

ANGELINA J. MALABANAN, PETITIONER, VS. GAW CHING AND THE INTERMEDIATE APPELLATE COURT, RESPONDENTS.*G.R. Nos. 74938-39. January 17, 1990*

Ponente: FELICIANO, J.

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The two (2) Petitions before us — G.R. Nos. 74938-39 and 75524-25 — assail the decision of the then Intermediate Appellate Court in A.C. - G.R. CV Nos. 05136-05137 dated 31 January 1986, which reversed the decision of the Regional Trial Court in two (2) consolidated cases, namely: Civil Case No. R-81-416 and Civil Case No. R-82-6798. Upon motion of petitioners, we ordered the consolidation of the two (2) Petitions.

Respondent Gaw Ching instituted two (2) cases against petitioners Angelina Malabanan, Leonida Senolos, et al. in connection with the sale of a piece of land located in Binondo, Manila. The first case, Civil Case No. R-81-416, sought to annul such sale and to enjoin the demolition of a building standing on that piece of land, and also prayed for the award of damages. The second case, Civil Case No. R-82-6798, demanded damages from petitioner Senolos for bringing about the demolition of the building.

The following facts found by the trial court, and adopted and incorporated by the appellate court, are undisputed:

"Evidence for plaintiff showed that Gaw Ching has been leasing the house and lot located [in] 697-699 Asuncion Street, Binondo, Manila from Mr. Jabit since 1951. Plaintiff conducted his business (Victoria Blacksmith Shop) on the ground floor and lived on the second floor. When Mr. Jabit died, his daughter, defendant Malabanan, continued to lease the premises to plaintiff but at an increased rental of P1,000.00 per month. Before the increase, Gaw Ching paid P700.00 per month, as evidenced by receipts of rentals. There was no written contract of lease between plaintiff and Mr. Jabit as to its duration but the rentals were evidently, paid monthly. On April 27, 1980, Angelina Malabanan told him that she was selling the house and lot for P5,000.00 per square meter. Plaintiff told her however, that the price is prohibitive. On May 13, 1980, defendant Malabanan wrote plaintiff, reiterating that she was selling the house and lot at P5,000.00 per square meter and that if he is not agreeable, she will sell it to another person. After receiving the letter, plaintiff turned over the letter to his counsel, Atty. Sugay. Gaw Ching claims that he is not in a position to buy the property at P5,000.00 per square meter because it was expensive. Subsequently, Gaw Ching tried to pay the rent for June, 1980, but Malabanan refused to accept it. Plaintiff's counsel advised him to deposit the rentals in a bank which he did, after which, his counsel wrote Malabanan informing her about the deposit (Exb. B). On October 2, 1980, plaintiff received another letter from defendant Malabanan which he gave to his counsel who told him that said defendant is offering the house and lot at P5,000.00 per square meter and that if he is not agreeable, she will sell the premises to another person at P4,000.00 per square meter. Plaintiff testified that he was willing to buy the subject property at P4,000.00 but hastened to add that it was still expensive and did not ask his counsel to write Malabanan about it. So, also, it was the opinion of his counsel that it was not necessary to reply because the context of the letter was invariably a threat. On November 3, 1980, plaintiff received another letter from Defendant Malabanan, informing him that the premises in question had already been sold to defendant Leonida Senolos. This time, Atty. Sugay sent a reply dated November 24, 1980, requesting that the pertinent documents of the sale be sent to them, but according to plaintiff, they were not furnished a copy of

said sale. Consequently, plaintiff received a letter from Atty. Techico dated December 5, 1980 demanding that he vacate the premises and to pay the arrearages in rentals from October to December, as they were more importantly, going to repair and convert the dwelling into a warehouse, Atty. Sugay sent a reply dated February 17, 1981 (Exh. C) requesting Atty. Techico to furnish them with the Deed of Sale and TCT because he doubted the veracity of the sale. It took a long time before Atty. Sugay's letter was answered and he was never furnished a copy of the Deed of Sale and Transfer Certificate of Title. After exerting all efforts, plaintiff finally was able to procure a copy of the Deed of Sale and TCT No. 14789 (Exh. A) which reflected that the date of entry of the Deed of Sale was December 9, 1980, whereas the Deed of Sale was dated August 23, 1979 (Exh. I). Plaintiff then told Atty. Sugay to file a civil case against defendants. On October 7, 1981, Atty. Techico sent a reply to Atty. Sugay's letter of February 17, 1981 (Exh. K). Plaintiff presented the receipt of rentals he paid (Exhs. L to L-6). He deposited the monthly rentals which Malabanan refused to accept, with the Pacific Banking Corporation (Exh. M). At a later period, plaintiff had to move out of the premises when it was demolished by the defendant. Gaw Ching, however, admitted that he was not yet a Filipino Citizen at the time the offer to sell was made, i.e., on April 27, 1980, May 13, 1980 and October 2, 1980 and that he became a Filipino citizen only on October 7, 1980, when he was issued a certificate of naturalization (Exh. 1-Malabanan). He did not, however, inform Malabanan on the matter of his newly acquired citizenship. Likewise, Gaw Ching admitted that he did not make any counter-offer in writing so as to price the property.

As to plaintiff's claim for damages, he testified, that this was motivated by the incident on November 16, 1981, while he was on the ground floor, when there was a sudden brownout, and around 50 people came thereat, climbed the roof with the use of a ladder, cut the electric wires and started banging the roof. Plaintiff, his wife, and mother-in-law were in the house and about 7 laborers were in the shop when the incident happened. Plaintiff then immediately called up Atty. Sugay and told him that Leonida Senolos called some people to demolish the house. Plaintiff further testified that x x x he was not notified of the demolition. x x x. On that same day, Atty. Sugay arrived at about 10:00 a.m. and told plaintiff that he was going to the City Hall. When Atty. Sugay came back he was with Roldan (Building Inspector), who ordered that the demolition be stopped, but Leonida Senolos refused to heed the order. Atty. Sugay and Roldan went back to the City Hall. x x x. At about 3:00 p.m., Atty. Sugay came back with another person from the City Hall who presented a letter to Leonida Senolos to which defendant affixed her signature. The formal letter was dated November 6, 1981 addressed to Leonida Senolos by Romulo del Rosario, City Engineer and Building Officer. Upon receipt of the letter, the policeman remained but the demolition continued. Plaintiff, together with Atty. Sugay, and the City Hall official, went to the police precinct where the City Hall official talked with somebody in the precinct. It was only when they returned to the premises at about 4:00 p.m. with a policeman that the demolition was stopped. x x x.

On cross examination, plaintiff admitted that he received a letter from the Office of the City Engineer dated July 29, 1981 (Exh. 1-Senolos) condemning the building. He also admitted that he was furnished a copy of the Demolition Order (Exh. 2-Senolos) to which he affixed his signature.

After receiving Exhibits '1' and '2,' Gaw Ching still refused to vacate the premises because he was told that the building was still in good condition and he continued paying the monthly rental.

On redirect, plaintiff declared that after receiving the notice of the City Engineer, he filed a complaint with the Ministry of Public Works and Highways by reason of which, the MPWH issued an order that the demolition to be stopped. (Exh. 3).

xxx xxx xxx

Another witness presented by plaintiff was Felix Tienzo, Actg. Chief of Enforcement Division, [Ministry of Public Works and Highways] x x x.

Mr. Felix Tienzo believes that the City of Manila was correct in ordering the demolition of the building but he intended to hold in abeyance the demolition of the building only in obedience to the order of the MPWH.

However, both Mr. Tienzo and Mr. Roldan claim that they do not usually receive an order from the MPWH stopping the demolitions.

xxx xxx xxx."[1]

On 10 August 1984, the trial court rendered a decision which upheld the validity of the contract of sale between petitioner Malabanan and petitioner Senolos. The trial court declared that petitioner Malabanan had not violated Sections 4 and 6 of Presidential Decree No. 1517 in relation to Presidential Proclamation No. 1893 and Letter of Instruction (LOI) No. 935 which provide for a preemptive right on the part of a lessee over leased property. The trial court stressed that respondent Gaw Ching had been given ample opportunity to exercise any right of first refusal he might have had, but he had chosen not to do so.

Respondent Gaw Ching went on appeal to the then Intermediate Appellate Court. By a vote of three (3) to two (2), the appellate court voted to reverse the decision of the trial court and hence to nullify the contract of sale between petitioners Malabanan and Senolos inter se.[2] The majority also held that the transaction between petitioners was vitiated by fraud, deceit and bad faith allegedly causing damage to respondent Gaw Ching. Petitioners were held liable jointly and severally to respondent for moral, exemplary and actual damages in the amount of P350,000.00 and for attorney's fees in the amount of P20,000.00 ---

"for the indulgence in inequitable conduct to plaintiff-appellant's [respondent Gaw Ching] prejudice and for the unwarranted demolition of the building by defendants-appellees [petitioners herein] after the issuance of the cease-and-desist order on October 30, 1981."

While holding that the land in question was located outside the Urban Land Reform Zone declared by Proclamations Nos. 1767 and 1967, the majority ruled that circumstances surrounding the sale of the land to petitioner Senolos had rendered that sale null and void. The majority were here referring to the finding that when petitioner Malabanan offered in October 1980 to sell the land involved to respondent Gaw Ching at P5,000.00 per square meter, that land had already been sold to petitioner Senolos as early as August 1979 for only P1,176.48 per square meter. On the matter of the demolition of the building, the majority held that the same was unwarranted and that even if petitioner Senolos had a demolition order.

"that order of demolition was valid only if there are no more tenants residing in the building. If there are tenants and they refused to vacate, the order of demolition is unavailing. It could not rise higher than the Civil Code and the Rules of Court."[3]

In the instant Petitions for Certiorari, petitioners assail both the annulment of the deed of sale and the grant of P350,000.00 worth of "moral, exemplary and actual damages" to respondent Gaw Ching.

We believe that the Petitions must be granted.

I

The firmly settled rule is that strangers to a contract cannot sue either or both of the contracting parties to annul and set aside that contract. Article 1397 of the Civil Code embodies that rule in the following formulation.

"Article 1397. The action for the annulment of contracts may be instituted by all who are thereby obliged principally or subsidiarily. However, persons who are capable cannot allege the incapacity of those with whom they contracted; nor can those who exerted intimidation, violence, or undue influence, or employed fraud, or caused mistake base their action upon these flaws of the contract." (Italics supplied)

Article 1397 itself follows from Article 1311 of the Civil Code which establishes the fundamental rule that:

"Article 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the

rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

xxx xxx xxx."

(Italics supplied)

As long ago as 1912, this Court in *Ybañez v. Hongkong and Shanghai Bank*,^[4] pointed out that it is the existence of an interest in a particular contract that is the basis of one's right to sue for nullification of that contract and that essential interest in a given contract is, in general, possessed only by one who is a party to the contract. In *Ybañez*, Mr. Justice Torres wrote:

"From these legal provisions it is deduced that it is the interest had in a given contract, that is the determining reason of the right which lies in favor of the party obligated principally or subsidiarily to enable him to bring an action for the nullity of the contract in which he intervened, and, therefore, he who has no right in a contract is not entitled to prosecute an action for nullity, for, according to the precedents established by the courts, the person who is not a party to a contract, nor has any cause of action or representation from those who intervened therein, is manifestly without right of action and personality such as to enable him to assail the validity of the contract. (Decisions of the Supreme Court of Spain, of April 18, 1901, and November 23, 1903, pronounced in cases requiring an application of the preinserted article 1302 of the Civil Code)."^[5]

Mr. Justice Torres went on to indicate a possible qualification to the above general principle, that is, a situation where a non-party to a contract could be allowed to bring an action for declaring that contract null:

"He who is not the party obligated principally or subsidiarily in a contract may perhaps be entitled to exercise an action for nullity, if he is prejudiced in his rights with respect to one of the contracting parties; but, in order that such be the case, it is indispensable to show the detriment which positively would result to him from the contract in which he had no intervention."

xxx xxx xxx."^[6]

(Italics supplied)

There is an important and clear, albeit implicit, limitation upon the right of a person who is in fact injured by the very operation of a contract between two (2) third parties to sue to nullify that contract: that contract may be nullified only to the extent that such nullification is absolutely necessary to protect the plaintiff's lawful rights. It may be expected that in most instances, an injunction restraining the carrying out of acts in fact incurious to the plaintiff's rights would be sufficient and that there should be no need to set aside the contract itself which is a *res inter alios acta* and which may have any number of other provisions, implementation of which might have no impact at all upon the plaintiff's rights and interests.

What is important for present purposes is that respondent *Gaw Ching*, admittedly a stranger to the contract of sale of a piece of land between petitioners *Malabanan* and *Senolos* *inter se*, does not fall within the possible exception recognized in *Ibañez v. Hongkong & Shanghai Bank*. In the first place, *Gaw Ching* had no legal right of preemption in respect of the house and lot here involved. The majority opinion of the appellate court itself explicitly found that the subject piece of land is located outside the Urban Land Reform Zones declared pursuant to P.D. No. 1517.^[7] Even assuming, for purposes of argument merely, that the land here involved was in fact embraced in a declared Urban Land Reform Zone (which it was not), *Gaw Ching* would still not have been entitled to a right of preemption in respect of the land sold. In *Santos v. Court of Appeals*,^[8] this Court held that the preemptive or redemptive right of a lessee under P.D. No. 1517 exists only in respect of the urban land under lease on which the tenant or lessee had built his home and in which he had resided for ten (10) years or more and that, in consequence, where both land and building belong to the lessor, that preemptive or redemptive right was

simply not available under the law.

Finally, we are unable to understand the respondent appellate court's view that respondent Gaw Ching having been a long-time tenant of the property in question, had acquired a preferred right to purchase that property. This holding is simply bereft of any legal basis. We know of no law, outside the Urban Land Reform Zone or P.D. No. 1517, that grants such a right to a lessee no matter how long the period of the lease has been. If such right existed at all, it could only have been created by contract;^[9] respondent Gaw Ching does not, however, pretend that there had been such a contractual stipulation between him and petitioners.

In the second place, assuming once again, for present purposes only, that respondent Gaw Ching did have a preemptive right to purchase the land from petitioner Malabanan (which he did not), it must be stressed that petitioner Malabanan did thrice offer the land to Gaw Ching but the latter had consistently refused to buy. Since Gaw Ching did not in fact accept the offer to sell and did not buy the land, he suffered no prejudice, and could not have suffered any prejudice, by the sale of the same piece of land to petitioner Senolos. No fraud was thus worked upon him notwithstanding his insinuation that the sale of the land to petitioner Senolos had preceded the offer of the same piece of land to himself.

In the third place, and contrary to the holding of the majority appellate court opinion, the fact that Gaw Ching had been lessee of the house and lot was simply not enough basis for a right to bring an action to set aside the contract of sale between the petitioners inter se. A lessee, it is elementary, cannot attack the title of his lessor over the subject matter of the lease.^[10] Moreover, the lease contract between petitioner Malabanan and respondent Gaw Ching must in any case be held to have lapsed when the leased house was condemned and the order of demolition issued.

II

We consider next petitioners' claim that the appellate court erred grievously in imposing upon them an award of P350,000.00 for "moral, exemplary and actual damages" not only because petitioners had "indulged in inequitable conduct to [respondent Gaw Ching's] prejudice" but also "for the unwarranted demolition of the building by [petitioners] after the issuance of the cease and desist order on October 30, 1981."

Here again, we are compelled to hold that the appellate court lapsed into reversible error. The relevant conclusions of fact which the trial court had arrived at are set out in its decision in the following manner:

"On the legality of the demolition necessarily raising the question: (3) whether or not plaintiff was notified within a reasonable period of time of the demolition, and a fortiori whether this admittedly exercise of police power, the validity of which was already being determined by the Court could be stopped by a preternatural [sic] administrative order from the office of the Assistant Secretary for Operation of the MPWH, brought about by an appeal by a person other than the owner of the building, which office had not done anything to immediately forestall the imminent injury to person and damage to property. (Please see P.D. 1096, Rule XII, Sec. 5 thereof).

In the first place, the claim of the plaintiff that the demolition of the house rented by him came as a surprise, is fiercely contradicted by his own evidence. A copy of the demolition order is attached to the complaint as Annex 'L', now marked as Exhibit '9' for the defendant Senolos, unmistakably show that plaintiff received a copy of the order of demolition from the City Engineer's Office, approved by the Mayor, on October 5, 1981.

Verily, the present action before the Court is procedurally and substantially correct in abating a nuisance. This exercise of police power is not only being cordoned sanitized [sic] by the doctrinal pronouncements, the provisions of Art. 482 in relation to Art. 436 of the Civil Code, Sections 275 and 276 of the compilation of ordinances of the City of Manila but also by Rule VII, par. 5 of the implementing Rules and Regulations of the

National Building Code of the Philippines (P.D. 1096). Indeed, the latter law does not authorize any person other than the owner, to appeal the order of the City Engineer to the Ministry of Public Works and Highways. This is the position espoused by the City Legal Officer of Manila in defense of the City Engineer and the Mayor, in opposition to the move of the plaintiff to dismiss the order of demolition as improvidently issued.

The demolition was invariably a valid exercise of police power which may be ordered done by the authorities or caused to be done at the expense of the owner. The exigency is made more demanding especially, the demolition, when it was ordered stopped thru an order inadvertently issued, as it was not as a consequence of an appeal by the owner of the building, but by the lessee, was during its last stages.

It therefore stands to reason that the order of demolition which is unquestionably legal could not be stopped by an inoperative administrative order, assuming that the appeal to the MPWH could validly be filed by the lessee, as it was filed only during the finishing touches of a demolition. Decidedly, the move exude physiological features of delay. This is compounded by the failure of the MPWH to act assertively, which in a sense, could be interpreted as an admission that the issuance of the order was inopportune.

On the claim for damages predicated on (4) whether or not there was an indiscriminate, careless handling and pilferage of the properties of the plaintiff, causing their loss or destruction:

It is readily explained that between October 5, 1981 to November 6, 1981, plaintiff could have avoided the misplaced fear, but assuming without having necessarily to concede that he was not able to guard against an actual demolition on November 6, 1981, rendering him so helpless, and prompting him to just sit on the sidewalk and watch the demolition team wreck the building indiscriminately, thereby causing destruction and loss of his personal properties, such as: (a) office equipment; (b) assorted tools; (c) machines; (d) finished products; and (e) steel box containing jewelries. The claim is almost too good to be true, considering first, that these items were so huge that they could not be spirited away without being noticed and, secondly; it has been established that there was a policeman detailed to the demolition scene from the start of the said demolition, to whom he could have easily reported the matter, caused the apprehension of the culprits, and prevent the loss of his personal properties, thirdly, he could have grabbed the steel box containing jewelries if this were the last thing he would have done. Waiting idly by the sidewalk and watching your properties pilfered by persons whom you could have successfully identified at the time and referring the matter to the policeman on duty, which plaintiff did not do, is certainly against the natural order of things and the legal presumption that a person takes great care of his concern. Plaintiff strongly relies on the alleged illegal and indiscriminate destruction of his properties as basis for his claim for damages. Truth to tell, there was no suddenness or indiscriminate destruction of plaintiff's property nor pilferage thereof, as alleged, in the demolition of the house owned by the defendant. The order was lawful as it was an abatement of a nuisance and the dismantling of the house owned by defendant Senolos could only be conceived as having been carried out in a manner consistent only with utmost care. Conversely, its indiscriminate destruction is contrary to the interest of the defendant Senolos as it is a truism that every bit of useful material should be preserved either for use of, or for profit of the owner. It would be sheer folly to assume that the demolition team would have taken a selective method of care for the still serviceable materials of the house and a destructive stance for the properties of the occupants. Understandably, the unorthodox position taken by plaintiff would not only lose his residence but also his place of business.

By and large, the basis for the claim for damages do not physically nor imaginatively exist, for it has defied reason and common sense."^[11]

We note that the majority opinion chose to disregard the above conclusions of fact of the trial court and instead quoted extensively from respondent Gaw Ching's brief and presumably relied upon such brief. The majority opinion, however, failed to indicate why it preferred Gaw Ching's version of the facts set out in his brief over the trial court's findings. No indication was offered where the trial court had fallen into error or what evidence had been misapprehended by it. In this situation, the Court considers that it must go back to the trial court's findings of

fact in line with the time-honored rule that such findings are entitled to great respect from appellate courts since the trial court judge had the opportunity to examine the evidence directly and to listen to the witnesses and observe their demeanor while testifying.

It appears therefore that firstly, the order of condemnation or demolition had been issued by the proper authorities which order was valid and subsisting at the time the demolition was actually carried out. Secondly, under Section 5.3 of Rule VII entitled "Abandonment/Demolition of Buildings" of the Rules and Regulations Implementing the National Building Code of the Philippines (P.D. No. 1096, as amended dated 19 February 1977), an order for demolition may be appealed, by the owner of the building or installation to be demolished, to the Secretary of Public Works and Highways. In the case at bar, it was respondent Gaw Ching, a lessee merely of the building condemned that sought to block the implementation of the demolition order. It does not even appear from the record whether or not Gaw Ching actually filed a formal appeal to the Secretary, even though he was not entitled to do so. What does appear from the record^[12] is that Gaw Ching's counsel, Atty. Sugay, was able to obtain a letter dated 6 November 1981 from the Office of the City Engineer and Building Official, enclosing a xerox copy of a letter from the Assistant Secretary for Operations, Ministry of Public Works and Highways, "directing this office to hold the demolition in abeyance." This letter, which did not purport to set aside the order of demolition, was served upon the demolition team on site while the demolition was in progress. After some hesitation, the demolition was in fact stopped.^[13]

It is worth noting that officials from the Office of the City Engineer, City of Manila, testified that it was not "normal practice to receive an order from the Ministry of Public Works and Highways stopping demolitions."

In the fourth place, respondent Gaw Ching, in the action that he had filed before the Regional Trial Court of Manila to set aside the contract of sale between petitioners Malabanan and Senolos, had sought preliminary injunction precisely to restrain the implementation of the order for demolition. That application for preliminary injunction was denied by the trial court and the order for demolition was implemented only after such denial. Thus, there was no subsisting court order restraining the demolition at the time such demolition was carried out.

In the fifth place, Gaw Ching had ample notices of the demolition order and had adequate time to remove his belongings from the premises if he was minded to obey the order for demolition. He chose not to obey that order. If he did suffer any losses — the trial court did not believe his claims that he did — he had only himself to blame.

ACCORDINGLY, The Court Resolved to GRANT the Petition and to REVERSE and SET ASIDE the Decision of the then Intermediate Appellate Court dated 31 January 1986 and its Resolution dated 5 June 1986, in A.C.-G.R. CV Nos. 05136-05137. The Decision of the trial court dated 10 August 1984 in consolidated Civil Cases Nos. R-81-416 and R-82-6798, is hereby REINSTATED. No pronouncement as to costs.

Fernan, C.J., (Chairman), Gutierrez, Jr., and Cortes, JJ., concur.
Bidin, J., no part. He participated in the appealed decision.

[1] Decision, Regional Trial Court; Rollo, pp. 42-48; G.R. Nos. 75524-25.

[2] Sison, P.V., J., ponente; Pascual and Britanico, JJ., concurring; Bidin and Veloso, JJ., dissented in a Separate Opinion.

[3] Decision, Intermediate Appellate Court; Rollo, p. 54; G.R. Nos. 74938-39.

[4] 22 Phil. 572 (1912).

[5] 22 Phil. at 584, underscoring supplied.

[6] 22 Phil. at 584-585. See also *Teves v. People's Homesite and Housing Corporation*, 23 SCRA 1141 (1968).

[7] *Sison P.V., J.*, said: "The said parcel of land is outside the declared Urban Land Reform Zone as per Proclamations Nos. 1767 and 1967" Rollo, p. 47. The reference to Proclamation No. 1767 is erroneous. Upon the other hand, Proclamation No. 1967, dated 14 May 1980 (78 O.G. 6809 [1982]) declared certain sites in Metropolitan Manila as "areas for priority development in Urban Land Reform Zones" and limited the application of provisions of P.D. Nos. 1517, 1640 and 1642 and of LOI No. 935 to said zones. The subject land is not embraced in any of these zones.

[8] 128 SCRA 428 (1984).

[9] *Lopez v. De la Cruz, et al.*, 94 Phil. 517 (1954).

[10] Article 1436, Civil Code; e.g.: *Lizada v. Omanan*, 59 Phil. 547 (1934); and *Pascual v. Angeles*, 4 Phil. 604 (1905).

[11] Rollo, pp. 80-82, G.R. Nos. 75524-25.

[12] Rollo, p. 44; pp. 47-48; G.R. Nos. 75524-25.

[13] Rollo, p. 45; G.R. Nos. 75524-25.

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