortgage, still the same was not being enforced as such but was used only as basis for the terms and conditions of respondent's agreement with the court. To enforce the same is truly beyond the scope of the probate court's jurisdiction. The court's actions constitute a refusal to pass upon the validity of the contract to sell.

Further, the probate court has ample discretion in determining whether conditions of a particular sale would be

beneficial to the estate and this is generally respected by the appellate courts (Court of First Instance v. Court of Appeals, 106 SCRA 114, Fernandez, et al. v. Montejo, 109 Phil. 701). To attack the nullity of the order of the probate court to sell property of the deceased, it must be shown that the contract of sale is null and void (Rafols v. Barba, 119 SCRA 147). The infirmity of the subject deed of sale is premised on the alleged nullity of the order of the court authorizing the sale. The validity of said order may not be attacked in a collateral proceeding, the supposed ground for declaring it void for lack of jurisdiction not being apparent on the face thereof (Rafols v. Barba, supra). Nevertheless, respondent could have prevented the sale of the Drepin lands. Section 3, Rule 89 of the Revised Rules of Court, to wit:

"Section 3. Persons interested may prevent such sale, etc., by giving bond.— No such authority to sell, mortgage, or otherwise encumber real or personal estate shall be granted if any person interested in the estate gives a bond, in a sum to be fixed by the court, conditioned to pay the debts, expenses of administration, and legacies within such time as the court directs: and such bond shall be for the security of the creditors, as well as of the executor or administrator, and may be prosecuted for the benefit of either."

provides respondent with the Segal means by which he could have forestalled the sale of the Drepin lands to the petitioner. (Court of First Instance v. Court of Appeals, supra) If third persons oppose an application for leave to sell the property of the decedent claiming title to the property, the title claim, can not be adjudicated by the probate court but it can hold approval of the sale in abeyance until the question of ownership shall have been decided in a proper action (Baquial v. Amman, 92 Phil. 501). But this, he failed to do. Ergo, we find no reason to disturb the questioned orders of the probate court.

Moreover, the respondent is not without remedy if truly his claim of ownership is proper and meritorious. Since the probate court has no jurisdiction over the question of title and ownership of the properties, the respondents may bring a separate action if they wish to question the petitioner's titles and ownership (Vda. de Rodriguez v. Court of Appeals, 91 SCRA 540). Though an order of the probate court approving the sale of the decedent's property is final, the respondent may file a complaint in the proper court for the rescission of the sale (Pizarro v. Court of Appeals, 99 SCRA 72) Likewise, the initial question of respondent regarding the propriety of including the properties in question in the inventory of the probate court as he claims ownership thereof, may therein be finally and conclusively settled (Vda. de Rodriguez v. Court of Appeals, supra; Lachenal v. Salas, 71 SCRA 202). The respondent has ample protection of his rights for the province of the probate court remains merely the settlement of the estate and may not be extended beyond (Pizarro v. Court of Appeals, supra).

WHEREFORE, in view of the foregoing, the petition for certiorari is hereby GRANTED. The decision of the Court of Appeals (now Intermediate Appellate Court), dated June 30, 1982 is REVERSED and SET ASIDE. The permanent restraining order issued against the trial court is hereby DISSOLVED. The impugned orders of the probate court dated April 15, 1980, July 2, 1980, September 30, 1980 and October 20, 1980 are accordingly REINSTATED.

SO ORDERED.

Teehankee, Acting C.J., Melencio-Herrera, Plana, Relova, and de la Fuente, JJ., concur.

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