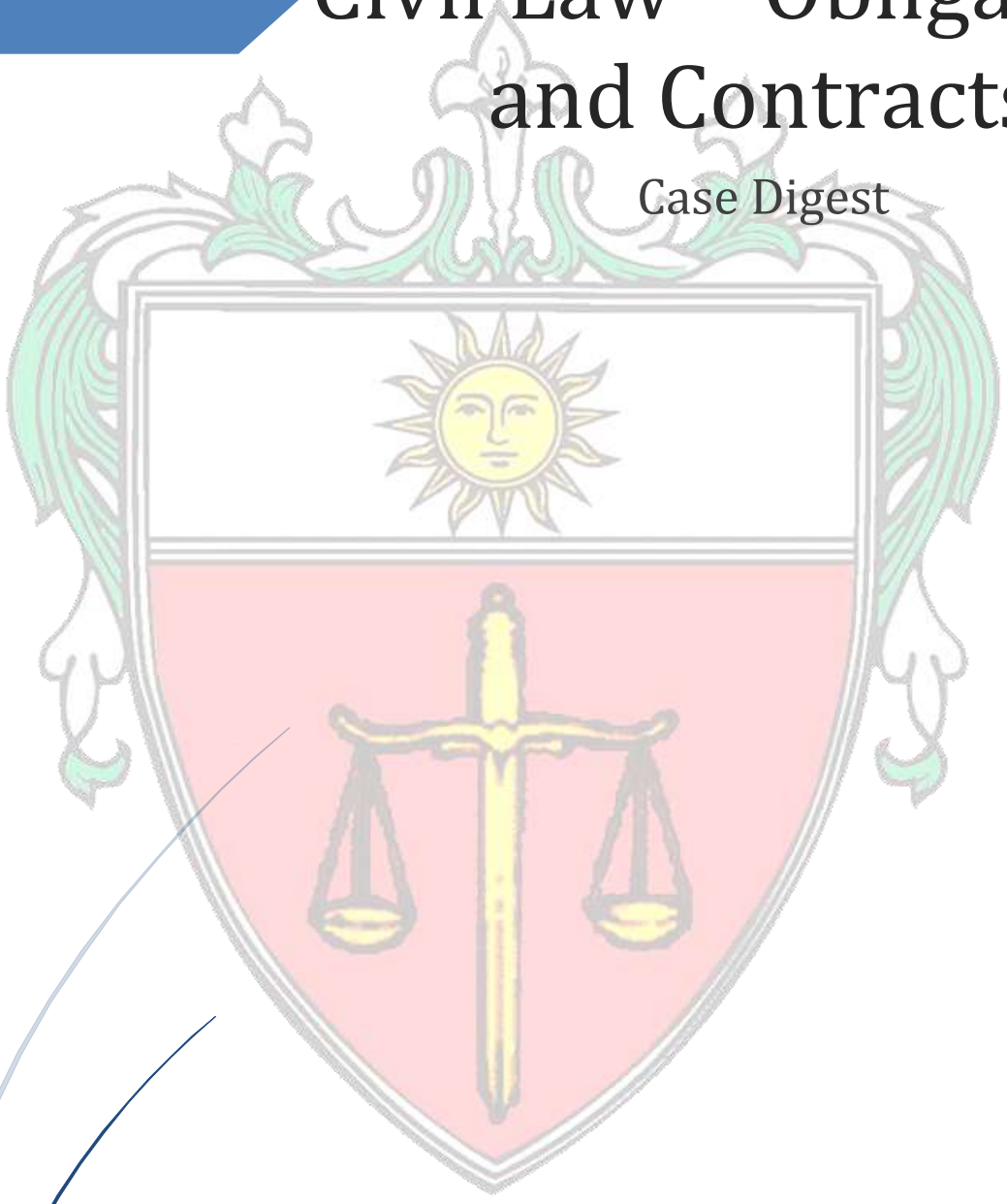
Civil Law – Obligations and Contracts

Case Digest



UNIVERSITY OF SANTO TOMAS
FACULTY OF CIVIL LAW

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MAKATI STOCK EXCHANGE v. CAMPOS
G.R. No. 138814, THIRD DIVISION, April 16, 2009, CHICO-NAZARIO, J.

A complaint states a cause of action where it contains three essential elements of a cause of action, namely: (1) the legal right of the plaintiff, (2) the correlative obligation of the defendant, and (3) the act or omission of the defendant in violation of said legal right. If these elements are absent, the complaint becomes vulnerable to dismissal on the ground of failure to state a cause of action.

The Petition in SEC Case No. 02-94-4678, although asserts a right of Campos and a correlative obligation of MKSE, failed to lay down the source of the obligation of MKSE or the basis of Campos's right. The petition merely quoted the MKSE Resolution, but nothing in the said Petition from which the Court can deduce that Camposwas granted by law, contract, or any other legal source, the right to subscribe to the IPOs of corporations listed in the stock market at their offering prices.

FACTS:

Campos instituted SEC Case No. 02-94-4678 with the Securities, Investigation and Clearing Department (SICD) of the Securities and Exchange Commission, a petition against Makati Stock Exchange, Inc., and its directors. The petition sought, among others, the nullification of a Resolution dated June 3, 1993 of the MKSE Board of Directors, which allegedly deprived him of his right to participate equally in the allocation of Initial Public Offerings (IPO) of corporations registered with MKSE. The SICD issued a TRO and a Writ of Preliminary Injunction to enjoin MKSE from enforcing the Resolution. MKSE appealed the case to the SEC *en banc* for its failure to state a cause of action. SEC-EB reversed all of SICD's orders. Campos then filed a Petition for Certiorari before the CA and it annulled SEC-EB's decisions.

ISSUE:

Whether or not SEC Case No. 02-94-4678 sufficiently states a cause of action. (NO)

RULING:

The petition filed by Campos should be dismissed for failure to state a cause of action. A cause of action is the act or omission by which a party violates a right of another. A complaint states a cause of action where it contains three essential elements of a cause of action, namely: (1) the legal right of the plaintiff, (2) the correlative obligation of the defendant, and (3) the act or omission of the defendant in violation of said legal right. If these elements are absent, the complaint becomes vulnerable to dismissal on the ground of failure to state a cause of action.

Petition in SEC Case No. 02-94-4678 asserts a **right** in favor of respondent: Campos's alleged right to subscribe to the IPOs of corporations listed in the stock market at their offering prices; and stipulates the correlative **obligation** of petitioners to respect respondent's rightby continuing to allow respondent to subscribe to the IPOs of corporations listed in the stock market at their offering prices.

Although the Petition in SEC Case No. 02-94-4678 does allege a right and an obligation, it utterly failed to lay down the source or basis of respondent's right and/or petitioners' obligation. Campos merely quoted in his Petition the MKSE Board Resolutiongranting him the position of Chairman Emeritus of MKSE for life. However, there is nothing in the said Petition from which the

Court can deduce that Campos was granted by law, contract, or any other legal source, the right to subscribe to the IPOs of corporations listed in the stock market at their offering prices.

MACASAET v. COA
G.R. No. 83748, EN BANC, May 12, 1989, MELENCIO-HERRERA, J.

Obligations arising from contract have the force of law between the contracting parties and should be complied with in good faith (Article 1159, Civil Code). The terminologies in the contract being clear, leaving no doubt as to the intention of the contracting parties, their literal meaning control (Article 1370, Civil Code). The price escalation cost must be deemed included in the final actual project cost and petitioner held entitled to the payment of its additional professional fees.

FACTS:

Phil. Tourism Authority (PTA) entered into a contract for the project design development of the proposed Zamboanga Golf and Country Club initially with Macasaet, and later on with Flavio Macasaet& Assoc., Inc. Under the contract, PTS obliged itself to pay Macasaet a professional fee of 7% of the actual construction cost. PTA then made periodic payments as stipulated in the contract. Upon completion of the project, PTA paid Macasaet what it perceived to be the balance in the professional fees.

PTA paid Supra Construction Co., main contractor, an additional sum of P3,148,198.26 representing the escalation cost of the contract price. Upon learning of the price escalation, petitioner requested payment of P219,302.47 additional professional fee representing 7% of P3,148,198.26. PTA denied payment on the ground that the price escalation referred to increased cost of construction materials and did not entail additional work on the part of petitioner as to entitle it to additional compensation. Macasaet brought the case to the COA, but the latter denied such and stated that to allow Macasaet to receive the subject claim absence the additional services would amount to overpayment on the part of the Government.

ISSUE:

Whether or not Macasaet is entitled to additional professional fees based on the final actual project cost. (YES)

RULING:

Under Article IV of said Contract, petitioner was to be entitled to seven (7%) of the "*actual construction cost.*" Under paragraphs 1, 2, 3, and 4, Article V, periodic payments were to be based on a "*reasonable estimated construction cost*." Ultimately, under paragraph 5, Article V, the balance of the professional fee was to be computed on the basis of "the *final actual project cost*."The real intendment of the parties, as shown by paragraph 5, Article V, of their Contract was to base the ultimate balance of petitioner's professional fees not on "actual construction cost" alone but on the *final actual project cost.*

The terminologies in the contract being clear, leaving no doubt as to the intention of the contracting parties, their literal meaning control (Article 1370, Civil Code). The price escalation cost must be deemed included in the final actual project cost and petitioner held entitled to the payment of its

additional professional fees. Obligations arising from contract have the force of law between the contracting parties and should be complied with in good faith (Article 1159, Civil Code).

PHIL. EXPORT v. V.P. EUSEBIO CONST. INC., ET AL.
G.R. No. 140047, FIRST DIVISION, July 13, 2004, DAVIDE, JR., C.J.

Article 1169, last paragraph, of the Civil Code, provides: "In reciprocal obligations, neither party incurs in delay if the other party does not comply or is not ready to comply in a proper manner with what is incumbent upon him."

The delay or the non-completion of the Project was caused by factors not imputable to the respondent contractor. It was rather due mainly to the persistent violations by SOB of the terms and conditions of the contract. Where one of the parties to a contract does not perform in a proper manner the prestation which he is bound to perform under the contract, he is not entitled to demand the performance of the other party. A party does not incur in delay if the other party fails to perform the obligation incumbent upon him. SOB cannot yet demand complete performance from VPECI because it has not yet itself performed its obligation in a proper manner. The VPECI cannot yet be said to have incurred in delay.

FACTS:

State Organization of Buildings (SOB) of Iraq awarded the construction of the Institute of physical Therapy-Medical Rehabilitation Center in Iraq to Ayjal Trading and Contracting Company. 3-Plex International, Inc., a local contractor engaged in the construction business, entered into a joint venture agreement with Ayjal where the former would undertook the execution of the entire project, while Ayjal would be entitled to 4% commission. Since 3-Plex was not accredited by the Phil. Overseas Construction Board (POCB), it assigned and transferred all its rights to V.P. Eusebio Const. Inc (VPECI). The SOB then required the submission of a performance bond. To comply with this requirement, 3-Plex and VPECI applied for a guarantee with Philguarantee, a government financial institution empowered to issue guarantee for qualified Filipino contractors.

VPECI and the Ayjal Trading and Contracting Co. (joint venture) entered into a service contract with the SOB for the construction of the Institute of Physical Therapy Medical Center Phase 2 to be completed within a period of 18 months. Under the contract, the joint venture would supply manpower and materials, and SOB would refund to the former 25% of the project cost in Iraqi Dinar and the 75% in US dollars at the exchange rate of 1 Dinar to 3.37777 US Dollars.

The construction delayed in commencing due to some setbacks and difficulties. Upon foreseeing the impossibility of meeting the deadline, the joint venture contractor worked for the renewal of the Performance Bond up to December 1986. As of March 1986, the status of the Project was 51% accomplished, meaning the structures were already finished. The remaining 47% consisted in electro-mechanical works and the 2%, sanitary works, which both required importation of equipment and materials.

On October 1986, Al Ahli Bank of Kuwait Sent a telex to Philguaranteedemanding full payment of its performance counter-guarantee. Upon receipt, VPECI requested Iraqi government to recll the telex for being in contravention of its mutual agreement that the penalty will be held in abeyance until completion of the project. It also wrote a protest to the SOB since the Iraqi government lacks foreign exchange to pay VPECI and the non-compliance with the 75% billings in US dollars.

Philguarantee received another telex from Al Ahli stating that it already paid to Rafidian Bank. The Central Bank then authorized the remittance to Al Ahli Bank representing the full payment of the performance counter-guarantee for VPECI's project. Philguarantee then sent letters to VPECI demanding the full payment of the amount it paid pursuant to Al Ahli pursuant to their joint and solidary obligation under the deed of undertaking and surety bond. VPECI failed to pay prompting Philguarantee to file the case.

The RTC ruled against Philguarantee and held that it had no valid cause of action against VPECI. Also, the joint venture contractor incurred no delay in the execution of the Project. Considering the Project owner's violations of the contract which rendered impossible the joint venture contractor's performance of its undertaking, no valid call on the guarantee could be made. Furthermore, the trial court held that no valid notice was first made by the Project owner SOB to the joint venture contractor before the call on the guarantee. The CA affirmed the RTC's decision

ISSUE:

Whether or not VPECI defaulted in its obligation that would justify resort to guaranty. (NO)

RULING:

Article 1169, last paragraph, of the Civil Code, provides: "In reciprocal obligations, neither party incurs in delay if the other party does not comply or is not ready to comply in a proper manner with what is incumbent upon him." Default or *mora* on the part of the debtor is the delay in the fulfillment of the prestation by reason of a cause imputable to the former. It is the non-fulfillment of an obligation with respect to time.

It is undisputed that only 51.7% of the total work had been accomplished. The 48.3% unfinished portion consisted in the purchase and installation of electro-mechanical equipment and materials, which were available from foreign suppliers, thus requiring US Dollars for their importation.

As found by lower courts, the delay or the non-completion of the Project was caused by factors not imputable to the respondent contractor. It was rather due mainly to the persistent violations by SOB of the terms and conditions of the contract, particularly its failure to pay 75% of the accomplished work *in US Dollars*. Indeed, where one of the parties to a contract does not perform in a proper manner the prestation which he is bound to perform under the contract, he is not entitled to demand the performance of the other party. A party does not incur in delay if the other party fails to perform the obligation incumbent upon him. SOB cannot yet demand complete performance from VPECI because it has not yet itself performed its obligation in a proper manner, particularly the payment of the 75% of the cost of the Project in US Dollars. The VPECI cannot yet be said to have incurred in delay. Even assuming that there was delay and that the delay was attributable to VPECI, still the effects of that delay ceased upon the renunciation by the creditor, SOB, which could be implied when the latter granted several extensions of time to the former. Besides, no demand has yet been made by SOB against the respondent contractor. Demand is generally necessary even if a period has been fixed in the obligation. And default generally begins from the moment the creditor demands judicially or extra-judicially the performance of the obligation. Without such demand, the effects of default will not arise.

RIVERA v. SPS. CHUA
G.R. No. 184458, EN BANC, May 12, 1989, MELENCIO-HERRERA, J.

There are four instances when demand is not necessary to constitute the debtor in default: (1) when there is an express stipulation to that effect; (2) where the law so provides; (3) when the period is the controlling motive or the principal inducement for the creation of the obligation; and (4) where demand would be useless.

The date of default under the Promissory Note is 1 January 1996, the day following 31 December 1995, the due date of the obligation. On that date, Rivera became liable for the stipulated interest which the Promissory Note says is equivalent to 5% a month.

FACTS:

The parties were friends of long standing having known each other since 1973. In February 1995, Rivera obtained a loan from the Spouses Chua, in the tune of P120,000.00 embodied in a promissory note with stipulations that failure on the part of Rivera to pay the amount on December 31, 1995, he agrees to pay 5% interest monthly from the date of default (January 1, 1996). Three years have passed from the maturity date, when Rivera issued two (2) checks in favor of Chua as payment for the loan, which, upon presentment, were dishonored for the reason *"account closed."* In their collection suit, Spouses Chua alleged that they have repeatedly demanded payment from Rivera to no avail. In his Answer, Rivera claimed forgery of the subject Promissory Note and denied his indebtedness thereunder. From the MeTC to the CA, the monetary claim of Spouses Chua was sustained.

ISSUE:

Whether or not a demand from Sps. Chua is needed to make Rivera liable. (NO)

RULING:

Demand is no longer necessary because the law is explicit that when the debtor fails to pay upon maturity date, when the obligation is due and demandable, he therefore incurs delay. *Art. 1169* of the NCC states, "Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation. However, the demand by the creditor shall not be necessary in order that delay may exist: 1) When the obligation or the law expressly so declare xxx."

There are four instances when demand is not necessary to constitute the debtor in default: (1) when there is an express stipulation to that effect; (2) where the law so provides; (3) when the period is the controlling motive or the principal inducement for the creation of the obligation; and (4) where demand would be useless. In the first two paragraphs, it is not sufficient that the law or obligation fixes a date for performance; it must further state expressly that after the period lapses, default will commence.

The clause in the Promissory Note containing the stipulation of interest which expressly requires Rivera to pay 5% monthly interest from the date of default until the entire obligation is fully paid. It is evident that the maturity of the obligation on a date certain, December 31, 1995, will give rise to the obligation to pay interest. The date of default under the Promissory Note is 1 January 1996, the

day following 31 December 1995, the due date of the obligation. On that date, Rivera became liable for the stipulated interest which the Promissory Note says is equivalent to 5% a month. In sum, until 31 December 1995, demand was not necessary before Rivera could be held liable for the principal amount of P120,000.00. Thereafter, on 1 January 1996, upon default, Rivera became liable to pay the Spouses Chua damages, in the form of stipulated interest.

JACINTO TANGUILIG doing business under the name and style J.M.T. ENGINEERING AND GENERAL MERCHANDISING, petitioner, vs. COURT OF APPEALS and VICENTE HERCE JR., respondents.

G.R. No. 117190, FIRST DIVISION, January 2, 1997, BELLOSILLO, J.

I. *It is a cardinal rule in the interpretation of contracts that the intention of the parties shall be accorded primordial consideration and, in case of doubt, their contemporaneous and subsequent acts shall be principally considered. In this case, an examination of such contemporaneous and subsequent acts of respondent as well as the attendant circumstances did not persuade the SC to uphold him.*

II. *In order for a party to claim exemption from liability by reason of fortuitous event under Art. 1174 of the Civil Code, four (4) requisites must concur: (a) the cause of the breach of the obligation must be independent of the will of the debtor; (b) the event must be either unforeseeable or unavoidable; (c) the event must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and, (d) the debtor must be free from any participation in or aggravation of the injury to the creditor.*

In this case, petitioner failed to show that the collapse of the windmill was due solely to a fortuitous event. Interestingly, the evidence does not disclose that there was actually a typhoon on the day the windmill collapsed.

FACTS:

Petitioner, doing business under the name and styleJ.M.T. Engineering and General Merchandising, proposed to respondent to construct a windmill system for him (respondent). They agreed on the construction of the windmill for a consideration of P60,000.00 with a one-year guaranty from the date of completion and acceptance by respondent of the project. Pursuant to the agreement, respondent paid petitioner a down payment of P30,000.00 and an installment payment of P15,000.00, leaving a balance of P15,000.00.

On 14 March 1988, due to the refusal of respondent to pay the balance, petitioner filed a complaint. In his Answer, respondent denied the claim saying that he had already paid this amount to the San Pedro General Merchandising Inc. (SPGMI) which constructed the deep well to which the windmill system was to be connected. According to respondent, since the deep well formed part of the system, the payment he tendered to SPGMI should be credited to his account by petitioner. Moreover, assuming that he owed petitioner a balanceof P15,000.00, this should be offset by the defects in the windmill system which caused the structure to collapse after a strong wind hit their place.

Petitioner denied that the construction of a deep well was included in the agreement to build the windmill system, for the contract price of P60,000.00 was solely for the windmill assembly and its installation. He also disowned any obligation to repair the system and insisted that he delivered it

in good condition to respondent who accepted the same without protest. Besides, its collapse was attributable to a typhoon, a force majeure, which relieved him of any liability.

In finding for plaintiff, the trial court held that the construction of the deep well was not part ofthe windmill project and that "there is no clear and convincing proof that the windmill system fell down due to the defect of the construction. "

The Court of Appeals reversed the trial court. It ruled that the construction of the deep well was included in the agreement of the parties because the term "deep well" was mentioned in both proposals. It also rejected petitioner's claim of force majeure and ordered the latter to reconstruct the windmill in accordance with the stipulated one-year guaranty.

ISSUES:

1) Whether the agreement to construct the windmill system included the installation of a deep well. (NO)

2) Whether petitioner is under obligation to reconstruct the windmill after it collapsed. (YES)

RULING:

1) The installation of a deep well was not included in the proposals of petitioner to construct a windmill system for respondent. Nowhere in either proposal is the installation of a deep well mentioned, even remotely. Neither is there an itemization or description of the materials to be used in constructing the deep well. There is absolutely no mention in the two (2) documents that a deep well pump is a component of the proposed windmill system. The contract prices fixed in both proposals cover only the features specifically described therein and no other. While the words "deep well" and "deep well pump" are mentioned in both, these do not indicate that a deep well is part of the windmill system. They merely describe the type of deep well pump for which the proposed windmill would be suitable. Since the terms of the instruments are clear and leave no doubt as to their meaning, they should not be disturbed.

   Moreover, it is a cardinal rule in the interpretation of contracts that the intention of the parties shall be accorded primordial consideration and, in case of doubt, their contemporaneous and subsequent acts shall be principally considered. An examination of such contemporaneous and subsequent acts of respondent as well as the attendant circumstances did not persuade the SC to uphold him.

2) In order for a party to claim exemption from liability by reason of fortuitous event under Art. 1174 ofthe Civil Code the event should be the sole and proximate cause of the loss or destruction of the object of the contract. In Nakpil vs. CA, four (4) requisites must concur: (a) the cause ofthe breach of the obligation must be independent of the will of the debtor; (b) the event must be either unforeseeable or unavoidable; (c) the event must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and, (d) the debtor must be free from any participation in or aggravation of the injury to the creditor.

   Petitioner failed to show that the collapse of the windmill was due solely to a fortuitous event. Interestingly, the evidence does not disclose that there was actually a typhoon on the day the windmill collapsed. Petitioner merely stated that there was a "strong wind." But a strong wind

in this case cannot be fortuitous — unforeseeable nor unavoidable. On the contrary, a strong wind should be present in places where windmills are constructed, otherwise the windmills will not turn.

The appellate court correctly observed that "given the newly-constructed windmill system, the same would not have collapsed had there been no inherent defect in it which could only be attributable to the appellee."

NATIONAL POWER CORPORATION, petitioner, vs. HONORABLE COURT OF APPEALS and ENGINEERING CONSTRUCTION, INC., respondents.
G.R. No. L-47379, THIRD DIVISION, May 16, 1988, GUTIERREZ, JR., J.

If upon the happening of a fortuitous event or an act of God, there concurs a corresponding fraud, negligence, delay or violation or contravention in any manner of the tenor of the obligation as provided for in Article 1170 of the Civil Code, which results in loss or damage, the obligor cannot escape liability.

In this case, NPC was undoubtedly negligent because it opened the spillway gates of the Angat Dam only at the height of typhoon "Welming" when it knew very well that it was safer to have opened the same gradually and earlier, as it was also undeniable that NPC knew of the coming typhoon at least four days before it actually struck. Thus, NPC cannot escape liability.

FACTS:

On August 4, 1964, Engineering Construction, Inc. (ECI)executed a contract with the National Waterworks and Sewerage Authority (NAWASA), whereby ECI undertook to furnish all tools, labor, equipment, and materials (not furnished by Owner), and to construct the proposed 2nd Ipo-Bicti Tunnel, Intake and Outlet Structures, and Appurtenant Structures, and Appurtenant Features, at Norzagaray, Bulacan, and to complete said works within eight hundred (800) calendar days from the date the Contractor receives the formal notice to proceed.

The project involved two (2) major phases: the first phase comprising the tunnel work covering a distance of seven (7) kilometers, passing through the mountain, from the Ipo river, a part of Norzagaray, Bulacan, where the Ipo Dam of the National Power Corporation (NPC) is located, to Bicti; the other phase consisting of the outworks at both ends of the tunnel.

By September 1967, the ECI already had completed the first major phase of the work, namely, the tunnel excavation work. As soon as the ECI had finished the tunnel excavation work at the Bicti site, all the equipment no longer needed there were transferred to the Ipo site where some projects were yet to be completed.

The record shows that on November 4, 1967, typhoon 'Welming' hit Central Luzon, passing through NPC'sAngat Hydro-electric Project and Dam at Ipo, Norzagaray, Bulacan. Strong winds struck the project area, and heavy rains intermittently fell. Due to the heavy downpour, the water in the reservoir of the Angat Dam was rising perilously at the rate of sixty (60) centimeters per hour. To prevent an overflow of water from the dam, NPC caused the opening of the spillway gates.

The appellate court sustained the findings of the trial court that the evidence preponderantly established the fact that due to the negligent manner with which the spillway gates of the Angat

Dam were opened, an extraordinary large volume of water rushed out of the gates, and hit the installations and construction works of ECI at the Ipo site with terrific impact, as a result of which the latter's stockpile of materials and supplies, camp facilities and permanent structures and accessories were either washed away, lost or destroyed.

ISSUE:

Whether or not the destruction and loss of the ECI's equipment and facilities were due to force majeure. (NO)

RULING:

It is clear from the appellate court's decision that based on its findings of fact and that of the trial court's, NPC was undoubtedly negligent because it opened the spillway gates of the Angat Dam only at the height of typhoon "Welming" when it knew very well that it was safer to have opened the same gradually and earlier, as it was also undeniable that NPC knew of the coming typhoon at least four days before it actually struck. And even though the typhoon was an act of God or what we may call force majeure, NPC cannot escape liability because its negligence was the proximate cause of the loss and damage. As the SC have ruled in Juan F. Nakpil& Sons v. Court of Appeals:

> "Thus, if upon the happening of a fortuitous event or an act of God, there concurs a corresponding fraud, negligence, delay or violation or contravention in any manner of the tenor of the obligation as provided for in Article 1170 of the Civil Code, which results in loss or damage, the obligor cannot escape liability.
>
> "The principle embodied in the act of God doctrine strictly requires that the act must be one occasioned exclusively by the violence of nature and human agencies are to be excluded from creating or entering into the cause of the mischief. When the effect, the cause of which is to be considered, is found to be in part the result of the participation of man, whether it be from active intervention or neglect, or failure to act, the whole occurrence is thereby humanized, as it was, and removed from the rules applicable to the acts of God.
>
> "Thus, it has been held that when the negligence of a person concurs with an act of God in producing a loss, such person is not exempt from liability by showing that the immediate cause of the damage was the act of God. To be exempt from liability for loss because of an act of God, he must be free from any previous negligence or misconduct by which the loss or damage may have been occasioned."

PHILIPPINE COMMUNICATIONS SATELLITE CORPORATION, petitioner,vs.GLOBE TELECOM, INC. (formerly and Globe Mckay Cable and Radio Corporation), respondents.
G.R. No. 147324, SECOND DIVISION, May 25, 2004, TINGA, J.

In order that Globe may be exempt from non-compliance with its obligation to pay rentals under Section 8, the concurrence of the following elements must be established: (1) the event must be independent of the human will; (2) the occurrence must render it impossible for the debtor to fulfill the obligation in a normal manner; and (3) the obligor must be free of participation in, or aggravation of, the injury to the creditor.

The abovementioned requisites are present in the instant case. Philcomsat and Globe had no control over the non-renewal of the term of the RP-US Military Bases Agreement when the same expired in 1991. Neither did the parties have control over the subsequent withdrawal of the US military forces and personnel from Cubi Point in December 1992.

FACTS:

For several years prior to 1991, Globe Mckay Cable and Radio Corporation, now Globe Telecom, Inc. (Globe),had been engaged in the coordination of the provision of various communication facilities for the military bases of the United States of America (US) in Clark Air Base, Angeles, Pampanga and Subic Naval Base in Cubi Point, Zambales. The said communication facilities were installed and configured for the exclusive use of the US Defense Communications Agency (USDCA), and for security reasons, were operated only by its personnel or those of American companies contracted by it to operate said facilities. The USDCA contracted with said American companies, and the latter, in turn, contracted with Globe for the use of the communication facilities. Globe, on the other hand, contracted with local service providers such as the Philippine Communications Satellite Corporation (Philcomsat) for the provision of the communication facilities.

On 07 May 1991, Philcomsat and Globe entered into an Agreement whereby Philcomsat obligated itself to establish, operate and provide an IBS Standard B earth station (earth station) within Cubi Point for the exclusive use of the USDCA.The term of the contract was for five (5) years. In turn, Globe promised to pay Philcomsat monthly rentals for each leased circuit involved.

At the time of the execution of the Agreement, both parties knew that the Military Bases Agreement between the Republic of the Philippines and the US (RP-US Military Bases Agreement), which was the basis for the occupancy of the Clark Air Base and Subic Naval Base in Cubi Point, was to expire in 1991.

On 16 September 1991, the Senate passed and adopted Senate Resolution No. 141, expressing its decision not to concur in the ratification of the Treaty of Friendship, Cooperation and Security and its Supplementary Agreements that was supposed to extend the term of the use by the US of Subic Naval Base, among others.

In a letter dated 06 August 1992, Globe notified Philcomsat of its intention to discontinue the use of the earth station in view of the withdrawal of US military personnel from Subic Naval Base after the termination of the RP-US Military Bases Agreement.

Philcomsat sent a reply letter to Globe, stating that "we expect [Globe] to know its commitment to pay the stipulated rentals for the remaining terms of the Agreement even after [Globe] shall have discontinue[d] the use of the earth station after November 08, 1992."

After the US military forces left Subic Naval Base, Philcomsat sent Globe a letter demanding payment of its outstanding obligations. However, Globe refused to heed Philcomsat's demand.

Philcomsat insists that since the expiration of the RP-US Military Bases Agreement, the non-ratification of the Treaty of Friendship, Cooperation and Security and the withdrawal of US military forces and personnel from Cubi Point were not unforeseeable, but were possibilities known to it and Globe at the time they entered into the Agreement, such events cannot exempt Globe from performing its obligation of paying rentals for the entire five-year term thereof.

ISSUE:

Whether the termination of the RP-US Military Bases Agreement, the non-ratification of the Treaty of Friendship, Cooperation and Security, and the consequent withdrawal of US military forces and personnel from Cubi Point constitute force majeure which would exempt Globe from complying with its obligation to pay rentals under its Agreement with Philcomsat. (YES)

RULING:

Article 1174, which exempts an obligor from liability on account of fortuitous events or force majeure,refers not only to events that are unforeseeable, but also to those which are foreseeable, but inevitable.

Philcomsat and Globe agreed in Section 8 of the Agreement that the following events shall be deemed events constituting force majeure:

1. Any law, order, regulation, direction or request of the Philippine Government;
2. Strikes or other labor difficulties;
3. Insurrection;
4. Riots;
5. National emergencies;
6. War;
7. Acts of public enemies;
8. Fire, floods, typhoons or other catastrophies or acts of God;
9. Other circumstances beyond the control of the parties.

Clearly, the foregoing are either unforeseeable, or foreseeable but beyond the control of the parties. There is nothing in the enumeration that runs contrary to, or expands, the concept of a fortuitous event under Article 1174.

Article 1159 of the Civil Code also provides that "obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith."Courts cannot stipulate for the parties nor amend their agreement where the same does not contravene law, morals, good customs, public order or public policy, for to do so would be to alter the real intent of the parties, and would run contrary to the function of the courts to give force and effect thereto.

Not being contrary to law, morals, good customs, public order, or public policy, Section 8 of the Agreement which Philcomsat and Globe freely agreed upon has the force of law between them.

In order that Globe may be exempt from non-compliance with its obligation to pay rentals under Section 8, the concurrence of the following elements must be established: (1) the event must be independent of the human will; (2) the occurrence must render it impossible for the debtor to fulfill the obligation in a normal manner; and (3) the obligor must be free of participation in, or aggravation of, the injury to the creditor.

The SC agreed with the CA and the trial court that the abovementioned requisites are present in the instant case. Philcomsat and Globe had no control over the non-renewal of the term of the RP-US Military Bases Agreement when the same expired in 1991, because the prerogative to ratify the

treaty extending the life thereof belonged to the Senate. Neither did the parties have control over the subsequent withdrawal of the US military forces and personnel from Cubi Point in December 1992.

The CA was thus correct in ruling that the happening of such fortuitous events rendered Globe exempt from payment of rentals for the remainder of the term of the Agreement.

Moreover, it would be unjust to require Globe to continue paying rentals even though Philcomsat cannot be compelled to perform its corresponding obligation under the Agreement.

SECURITY BANK & TRUST COMPANY and ROSITO C.
MANHIT, petitioners, vs. COURT OFAPPEALS and YSMAEL C. FERRER, respondents.
G.R. No. 117009, FIRST DIVISION, October 11, 1995, PADILLA, J.

Under Article 1182 of the Civil Code, a conditional obligation shall be void if its fulfillment depends upon the sole will of the debtor. In the present case, the mutual agreement, the absence of which petitioner bank relies upon to support its non-liability for the increased construction cost, is in effect a condition dependent on petitioner bank's sole will, since private respondent would naturally and logically give consent to such an agreement which would allow him recovery of the increased cost.

FACTS:

Private respondent Ysmael C. Ferrer was contracted by herein petitioners Security Bank and Trust Company (SBTC) and Rosito C. Manhit to construct the building of SBTC in Davao City for the price ofP1,760,000.00. Respondent Ferrer was able to complete the construction of the building within the contracted period but he was compelled by a drastic increase in the cost ofconstruction materials to incur expenses of about P300,000.00 on top of the original cost. The additional expenses were made known to petitioner SBTC thru its Vice-President Fely Sebastian and Supervising Architect Rudy de la Rama. Respondent Ferrer made timely demands for payment ofthe increased cost. Said demands were supported by receipts, invoices, payrolls and other documents proving the additional expenses.

In March 1981, SBTC thru Assistant Vice-President Susan Guanio and a representative of an architectural firm consulted by SBTC, verified Ferrer's claims for additional cost. A recommendation was then made to settle Ferrer's claim but only for P200,000.00. SBTC, instead of paying the recommended additional amount, denied ever authorizing payment of any amount beyond the original contract price.SBTC likewise denied any liability for the additional cost based on Article IX of the building contract. SBTC argued that under Article IX of the building contract, any increase in the price of labor and/or materials resulting in an increase in construction cost above the stipulated contract price will not automatically make petitioners liable to pay for such increased cost, as any payment above the stipulated contract price has been made subject to the condition that the "appropriate adjustment" will be made "upon mutual agreement of both parties." It is contended that since there was no mutual agreement between the parties, petitioners' obligation to pay amounts above the original contract price never materialized.

Ysmael C. Ferrer then filed a complaint for breach of contract with damages. The trial court ruled for Ferrer. The Court of Appeals affirmed the trial court decision.

ISSUE:

Whether or not petitioners are liable to pay for the increased construction cost. (YES)

RULING:

It is not denied that private respondent incurred additional expenses in constructing petitioner bank's building due to a drastic and unexpected increase in construction cost. In fact, petitioner bank admitted liability for increased cost when a recommendation was made to settle private respondent's claim for P200,000.00. Private respondent's claim for the increased amount was adequately proven during the trial by receipts, invoices and other supporting documents.

Under Article 1182 of the Civil Code, a conditional obligation shall be void if its fulfillment depends upon the sole will of the debtor. In the present case, the mutual agreement, the absence of which petitioner bank relies upon to support its non-liability for the increased construction cost, is in effect a condition dependent on petitioner bank's sole will, since private respondent would naturally and logically give consent to such an agreement which would allow him recovery of the increased cost.

Further, it cannot be denied that petitioner bank derived benefits when private respondent completed the construction even at an increased cost.

Hence, to allow petitioner bank to acquire the constructed building at a price far below its actual construction cost would undoubtedly constitute unjust enrichment for the bank to the prejudice of private respondent. Such unjust enrichment is not allowed by law.

MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY, *v.* **BENJAMIN TUDTUD**

G.R. 17412. November 14,2008, SECOND DIVISION, J.CARPIO-MORALES

> *Art. 1190: "When the conditions have for their purpose the extinguishment of an obligation to give, the parties, upon the fulfillment of said conditions, shall return to each other what they have received.*
>
> *In case of the loss, deterioration, or improvement of the thing, the provisions which, with respect to the debtor, are laid down in the preceding article shall be applied to the party who is bound to return."*

In accordance with earlier-quoted Article 1190 vis-à-vis Article 1189(5) which provides that "if the thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor" -- respondents, as creditors, do not have to settle as part of the process off restitution the appreciation in value of Lot 988 which is a natural consequence of nature and time.

FACTS:

The predecessors-in-interest of respondents Benjamin Tudtud et al. were the owners of a parcel of land in Cebu City acquired by Petitioner National Airports Corporation (NAC), a public corporation of the Republic of the Philippines, for the expansion of Cebu Lahug Airport.

However, no structures related to the operation of the Cebu Lahug Airport were constructed on the subject lot. The subject lot was later transferred to the Air Transport Office(ATO), and still later to petitioner Mactan Cebu Internation Airport Authority (MCIAA) in 1990.

When the Mactan International Airport at LapuLapu City was opened for commercial flights, the Cebu Lahug Airport was closed and abandoned and a significant area thereof was purchased by the Cebu Property Ventures, Inc. for development as a commercial complex.

With respondents' demand to repurchase the lot unheeded, they filed a complaint for reconveyance and damages with application for Preliminary Injunction/Restraining Order against MCIAA anchored on the assurance they claimed was made by the NAC to the original owners and/or their succesors-in-interest would be entitled to repurchase the lot when and in the event that it was no longer used for airport purposes.

ISSUE:

1. W/N respondents have the right for reconvenyance of the subject lot.

RULING:

YES. The rights and duties between the MCIAA and respondents are governed by Art.1190 of the Civil Code:

> "When the conditions have for their purpose the extinguishment of an obligation to give, the parties, upon the fulfillment of said conditions, shall return to each other what they have received.
>
> In case of the loss, deterioration, or improvement of the thing, the provisions which, with respect to the debtor, are laid down in the preceding article shall be applied to the party who is bound to return."

While the MCIAA is obliged to reconvey Lot No. 988 to respondents, respondents must return to the MCIAA what they received as just compensation for the expropriation of Lot No. 988, plus legal interest to be computed from default which in this case runs from the time the MCIAA complies with its obligation to the respondents.

Respondents must likewise pay the MCIAA the necessary expenses it may have incurred in sustaining Lot No. 988 and the monetary value of its services in managing it to the extent that respondents were benefited thereby.

Following Article 1187 of the Civil Code, the MCIAA may keep whatever income or fruits it may have obtained from the subject lot and respondents need not account for the interests that the amounts they received as just compensation may have earned in the meantime.

In accordance with earlier-quoted Article 1190 vis-à-vis Article 1189(5) which provides that "if the thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor" Respondents, as creditors, do not have to settle as part of the process off restitution the appreciation in value of Lot 988 which is a natural consequence of nature and time.

THE WELLEX GROUP; INC. VS. U-LAND AIRLINES, CO, LTD
G.R. No. 167519, January 14, 2015, SECOND DIVISION, J. LEONEN

The failure of one of the parties to comply with its reciprocal prestation allows the wronged party to seek the remedy of Art.1191. The injured party is entitled to rescission or resolution under Art. 1191, and even the payment of damages. It is a principal action precisely because it is a violation of the original reciprocal prestation.

Contrary to petitioner Wellex's argument, this is not rescission under Article 1381 of the Civil Code. This case does not involve prejudicial transactions affecting guardians, absentees, or fraud of creditors.

Hence, respondent U-Land correctly sought the principal relief of rescission or resolution under Article 1191.

FACTS:

Wellex is a corporation established under Philippine law and it maintains airline operations in the Philippines. It owns shares of stock in several corporations including Air Philippines International Corporation(APIC), Philippine Estates Corporation (PEC), and Express Savings Bank(ESB). Wellex alleges that it owns all shares of stock of Air Philippines Corporation (APC). While U-Land Airlines Co. Ltd. (U-Land) "is a corporation duly organized and exisiting under the laws of Taiwan, registered to do business in the Philippines. It is engaged in the business of air transportation in Taiwan and in other Asian countries.

Wellex and U-land entered into a Memorandum of Agreement (MOA) by virtue of which as provided they both agreed to develop a long-term business relationship through the creation of joint interest in (1) airline operations and (2) property development projects in the Philippines. The MOA would be implemented through (1) the acquisition of shares by the U-Land from the Wellex, of the shares of stocks of APC and PEC ; (2) by another joint development agreement between U-Land and PEC; (3) Option for U-Land to acquire shares of ESB

Part of the agreement provides that within 40 days from the date of said agreement unless extended by mutual agreement, U-Land and WELLEX shall execute a Share Holder Purchase Agreement (SHPA) covering the acquisition by U-Land of the APIC and PEC shares.

Accordingly, Wellex and U-Land agreed that if they were unable to agree on the terms of the SPHA and the joint development agreement within 40 days from the signing, then the 1st MOA would cease to be effective. And if in case no agreements were executed, the parties would be released from their respective undertakings, except that Wellex would be required to refund within 3 days the $3 Million given as initial funding by U-Land for their development projects. If Wellex was unable to refund the $3 Million dollars to U-Land, then U-Land would have the right to recover on the 57,000,000 PEC shares that would be delivered to it

The 40-day period lapsed. Wellex and U-Land were not able to enter into any SHPA although drafts were exchanged between the twoDespite the absence of a SHPA, U-Land remitted to Wellex $7.5 Million Dollars which was acknowledged by Wellex.

According to Wellex, the parties agreed to enter into a security arrangement. If the sale of the shares of stock failed to push through, the partial payments or remittances U-Land made were to be secured by these shares of stock and parcels of land.50 This meant that U-Land could recover the amount it paid to Wellex by selling these shares of stock of 60,770,000 and 72,601,000 and land titles or using them to generate income. Despite these transactions, Wellex and U-Land still failed to enter into the SHPA and the Joint Development Agreement. So 10 months after the last formal communication between the two parties, U-Land demanded the refund for the amount it remitted. Due to failure of Wellex to heed the demand, U-Land filed a complaint for rescission of the First Memorandum of Agreement and damages against Wellex.

ISSUE:

W/N U-Land is praying for rescission or resolution under Art.1191, and not rescission under Article 1381.

RULING:

The Court ruled that rescission under 1191(also known as resolution), and not under 1381, is proper in this case.

For Article 1191 to be applicable, there must be reciprocal prestations as distinguished from mutual obligations between or among the parties. A prestation is the object of an obligation, and it is the conduct required by the parties to do or not to do, or to give. Parties may be mutually obligated to each other, but the prestations of these obligations are not necessarily reciprocal. The reciprocal prestations must necessarily emanate from the same cause that gave rise to the existence of the contract.

Reciprocity arises from identity of cause, and necessarily the two obligations are created at the same time. The failure of one of the parties to comply with its reciprocal prestation allows the wronged party to seek the remedy of Art.1191. The injured party is entitled to rescission or resolution under Art. 1191, and even the payment of damages. It is a principal action precisely because it is a violation of the original reciprocal prestation.

Article 1381 and 1383, on the other hand, pertain to rescission where creditors or even third persons not privy to the contract can file an action due to lesion or damage as a result of the contract. When a party seeks the relief of rescission as provided in Article 1381, there is no need for reciprocal prestations to exist between or among the parties. All that is required is that the contract should be among those enumerated in Article 1381 for the contract to be considered rescissible. Unlike Article 1191, rescission under Art. 1381 must be a subsidiary action because of Article 1383.

Contrary to petitioner Wellex's argument, this is not rescission under Article 1381 of the Civil Code. This case does not involve prejudicial transactions affecting guardians, absentees, or fraud of creditors. Article 1381(3) pertains in particular to a series of fraudulent actions on the part of the debtor who is in the process of transferring or alienating property that can be used to satisfy the obligation of the debtor to the creditor. There is no allegation of fraud for purposes of evading obligations to other creditors. The actions of the parties involving the terms of the First Memorandum of Agreement do not fall under any of the enumerated contracts that may be subject of rescission.

Moreover, the desire of both parties to enter into a share purchase agreement that ould allow both parties to expand their respective airline operations in the Philippines and other neighboring countries give raise to a reciprocal prestation,

Hence, respondent U-Land correctly sought the principal relief of rescission or resolution under Article 1191.

METROPOLITAN BANK AND TRUST COMPANY, *Petitioner,*
vs.* WILFRED N. CHIOK, *Respondent
G.R. NOS. 172652, 175302 and 175394, November 26, 2014, J. LEONARDO-DE CASTRO

The right of rescission under Article 1191 of the Civil Code can only be exercised in accordance with the principle of relativity of contracts under Article 1131 of the same code.

Under the civil law principle of relativity of contracts under Article 1131, contracts can only bind the parties who entered into it, and it cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof. Metrobank and Global Bank are not parties to the contract to buy foreign currency between Chiok and Nuguid. Therefore, they are not bound by such contract and cannot be prejudiced by the failure of Nuguid to comply with the terms thereof.

FACTS:

Respondent Wilfred N. Chiok had been engaged in dollar trading for several years. He usually buys dollars from Gonzalo B. Nuguid at the exchange rate prevailing on the date of the sale. Chiok pays Nuguid either in cash or manager's check, to be picked up by the latter or deposited in the latter's bank account. For this purpose, Chiok maintained accounts with petitioners Metropolitan Bank and Trust Company (Metrobank) and Global Business Bank, Inc. (Global Bank), the latter being then referred to as the Asian Banking Corporation (Asian Bank).

Chiok likewise entered into a Bills Purchase Line Agreement (BPLA) with Asian Bank. Under the BPLA, checks drawn in favor of, or negotiated to, Chiok may be purchased by Asian Bank. Upon such purchase, Chiok receives a discounted cash equivalent of the amount of the check earlier than the normal clearing period.

On July 5, 1995, Asian Bank "bills purchased" Security Bank & Trust Company (SBTC) Manager's Check in the amount of ₱25,500,000.00 issued in the name of Chiok, and credited the same amount to the latter's Savings Account.

On the same day, Asian Bank issued two (2) Manager's Check(MC) with the aggregate amount of Php 18.5 million upon Chiok's instruction which was debited from his account. Likewise upon Chiok's application, Metrobank issued one (1) Cashier's Check (CC)in the amount of Php 7.6 million in the name of Gonzalo Bernardo.

Chiok then deposited the three checks (2 Asian Bank MC and 1 Metrobank CC) in Niguid's account with Far East Bank and Trust Company(FEBTC)*, a predecessor-in-interest of* BPI

Nuguid was supposed to deliver US$1,022,288.50,4 the dollar equivalent of the three checks as agreed upon, in the afternoon of the same day.**Nuguid, however, failed to do so**, **prompting Chiok to request that payment on the three checks be stopped.**

On the following day, Chiok filed a Complaint for damages with application for restraining order and/or Preliminary injunction with the RTC of Quezon City against Niguid and the depository banks, Asian Bank and Metrobank. On the same day a TRO was issued directing Niguid to refrain from presenting the said checks for payment and the depositary banks from honoring the same.

Upon the filing by Chiok of the requisite bond, the Writ was subsequently issued to prevent during the pendency of the issue Asian Bank and Metro Bank from paying the aforementioned checks.

ISSUE:

Whether or not the purchaser of checks has the right to have the checks cancelled by filing an action for rescission of its contract with the payee under art.1191 **[NO]**

RULING:

When Nuguid failed to deliver the agreed amount to Chiok, the latter had a cause of action against Nuguid to ask for the rescission of their contract. On the other hand, Chiok did not have a cause of action against Metrobank and Global Bank that would allow him to rescind the contracts of sale of the manager's or cashier's checks, which would have resulted in the crediting of the amounts thereof back to his accounts.

Otherwise stated, the right of rescission under Article 1191 of the Civil Code can only be exercised in accordance with the principle of relativity of contracts under Article 1131 of the same code, which provides:

> Art. 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"

Under the civil law principle of relativity of contracts under Article 1131, contracts can only bind the parties who entered into it, and it cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof. Metrobank and Global Bank are not parties to the contract to buy foreign currency between Chiok and Nuguid. Therefore, they are not bound by such contract and cannot be prejudiced by the failure of Nuguid to comply with the terms thereof.

ROWENA R. SALONTE, vs. COMMISSION ON AUDIT
G.R. NO. 207348, August 19, 2014 ,EN BANC, J.VELASCO,JR.

Article 1193. Obligations for whose fulfillment a day certain has been fixed, shall be demandable only when that day comes. Obligations with a resolutory period take effect at once, but terminate upon arrival of the day certain. A day certain is understood to be that which must necessarily come, although it may not be known when.

A plain reading of the Contract of Reclamation reveals that the six (6)-year period provided for project completion, or, with like effect, termination of the contract was a mere estimate and cannot be considered a period or a "day certain" in the context of the aforequoted Art. 1193.

To be clear, par. 15 of the Contract of Reclamation states: "[T]he project is estimated to be completed in six (6) years." As such, the lapse of six (6) years from the perfection of the contract did not, by itself, make the obligation to finish the reclamation project demandable, such as to put the obligor in a state of actionable delay for its inability to finish.

FACTS:

The City of Mandaue and F.F. Cruz and Co., Inc. (F.F. Cruz) entered into a Contract of Reclamation4 in which F.F. Cruz, in consideration of a defined land agreed to undertake, at its own expense, the reclamation of 180 hectares, more or less, of foreshore and submerged lands in the city.

The project is estimated to be completed in six (6) years: (3 years for the dredge-filling and seawall construction and 3 years for the infrastructures completion).

On a best effort basis, the construction of roadways, drainage system and open spaces in the area designated as share of the City of Mandaue, shall be completed not later than December 31, 1991.
Subsequently, the parties in relation to the above project, executed a Memorandum of Agreement [MOA] whereby the City of Mandaue allowed F.F. Cruz to put up structures on a portion of a parcel of land owned by the city for the use of and to house F.F. Cruz personnel assigned at the project site, subject to the ff. terms:

> a. No rental to be paid by [F.F. Cruz] to the [City of Mandaue]
> b. That upon the completion of the Reclamation Project, all improvements introduced by F.F. Cruz]to the portion of the parcel of land owned by the city of mandaue existing upon the completion of the said Reclamation Project shall ipso facto belong to the [City of Mandaue in ownership as compensation for the use ofsaid parcel of land by [F.F. Cruz] without any rental whatsoever.

Pursuant to the MOA, F.F. Cruz proceeded to construct the contemplated housing units and other facilities which included a canteen and a septic tank. Later developments saw the City of Mandaue which required the widening of roads. However, the structures ad facilities built by F.F. Cruz subject of the MOA stood in the direct path of the road widening project. Thus, the DPWH and Samuel Darzaentered into an agreement with FF.Cruz whereby FF Cruz would demolish the improvements outside of the boundary of the road widening project and, in return, receive the total amount of PhP 1,084,836.42 in compensation.

However, the Special Audit Office disallowed hte payment of PhP 1,084,836.42 to F.F. Cruz and naming that company, Darza and Solante liable for the transaction.

ISSUE:

W/N THE CITY OF MANDAUE OWNED THE MATERIAL DURING THE PERIOD IT WAS DEMOLISHED

RULING:

[NO] F.F CRUZ IS STILL THE OWNER
On this point, the Civil Code provision on obligations with a period is relevant:

> ***Article 1193.*** *Obligations for whose fulfillment a day certain has been fixed, shall be demandable only when that day comes. Obligations with a resolutory period take effect at once, but terminate upon arrival of the day certain. A day certain is understood to be that which must necessarily come, although it may not be known when.*

A plain reading of the Contract of Reclamation reveals that the six (6)-year period provided for project completion, or, with like effect, termination of the contract was a mere estimate and cannot be considered a period or a "day certain" in the context of the aforequoted Art. 1193. To be clear, par. 15 of the Contract of Reclamation states: "[*T]he project is estimated to be completed in six (6) years*." As such, the lapse of six (6) years from the perfection of the contract did not, by itself, make the obligation to finish the reclamation project demandable, such as to put the obligor in a state of actionable delay for its inability to finish.

The Ombudsman espoused a similar view confirming that respondent Cruz was still the owner of the subject properties at the time these were demolished. That the Contract specifies that the six (6)-year period was no more than an estimate of the project completion. It was not a fixed period agreed upon. Being so, the mere lapse of six (6) years from the execution of the Contract, did not by itself deem the reclamation project completed, muchless bring about the fulfillment of the condition stipulated in the MOA (on the shift of ownership over the demolished properties).

Put a bit differently, the lapse of six (6) years from the perfection of the subject reclamation contract, could not have automatically vested Mandaue City, under the MOA, with ownership of the structures.

Even if we consider the allotted six (6) years within which F.F. Cruz was supposed to complete the reclamation project, the lapse thereof does not automatically mean that F.F. Cruz was in delay. **As** may be noted, the City of Mandaue never madea demand for the fulfillment of its obligation under the Contract of Reclamation.

The records are bereft of any document whence to deduce that the City of Mandaue exacted from F.F. Cruz the fulfillment of its obligation under the reclamation contract. And to be sure, not one of the exceptions to the requisite demand under Art. 1169 is established, let alone asserted.

As it were, the Mandaue-F.F.Cruz MOA states that the structures built by F .F. Cruz on the property of the city will belong to the latter only upon the completion of the project. Clearly, the completion of the project is a suspensive condition that has yet to be fulfilled.Until the condition arises, ownership of the structures properly pertains to F .F. Cruz.

SPOUSES RODOLFO BEROT AND LILIA BEROT, *petitioners*, -versus- FELIPE C. SIAPNO, *respondent.*

G.R. No. 188944, FIRST DIVISION, July 9, 2014, SERENO, *J.*

The law further provides that to consider the obligation as solidary in nature, it must expressly be stated as such, or the law or the nature Sof the obligation itself must require solidarity. Respondent was also not able to prove by a preponderance of evidence that petitioners' obligation to him was solidary. Hence, applicable to this case is the presumption under the law that the nature of the obligation herein can only be considered as joint. It is incumbent upon the party alleging otherwise to prove with a preponderance of evidence that petitioners' obligation under the loan contract is indeed solidary in character.

FACTS

On May 23, 2002, Macaria Berot and spouses Rodolfo A. Berot and Lilia P. Berot obtained a loan from Felipe C. Siapno in the sum of 250,000, payable within one year together with interest thereon at the rate of 2% per annum from that date untilfully paid. As security for the loan, Macaria, appellant and Lilia mortgaged to appellee a portion, consisting of 147 square meters, of that parcel of land with an area of 718 squar emeters. On June 23, 2003, Macaria died. Because of the mortgagors' default, appellee filed an action against them for foreclosure of mortgage and damages. The action was anchored on the averment that the mortgagors failed and refused to pay the sum of 250,000.00 plus the stipulated interest of 2% per month despite lapse of one year from May 23, 2002.

The spouses Berot alleged that the They alleged that the contested property was the inheritance of the former from his deceased father, Pedro; that on said property is their family home; that the mortgage is void as it was constituted over the family home without the consent of their children, who are the beneficiaries thereof; that their obligation is only joint; and that the lower court has no jurisdiction over Macaria for the reason that no summons was served on her as she was already dead.

The trial court, in its decision, allowed the foreclosure of the subject mortgage. The CA affirmed the decision of the lower court. The appellate court explained in its ruling that petitioners correctly argued that a decedent's estate is not a legal entity and thus, cannot sue or be sued. However, it noted that petitioners failed to object to the trial court's exercise of jurisdiction over the estate of Macaria when the latter was impleaded by respondents by amending the original complaint. It also found the action of respondent to be procedurally correct under Section 7, Rule 86 of the Rules of Court, when it decided to foreclose on the mortgage of petitioner and prove his deficiency as an ordinary claim. The CA did not make a categorical finding that the nature of the obligation was joint or solidary on the part of petitioners.

ISSUE

1. Whether or not the Court of Appeals erred in holding that the intestate estate of Macaria Berot as a proper party by waiver expressly or impliedly by voluntary appearance (NO)
2. Whether or not the Court of Appeals erred in not holding that the obligation is joint (NO)

RULING

The petition is denied for lack of merit.

A real party in interest is defined as "the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of a suit."In Vda. De Salazar v. Court of Appeals the Court ruled that a formal substitution of the heirs in place of the deceased is no longer necessary if the heirs continued to appear and participated in the proceedings of the case. Attending the case at bench, after all, are these particular circumstances which negate petitioner's belated and seemingly ostensible claim of violation of her rights to due process.

In the instant case, the heirs are the proper substitutes. Substitution gives them the opportunity to continue the defense for the deceased. Substitution is important because such opportunity to defend is a requirement to comply with due process. Such substitution consists of making the

proper changes in the caption of the case which may be called the formal aspect of it. Such substitution also includes the process of letting the substitutes know that they shall be bound by any judgment in the case and that they should therefore actively participate in the defense of the deceased.

Petitioners were correct when they argued that upon Macaria Berot's death on 23 June 2003, her legal personality ceased, and she could no longer be impleaded as respondent in the foreclosure suit. It is also true that her death opened to her heirs the succession of her estate, which in this case was an intestate succession. The CA, in fact, sustained petitioners' position that a deceased person's estate has no legal personality to be sued. Citing the Court's ruling in Ventura v. Militante, it correctly ruled that a decedent does not have the capacity to be sued and may not be made a defendant in a case.

When respondent filed the foreclosure case on 15 June 2004 and impleaded Macaria Berot as respondent, the latter had already passed away the previous year, on 23 June 2003.Respondent then amended his Complaint with leave of court and substituted the deceased Macaria by impleading her intestate estate and identified Rodolfo Berot as the estate's representative. Rodolfo Berot is the son of the deceased Macaria and as such, he is a compulsory heir of his mother. His substitution is mandated by Section 16, Rule 3 of the Revised Rules of Court.

It can be gleaned from the records of the case that petitioners did not object when the estate of Macaria was impleaded as respondent in the foreclosure case. Petitioner Rodolfo Berot did not object either when the original Complaint was amended and respondent impleaded him as the administrator of Macaria's estate, in addition to his being impleaded as an individual respondent in the case.

Also, their full participation in the proceedings of the case can only be construed as a waiver of any objection to or defense of the trial court's supposed lack of jurisdiction over the estate. Thus, the trial and appellate courts were correct in ruling that, indeed, petitioners impliedly waived any objection to the trial court's exercise of jurisdiction over their persons at the inception of the case. In Gonzales v. Balikatan Kilusang Bayan sa Panlalapi, Inc., the Court held that a party's appearance in a case is equivalent to a service of summons and that objections must be timely raised.

Re: The obligation is joint

Article 1207 of the Civil Code of the Philippines, the general rule is that when there is a concurrence of two or more debtors under a single obligation, the obligation is presumed to be joint:

Art. 1207. The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestations. There is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity.

The law further provides that to consider the obligation as solidary in nature, it must expressly be stated as such, or the law or the nature of the obligation itself must require solidarity.

Solidary obligation is one in which each of the debtors is liable for the entire obligation, and each of the creditors is entitled to demand the satisfaction of the whole obligation from any or all of the

debtors. They must be positively and clearly expressed. A liability is solidary "only when the obligation expressly so states, when the law so provides or when the nature of the obligation so requires."

Joint obligation is one in which each debtors is liable only for a proportionate part of the debt, and the creditor is entitled to demand only a proportionate part of the credit from each debtor.

The Real Estate Mortgage(Exh. "A") will show that all the defendants, for a single loan, bind themselves to cede, transfer, and convey by way of real estate mortgage all their rights, interest and participation in the subject parcel of land including the improvements thereon in favor of the plaintiff, and warrant the same to be free from liens and encumbrances, and that should they fail to perform their obligation the mortgage will be foreclosed.

Furthermore, when petitioner Rodolfo Berot testified in court, he admitted that he and his mother, Macaria had contracted the loan for their benefit. The testimony of petitioner Rodolfo only established that there was that existing loan to respondent, and that the subject property was mortgaged as security for the said obligation.

Respondent was also not able to prove by a preponderance of evidence that petitioners' obligation to him was solidary. Hence, applicable to this case is the presumption under the law that the nature of the obligation herein can only be considered as joint. It is incumbent upon the party alleging otherwise to prove with a preponderance of evidence that petitioners' obligation under the loan contract is indeed solidary in character.

The CA properly upheld respondent's course of action as an availment of the second remedy provided under Section 7, Rule 86 of the 1997 Revised Rules of Court. Under the said provision for claims against an estate, a mortgagee has the legal option to institute a foreclosure suit and to recover upon the security, which is the mortgaged property.

During her lifetime, Macaria was the registered owner of the mortgaged property, subject of the assailed foreclosure. Considering that she had validly mortgaged the property to secure a loan obligation, and given our ruling in this case that the obligation is joint, her intestate estate is liable to a third of the loan contracted during her lifetime. Thus, the foreclosure of the property may proceed, but would be answerable only to the extent of the liability of Macaria to respondent.

BANK OF THE PHILIPPINE ISLANDS, *petitioner*, -versus- TARCILA FERNANDEZ, *respondent.*
G.R. No. 173134, SECOND DIVISION, September 2, 2015, BRION, *J.*

Certificate of deposit is a written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor, or to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created. In other words, the accounts may only be terminated upon endorsement and presentation of the certificates of deposit. BPI thus may only terminate the certificates of deposit after it has diligently completed two steps. First, it must ensure the identity of the accountholder. Second, BPI must demand the surrender of the certificates of deposit. This is the essence of the contract entered into by the parties which serves as an accountability measure to other co-depositors. By requiring the presentation of the certificates prior to termination, the other depositors may rely on the fact that their investments in the interest-yielding accounts may not be indiscriminately withdrawn by any of their co-depositors.

With these considerations in mind, the Court find that BPI substantially breached its obligations to the prejudice of Tarcila. BPI allowed the termination of the accounts without demanding the surrender of the certificates of deposits, in the ordinary course of business. Worse, BPI even had actual knowledge that the certificates of deposit were in Tarcila's possession and yet it chose to release the proceeds to Manuel on the basis of a falsified affidavit of loss, in gross violation of the terms of the deposit agreements.

FACTS

In 1991, Tarcila together with her husband, Manuel and their children Monique Fernandez and Marco Fernandez, opened the following AND/OR deposit accounts with the petitioner BPI, Shaw Blvd. Branch. On September 24, 1991, Tarcila went to the BPI Shaw Blvd. Branch to preterminate these joint AND/OR accounts. She brought with her the certificates of time deposit and the passbook, and presented them to the bank. BPI, however, refused the requested pre-termination despite Tarcila's presentation of the covering certificates. Instead, BPI, through its branch manager, Capistrano , insisted on contacting Manuel, alleging in this regard that this is an integral part of its standard operating procedure.

Shortly after Tarcila left the branch, Manuel arrived and likewise requested the pre-termination of the joint AND/OR accounts. Manuel claimed that he had lost the same certificates of deposit that Tarcila had earlier brought with her. BPI, through Capistrano, this time acceded to the pre termination requests, blindly believed Manuel's claim, and requested him to accomplish BPI's pro-forma affidavit of loss. Two days after, Two days after, Manuel returned to BPI, Shaw Blvd. Branch to pre-terminate the joint AND/OR accounts. He was accompanied by Atty. Hector Rodriguez, the respondent Dalmiro Sian (Sian), and two (2) alleged National Bureau of Investigation (NBI) agents. In place of the actual certificates of deposit, Manuel submitted BPI's pro-forma affidavit of loss that he previously accomplished and an Indemnity Agreement that he and Sian executed on the same day. The Indemnity Agreement discharged BPI from any liability in connection with the pretermination. Notably, none of the co-depositors were contacted in carrying out these transactions. On the same day, the proceeds released to Manuel were funneled to Sian's newly opened account with BPI. Immediately thereafter, Capistrano requested Sian to sign blank withdrawal slips, which Manuel used to withdraw the funds from Sian's newly opened account. Sian's account, after its use, was closed on the same day.

A few days after these transactions, Tarcila filed a petition for "Declaration of Nullity of Marriage, etc." against Manuel. Tarcila never received her proportionate share of the pre-terminated deposits, prompting her to demand from BPI the amounts due her as a co-depositor in the joint AND/OR accounts. In her complaint, Tarcila alleged that BPI's payments to Manuel of the preterminated deposits were invalid with respect to her share. She argued that BPI was in bad faith for allowing the pre-termination of the time deposits based on Manuel's affidavit of loss when the bank had actual knowledge that the certificates of deposit were in her possession. In its answer, BPI alleged that the accounts contained conjugal funds that Manuel exclusively funded.BPI further argued that Tarcila could not ask for her share of the pre-terminated deposits because her share in the conjugal property is considered inchoate until its dissolution.

The RTC rules in favor of Tarcila. The RTC opined that the AND/OR nature of the accounts indicate an active solidarity that thus entitled any of the account holders to demand from BPI payment of their proceeds. The CA ruled that as a co-depositor and a solidary creditor of joint "AND/OR"

accounts, BPI did not enjoy the prerogative to determine the source of the deposited funds and to refuse payment to Tarcila on this basis. The CA also found that BPI had acted in bad faith in allowing Manuel to preterminate the certificates of deposits and in facilitating the swift funneling of the funds to Sian's account, which allowed Manuel to withdraw them.

ISSUE

Whether or not breached its obligation under the certificates of deposit (YES)

RULING

Certificate of deposit is a written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor, or to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created. It contains provisions on the amount of interest, period of maturity, and manner of termination. Specifically, they stressed that endorsement and presentation of the certificate of deposit is indispensable to their termination. In other words, the accounts may only be terminated upon endorsement and presentation of the certificates of deposit. BPI thus may only terminate the certificates of deposit after it has diligently completed two steps. First, it must ensure the identity of the accountholder. Second, BPI must demand the surrender of the certificates of deposit.

This is the essence of the contract entered into by the parties which serves as an accountability measure to other co-depositors. By requiring the presentation of the certificates prior to termination, the other depositors may rely on the fact that their investments in the interest-yielding accounts may not be indiscriminately withdrawn by any of their co-depositors. This protective mechanism likewise benefits the bank, which shields it from liability upon showing that it released the funds in good faith to an account holder who possesses the certificates. Without the presentation of the certificates of deposit, BPI may not validly terminate the certificates of deposit.

With these considerations in mind, the Court find that BPI substantially breached its obligations to the prejudice of Tarcila. BPI allowed the termination of the accounts without demanding the surrender of the certificates of deposits, in the ordinary course of business. Worse, BPI even had actual knowledge that the certificates of deposit were in Tarcila's possession and yet it chose to release the proceeds to Manuel on the basis of a falsified affidavit of loss, in gross violation of the terms of the deposit agreements.

Notably, BPI effectively deprived Tarcila and the other co-depositors of their share in the proceeds of the certificates of deposits. As the CA noted in the assailed Decision, the series of transactions were accomplished in one sitting for the purpose of misleading anyone who would try to trace the proceeds of [Manuel]'s deposit accounts .It appears that BPI connived with Manuel to allow him to divest his co-depositors of their share in proceeds. Worse, it cooperated with Manuel in trying to conceal this fraudulent conduct by making it appear that the fund swere withdrawn from another account.

The Court affirmed the decision of CA and the trial court's findings that BPI was guilty of bad faith in these transactions. Bad faith imports a dishonest purpose and conscious wrongdoing. It means a breach of a known duty through some motive or interest or ill will.

A review of the records of the case show ample evidence supporting BPI's bad faith, as shown by the clear bias it had against Tarcila. As the CA observed:"The bias and bad faith on the part of [BPI]'s officers become readily apparent in the face of the fact that [BPI]'s officers did not require the presentation of the certificates of deposit from [Manuel] but even assisted and facilitated the pre-termination transaction by the latter on the basis of a mere pro-forma and defective affidavit of loss, which the bank itself supplied, despite the fact that [BPI]'s officers were fully aware that the certificates were not lost but in the possession of [Tarcila]."The records thus abound with evidence that BPI clearly favored Manuel. BPI considered Manuel as the primary depositor despite the clear import of the nature of their AND/OR account, which permits either or any of the co-depositors to transact with BPI, upon the surrender of the certificates of deposit.

BPI did not only fail to exercise that degree of diligence required by the nature of its business, it also exercised its functions with bad faith and manifest partiality against Tarcila. The bank even recognized an affidavit of loss whose allegations, the bank knew, were false. BPI is sternly reminded that the business of banks is impressed with public interest. The fiduciary nature of their relationship with their depositors requires it to treat the accounts of its clients with the highest degree of integrity, care and respect. In the present case, the manner by which BPI treated Tarcila also transgresses the general banking law and Article 19 of the Civil Code, which directs every person, in the exercise of his rights, "to give everyone his due, and observe honesty and good faith."

WILLIAM C. LOUH and IRENE LOUH, *petitioner*,
-versus- BANK OF THE PHILIPPINE ISLANDS, *respondent.*
G.R. No. 22562, THIRD DIVISION, March 8, 2017, REYES, *J.*

In Macalinao, where BPI charged the credit cardholder of 3.25% interest and 6% penalty per month, and 25% of the total amount due as attorney's fees, the Court unequivocally declared that:
[T]his is not the first time that this Court has considered the interest rate of 36% per annum as excessive and unconscionable. We held in Chua vs. Timan: The stipulated interest rates of 7% and 5% per month imposed on respondents' loans must be equitably reduced to 1% per month or 12% per annum . We need not unsettle the principle we had affirmed in a plethora of cases that stipulated interest rates of 3% per month and higher are excessive, iniquitous, unconscionable and exorbitant. Such stipulations are void for being contrary to morals, if not against the law.

Since the stipulation on the interest rate is void, it is as if there was no express contract thereon. Hence, courts may reduce the interest rate as reason and equity demand. The same is true with respect to the penalty charge. x x x Pertinently, Article 1229 of the Civil Code states:
Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

FACTS

BPI, issued a credit card in William's name, with Irene as the extension card holder. Pursuant to the terms and conditions of the cards' issuance, 3.5% finance charge and 6% late payment charge shall be imposed monthly upon unpaid credit availments. The Spouses Louh made purchases from the use of the credit cards and paid regularly based on the amounts indicated in the Statement of Accounts (SOAs). However, they were remiss in their obligations starting October 14, 2009. 5 As of August 15, 2010, their account was unsettled prompting BPI to send written demand letters. By September 14, 2010, they owed BPI (1) the total amount of P533,836.27 (2) 25% of the amount due

as attorney's fees, plus P1,000.00 per court hearing and P8,064.00 as filing or docket fees; and (3) costs of suit. Despite repeated verbal and written demands, the Spouses Louh failed to pay BPI. BPI filed a complaint for collection of a sum of money and motion to declare the Spouses Louh in default. The RTC issued an Order declaring the Spouses Lough in default and ordered the Spouses Louh to solidarily pay BPI P533,836.27 plus 12% finance and 12% late payment annual charges. The CA affirmed in toto the RTC's judgement.

ISSUE

Whether or not the principal amount attorney's fees awarded by the RTC and CA are excessive. (YES)

RULING

The Court affirms the herein assailed decision and resolution, but modifies the principal amount and attorney's fees awarded by the RTC and the CA.
In Macalinao, where BPI charged the credit cardholder of 3.25% interest and 6% penalty per month, and 25% of the total amount due as attorney's fees, the Court unequivocally declared that:

[T]his is not the first time that this Court has considered the interest rate of 36% per annum as excessive and unconscionable. We held in Chua vs. Timan: The stipulated interest rates of 7% and 5% per month imposed on respondents' loans must be equitably reduced to 1% per month or 12% per annum . We need not unsettle the principle we had affirmed in a plethora of cases that stipulated interest rates of 3% per month and higher are excessive, iniquitous, unconscionable and exorbitant. Such stipulations are void for being contrary to morals, if not against the law. While C.B. Circular No. 905-82, which took effect on January 1, 1983, effectively removed the ceiling on interest rates for both secured and unsecured loans, regardless of maturity, nothing in the said circular could possibly be read as granting carte blanche authority to lenders to raise interest rates to levels which would either enslave their borrowers or lead to a hemorrhaging of their assets. x x x

Since the stipulation on the interest rate is void, it is as if there was no express contract thereon. Hence, courts may reduce the interest rate as reason and equity demand.

The same is true with respect to the penalty charge. x x x Pertinently, Article 1229 of the Civil Code states:

Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.
xxx xxx xxx

x x x [T]he stipulated penalty charge of 3% per month or 36% per annum, in addition to regular interests, is indeed iniquitous and unconscionable.

Thus, in Macalinao, the Court reduced both the interest and penalty charges to 12% each, and the attorney's fees to P10,000.00.

In MCMP Construction Corp. v. Monark Equipment Corp., the creditor cumulatively charged the debtor 60% annually as interest, penalty and collection fees, and 25% of the total amount due as

attorney's fees. The Court similarly found the rates as exorbitant and unconscionable; hence, directed the reduction of the annual interest to 12%, penalty and collection charges to 6%, and attorney's fees to 5%. The Court explained that attorney's fees are in the nature of liquidated damages, which under Article 2227 of the New Civil Code, "shall be equitably reduced if they are iniquitous or unconscionable."

In the case at bench, BPI imposed a cumulative annual interest of 114%, plus 25% of the amount due as attorney's fees. Inevitably, the RTC and the CA aptly reduced the charges imposed by BPI upon the Spouses Louh. Note that incorporated in the amount of P533,836.27 demanded by BPI as the Spouses Louh's obligation as of August 7, 2010 were the higher rates of finance and late payment charges, which the courts a quo had properly directed to be reduced.

In the SOA dated October 14, 2009, the principal amount indicated was P113,756.83. In accordance with Macalinao, the finance and late payment charges to be imposed on the principal amount of P113,756.83 are reduced to 12% each per annum, reckoned from October 14, 2009, the date when the Spouses Louh became initially remiss in the payment of their obligation to BPI, until full payment.

Anent BPI's litigation expenses, the Court retains the RTC and CA's disquisition awarding P8,064.00 as filing or docket fees, and costs of suit. However, the Court reduces the attorney's fees to five percent (5%) of the total amount due from the Spouses Louh pursuant to MCMP and Article 2227 of the New Civil Code.

PRYCE CORPORATION, *petitioner*, -versus- PHILIPPINE AMUSEMENT AND GAMING CORPORATION, *respondent.*

G.R. No. 157480, THIRD DIVISION, May 6, 2005, PANGANIBAN, *J.*

Where the action prayed for the payment of rental arrearages, the aggrieved party actually sought the partial enforcement of a lease contract. Thus, the remedy was not rescission, but termination or cancellation of the contract. To rescind is to declare a contract void in its inception and to put an end to it as though it never were. The termination or cancellation of a contract would necessarily entail enforcement of its terms prior to the declaration of its cancellation in the same way that before a lessee is ejected under a lease contract, he has to fulfill his obligations thereunder that had accrued prior to his ejectment. However, termination of a contract need not undergo judicial intervention. Rescission is the unmaking of a contract or its undoing from the very beginning. On the other hand, termination refers to an end in time or existence. With respect to a lease or contract, it means an ending, usually before the end of the anticipated term of such lease or contract, that may be effected by mutual agreement or by one party exercising one of its remedies as a consequence of the default of the other.

In this case, the actions and pleadings of petitioner show that it never intended to rescind the Lease Contract from the beginning. This fact was evident when it first sought to collect the accrued rentals from September to November 1993 because, as previously stated, it actually demanded the enforcement of the Lease Contract prior to termination. Any intent to rescind was not shown, even when it abrogated the Contract on November 25, 1993, because such abrogation was not the rescission provided for under Article 1659.

FACTS

In 1992, representatives from Pryce Corp. (PPC) made representations with PAGCOR on the possibility of setting up a casino in Pryce Plaza Hotel in Cagayan de Oro City. PAGCOR representatives went to CDO to determine whether the presence of a casino would be welcomed by the residents. Some local government officials showed keen interest in the casino operation and expressed the view that the possible problems were surmountable. Their negotiations culminated on Oct. 14, 1992. On November 11, the parties executed a Contract of Lease involving the ballroom of the hotel for a period of three years starting Dec. 1, 1992 until November 30, 1995. On November 13, 1992, they added in the contract a lease of an additional 1000 sq.m. of the hotel grounds as living quarters and playground of the casino personnel. PAGCOR advertised the start of their operations on Dec. 18, 1992

Way back in 1990, the Sangguniang Panlungsod of CDO declared a Resolution prohibiting the establishment of a gambling casino and on Dec. 7, 1992, they enacted an ordinance prohibiting the issuance of business permits and cancelling business permits to any establishment for using any of its premises for the operation of a casino.

Hours before the formal opening of the casino, a public rally was staged by some local officials, residents, and religious leaders. Because of this, PAGCOR was constrained to suspend their operations. On January 4, 1993, an ordinance was passed by the Sangguniang Panlungsod, prohibiting the operation of casinos and providing for penalty for violation thereof. On January 7, PPC filed a Petition for Prohibition with Preliminary Injunction against them before the CA, praying for the unconstitutionality of the ordinance. Thus, the ordinance was declared unconstitutional and respondents are permanently enjoined from enforcing those ordinances.

Public Respondents elevated the case to the SC, where the SC affirmed the decision of the CA. PAGCOR resumed casino operations on July 15, 1993, but were later on suspended due to incessant demonstrations. PAGCOR decided to stop its casino operation in CDO. PPC sent PAGCOR a letter stating its Board of Directors' decision to collect the full rentals in case of pre-termination of lease. PAGCOR stated that it was not amenable to the payment of full rental due to unforeseen legal and other circumstances which prevented it from complying with its obligations. Moreover, it had no other alternative but to pre-terminate the lease agreement due to the relentless and vehement opposition to their casino operations. On Oct. 12, 1993, PAGCOR asked PPC to refund the total amount of P1,437,582.25 representing the reimbursable rental deposits and expenses for the permanent improvement of the Hotel's parking lot. On Nov. 5, 1993, PAGCOR formally demanded from PPC the payment of its claim for reimbursement. PPC and PAGCOR filed a case for sum of money in the RTC. These cases were jointly tried by the court a quo.

The CA ruled that the PAGCOR's pretermination of the Contract of Lease is unjustified. Public demonstrations cannot be considered as fortuitous events that would exempt them from complying with their contractual obligations. Therefore, the Contract continued to be effective until PPC elected to terminate it on Nov. 25, 1993. Under Art. 1659 of the Civil Code, PPC had the right to ask for (1) rescission of the Contract and the indemnification for damages or (2) only indemnification plus continuation of the Contract. These two remedies were alternative, not cumulative. As PAGCOR had admitted its failure to pay the rentals from September to November 1993, PPC correctly exercised the option to terminate the lease agreement. The contract remained effective and PPC could collect the accrued rentals. However, when it terminated the contract on November 25, 1993, PPC could no longer demand payment of the remaining rentals as part of actual damages.

ISSUE

Whether or not Pryce was entitled to future rentals or lease payments for the unexpired period of the Contract of Lease between Pryce and PAGCOR. (NO)

RULING

PPC anchors its right to collect future rentals upon the provisions of the Contract. Likewise, it argues that termination, as defined under the Contract, is different from the remedy of rescission prescribed under Article 1659 of the Civil Code. On the other hand, PAGCOR contends, as the CA ruled, that Article 1659 of the Civil Code governs; hence, PPC is allegedly no longer entitled to future rentals, because it chose to rescind the Contract.

Article 1159 of the Civil Code provides that "obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith." In deference to the rights of the parties, the law allows them to enter into stipulations, clauses, terms and conditions they may deem convenient; that is, as long as these are not contrary to law, morals, good customs, public order or public policy. Likewise, it is settled that if the terms of the contract clearly express the intention of the contracting parties, the literal meaning of the stipulations would be controlling. In this case, Article XX of the parties' Contract of Lease provides in part as follows: The provision of Sections 20(a) and (c) leave no doubt that the parties covenanted (1) to give PPC the right to terminate and cancel the Contract in the event of a default or breach by the lessee; and (2) to make PAGCOR fully liable for rentals for the remaining term of the lease, despite the exercise of such right to terminate.

The above provisions leave no doubt that the parties have covenanted 1) to give PPC the right to terminate and cancel the Contract in the event of a default or breach by the lessee; and 2) to make PAGCOR fully liable for rentals for the remaining term of the lease, despite the exercise of such right to terminate. Plainly, the parties have voluntarily bound themselves to require strict compliance with the provisions of the Contract by stipulating that a default or breach, among others, shall give the lessee the termination option, coupled with the lessor's liability for rentals for the remaining term of the lease. For sure, these stipulations are valid and are not contrary to law, morals, good customs, public order or public policy. Neither is there anything objectionable about the inclusion in the Contract of mandatory provisions concerning the rights and obligations of the parties. Being the primary law between the parties, it governs the adjudication of their rights and obligations. A court has no alternative but to enforce the contractual stipulations in the manner they have been agreed upon and written. It is well to recall that courts, be they trial or appellate, have no power to make or modify contracts. Neither can they save parties from disadvantageous provisions.

Termination or Rescission?

The term rescission is found in 1) Article 1191, the general provisions on reciprocal obligations; 2) Article 1659, which authorizes rescission as an alternative remedy insofar as the right and obligations of the lessor and the lessee in contracts of lease are concerned; and 3) Article 1380 with regard to the rescission of contracts.

Where the action prayed for the payment of rental arrearages, the aggrieved party actually sought the partial enforcement of a lease contract. Thus, the remedy was not rescission, but termination or cancellation of the contract. To rescind is to declare a contract void in its inception and to put an

end to it as though it never were. It is not merely to terminate it and release parties from further obligations to each other but to abrogate it from the beginning and restore the parties to relative positions which they would have occupied had no contract ever been made. The termination or cancellation of a contract would necessarily entail enforcement of its terms prior to the declaration of its cancellation in the same way that before a lessee is ejected under a lease contract, he has to fulfill his obligations thereunder that had accrued prior to his ejectment. However, termination of a contract need not undergo judicial intervention. Rescission is the unmaking of a contract or its undoing from the very beginning. On the other hand, termination refers to an end in time or existence. With respect to a lease or contract, it means an ending, usually before the end of the anticipated term of such lease or contract, that may be effected by mutual agreement or by one party exercising one of its remedies as a consequence of the default of the other.

In this case, the actions and pleadings of petitioner show that it never intended to *rescind* the Lease Contract from the beginning. This fact was evident when it first sought to collect the accrued rentals from September to November 1993 because, as previously stated, it actually demanded the enforcement of the Lease Contract prior to termination. Any intent to rescind was not shown, even when it abrogated the Contract on November 25, 1993, because such abrogation was not the *rescission* provided for under Article 1659.

We stress that by abrogating the Contract in the present case, PPC released PAGCOR from the latters future obligations, which included the payment of rentals. To grant that right to the former is to unjustly enrich it at the latters expense.

However, it appears that Section XX (c) was intended to be a **penalty clause**. That fact is manifest from a reading of the mandatory provision under subparagraph (a) in conjunction with subparagraph (c) of the Contract. In obligations with a penal clause, the general rule is that the penalty serves as a substitute for the indemnity for damages and the payment of interests in case of noncompliance; that is, if there is no stipulation to the contrary, in which case proof of actual damages is not necessary for the penalty to be demanded. There are exceptions to the aforementioned rule, however, 1) when there is a stipulation to the contrary, 2) when the obligor is sued for refusal to pay the agreed penalty, and 3) when the obligor is guilty of fraud. In the present case, the first exception applies because Article XX (c) provides that, aside from the payment of the rentals corresponding to the remaining term of the lease, the lessee shall also be liable for any and all damages, actual or consequential, resulting from such default and termination of this contract. Having entered into the Contract voluntarily and with full knowledge of its provisions, PAGCOR must be held bound to its obligations. It cannot evade further liability for liquidated damages.

SONNY LO, *petitioner*, -versus- KJS ECO-FORMWORK SYSTEM PHIL., INC., *respondent.*
G.R. No. 149420, FIRST DIVISION, October 8, 2003, YNARES-SANTIAGO, *J.*

Article 1628 of the Civil Code provides: The vendor in good faith shall be responsible for the existence and legality of the credit at the time of the sale, unless it should have been sold as doubtful; but not for the solvency of the debtor, unless it has been so expressly stipulated or unless the insolvency was prior to the sale and of common knowledge. Here, respondent alleged the non-existence of the credit and asserted its claim to petitioner's warranty under the assignment. Therefore, it behooved on petitioner to make good its warranty and paid the obligation.

FACTS

Respondent KJS ECO-FORMWORK System Phil., Inc. is a corporation engaged in the sale of steel scaffoldings, while petitioner Sonny L. Lo, doing business under the name and style San's Enterprises, is a building contractor. Petitioner ordered scaffolding equipments from respondent worth P540,425.80. He paid a downpayment in the amount of P150,000.00. The balance was made payable in ten monthly installments. Respondent delivered the scaffoldings to petitioner. Petitioner was able to pay the first two monthly installments. His business, however, encountered financial difficulties and he was unable to settle his obligation to respondent despite oral and written demands made against him. As a result, petitioner and respondent executed a Deed of Assignment, whereby petitioner assigned to respondent his receivables in the amount of P335,462.14 from Jomero Realty Corporation. However, when respondent tried to collect the said credit from Jomero Realty Corporation, the latter refused to honor the Deed of Assignment because it claimed that petitioner was also indebted to it. So, respondent sent a letter to petitioner demanding payment of his obligation, but petitioner refused to pay claiming that his obligation had been extinguished when they executed the Deed of Assignment. Consequently, respondent filed an action for recovery of a sum of money against the petitioner.

The RTC rendered a decision dismissing the complaint on the ground that the assignment of credit extinguished the obligation. Upon appeal, the CA reversed the decision of the trial court. It ruled that (1) petitioner failed to comply with his warranty under the Deed; (2) the object of the Deed did not exist at the time of the transaction, rendering it void pursuant to Article 1409 of the Civil Code; and (3) petitioner violated the terms of the Deed of Assignment when he failed to execute and do all acts and deeds as shall be necessary to effectually enable the respondent to recover the collectibles.

ISSUE

Whether or not the Deed of Assignment extinguished petitioner's obligation. (NO)

RULING

An assignment of credit is an agreement by virtue of which the owner of a credit, known as the assignor, by a legal cause, such as sale, *dacion en pago*, exchange or donation, and without the consent of the debtor, transfers his credit and accessory rights to another, known as the assignee, who acquires the power to enforce it to the same extent as the assignor could enforce it against the debtor. Corollary thereto, in *dacion en pago*, as a special mode of payment, the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding debt. In order that there be a valid *dation* in payment, the following are the requisites: (1) There must be the performance of the prestation in lieu of payment *(animo solvendi)* which may consist in the delivery of a corporeal thing or a real right or a credit against the third person; (2) There must be some difference between the prestation due and that which is given in substitution *(aliud pro alio)*; (3) There must be an agreement between the creditor and debtor that the obligation is immediately extinguished by reason of the performance of a prestation different from that due. Hence, it may well be that the assignment of credit, which is in the nature of a sale of personal property, produced the effects of a dation in payment which may extinguish the obligation. However, as in any other contract of sale, the vendor or assignor is bound by certain warranties. More specifically, the first paragraph of Article 1628 of the Civil Code provides: The vendor in good faith shall be responsible for the existence and legality of the credit at the time of the sale, unless it should have been sold as

doubtful; but not for the solvency of the debtor, unless it has been so expressly stipulated or unless the insolvency was prior to the sale and of common knowledge.

From the above provision, petitioner, as vendor or assignor, is bound to warrant the existence and legality of the credit at the time of the sale or assignment. When Jomero claimed that it was no longer indebted to petitioner since the latter also had an unpaid obligation to it, it essentially meant that its obligation to petitioner has been extinguished by compensation. In other words, respondent alleged the non-existence of the credit and asserted its claim to petitioner's warranty under the assignment. Therefore, it behooved on petitioner to make good its warranty and paid the obligation. Indeed, by warranting the existence of the credit, petitioner should be deemed to have ensured the performance thereof in case the same is later found to be inexistent. He should be held liable to pay to respondent the amount of his indebtedness.

INTERNATIONAL HOTEL CORPORATION, *petitioner*, -versus- FRANCISCO B. JOAQUIN, JR. and RAFAEL SUAREZ, INC., *respondents.*
G.R. No. 158361, FIRST DIVISION, April 10, 2013, BERSAMIN, *J.*

The existing rule in a mixed conditional obligation is that when the condition was not fulfilled but the obligor did all in his power to comply with the obligation, the condition should be deemed satisfied. Here, IHC is liable to pay under the rule on constructive fulfillment of a mixed conditional obligation.

FACTS

Respondent Francisco B. Joaquin, Jr. submitted a proposal to the Board of Directors of the International Hotel Corporation (IHC) for him to render technical assistance in securing a foreign loan for the construction of a hotel, to be guaranteed by the Development Bank of the Philippines (DBP). Shortly after submitting the application to DBP, Joaquin wrote to IHC to request the payment of his fees in the amount of P500,000.00 for the services that he had provided and would be providing to IHC in relation to the hotel project that were outside the scope of the technical proposal. Joaquin intimated his amenability to receive shares of stock instead of cash in view of IHC's financial situation. Later, the stockholders of IHC met and granted Joaquin's request, allowing the payment for both Joaquin and Rafael Suarez for their services in implementing the proposal.

Joaquin narrowed the financiers to Roger Dunn & Company and Materials Handling Corporation. He recommended that the Board of Directors consider Materials Handling Corporation based on the more beneficial terms it had offered. His recommendation was accepted. Negotiations with Materials Handling Corporation and, later on, with its principal, Barnes International, ensued. While the negotiations with Barnes were ongoing, Joaquin and Jose Valero, the Executive Director of IHC, met with another financier, the Weston International Corporation, to explore possible financing. When Barnes failed to deliver the needed loan, IHC informed DBP that it would submit Weston for DBP's consideration. As a result, DBP cancelled its previous guaranty. Thereafter, IHC entered into an agreement with Weston, and communicated this development to DBP. However, DBP denied the application for guaranty for failure to comply with the conditions contained in its letter. Due to Joaquin's failure to secure the needed loan, IHC, through its President Bautista, canceled the 17,000 shares of stock previously issued to Joaquin and Suarez as payment for their services.

Consequently, Joaquin and Suarez commenced this action for specific performance, annulment, damages and injunction. The trial court held IHC liable pursuant to the second paragraph of Article 1284 of the Civil Code. At the same time, the RTC found that Joaquin and Suarez had failed to meet

their obligations when IHC had chosen to negotiate with Barnes rather than with Weston, the financier that Joaquin had recommended; and that the cancellation of the shares of stock had been proper under Section 68 of the Corporation Code, which allowed such transfer of shares to compensate only past services, not future ones. On appeal, the CA concurred with the RTC, upholding IHC's liability under Article 1186 of the Civil Code. It ruled that in the context of Article 1234 of the Civil Code, Joaquin had substantially performed his obligations and had become entitled to be paid for his services; and that the issuance of the shares of stock was *ultra vires* for having been issued as consideration for future services.

ISSUE

Whether or not IHC is liable to pay the respondents. (YES)

RULING

Article 1186 and Article 1234 of the Civil Code cannot be the source of IHC's obligation to pay respondents. There is no constructive fulfillment of a suspensive condition as IHC only relied on the opinion of its consultant in deciding to transact with Materials Handling and, later on, with Barnes. In negotiating with Barnes, IHC had no intention, willful or otherwise, to prevent Joaquin and Suarez from meeting their undertaking. Such absence of any intention negated the basis for the CA's reliance on Article 1186 of the Civil Code. Nor do the Court agree with the CA's upholding of IHC's liability by virtue of Joaquin and Suarez's substantial performance. It is well to note that Article 1234 applies only when an obligor admits breaching the contract after honestly and faithfully performing all the material elements thereof except for some technical aspects that cause no serious harm to the obligee.

IHC is nonetheless liable to pay under the rule on constructive fulfillment of a mixed conditional obligation. To secure a DBP-guaranteed foreign loan did not solely depend on the diligence or the sole will of the respondents because it required the action and discretion of third persons—an able and willing foreign financial institution to provide the needed funds, and the DBP Board of Governors to guarantee the loan. Such third persons could not be legally compelled to act in a manner favorable to IHC. There is no question that when the fulfillment of a condition is dependent partly on the will of one of the contracting parties, or of the obligor, and partly on chance, hazard or the will of a third person, the obligation is mixed. The existing rule in a mixed conditional obligation is that when the condition was not fulfilled but the obligor did all in his power to comply with the obligation, the condition should be deemed satisfied. Considering that the respondents were able to secure an agreement with Weston, and subsequently tried to reverse the prior cancellation of the guaranty by DBP, the Court ruled that they thereby constructively fulfilled their obligation.

NATIONAL POWER CORPORATION, *petitioner*, -versus- LUCMAN M. IBRAHIM, et al., *respondents.*

G.R. No. 175863, FIRST DIVISION, February 18, 2015, PEREZ, *J.*

Article 1242 of the Civil Code reads: "Payment made in good faith to any person in possession of the credit shall release the debtor." Here, petitioner's previous payment to Mangondato pursuant to Civil Case No. 605-92 and Civil Case No. 610-92 given the absence of bad faith on petitioner's part may nonetheless be considered as akin to a payment made in "good faith" to a person in "possession of credit" that, just the same, extinguishes its obligation to pay for the rental fees and expropriation indemnity due for the subject land.

FACTS

In 1978, petitioner NAPOCOR took possession of a parcel of land in Marawi City for the purpose of building thereon a hydroelectric power plant pursuant to its *Agus 1* project. The subject land, while in truth a portion of a private estate registered under TCT No. 378-A in the name of herein respondent Mangondato, was occupied by petitioner under the mistaken belief that such land is part of the vast tract of public land reserved for its use by the government under Proclamation No. 1354, s. 1974. Respondent Mangondato first discovered petitioner's occupation of the subject land in 1979 and began demanding compensation for the subject land from petitioner. Petitioner, at first, rejected Mangondato's claim of ownership over the subject land; the former then adamant in its belief that the said land is public land covered by Proclamation No. 1354, s. 1974. But, after more than a decade, petitioner finally acquiesced to the fact that the subject land is private land covered by TCT No. 378-A and consequently acknowledged Mangondato's right, as registered owner, to receive compensation therefor. During the pendency of the case by Mangondato against NAPOCOR, respondents Ibrahims and Maruhoms, disputed Mangondato's ownership of the subject lands. They submit that since they are the real owners of the lands covered by TCT No. 378-A, they should be the ones entitled to any rental fees or expropriation indemnity that may be found due for the subject land.

On Civil Case No. 605-92 and Civil Case No. 610-92 filed by Mangondato, the RTC decision upheld petitioner's right to expropriate the subject land: it denied Mangondato's claim for reconveyance and decreed the subject land condemned in favor of the petitioner, effective July of 1992, subject to payment by the latter of just compensation in the amount of P21,995,000.00. On the other hand, on Civil Case No. 967-93 the RTC ruled that The Ibrahims and Maruhoms not Mangondato are the true owners of the lands and they are entitled to compensation, and held Mangondato and NAPOCOR solidarily liable for the rental fees and expropriation indemnity and issued a TRO and writ of preliminary injunction for the execution of the judgment in the other case.

Pursuant to the above resolution, a notice of garnishment dated 5 June 1996 for the amount of P21,801,951.00 was promptly served upon the Philippine National Bank (PNB) the authorized depositary of petitioner. Consequently, the amount thereby garnished was paid to Mangondato in full satisfaction of petitioner's judgment debt. Disagreeing with the amount of just compensation that it was adjudged to pay under the said decision, petitioner filed an appeal with the Court of Appeals. The CA affirmed the lower courts' decision. Hence, the present appeal by petitioner.

ISSUE

Whether NAPOCOR is solidarily liable to the respondents Ibrahims despite payment to Mangondato. (NO)

RULING

Petitioner's previous payment to Mangondato pursuant to Civil Case No. 605-92 and Civil Case No. 610-92 given the absence of bad faith on petitioner's part as previously discussed may nonetheless be considered as akin to a payment made in "good faith" to a person in "possession of credit" per Article 1242 of the Civil Code that, just the same, extinguishes its obligation to pay for the rental fees and expropriation indemnity due for the subject land. Article 1242 of the Civil Code reads: "Payment made in good faith to any person in possession of the credit shall release the debtor." Article 1242 of the Civil Code is an exception to the rule that a valid payment of an obligation can

only be made to the person to whom such obligation is rightfully owed. It contemplates a situation where a debtor pays a "possessor of credit" *i.e.*, someone who is not the real creditor but appears, under the circumstances, to be the real creditor. In such scenario, the law considers the payment to the "possessor of credit" as valid even as against the real creditor taking into account the good faith of the debtor. The extinguishment of petitioner's obligation to pay for the rental fees and expropriation indemnity due the subject land carries with it certain legal effects: First. If Mangondato turns out to be the real owner of the subject land, the Ibrahims and Maruhoms would not be entitled to recover anything from anyone for the subject land. Otherwise, *i.e.* if the Ibrahims and Maruhoms really are the true owners of the subject land, they may only recover the rental fees and expropriation indemnity due the subject land against Mangondato but only up to whatever payments the latter had previously received from NAPOCOR.

At any rate, the extinguishment of petitioner's obligation to pay for the rental fees and expropriation indemnity due the subject land negates whatever cause of action the Ibrahims and Maruhoms might have had against NAPOCOR.

TOWNE & CITY DEVELOPMENT CORPORATION, *petitioner*, -versus- COURT OF APPEALS and GUILLERMO R. VOLUNTAD (substituted by TOMAS VOLUNTAD and FLORDELIZA ESTEBAN Vda. De VOLUNTAD), INC., *respondents.*
G.R. No. 135043, SECOND DIVISION, July 14, 2004, TINGA, *J.*

Under Article 1249 of the Civil Code, payment of debts in money has to be made in legal tender and the delivery of mercantile documents, including checks, shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired. A receipt is a written and signed acknowledgment that money has been or goods have been delivered, while a voucher is documentary record of a business transaction. Here, the references to alleged check payments in the vouchers presented by the petitioner do not vest them with the character of receipts.

FACTS

Respondent Guillermo Voluntad and petitioner Towne & City Development Corporation were both engaged in the construction business. From 1984 to 1985, they entered into a contract for the (a) construction of several housing units belonging to or reserved for different individuals; (b) repair of several existing housing units belonging to different individuals; and (c) repair of facilities, all located at the Virginia Valley Subdivision, owned and developed by the petitioner. The total contract cost amounted to One Million Forty One Thousand Three Hundred Fifty Nine (P1,041,359.00) Pesos. The parties agreed that Guillermo should be paid in full by petitioner the agreed contract cost upon completion of the project. In 1985, pending completion of the project, Guillermo was allowed by petitioner to occupy, free of charge, one of its houses at the Virginia Valley Subdivision. After completing the construction and repair works subject of the contract, Guillermo demanded payment for his services. When petitioner failed to satisfy his claim in full, Guillermo filed on April 30, 1990 a *Complaint* for collection against petitioner before the Regional Trial Court of Manila. Guillermo alleged that petitioner paid him only the amount of P69,400.00, leaving a balance of P971,959.00 under the terms of their contract. Petitioner averred that it had already paid Guillermo for his services and that there was even an overpayment of P58,189.46. Petitioner further claimed that Guillermo is liable for unpaid rentals amounting to P66,000.00 as of June 1990 for his occupancy of one of the houses in Virginia Valley Subdivision since 1985.

The trial court rendered its decision in favor of Petitioner Voluntad, ordering the respondent to pay the unpaid balance, with interest. On appeal, the CA affirmed the lower court's decision. Hence, this petition.

ISSUE

Whether or not petitioner is liable to pay Guilllermo's claim. (YES)

RULING

In the case at bar, petitioner has relied on vouchers to prove its defense of payment. However, as correctly pointed out by the trial court which the appellate court upheld, vouchers are not receipts. It should be noted that a voucher is not necessarily an evidence of payment. It is merely a way or method of recording or keeping track of payments made. A procedure adopted by companies for the orderly and proper accounting of funds disbursed. Unless it is supported by an actual payment like the issuance of a check which is subsequently encashed or negotiated, or an actual payment of cash duly receipted for as is customary among businessmen, a voucher remains a piece of paper having no evidentiary weight. A receipt is a written and signed acknowledgment that money has been or goods have been delivered, while a voucher is documentary record of a business transaction. The references to alleged check payments in the vouchers presented by the petitioner do not vest them with the character of receipts. Under Article 1249 of the Civil Code, payment of debts in money has to be made in legal tender and the delivery of mercantile documents, including checks, shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.

BENJAMIN EVANGELISTA, *Petitioner*, -versus- SCREENEX, INC. represented by ALEXANDER G. YU, *Respondent*.

G.R. No. 211564, FIRST DIVISION, November 20, 2017, SERENO,J.

Payment is deemed effected and the obligation for which the check was given as conditional payment is treated discharged, if a period of 10 years or more has elapsed from the date indicated on the check until the date of encashment or presentment for payment. ***The failure to encash the checks within a reasonable time after issue, or more than 10 years in this instance, not only results in the checks becoming stale but also in the obligation to pay being deemed fulfilled by operation of law.***

In Papa v. Valencia, the Court ruled that ***the acceptance of a check implied an undertaking of due diligence in presenting it for payment, and if he from whom it is received sustains loss by want of such diligence, it will be held to operate as actual payment of the debt or obligation for which it was given.*** *Similarly in this case, the delivery of the checks and the failure to encash them within a period of 10 years or more, had the effect of payment. Thus, Evangelista is considered discharged from his obligation to pay and can no longer be pronounced civilly liable for the amounts indicated thereon.*

FACTS:

Sometime in **1991**, **Benjamin Evangelista** (Evangelista) **obtained a loan from Screenex Inc.** (Screenex), which issued two checks to Evangelista. There were also vouchers of Screenex that were signed evidencing that Evangelista received the two checks in acceptance of the loan granted

to him. As security for the payment of the loan, **Evangelista gave two open-dated checks, both pay to the order of Screenex.** From the time the checks were issued by Evangelista, they were held in safekeeping together with the other documents and papers of the company by Philip Gotuaco, Sr. (Gotuaco), father-in-law of respondent Alexander Yu, until the former's death.

Fourteen years after the loan, Evangelista was charged with the violation of Batas Pambansa Blg. 22 filed with the Metropolitan Trial Court (MeTC) of Makati City. The complaint stated that when Screenex tried to encash the checks for payment in **2005**, it was dishonored by the drawee bank for the reason that the account has already been closed. In his defense, Evangelista argued that **the obligation was extinguished and was barred by prescription due to the lapse of more than 10 years from the time the checks were issued.**

The MeTC found that the prosecution had failed to prove the elements constituting violation of BP 22 thus, **acquitting him of the crime charged.** However, **the MeTC still found Evangelista civilly liable.** Ruling on the civil aspect of the cases, the court held that **while Evangelista admitted to having issued and delivered the checks to Gotuaco and to having fully paid the amounts indicated therein, no evidence of payment was presented.** It further held that **the creditor's possession of the instrument of credit was sufficient evidence that the debt claimed had not yet been paid.** Evangelista was found liable for the corresponding civil obligation. Evangelista appealed to the Regional Trial Court (RTC) of Makati City but the trial court dismissed the appeal and affirmed the MeTC's decision in its entirety. He then appealed the decision of the RTC to the Court of Appeals which also affirmed the decision of the lower court.

ISSUE:

Whether or not the failure of Screenex to encash the checks within 10 years of its issuance produced the effect of payment (YES)

RULING:

Payment is deemed effected and the obligation for which the check was given as conditional payment is treated discharged, if a period of 10 years or more has elapsed from the date indicated on the check until the date of encashment or presentment for payment. **The failure to encash the checks within a reasonable time after issue, or more than 10 years in this instance, not only results in the checks becoming stale but also in the obligation to pay being deemed fulfilled by operation of law.** Section 186 of the National Instrument laws provides that **a check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.** Likewise, Article 1249, Paragraph 2 of the Civil Code states:

> xxx
> **The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of exchange or other mercantile documents shall produce the effect of payment only** when they have been cashed, or when through the fault payment only when they have been cashed, or **when through the fault of the creditor they have been impaired of the creditor they have been impaired.**
> xxx

In *Papa v. Valencia*, the Court ruled that **the acceptance of a check implied an undertaking of due diligence in presenting it for payment, and if he from whom it is received sustains loss by want of such diligence, it will be held to operate as actual payment of the debt or obligation for which it was given.** Similarly in this case, the delivery of the checks and the failure to encash them within a period of 10 years or more, had the effect of payment. Thus, Evangelista is considered discharged from his obligation to pay and can no longer be pronounced civilly liable for the amounts indicated thereon.

NETLINK COMPUTER INCORPORATED, *Petitioner*, -versus- ERIC DELMO, *Respondent*.
G.R. No. 160827, FIRST DIVISION, June 18, 2014, BERSAMIN,J.

While there was no written contract between Netlink and Delmo stipulating the latter's commissions would be paid in US Dollars, ***the absence of such does not necessarily mean that Netlink would not be liable to pay Delmo in US Dollars for their US Dollar-denominated sales as it has already been company policy as impliedly admitted by Netlink. With the payment of US Dollar commissions having ripened into company practice, there is no way that the commissions due to Delmo were to be paid in US Dollars and their equivalent in Philippine currency determined at the time of the sales.*** *To rule otherwise would be to cause an unjust diminution of the commissions due and owing to Delmo.*

FACTS:

On November 3, 1991, Netlink Computer Inc. Products and Services (Netlink) hired Eric Delmo (Delmo) as account manager tasked to canvass and source clients and convince them to purchase the products and services of Netlink. Throughout his work in Netlink, Delmo was able to generate sales worth PHP 35,000,000, from which he earned commissions amounting to PHP 993,558.89 and USD 7,588.30. He then requested payment of his commissions, but Netlink refused and only gave him partial cash advances chargeable to his commissions. Later on, Netlink began to nitpick and fault find his work in order to force him to resign. It culminated when Delmo was refused entry to the company premises by the security guard, This incident prompted him to file a complaint for illegal dismissal.

The Labor Arbiter ruled against Netlink and in favor of Delmo. On appeal, the National Labor Relations Commission (NLRC) affirmed the decision of the Labor Arbiter but modified it. The Court of Appeals (CA) also affirmed the decision of the NLRC ruling that Netlink failed to refute by evidence that Delmo is not entitled to the commissions payable in US Dollars. Neither is there any reason that the computation of these commissions must be based on the value of a Peso in relation to a Dollar at the time of sale.

In this appeal, Netlink submits that the CA committed a palpable and reversible of law in not holding that the applicable exchange rate for computing the US Dollar commissions of Delmo should be the rates prevailing at the time when the sales were actually generated, not the rates prevailing at the time of the payment.

ISSUE:

Whether or not the applicable exchange rate for computing the US Dollar commissions of Delmo should be the rates prevailing at the time when the sales were actually generated (NO)

RULING:

As a general rule, all obligations shall be paid in Philippine Currency. However, the contracting parties may stipulate that foreign currencies may be used for setting obligations pursuant to RA 8183.

While there was no written contract between Netlink and Delmo stipulating the latter's commissions would be paid in US Dollars, **the absence of such does not necessarily mean that Netlink would not be liable to pay Delmo in US Dollars for their US Dollar-denominated sales as it has already been company policy as impliedly admitted by Netlink. With the payment of US Dollar commissions having ripened into company practice, there is no way that the commissions due to Delmo were to be paid in US Dollars and their equivalent in Philippine currency determined at the time of the sales.** To rule otherwise would be to cause an unjust diminution of the commissions due and owing to Delmo.

NUNELON R. MARQUEZ, *Petitioner*, -versus- ELISAN CREDIT CORPORATION, *Respondent*.
G.R. No. 194642, SECOND DIVISION, April 6, 2015, BRION,J.

Article 1176 should be treated as a general presumption subject to the more specific presumption under Article 1253. *Article 1176 is relevant on questions pertaining to the effects and nature of obligations in general, while Article 1253 is specifically pertinent on questions involving application of payments and extinguishment of obligations.*

Correlating the two provisions, the rule under Article 1253 that payments shall first be applied to the interest and not to the principal shall govern if two facts exist: (1) the debt produces interest (e.g., the payment of interest is expressly stipulated) and (2) the principal remains unpaid. The exception is a situation covered under Article 1176, when the creditor waives payment of the interest despite the presence of (1) and (2). In such case, the payments shall obviously be credited to the principal.

However, in this case, ***there was no waiver of interest on the part of Elisan Credit.*** *The fact that the official receipts did not indicate whether the payments were made for the principal or the interest does not prove that Elisan Credit waived the interest.*

FACTS:

On December 16, 1991, Nunelon **Marquez** (Marquez) **obtained a loan from Elisan Credit Corporation** (Elisan Credit) for PHP 53,000.00 payable in 180 days. The petitioner signed **a promissory note which provided that it is payable in weekly installments and subject to 26 % annual interest. In case of non-payment, the petitioner agreed to pay a 10% monthly penalty based on the total amount unpaid and another 25% of such amount for attorney's fees.** To further secure payment of the loan, the petitioner executed a chattel mortgage over a motor vehicle. Subsequently, **the petitioner obtained another loan from the respondent** for PHP 55,000.00 evidenced by a promissory note and a cash voucher. The promissory note covering the second loan contained exactly the same terms and conditions as the first promissory note.

When the second loan matured, the petitioner had only paid PHP 29,960.00. Due to liquidity problems, **Marquez asked Elisan Credit if he could pay in daily installments until the second loan is paid which was granted.** As of September 1994 or 21 months after the second loan's

maturity, the petitioner had already paid a total of PHP 56,440.00, an amount greater than the principal but despite this, Elisan Credit filed a judicial complaint for judicial foreclosure of the chattel mortgage because the petitioner allegedly failed to settle the balance of the second loan despite demand. The respondent further alleged that pursuant to the terms of the promissory note, the petitioner's failure to fully pay upon maturity triggered the imposition of 10% monthly penalty and 25% attorney's fees.

The Municipal Trial Court (MTC) found for the petitioner and held that the second loan was fully extinguished as of September 1994. The court held that when a creditor accepts the performance or payment of an obligation, knowing its incompleteness or irregularity and without expressing any protest or objection, the obligation is deemed fully complied with. The Regional Trial Court initially affirmed the decision of the MTC but reversed itself acting on Elisan Credit's motion for reconsideration and ruled that, pursuant to Article 1253 of the Civil Code, if the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered. The Court of Appeals appealed the trial court's ruling.

ISSUE:

Whether or not Marquez has fully paid his obligation (NO)

RULING:

There is a need to analyze and harmonize Article 1176 and Article 1253 of the Civil Code to determine whether the daily payments made after the second loan's maturity should be credited against the interest or against the principal. Article 1176 and Article 1253 respectively provides that:

> **The receipt of the principal by the creditor, without reservation with respect to the interest, shall give rise to the presumption that said interest has been paid.**
>
> xxx.
>
> **If the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered.**

The aforementioned provisions appear to be contradictory but they in fact support, and are in conformity with each other. Thus, the settlement of the first issue depends on which of these presumptions prevails under the given facts of the case. There are two undisputed facts crucial in resolving the first issue: (1) the petitioner failed to pay the full amount of the second loan upon maturity; and (2) the second loan was subject to interest, and in case of default, to penalty and attorney's fees.

Article 1176 falls under Chapter I (Nature and Effect of Obligations) while Article 1253 falls under Subsection I (Application of Payments), Chapter IV (Extinguishment of Obligations) of Book IV (Obligations and Contracts) of the Civil Code. The structuring of these provisions, properly taken into account, means that **Article 1176 should be treated as a general presumption subject to the more specific presumption under Article 1253.** Article 1176 is relevant on questions pertaining to the effects and nature of obligations in general, while Article 1253 is specifically pertinent on questions involving application of payments and extinguishment of obligations.

Correlating the two provisions, the rule under Article 1253 that payments shall first be applied to the interest and not to the principal shall govern if two facts exist: (1) the debt produces interest (e.g., the payment of interest is expressly stipulated) and (2) the principal remains unpaid. The exception is a situation covered under Article 1176, i.e., when the creditor waives payment of the interest despite the presence of (1) and (2) above. In such case, the payments shall obviously be credited to the principal.

However, in this case, **there was no waiver of interest on the part of Elisan Credit.** The fact that the official receipts did not indicate whether the payments were made for the principal or the interest does not prove that Elisan Credit waived the interest.

ELIZABETH DEL CARMEN, *Petitioner*, -versus- SPOUSES RESTITUTE AND MIMA MAHILUM-SABORDO, *Respondents*.
G.R. No. 181723, THIRD DIVISION, August 11, 2014, PERALTA,J.

Consignation is the act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment, and ***it generally requires a prior tender of payment****.*

Tender of payment involves a positive and unconditional act by the obligor of offering legal tender currency as payment to the obligee for the former's obligation and demanding the latter accept the same. In this case, there was no prior tender of payment. ***It is settled that compliance with the requisite of a valid consignation is mandatory. Failure to comply strictly with any of these requisites will render the consignation void.***

FACTS:

Sometime in 1961, spouses Suico, along with several business partners, entered into a business venture. As part of their capital, they obtained a loan from the Development Bank of the Philippines (DBP), and to secure the said loan, four parcels of land (Lots 506, 512, 513, and 514) owned by the Suico spouses and another lot owned by their business partner, Juliana Del Rosario, were mortgaged. Subsequently, the Suico spouses and their business partners failed to pay their loan obligations forcing DBP to foreclose the mortgage.

After the Suico spouses and their partners failed to redeem the foreclosed properties, DBP consolidated its ownership over the same. Nonetheless, DBP later allowed the Suico Spouses and Flores Spouses (as substitutes for Juliana Del Rosario) to repurchase the subject lot. The Suico and Flores spouses were able to pay the downpayment and the first monthly amortization, but no monthly installments were made thereafter. This prompted them to sell their rights over the said property to respondents spouses Sabordo (Respondents), subject to the condition that the latter shall pay the balance of the sale price which the DBP approved. In a supplemental agreement executed between them, they affirmed that what was actually sold to the respondents were Lots 512 and 513, while **Lots 506 and 514 were given to them as usufructuaries**. Subsequently, the respondents were able to repurchase the foreclosed properties of the Suico and Flores spouses.

Thereafter, respondent filed with the Court of First Instance of Negros Occidental an original action for declaratory relief raising the issue **whether or not spouses Suico have the right to recover from respondents Lots 506 and 514**. The Regional Trial Court (RTC) of San Carlos City **ruled in**

favor of the Suico Spouses giving them a period within which to redeem or buy back from respondents the said lots. On appeal, the Court of Appeals (CA) **also affirmed the decision of the trial court and giving them an additional period of 90 days from notice within which to exercise their option to purchase or redeem the disputed lots.**

Toribio Suico died leaving his widow and several others, including Elizabeth Del Carmen (petitioner) as legal heirs. Later, **they discovered that respondents mortgaged Lots 506 and 514 with Republic Planters Bank (RPB) as security for a loan**, subsequently, became delinquent.

Claiming that they are ready with the payment for the disputed lots but alleging that **they cannot determine as to whom such payment shall be made**, petitioner and her co-heirs filed a Complaint with the RTC of San Carlos City seeking to compel herein respondents and RPB to interplead and litigate between themselves their respective interests on the sum of money. **Upon filing the complaint, the petitioners deposited the amount with the RTC.** The RTC rendered judgment dismissing the Complaint for lack of merit. On appeal, the CA denied the appeal for lack of merit and affirming the decision of the trial court. Petitioner filed this petition **contending that the consignation which she and her co-heirs made was a judicial deposit based on final judgment and does not need to comply with the requirements of a valid consignation as set forth by law.**

ISSUE:

Whether or not there was a valid consignation (NO)

RULING:

Consignation is the act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment, and **it generally requires a prior tender of payment**. In the case cited by the petitioners, the Court considered a valid payment of the amount adjudged, even without prior tender of payment, because the plaintiff in the case expressly petitioned the court that the defendants be notified to receive the tender of payment. However, in this case, petitioner upon making the deposit with the RTC, did not ask the trial court that respondents be notified to receive the amount that they have deposited.

In a number of cases, the Court has consistently held that for a consignation or deposit with the court of an amount due on a judgment to be considered as payment, there must be prior tender of payment. Tender of payment involves a positive and unconditional act by the obligor of offering legal tender currency as payment to the obligee for the former's obligation and demanding the latter accept the same. In this case, there was no prior tender of payment. **It is settled that compliance with the requisite of a valid consignation is mandatory. Failure to comply strictly with any of these requisites will render the consignation void.** One of these requirements is valid prior tender of payment.

SPOUSES NAMEAL and LOURDES BONROSTRO, *petitioners,* **-versus- SPOUSES JUAN and CONSTANCIA LUNA,** *respondents.*
GR No. 172346, SECOND DIVISION, 24 July 2013, DEL CASTILLO, J.

In a contract to sell, payment of the price is a positive suspensive condition, failure of which is not a breach of contract warranting rescission under Article 1191 of the Civil Code but rather just an event that prevents the supposed seller from being bound to convey title to the supposed buyer. There being no breach to speak of in case of non-payment of the purchase price in a contract to sell, as in this case, the RTC's factual finding that Lourdes was willing and able to pay her obligation therefore loses significance.

FACTS:

Spouses Constancia and Juan Luna filed before the RTC a Complaint for Rescission of Contract and Damages against spouses Bonrostro.

Constancia, as buyer, entered into a Contract to Sell with Bliss Development Corporation involving a house and lot. A year after, Constancia, this time as seller, entered into another Contract to Sell with Lourdes Bonrostro over the same property. Spouses Bonrostro took possession of the property. However, they managed to pay only the P200 000 down payment and failed to settle the stipulated subsequent amortization payments.

Spouses Bonrostro alleged that they sent a letter to Spouses Luna's lawyer, stating that they were willing to pay the remaining balance. They also asserted that they paid Bliss the amortizations, but Constancia instructed Bliss not to accept any payment.

The RTC ruled that the delay on the part of Bonrostro could not be considered substantial breach because they expressed their willingness to pay, hence, it does not warrant rescission. However, the Court of Appeals reversed the decision.

ISSUE:
Whether or not the delay in the payment on the part of Spouses Bonrostro warrants rescission of the contract. (NO)

RULING:
In a contract to sell, payment of the price is a positive suspensive condition, failure of which is not a breach of contract warranting rescission under Article 1191 of the Civil Code but rather just an event that prevents the supposed seller from being bound to convey title to the supposed buyer.

There being no breach to speak of in case of non-payment of the purchase price in a contract to sell, as in this case, the RTC's factual finding that Lourdes was willing and able to pay her obligation — a conclusion arrived at in connection with the said court's determination of whether the non-payment of the purchase price in accordance with the terms of the contract was a substantial breach warranting rescission — therefore loses significance.

NAGA TELEPHONE CO., INC (NATELCO) AND LUCIANO M. MAGGAY, *petitioners* **-versus- THE COURT OF APPEALS AND CAMARINES SUR II ELECTRIC COOPERATIVE, INC. (CASURECO II),** *respondents.*
GR No. 107112, SECOND DIVISION, 24 February 1994, NOCON, J.

Article 1267 speaks of "service" which has become so difficult. Taking into consideration the rationale behind this provision, the term "service" should be understood as referring to the "performance" of the obligation. Article 1267 states in our law the doctrine of unforeseen events. This is said to be based on the discredited theory of rebus sic stantibus in public international law; under this theory, the parties stipulate in the light of certain prevailing conditions, and once these conditions cease to exist the contract also ceases to exist. In the present case, the obligation of private respondent consists in allowing petitioners to use its posts in Naga City, which is the service contemplated in said article.

FACTS:

Naga Telephone Co., Inc. (NATELCO) entered into a contract with Camarines Sur II Electric Cooperative, Inc. (CASURECO II) where it is stipulated that NATELCO will use the electric light posts of CASURECO II for the operation of NATELCO's telephone service. In return, NATELCO agreed to install 10 telephone connections for the use by CASURECO II, free of charge.

After the enforcement of the contract for over 10 years, CASURECO II filed against NATELCO for reformation of the contract with damages on the ground that it is too one-sided in favor of NATELCO. It argued that after 11 years of NATELCO's use of the posts, the telephone cables strung by them became heavier with the increase in the volume of their subscribers, worsened by the fact that their linemen bore holes through the posts which caused the posts to be destroyed during typhoons.

The RTC ruled that the contract should be reformed based on equity. Hence, NATELCO should pay CASURECO II compensation for the use of their posts, while the latter should pay monthly bills for the use of the telephones.

Before the SC, NATELCO argued that Article 1267 of the New Civil Code is not applicable because the contract does not involve the rendition of service or a personal prestation and it is not for future service with future unusual change.

ISSUE:

Whether or not Article 1267 applies in this case to warrant the release of the parties from their obligations. (YES)

RULING:

Article 1267 speaks of "service" which has become so difficult. Taking into consideration the rationale behind this provision, the term "service" should be understood as referring to the "performance" of the obligation. Article 1267 states in our law the doctrine of unforeseen events. This is said to be based on the discredited theory of rebus sic stantibus in public international law; under this theory, the parties stipulate in the light of certain prevailing conditions, and once these conditions cease to exist the contract also ceases to exist.

In the present case, the obligation of private respondent consists in allowing petitioners to use its posts in Naga City, which is the service contemplated in said article. A bare reading of this article reveals that it is not a requirement thereunder that the contract be for future service with future unusual change. The parties are therefore released from their respective obligations, but on the basis of equity, the RTC's ruling should be upheld.

COMGLASCO CORPORATION/AGUILA GLASS, *petitioner,* **-versus- SANTOS CAR CHEK CENTER CORPORATION,** *respondent.*
GR No. 202989, THIRD DIVISION, 25 March 2015, REYES, J.

In PNCC v. CA, the Court held that the payment of lease rentals does not involve a prestation "to do" envisaged in Articles 1266 and 1267 which has been rendered legally or physically impossible without the fault of the obligor-lessor. Article 1267 speaks of a prestation involving service which has been rendered so difficult by unforeseen subsequent events as to be manifestly beyond the contemplation of the parties.

FACTS:

In 2000, Santos Car Check Center Corporation leased out a space of its showroom to Comglasco for a period of five years. On October 2001, Comglasco advised Santos through a letter that it was pre-terminating their lease agreement. Santos refused to accede to the pre-termination, but Comglasco vacated the leased premises and halted paying any rentals.

Santos filed a suit against Comglasco for breach of contract. However, Comglasco argued that paragraph 15 of their lease contract permits pre-termination with cause in the first three years and without case after the third year. It anchored its claim on the 1997 Asian financial crisis which according to Comglasco, exempted it from its obligation based on Article 1267 of the Civil Code.

ISSUE:

Whether or not the Comglasco is exempt from its obligation based on Article 1267 of the Civil Code. (NO)

RULING:

Relying on Article 1267 of the Civil Code to justify its decision to pre-terminate its lease with Santos, Comglasco invokes the 1997 Asian currency crisis as causing it much difficulty in meeting its obligations.

In PNCC v. CA, the Court held that the payment of lease rentals does not involve a prestation "to do" envisaged in Articles 1266 and 1267 which has been rendered legally or physically impossible without the fault of the obligor-lessor. Article 1267 speaks of a prestation involving service which has been rendered so difficult by unforeseen subsequent events as to be manifestly beyond the contemplation of the parties.

TRANS-PACIFIC INDUSTRIAL SUPPLIES, INC., *petitioner,* **-versus- THE COURT OF APPEALS and ASSOCIATED BANK,** *respondents.*
GR No. 109172, THIRD DIVISION, 19 August 1994, BIDIN, J.

The rationale for allowing the presumption of renunciation in the delivery of a private instrument is that, unlike that of a public instrument, there could be just on copy of the evidence of credit. Where several originals are made of a private document, the intendment of the law would thus be to refer to the delivery only of the original original rather than to the original duplicate of which the debtor would normally retain a copy. In this case, there is sufficient justification to overthrow the presumption of payment generated by the delivery of the documents evidencing Trans-Pacific's indebtedness.

FACTS:

Trans-Pacific Industrial Supplies applied for and was granted several financial accommodations amounting to P1.3 Million by Associated Bank. The loans were secured by four promissory notes, a real estate mortgage, and a chattel mortgage.

When Trans-Pacific failed to settle its obligation in full, it requested for, and was granted by Associated Bank, a restructuring of the remaining indebtedness. To secure the restructured loan, three new promissory notes were executed by Trans-Pacific.

Subsequently, Associated Bank returned the duplicate original copies of the three promissory notes to Trans-Pacific with the word "PAID" stamped thereon. Despite the return of the notes, the bank demanded from Trans-Pacific the payment of accrued interest on the notes. According to them, the promissory notes were erroneously released.

Trans-Pacific filed a case for specific performance and damages against Associated Bank. It prayed for the release of its mortgages and its obligation to the bank be declared as having been fully paid.

ISSUE:

Whether or not the delivery of the promissory notes evidencing the principal obligation signified the renunciation of the obligation of Trans-Pacific to Associated Bank. (NO)

RULING:

The presumption created by the Art. 1271 of the Civil Code is not conclusive but merely prima facie. If there be no evidence to the contrary, the presumption stands. Conversely, the presumption loses its legal efficacy in the face of proof or evidence to the contrary. In this case, there is sufficient justification to overthrow the presumption of payment generated by the delivery of the documents evidencing Trans-Pacific's indebtedness.

The rationale for allowing the presumption of renunciation in the delivery of a private instrument is that, unlike that of a public instrument, there could be just on copy of the evidence of credit. Where several originals are made of a private document, the intendment of the law would thus be to refer to the delivery only of the original *original* rather than to the original duplicate of which the debtor would normally retain a copy. It would thus be absurd if Article 1271 were to be applied differently.

ENGRACIO FRANCIA, *Petitioner*, -versus- INTERMEDIATE APPELLATE COURT and HO FERNANDEZ, *Respondents*

G.R. No. L-67649, THIRD DIVISION, June 28, 1988, GUTIERREZ, JR., J.

We have consistently ruled that there can be no off-setting of taxes against the claims that the taxpayer may have against the government. A person cannot refuse to pay a tax on the ground that the government owes him an amount equal to or greater than the tax being collected. The collection of a tax cannot await the results of a lawsuit against the government.

FACTS

Engracio Francia is the registered owner of a residential lot and a two-story house built upon it situated at Barrio San Isidro, now District of Sta. Clara, Pasay City, Metro Manila. On October 15, 1977, a 125 square meter portion of Francia's property was expropriated by the Republic of the Philippines for the sum of P4,116.00 representing the estimated amount equivalent to the assessed value of the aforesaid portion.

Since 1963 up to 1977 inclusive, Francia failed to pay his real estate taxes. Thus, on December 5, 1977, his property was sold at public auction by the City Treasurer of Pasay City pursuant to Section 73 of Presidential Decree No. 464 known as the Real Property Tax Code in order to satisfy a tax delinquency of P2,400.00. Ho Fernandez was the highest bidder for the property.

Francia was not present during the auction sale since he was in Iligan City/ On March 3, 1979, Francia received a notice of hearing of LRC Case No. 1593-P "In re: Petition for Entry of New Certificate of Title" filed by Ho Fernandez, seeking the cancellation of TCT No. 4739 (37795) and the issuance in his name of a new certificate of title. Upon verification through his lawyer, Francia discovered that a Final Bill of Sale had been issued in favor of Ho Fernandez by the City Treasurer on December 11, 1978. The auction sale and the final bill of sale were both annotated at the back of TCT No. 4739 (37795) by the Register of Deeds.

On March 20, 1979, Francia filed a complaint to annul the auction sale. He later amended his complaint on January 24, 1980.

ISSUE

Whether the Intermediate Appellate Court committed a grave error of law in not holding petitioner's obligation to pay P2,400.00 for supposed tax delinquency was set-off by the amount of P4,116.00 which the government is indebted to the former (NO)

RULING

Francia contends that his tax delinquency of P2,400.00 has been extinguished by legal compensation. He claims that the government owed him P4,116.00 when a portion of his land was expropriated on October 15, 1977. Hence, his tax obligation had been set-off by operation of law as of October 15, 1977.

There is no legal basis for the contention. By legal compensation, obligations of persons, who in their own right are reciprocally debtors and creditors of each other, are extinguished (Art. 1278,

Civil Code). The circumstances of the case do not satisfy the requirements provided by Article 1279, to wit:

> (1) that each one of the obligors be bound principally and that he be at the same time a principal creditor of the other;
> xxx xxx xxx
> (3) that the two debts be due.
> xxx xxx xxx

This principal contention of the petitioner has no merit. We have consistently ruled that there can be no off-setting of taxes against the claims that the taxpayer may have against the government. A person cannot refuse to pay a tax on the ground that the government owes him an amount equal to or greater than the tax being collected. The collection of a tax cannot await the results of a lawsuit against the government. We stated that a taxpayer cannot refuse to pay his tax when called upon by the collector because he has a claim against the governmental body not included in the tax levy.

There are other factors which compel us to rule against the petitioner. The tax was due to the city government while the expropriation was effected by the national government. Moreover, the amount of P4,116.00 paid by the national government for the 125 square meter portion of his lot was deposited with the Philippine National Bank long before the sale at public auction of his remaining property. Notice of the deposit dated September 28, 1977 was received by the petitioner on September 30, 1977. The petitioner admitted in his testimony that he knew about the P4,116.00 deposited with the bank but he did not withdraw it. It would have been an easy matter to withdraw P2,400.00 from the deposit so that he could pay the tax obligation thus aborting the sale at public auction.

FIRST UNITED CONSTRUCTORS CORPORATION AND BLUE STAR CONSTRUCTION CORPORATION, Petitioner, –versus- BAYANIHAN AUTOMOTIVE CORPORATION, Respondent
G.R. No. 164985, FIRST DIVISION, January 15, 2014 , Bersamin, J.

Recoupment is allowed when a part of a claim upon which one is sued by means of a legal or equitable right resulting from a counterclaim arises out of the same transaction. Even if there is a series of transaction, such cannot be considered as one and the same transaction for the purpose of recoupment. In a case where there is an earlier purchase of the six dump trucks and a latter purchase of the Hino Prime Mover and the Isuzu Transit Mixer, and as such constitutes a series of transaction, these transactions cannot be considered as the same transactions for purposes of recoupment. A series of transaction is different from one and the same transaction.

Legal compensation, on the other hand, applies even if the claims and counterclaims do not stem from the same transactions. The important factor to consider in legal compensation is that the parties must be creditors and debtors of each other. Since petitioners spent for the repairs and spare parts of the alleged defective dump truck, they become the creditor of the respondent as well as their debtor since the former has not paid its obligation to the latter. Thus, the requisites of legal compensation are met.

FACTS

FUCC ordered from the respondent one unit of Hino Prime Mover that the respondent delivered on the same date it was ordered. Thereafter, FUCC again ordered from the respondent one unit of Isuzu Transit Mixer that was also delivered to the petitioners. For the two purchases, FUCC partially paid in cash, and the balance through post-dated checks. Upon presentment of the checks for

payment, the respondent learned that FUCC had ordered the payment stopped. The respondent immediately demanded the full settlement of their obligation from the petitioners, but to no avail. Instead, the petitioners informed the respondent that they were withholding payment of the checks due to the breakdown of one of the dump trucks they had earlier purchased from respondent.

Due to the nonpayment of the obligation, the respondents commenced the present action. In their answer, the petitioners averred that they had stopped the payment on the two checks because of the respondent's refusal to repair the second dump truck; and that they had informed the respondent of the defects in that unit but the respondent had refused to comply with its warranty, compelling them to incur expenses for the repair and spare parts. It was the position of the respondent that the petitioners were not legally justified in withholding payment of the unpaid balance of the purchase price of the Hino Prime Mover and the Isuzu Transit Mixer due the alleged defects in one dump truck because the purchase of the two units was an entirely different transaction from the sale of the dump trucks, the warranties for which having long expired.

The RTC ruled in favor of the respondent. The CA affirmed the RTC decision. Hence, this petition.

ISSUE

1. Whether the petitioners validly exercised the right of recoupment through the withholding of payment of the unpaid balance of the purchase price of the Hino Prime Mover and the Isuzu Transit Mixer (NO)
2. Whether the costs of the repairs and spare parts for the alleged defective dump truck could be offset for the petitioners' obligations to the respondent (YES)

RULING

Petitioners could not validly resort to recoupment against respondent

Recoupment (*reconvencion*) is the act of rebating or recouping a part of a claim upon which one is sued by means of a legal or equitable right resulting from a counterclaim arising out of the same transaction. It is the setting up of a demand arising from the same transaction as the plaintiff's claim, to abate or reduce that claim.

The legal basis for recoupment by the buyer is the first paragraph of Article 1599 of the *Civil Code, viz*:
Article 1599. Where there is a breach of warranty by the seller, the buyer may, at his election:

(1) Accept or keep the goods and set up against the seller, the breach of warranty by way of recoupment in diminution or extinction of the price;

x x x x
When the buyer has claimed and been granted a remedy in anyone of these ways, no other remedy can thereafter be granted, without prejudice to the provisions of the second paragraph of article 1191. It was improper for petitioners to set up their claim for repair expenses and other spare parts of the dump truck against their remaining balance on the price of the prime mover and the transit mixer they owed to respondent. Recoupment must arise out of the contract or transaction upon which the plaintiff's claim is founded. To be entitled to recoupment, therefore, the claim must arise from the same transaction, *i.e.,* the purchase of the prime mover and the transit mixer and not to a

previous contract involving the purchase of the dump truck. That there was a series of purchases made by petitioners could not be considered as a single transaction, for the records show that the earlier purchase of the six dump trucks was a separate and distinct transaction from the subsequent purchase of the Hino Prime Mover and the Isuzu Transit Mixer. Consequently, the breakdown of one of the dump trucks did not grant to petitioners the right to stop and withhold payment of their remaining balance on the last two purchases.

Legal compensation was permissible

Legal compensation takes place when the requirements set forth in Article 1278 and Article 1279 of the *Civil Code* are present, to wit:

Article 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other."

Article 1279. In order that compensation may be proper, it is necessary:
(1) That each of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
(2) That both debts consists in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
(3) That the two debts be due;
(4) That they be liquidated and demandable;
(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

Considering that preponderant evidence showing that petitioners had spent for the repairs and spare parts of the alleged defective dump truck within the warranty period of three months supported the finding of the two lower courts, the Court accepts their finding. Verily, factual findings of the trial court, when affirmed by the CA, are conclusive on the Court when supported by the evidence on record.

A debt is liquidated when its existence and amount are determined. Accordingly, an unliquidated claim set up as a counterclaim by a defendant can be set off against the plaintiff's claim from the moment it is liquidated by judgment. Article 1290 of the *Civil Code* provides that when all the requisites mentioned in Article 1279 of the *Civil Code* are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount. With petitioners' expenses for the repair of the dump truck being already established and determined with certainty by the lower courts, it follows that legal compensation could take place because all the requirements were present.

HEIRS OF SERVANDO FRANCO, *Petitioners,* -versus- SPOUSES VERONICA and DANILO GONZALES, *Respondents*
G.R. No. 159709, FIRST DIVISION, June 27, 2012, De Castro, J.

A new obligation extinguishes a prior agreement only when the substitution is unequivocally declared, or the old and the new obligations are incompatible on every point. A compromise of a final judgment operates as a novation of the judgment obligation upon compliance with either of these two conditions.

FACTS

Defendants Servando Franco and Leticia Mendel obtained loans from Veronica Gonzales for the latter was engaged in the business of financing under the company Gonzales Credit Enterprises. There were three loans which the Servando and Leticia secured with the respondent, which was not paid on maturity. The third loan was secured by a property was owned by one Leticia Makalintal Yapintchay, who issued a special power of attorney in favor of Leticia Medel, authorizing her to execute the mortgage. The fourth loan was engaged with Dr. Rafael Mendel, the husband of Leticia Mendel of P 60,000 by executing a promissory note which consolidates the other previous loans which totals to P 500,000.

Upon maturity of the new promissory note, the defendants failed to pay their obligation. So, the plaintiffs filed a complaint for the collection of the full amount of the loan, plus interests and other charges. Servando contended that he did not obtain any loan from the respondents, he was not benefited from its proceed and he signed the promissory note as a witness.

With the various appeals and motion for reconsideration with the RTC and CA, it was decided that the parties should be liable for the loans. Servando opposed that he and the respondents had agreed to fix the entire obligation at P775,000.00. According to Servando, their agreement, which was allegedly embodied in a receipt dated February 5, 1992, whereby he made an initial payment of P400,000.00 and promised to pay the balance of P375,000.00 on February 29, 1992, superseded the July 23, 1986 promissory note. But the RTC ruled over Servando's opposition and moved to the execution of the judgment for it is final and executory. Then, Servando's heirs, on account of his intervening death, appealed that there was novation is the judgment that transpired upon the decision of the court on December 9, 1991 and February 5, 1992.

ISSUE

Whether there is novation between the judgments rendered by the courts. (NO)

RULING

There is no novation in the instant case.

There is no novation when there is no irreconcilable incompatibility between the old and the new obligations. There is no novation in case of only slight modifications; hence, the old obligation prevails. Extinguishment of the old obligation is a necessary element for novation and the new one will arise from such.

Novation arises when there is a substitution of an obligation by a subsequent one that extinguishes the first, either by changing the object or the principal conditions, or by substituting the person of the debtor, or by subrogating a third person in the rights of the creditor. For a valid novation to take place, there must be, therefore: (a) a previous valid obligation; (b) an agreement of the parties to make a new contract; (c) an extinguishment of the old contract; and (d) a valid new contract. In short, the new obligation extinguishes the prior agreement only when the substitution is unequivocally declared, or the old and the new obligations are incompatible on every point. A compromise of a final judgment operates as a novation of the judgment obligation upon compliance with either of these two conditions.

On the receipt of February 5, 1992 did not create a new obligation incompatible with the old one under the promissory note that was issued. It was only a payment of the obligation of Servando and did not establish a new obligation. The Court ruled that the payment of the obligation does not novate the instrument that only expressly recognize the old obligation, or changes only the terms of the payment, or adds other obligation that is not incompatible with the old ones, or the new contract merely supplements the old one. The new contract that is a mere reiteration, acknowledgement or ratification of the old contract with slight modifications or alterations as to the cause or object or principal conditions can stand together with the former one, and there can be no incompatibility between them. Moreover, a creditor's acceptance of payment after demand does not operate as a modification of the original contract.

Novation is not presumed by the parties, there should be an expressed agreement that would abrogate the old one in favor of the new one. In the absence of the express agreement, the old and the new obligation should be incompatible on every point. The incompatibility of the obligation is that the two obligations cannot stand together, each one having independence from each other.

ARCO PULP AND PAPER CO., INC. and CANDIDA A. SANTOS, *Petitioners* –versus- DAN T. LIM, doing business under the name and style of QUALITY PAPERS & PLASTIC PRODUCTS ENTERPRISES, *Respondents*

G.R. No. 206806, THIRD DIVISION, June 25, 2014, Leonen, J.

Pulp and Paper had an alternative obligation whereby it would either pay Dan T. Lim the value of the raw materials or deliver to him their finished products of equivalent value. When petitioner Arco Pulp and Paper tendered a check to Lim in partial payment for the scrap papers, they exercised their option to pay the price. This choice was also shown by the terms of the memorandum of agreement which declared in clear terms that the delivery of petitioner Arco Pulp and Paper's finished products would be to a third person, thereby extinguishing the option to deliver the finished products of equivalent value to respondent. The trial court erroneously ruled that the execution of the memorandum of agreement constituted a novation of the contract between the parties. Novation extinguishes an obligation between two parties when there is a substitution of objects or debtors or when there is subrogation of the creditor. The consent of the creditor must be secured for the novation to be valid. In this case, Lim was not privy to the memorandum of agreement, thus, his conformity to the contract need not be secured. If the memorandum of agreement was intended to novate the original agreement between the parties, respondent must have first agreed to the substitution of Eric Sy as his new debtor.

FACTS

Dan T. Lim works in the business of supplying scrap papers, cartons, and other raw materials, under the name Quality Paper and Plastic Products, Enterprises, to factories engaged in the paper mill business. Lim delivered scrap papers worth 7,220,968.31 to Arco Pulp and Paper Company, Inc. through its Chief Executive Officer and President, Candida A. Santos. The parties allegedly agreed that Arco Pulp and Paper would either pay Dan T. Lim the value of the raw materials or deliver to him their finished products of equivalent value.

Dan T. Lim alleged that when he delivered the raw materials, Arco Pulp and Paper issued a post-dated check as partial payment, with the assurance that the check would not bounce. When he deposited the check, it was dishonored for being drawn against a closed account. On the same day, Arco Pulp and Paper and a certain Eric Sy executed a memorandum of agreement where Arco Pulp and Paper bound themselves to deliver their finished products to Megapack Container Corporation,

owned by Eric Sy, for his account. According to the memorandum, the raw materials would be supplied by Dan T. Lim, through his company, Quality Paper and Plastic Products.

Despite repeated demands by Lim, Arco Pulp and Paper did not pay. Lim filed a complaint for collection of sum of money with prayer for attachment with the RTC. The trial court rendered a judgment in favor of Arco Pulp and Paper and dismissed the complaint, holding that when Arco Pulp and Paper and Eric Sy entered into the memorandum of agreement, novation took place, which extinguished Arco Pulp and Paper's obligation to. Lim. The CA reversed said decision.

ISSUE

Whether or not the obligation between the parties was extinguished by novation (NO)

RULING

The obligation between the parties was an alternative obligation.
The rule on alternative obligations is governed by Article 1199 of the Civil Code, which states:

Article 1199. A person alternatively bound by different prestations shall completely perform one of them. The creditor cannot be compelled to receive part of one and part of the other undertaking.

"In an alternative obligation, there is more than one object, and the fulfillment of one is sufficient, determined by the choice of the debtor who generally has the right of election." The right of election is extinguished when the party who may exercise that option categorically and unequivocally makes his or her choice known.

The choice of the debtor must also be communicated to the creditor who must receive notice of it since: The object of this notice is to give the creditor . . . opportunity to express his consent, or to impugn the election made by the debtor, and only after said notice shall the election take legal effect when consented by the creditor, or if impugned by the latter, when declared proper by a competent court.

The appellate court correctly identified the obligation between the parties as an alternative obligation, whereby petitioner Arco Pulp and Paper, after receiving the raw materials from respondent, would either pay him the price of the raw materials or, in the alternative, deliver to him the finished products of equivalent value.

When petitioner Arco Pulp and Paper tendered a check to respondent in partial payment for the scrap papers, they exercised their option to pay the price. Respondent's receipt of the check and his subsequent act of depositing it constituted his notice of petitioner Arco Pulp and Paper's option to pay. This choice was also shown by the terms of the memorandum of agreement, which was executed on the same day. The memorandum declared in clear terms that the delivery of petitioner Arco Pulp and Paper's finished products would be to a third person, thereby extinguishing the option to deliver the finished products of equivalent value to respondent.

The trial court erroneously ruled that the execution of the memorandum of agreement constituted a novation of the contract between the parties. When petitioner Arco Pulp and Paper opted instead to deliver the finished products to a third person, it did not novate the original obligation between the parties.

The rules on novation are outlined in the Civil Code, thus:

Article 1291. Obligations may be modified by:
1. Changing their object or principal conditions;
2. Substituting the person of the debtor;
3. Subrogating a third person in the rights of the creditor.

Article 1292. In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other. (1204)

Article 1293. Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him the rights mentioned in Articles 1236 and 1237.

Novation extinguishes an obligation between two parties when there is a substitution of objects or debtors or when there is subrogation of the creditor. It occurs only when the new contract declares so "in unequivocal terms" or that "the old and the new obligations be on every point incompatible with each other."

In general, there are two modes of substituting the person of the debtor: (1) expromision and (2) delegacion. In expromision, the initiative for the change does not come from — and may even be made without the knowledge of — the debtor, since it consists of a third person's assumption of the obligation. As such, it logically requires the consent of the third person and the creditor. In delegacion, the debtor offers, and the creditor accepts, a third person who consents to the substitution and assumes the obligation; thus, the consent of these three persons are necessary. Both modes of substitution by the debtor require the consent of the creditor.

Novation may also be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new one that takes the place of the former. It is merely modificatory when the old obligation subsists to the extent that it remains compatible with the amendatory agreement. Whether extinctive or modificatory, novation is made either by changing the object or the principal conditions, referred to as objective or real novation; or by substituting the person of the debtor or subrogating a third person to the rights of the creditor, an act known as subjective or personal novation. For novation to take place, the following requisites must concur:

1. There must be a previous valid obligation.
2. The parties concerned must agree to a new contract.
3. The old contract must be extinguished.
4. There must be a valid new contract.

The consent of the creditor must also be secured for the novation to be valid: Novation must be expressly consented to. Moreover, the conflicting intention and acts of the parties underscore the absence of any express disclosure or circumstances with which to deduce a clear and unequivocal intent by the parties to novate the old agreement.
In this case, respondent was not privy to the memorandum of agreement, thus, his conformity to the contract need not be secured. If the memorandum of agreement was intended to novate the original agreement between the parties, respondent must have first agreed to the substitution of

Eric Sy as his new debtor. The memorandum of agreement must also state in clear and unequivocal terms that it has replaced the original obligation of petitioner Arco Pulp and Paper to respondent. Neither of these circumstances is present in this case.

Petitioner Arco Pulp and Paper's act of tendering partial payment to respondent also conflicts with their alleged intent to pass on their obligation to Eric Sy. When respondent sent his letter of demand to petitioner Arco Pulp and Paper, and not to Eric Sy, it showed that the former neither acknowledged nor consented to the latter as his new debtor. These acts, when taken together, clearly show that novation did not take place. Since there was no novation, petitioner Arco Pulp and Paper's obligation to respondent remains valid and existing. Petitioner Arco Pulp and Paper, therefore, must still pay respondent the full amount of P7,220,968.31.

LEONARDO BOGNOT, *Petitioners* –versus- RRI LENDING CORPORATION, represented by its General Manager, DARIO J. BERNARDEZ, *Respondents*
G.R. No. 180144, SECOND DIVISION, September 24, 2014, BRION, *J.*

It has been held in Bank of the Philippine Islands v. Spouses Royeca, settled is the rule that ***payment must be made in legal tender****. A* ***check is not legal tender*** *and, therefore, cannot constitute a valid tender of payment. Since a negotiable instrument is only a substitute for money and not money, the delivery of such an instrument does not, by itself, operate as payment.* ***Mere delivery of checks does not discharge the obligation under a judgment****. The obligation is not extinguished and remains suspended until the payment by commercial document is actually realized.*

In the present case, the petitioner failed to satisfactorily prove that his obligation had already been extinguished by payment. As the CA correctly noted, the petitioner ***failed to present any evidence that the respondent had in fact encashed his check*** *and applied the proceeds to the payment of the loan. Neither did he present official receipts evidencing payment, nor any proof that the check had been dishonored.*

FACTS

RRI Lending Corporation (respondent) is an entity engaged in the business of lending money to its borrowers within Metro Manila. The petitioner and his younger brother, Rolando A. Bognot (collectively referred to as the "Bognot siblings"), applied for and obtained a loan of Five Hundred Thousand Pesos (₱500,000.00) from the respondent. The loan was evidenced by a promissory note and was secured by a post dated check.

Evidence on record shows that the petitioner renewed the loan several times on a monthly basis. He paid a renewal fee of ₱54, 600.00 for each renewal, issued a new post-dated check as security, and executed and/or renewed the promissory note previously issued. The respondent on the other hand, canceled and returned to the petitioner the post-dated checks issued prior to their renewal.
The petitioner applied for another loan renewal. He again executed as principal and signed Promissory Note. As security for the loan, the petitioner also issued BPI Check.

Several days before the loan's maturity, Rolando's wife, Julieta Bognot (Mrs. Bognot), went to the respondent's office and applied for another renewal of the loan. She issued in favor of the respondent Promissory Note, and International Bank Exchange (IBE) Check in the amount of ₱54,600.00 as renewal fee.

On the excuse that she needs to bring home the loan documents for the Bognot siblings' signatures and replacement, Mrs. Bognot asked the respondent's clerk to release to her the promissory note, the disclosure statement, and the check. Mrs. Bognot, however, never returned these documents nor issued a new post-dated check. Consequently, the respondent sent the petitioner follow-up letters demanding payment of the loan, plus interest and penalty charges. These demands went unheeded.
The respondent, through Bernardez, filed a complaint for sum of money before the Regional Trial Court (RTC) against the Bognot siblings. The respondent mainly alleged that the loan renewal which the Bognot siblings applied for **remained unpaid**; and **despite repeated demands**, the Bognot siblings failed to pay their joint and solidary obligation.

ISSUE

Whether or not the parties' obligation was extinguished by payment. (NO)

RULING

Jurisprudence tells us that one who pleads payment has the burden of proving it; the **burden rests on the defendant to prove payment**, rather than on the plaintiff to prove non-payment. Indeed, once the existence of an indebtedness is duly established by evidence, the burden of showing with legal certainty that the obligation has been discharged by payment rests on the debtor.

In the present case, the petitioner failed to satisfactorily prove that his obligation had already been extinguished by payment. As the CA correctly noted, the petitioner **failed to present any evidence that the respondent had in fact encashed his check** and applied the proceeds to the payment of the loan. Neither did he present official receipts evidencing payment, nor any proof that the check had been dishonored.

Article 1249, paragraph 2 of the Civil Code provides:

The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall **produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired**.

Also, we held in *Bank of the Philippine Islands v. Spouses Royeca*, settled is the rule that **payment must be made in legal tender**. A **check is not legal tender** and, therefore, cannot constitute a valid tender of payment. Since a negotiable instrument is only a substitute for money and not money, the delivery of such an instrument does not, by itself, operate as payment. **Mere delivery of checks does not discharge the obligation under a judgment**. The obligation is not extinguished and remains suspended until the payment by commercial document is actually realized.

MANUEL C. ACOL, substituted by MANUEL RAYMOND ACOL, *Petitioners* –versus- PHILIPPINE COMMERCIAL CREDIT CARD INCORPORATED, *Respondents*
G.R. No. 135149, SECOND DIVISION, July 25, 2006, CORONA, *J.*

Article 1306 of the Civil Code *prohibits contracting parties from establishing stipulations contrary to public policy. The assailed provision was just such a stipulation. It is without any hesitation therefore that we* ***strike it down.***

FACTS

Petitioner Manuel Acol applied with respondent for a Bankard credit card and extension. Both were issued to him shortly thereafter. For several years, he regularly used this card, purchasing from respondent's accredited establishments and paying the corresponding charges for such purchases. Petitioner discovered the **loss of his credit card**. After exhausting all efforts to find it, the first hour of the following day, a Sunday, he called up respondent's office and reported the loss. The representative he spoke to told him that his card would be immediately included in the circular of lost cards.

Again, petitioner called up respondent to reiterate his report on the loss of his card. He inquired if there were other requirements he needed to comply with in connection with the loss. Respondent's representative advised him to put into writing the notice of loss and to submit it, together with the extension cards of his wife and daughter. Petitioner promptly wrote a letter confirming the loss and sent it to respondent.

A day before receiving the written notice, respondent issued a special cancellation bulletin informing its accredited establishments of the loss of the cards of the enumerated holders, including petitioner's. Unfortunately, it turned out that **somebody used petitioner's card** to buy commodities. Petitioner informed respondent he would not pay for the purchases made after the day he notified respondent of the loss.

At first, respondent agreed to reverse the disputed billings, pending the result of an investigation of petitioner's account. After the investigation and review, the respondent, confirmed that it was not the petitioner who used his Bankard on April 19 and 20, 1987.

Nonetheless, respondent reversed its earlier position to delete the disputed billings and insisted on collecting within 15 days from notice. It alleged that it was the most "practicable procedure and policy of the company." It cited provision no. 1 of the "Terms and Conditions Governing The Issuance and Use of the Bankard" found at the back of the application form:

> xxx Holder's responsibility for all charges made through the use of the card shall continue until the expiration or its return to the Card Issuer or until a reasonable time after receipt by the Card Issuer of written notice of loss of the Card and its actual inclusion in the Cancellation Bulletin. xxx

ISSUE

Whether or not the contested provision in the contract was valid and binding on the petitioner. (NO)

RULING

In this case, the stipulation in question is just as **repugnant to public policy**. As petitioner points out, the effectivity of the cancellation of the lost card rests on an act entirely beyond the control of the cardholder. Worse, the phrase "after a reasonable time" gives the issuer the opportunity to actually profit from unauthorized charges despite receipt of immediate written notice from the cardholder.

Under such a stipulation, petitioner could have theoretically done everything in his power to give respondent the required written notice. But if respondent took a "reasonable" time (which could be indefinite) to include the card in its cancellation bulletin, it could still hold the cardholder liable for whatever unauthorized charges were incurred within that span of time. This would have been truly iniquitous, considering the amount respondent wanted to hold petitioner liable for.
Article 1306 of the Civil Code prohibits contracting parties from establishing stipulations contrary to public policy. The assailed provision was just such a stipulation. It is without any hesitation therefore that we **strike it down**.

TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY (TESDA), ***Petitioners*** **– versus- THE COMMISSION ON AUDIT, CHAIRPERSON MA. GRACIA M. PULIDO TAN, COMMISSIONER JUANITO G. ESPINO, JR., and COMMISSIONER HEIDI L. MENDOZA,** ***Respondents***
G.R. No. 204869, EN BANC, March 11, 2014, CARPIO, *J.*

No money shall be paid out of the Treasury except in pursuance of an appropriation made by law. *COA did not act with grave abuse of discretion when it disallowed the disbursement of EME to TESDA officials for being excessive and unauthorized by law.* ***Provisions in the GAA are clear*** *in stating that the EME shall not exceed the amount fixed therein.*

FACTS

Upon post audit, the TESDA audit team leader discovered that for the calendar years 2004-2007, TESDA paid EME twice each year to its officials from two sources: (1) the **General Fund** for locally-funded projects, and (2) the **Technical Education and Skills Development Project** (TESDP) Fund for the foreign-assisted projects. The payment of EME was authorized under the General Provisions of the **General Appropriations Acts** of 2004, 2005, 2006 and 2007 (2004-2007 GAAs), subject to certain conditions.

The audit team issued a notice **disallowing the payment of EME** amounting to P5,498,706.60 for being in excess of the amount allowed in the 2004-2007 GAAs. In addition, the EME were disbursed to TESDA officials whose positions were not of equivalent ranks as authorized by the Department of Budget and Management (DBM), contrary to the provisions of the 2004-2007 GAAs. Notice of Disallowance indicated the persons liable for the excessive payment of EME: the approving officers, payees and the accountants.

TESDA, filed an Appeal Memorandum arguing that the 2004-2007 GAAs and the Government Accounting and Auditing Manual allowed the grant of EME from both the General Fund and the TESDP Fund provided the legal ceiling was not exceeded for each fund. According to TESDA, the General Fund and the TESDP Fund are distinct from each other, and TESDA officials who were designated as project officers concurrently with their regular functions were entitled to separate EME from both funds.

ISSUE

Whether or not COA properly disallow the payment of excessive EME by TESDA. (YES)

RULING

COA did not act with grave abuse of discretion when it disallowed the disbursement of EME to TESDA officials for being excessive and unauthorized by law. **Provisions in the GAA are clear** in stating that the EME shall not exceed the amount fixed therein. Those entitled to claim EME not exceeding the amount provided in the GAA are as follows: (1) the officials named in the GAA, (2) the officers of equivalent rank as may be authorized by the DBM, (3) and the offices under them. However, TESDA had a different interpretation of the law. It contends that there was no prohibition under the 2004-2007 GAAs regarding the additional EME chargeable against TESDP Fund. This argument deserves scant consideration. It is worth noting that **TESDA, an instrumentality of the government established under the TESDA Act of 1994, is accorded with budget for its implementation which is included in its annual GAA**. The TESDP Fund, which is being sourced from the Treasury, belongs to the government. The **Constitution provides that, no money shall be paid out of the Treasury except in pursuance of an appropriation made by law**. **No law was pointed out by TESDA authorizing it to grant additional reimbursement** for EME from the TESDP Fund, contrary to the explicit requirement in the Constitution and the law.

The Director-General blatant violation of the clear provisions of the Constitution, the 2004-2007 GAAs and the COA circulars is equivalent to **gross negligence** amounting to bad faith. Hence, he is **required to refund** the EME he received from the TESDP Fund for himself. TESDA officials, on the other hand, who had no participation in the approval of the excessive EME acted in good faith and they need not refund the excess EME they received.

SPOUSES BENJAMIN C. MAMARIL AND SONIA P. MAMARIL, *Petitioners* –versus- THE BOY SCOUT OF THE PHILIPPINES, AIB SECURITY AGENCY, INC., CESARIO PEÑA, AND VICENTE GADDI, *Respondents*

G.R. No. 179382, SECOND DIVISION, January 14, 2013, PERLAS-BERNABE, *J*.

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. If a contract should contain some* ***stipulation in favor of a third person****, he* ***may demand its fulfillment*** *provided he* ***communicated his acceptance to the obligor before its revocation.*** *A mere incidental benefit or interest of a person is not sufficient. The* ***contracting parties must have clearly and deliberately conferred a favor upon a third person.***

FACTS

Spouses Benjamin C. Mamaril and Sonia P. Mamaril (Sps. Mamaril) are **jeepney operator**. They would **park their six (6) passenger jeepneys** every night at the Boy Scout of the Philippines' (BSP) compound for a fee of ₱300.00 per month for each unit. One evening, all these vehicles were parked inside the BSP compound. The following morning, however, **one of the vehicles was missing** and was never recovered. According to the security guards Cesario Peña (Peña) and Vicente Gaddi (Gaddi) of AIB Security Agency, Inc. (AIB) with whom BSP had contracted for its security and protection, a male person who looked familiar to them took the subject vehicle out of the compound.

Sps. Mamaril filed a complaint for damages before the Regional Trial Court (RTC) against BSP, AIB, Peña and Gaddi. In support thereof, Sps. Mamaril averred that the loss of the subject vehicle was

due to the **gross negligence of the above-named security guards** on-duty who allowed the subject vehicle to be driven out by a stranger despite their agreement that only authorized drivers duly endorsed by the owners could do so. Peña and Gaddi even admitted their negligence during the ensuing investigation. Notwithstanding, BSP and AIB did not heed Sps. Mamaril's demands for a conference to settle the matter. They therefore **prayed that Peña and Gaddi, together with AIB and BSP, be held liable.**

ISSUE

Whether or not BSP may be held liable for the loss of the vehicle caused by the negligence of its security guards. (NO)

RULING

The **proximate cause** of the loss of Sps. Mamaril's vehicle was the **negligent act of security guards** Peña and Gaddi in allowing an unidentified person to drive out the subject vehicle. The records are **bereft of any finding of negligence on the part of BSP**. Neither will the v**icarious liability** of an employer under **Article 2180 of the Civil Code** apply in this case. Peña and Gaddi were assigned as security guards by AIB to BSP pursuant to the Guard Service Contract. **No employer-employee relationship existed between BSP and the security guards** assigned in its premises. Sps. Mamaril are not parties to the Guard Service Contract. Guard Service Contract between defendant-appellant BSP and defendant AIB Security Agency is purely between the parties therein.

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. If a contract should contain some **stipulation in favor of a third person**, he **may demand its fulfillment** provided he **communicated his acceptance to the obligor before its revocation.** A mere incidental benefit or interest of a person is not sufficient. The **contracting parties must have clearly and deliberately conferred a favor upon a third person.**

Thus, in order that a third person benefited by the second paragraph of Article 1311, referred to as a stipulation pour autrui, may demand its fulfillment, the following requisites must concur: (1) There is a stipulation in favor of a third person; (2) The stipulation is a part, not the whole, of the contract; (3) The contracting parties clearly and deliberately conferred a favor to the third person - the favor is not merely incidental; (4) The favor is unconditional and uncompensated; (5) The third person communicated his or her acceptance of the favor before its revocation; and (6) The contracting parties do not represent, or are not authorized, by the third party. However, none of the foregoing elements obtains in this case. There is absolutely nothing in the said contract that would indicate any obligation and/or liability on the part of the parties therein in favor of third persons such as herein plaintiffs-appellees.

Moreover, the Court concurs with the finding of the CA that the **contract between the parties herein was one of lease** as defined under Article 1643 of the Civil Code. It has been held that the act of parking a vehicle in a garage, upon payment of a fixed amount, is a lease. The **agreement with respect to the ingress and egress of Sps. Mamaril's vehicles were coordinated only with AIB and its security guards, without the knowledge and consent of BSP**. Accordingly, the

mishandling of the parked vehicles that resulted in herein complained loss should be recovered only from the tort feasors (Peña and Gaddi) and their employer, AIB; and not against the lessor, BSP.

TANAY RECREATION CENTER AND DEVELOPMENT CORP., Petitioners, vs. **CATALINA MATIENZO FAUSTO* and ANUNCIACION FAUSTO PACUNAYEN,** Respondents.
G.R. No. 140182, SECOND DIVISION, April 12, 2005, AUSTRIA-MARTINEZ, *J.*:

When a lease contract contains a right of first refusal, the lessor is under a legal duty to the lessee not to sell to anybody at any price until after he has made an offer to sell to the latter at a certain price and the lessee has failed to accept it. The lessee has a right that the lessor's first offer shall be in his favor. Petitioner's right of first refusal is an integral and indivisible part of the contract of lease and is inseparable from the whole contract. The consideration for the lease includes the consideration for the right of first refusal and is built into the reciprocal obligations of the parties.

FACTS:

Petitioner Tanay Recreation Center and Development Corp. (TRCDC) is the lessee of a 3,090-square meter property located in Sitio Gayas, Tanay, Rizal, owned by Catalina Matienzo Fausto, under a Contract of Lease. On this property stands the Tanay Coliseum Cockpit operated by petitioner. The lease contract provided for a 20-year term, subject to renewal within sixty days prior to its expiration. The contract also provided that should Fausto decide to sell the property, petitioner shall have the "priority right" to purchase the same.

On June 17, 1991, petitioner wrote Fausto informing her of its intention to renew the lease. However, it was Fausto's daughter, respondent Anunciacion F. Pacunayen, who replied, asking that petitioner remove the improvements built thereon, as she is now the absolute owner of the property. It appears that Fausto had earlier sold the property to Pacunayen and title has already been transferred in her name. Petitioner filed an Amended Complaint for Annulment of Deed of Sale, Specific Performance with Damages, and Injunction.

In her Answer, respondent claimed that petitioner is estopped from assailing the validity of the deed of sale as the latter acknowledged her ownership when it merely asked for a renewal of the lease. According to respondent, when they met to discuss the matter, petitioner did not demand for the exercise of its option to purchase the property, and it even asked for grace period to vacate the premises.

ISSUE:

Whether or not petitioner has the right of first refusal. (YES)

RULING:

When a lease contract contains a right of first refusal, the lessor is under a legal duty to the lessee not to sell to anybody at any price until after he has made an offer to sell to the latter at a certain price and the lessee has failed to accept it. The lessee has a right that the lessor's first offer shall be in his favor. Petitioner's right of first refusal is an integral and indivisible part of the contract of lease and is inseparable from the whole contract. The consideration for the lease includes the consideration for the right of first refusal and is built into the reciprocal obligations of the parties.

It was erroneous for the CA to rule that the right of first refusal does not apply when the property is sold to Fausto's relative. When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon. As such, there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement, except when it fails to express the true intent and agreement of the parties. In this case, the wording of the stipulation giving petitioner the right of first refusal is plain and unambiguous, and leaves no room for interpretation. It simply means that should Fausto decide to sell the leased property during the term of the lease, such sale should first be offered to petitioner. The stipulation does not provide for the qualification that such right may be exercised only when the sale is made to strangers or persons other than Fausto's kin. Thus, under the terms of petitioner's right of first refusal, Fausto has the legal duty to petitioner not to sell the property to anybody, even her relatives, at any price until after she has made an offer to sell to petitioner at a certain price and said offer was rejected by petitioner.

C. S. GILCHRIST, plaintiff-appellee, vs. E. A. CUDDY, ET AL., defendants.
JOSE FERNANDEZ ESPEJO and MARIANO ZALDARRIAGA, appellants.

G.R. No. L-9356, EN BANC, February 18, 1915, TRENT, *J.*:

The liability of the appellants arises from unlawful acts and not from contractual obligations, as they were under no such obligations to induce Cuddy to violate his contract with Gilchrist. So that if the action of Gilchrist had been one for damages, it would be governed by chapter 2, title 16, book 4 of the Civil Code. Article 1902 of that code provides that a person who, by act or omission, causes damages to another when there is fault or negligence, shall be obliged to repair the damage done. There is nothing in this article which requires as a condition precedent to the liability of a tort-feasor that he must know the identity of a person to whom he causes damages. In fact, the chapter wherein this article is found clearly shows that no such knowledge is required in order that the injured party may recover for the damage suffered.

FACTS:

Cuddy, a resident of Manila, was the owner of the "Zigomar;" that Gilchrist was the owner of a cinematograph theater in Iloilo; that in accordance with the terms of the contract entered into between Cuddy and Gilchrist the former leased to the latter the "Zigomar" for exhibition in his (Gilchrist's) theater for the week beginning May 26, 1913; and that Cuddy willfully violate his contract in order that he might accept the appellant's offer of P350 for the film for the same period. Did the appellants know that they were inducing Cuddy to violate his contract with a third party when they induced him to accept the P350? Espejo admitted that he knew that Cuddy was the owner of the film. He received a letter from his agents in Manila dated April 26, *assuring him that he could not get the film for about six weeks*. The arrangement between Cuddy and the appellants for the exhibition of the film by the latter on the 26th of May were perfected after April 26, so that the six weeks would include and extend beyond May 26. The appellants must necessarily have known at the time they made their offer to Cuddy that the latter had booked or contracted the film for six weeks from April 26. Therefore, the inevitable conclusion is that the appellants knowingly induced Cuddy to violate his contract with another person. But there is no specific finding that the appellants knew the identity of the other party. So we must assume that they did not know that Gilchrist was the person who had contracted for the film.

ISSUE:

Whether or not Espejo and his partner Zaldarriaga should be liable for damages though they do not know the identity of Gilchrist. (YES)

RULING:

It is said that the ground on which the liability of a third party for interfering with a contract between others rests, is that the interference was malicious. The contrary view, however, is taken by the Supreme Court of the United States in the case of Angle *vs.* Railway Co. (151 U. S., 1). The only motive for interference by the third party in that case was the desire to make a profit to the injury of one of the parties of the contract. There was no malice in the case beyond the desire to make an unlawful gain to the detriment of one of the contracting parties.

In the case at bar the only motive for the interference with the Gilchrist — Cuddy contract on the part of the appellants was a desire to make a profit by exhibiting the film in their theater. There was no malice beyond this desire; but this fact does not relieve them of the legal liability for interfering with that contract and causing its breach. It is, therefore, clear, under the above authorities, that they were liable to Gilchrist for the damages caused by their acts, unless they are relieved from such liability by reason of the fact that they did not know at the time the identity of the original lessee (Gilchrist) of the film.

The liability of the appellants arises from unlawful acts and not from contractual obligations, as they were under no such obligations to induce Cuddy to violate his contract with Gilchrist. So that if the action of Gilchrist had been one for damages, it would be governed by chapter 2, title 16, book 4 of the Civil Code. Article 1902 of that code provides that a person who, by act or omission, causes damages to another when there is fault or negligence, shall be obliged to repair the damage done. There is nothing in this article which requires as a condition precedent to the liability of a tort-feasor that he must know the identity of a person to whom he causes damages. In fact, the chapter wherein this article is found clearly shows that no such knowledge is required in order that the injured party may recover for the damage suffered.

RIDO MONTECILLO, *Petitioner, vs.* IGNACIA REYNES and SPOUSES REDEMPTOR and ELISA ABUCAY, *Respondents*.
G.R. No. 138018, THIRD DIVISION, July 26, 2002, CARPIO, *J.:*

Where the deed of sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is null and void ab initio for lack of consideration. A contract of sale is void and produces no effect whatsoever where the price, which appears thereon as paid, has in fact never been paid by the purchaser to the vendor. Such a sale is non-existent or cannot be considered consummated.

FACTS:

Respondents Ignacia Reynes (Reynes for brevity) and Spouses Abucay (Abucay Spouses for brevity) filed on June 20, 1984 a complaint for Declaration of Nullity and Quieting of Title against petitioner Rido Montecillo (Montecillo for brevity). Reynes asserted that she is the owner of a lot situated in Mabolo, Cebu City, covered by Transfer Certificate of Title No. 74196 and containing an area of 448 square meters (Mabolo Lot for brevity). In 1981, Reynes sold 185 square meters of the Mabolo Lot to the Abucay Spouses who built a residential house on the lot they bought.

Reynes further alleged that Montecillo failed to pay the purchase price after the lapse of the one-month period, prompting Reynes to demand from Montecillo the return of the Deed of Sale. Since Montecillo refused to return the Deed of Sale, Reynes executed a document unilaterally revoking the sale and gave a copy of the document to Montecillo.

Reynes and the Abucay Spouses argued that for lack of consideration there (was) no meeting of the minds between Reynes and Montecillo. Thus, the trial court should declare null and void *ab initio* Montecillos Deed of Sale, and order the cancellation of Certificate of Title No. 90805 in the name of Montecillo.

ISSUE:

Whether or not the deed of sale is void ab initio. (YES)

RULING:

Under Article 1318 of the Civil Code, [T]here is no contract unless the following requisites concur: (1) Consent of the contracting parties; (2) Object certain which is the subject matter of the contract; (3) Cause of the obligation which is established. Article 1352 of the Civil Code also provides that Contracts without cause produce no effect whatsoever.

On its face, Montecillos Deed of Absolute Sale appears supported by a valuable consideration. However, based on the evidence presented by both Reynes and Montecillo, the trial court found that Montecillo never paid to Reynes, and Reynes never received from Montecillo, the P47,000.00 purchase price. There was indisputably a total absence of consideration contrary to what is stated in Montecillos Deed of Sale. As pointed out by the trial court.

Where the deed of sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is null and void *ab initio* for lack of consideration. A contract of sale is void and produces no effect whatsoever where the price, which appears thereon as paid, has in fact never been paid by the purchaser to the vendor. Such a sale is non-existent) or cannot be considered consummated.

MIGUELA R. VILLANUEVA, RICHARD R. VILLANUEVA, and MERCEDITA VILLANUEVA-TIRADOS, petitioners, vs. **COURT OF APPEALS, CENTRAL BANK OF THE PHILIPPINES, ILDEFONSO C. ONG, and PHILIPPINE VETERANS BANK,** respondents.
G.R. No. 114870, FIRST DIVISION, May 26, 1995, DAVIDE, JR., *J.:*

Under Article 1323 of the Civil Code, an offer becomes ineffective upon the death, civil interdiction, insanity, or insolvency of either party before acceptance is conveyed. The reason for this is that:

> *The contract is not perfected except by the concurrence of two wills which exist and continue until the moment that they occur. The contract is not yet perfected at any time before acceptance is conveyed; hence, the disappearance of either party or his loss of capacity before perfection prevents the contractual tie from being formed.*

Applying Article 1323 of the Civil Code, Ong's offer to purchase the subject lots became ineffective because the PVB became insolvent before the bank's acceptance of the offer came to his knowledge.

Hence, the purported contract of sale between them did not reach the stage of perfection. Corollarily, he cannot invoke the resolution of the bank approving his bid as basis for his alleged right to buy the disputed properties.

FACTS:

The disputed lots were originally owned by the spouses Celestino Villanueva and Miguela Villanueva, acquired by the latter during her husband's sojourn in the United States since 1968. Sometime in 1975, Miguela Villanueva sought the help of one Jose Viudez, the then Officer-in-Charge of the PVB branch in Makati if she could obtain a loan from said bank. Jose Viudez told Miguela Villanueva to surrender the titles of said lots as collaterals. And to further facilitate a bigger loan, Viudez, in connivance with one Andres Sebastian, swayed Miguela Villanueva to execute a deed of sale covering the two (2) disputed lots, which she did but without the signature of her husband Celestino. Miguela Villanueva, however, never got the loan she was expecting. Subsequent attempts to contact Jose Viudez proved futile, until Miguela Villanueva thereafter found out that new titles over the two (2) lots were already issued in the name of the PVB. It appeared upon inquiry from the Registry of Deeds that the original titles of these lots were canceled and new ones were issued to Jose Viudez, which in turn were again canceled and new titles issued in favor of Andres Sebastian, until finally new titles were issued in the name of PNB [should be PVB] after the lots were foreclosed for failure to pay the loan granted in the name of Andres Sebastian.

Miguela Villanueva sought to repurchase the lots from the PVB after being informed that the lots were about to be sold at auction. The PVB told her that she can redeem the lots for the price of P110,416.00. Negotiations for the repurchase of the lots nevertheless were stalled by the filing of liquidation proceedings against the PVB on August of 1985.

Plaintiff-appellant [Ong] on the other hand expounds on his claim over the disputed lots in this manner:

In October 1984, plaintiff-appellant offered to purchase two pieces of Land that had been acquired by PVB through foreclosure. To back-up plaintiff-appellant's offer he deposited the sum of P10,000.00.

In 23 November 1984, while appellant was still abroad, PVB approved his subject offer under Board Resolution No. 10901-84. Among the conditions imposed by PVB is that: "The purchase price shall be P110,000.00 (Less deposit of P10,000.00) payable in cash within fifteen (15) days from receipt of approval of the offer."

In mid-April 1985, appellant returned to the country. He immediately verified the status of his offer with the PVB, now under the control of CB, where he was informed that the same had already been approved. On 16 April 1985, appellant formally informed CB of his desire to pay the subject balance provided the bank should execute in his favor the corresponding deed of conveyance. The letter was not answered.

Plaintiff-appellant sent follow-up Letters that went unheeded, the last of which was on 21 May 1987. On 26 May 1987, appellant's payment for the balance of the subject properties were accepted by CB under Official Receipt #0816.

On 17 September 1987, plaintiff-appellant through his counsel, sent a letter to CB demanding for the latter to execute the corresponding deed of conveyance in favor of appellant. CB did not bother to answer the same. Hence, the instant case.

ISSUE:

Whether or not Ong's offer to purchase the subject lots is valid. (NO)

RULING:

It must be recalled that the PVB was placed under receivership pursuant to the MB Resolution of 3 April 1985 after a finding that it was insolvent, illiquid, and could not operate profitably, and that its continuance in business would involve probable loss to its depositors and creditors. The PVB was then prohibited from doing business in the Philippines, and the receiver appointed was directed to "immediately take charge of its assets and liabilities, as expeditiously as possible collect and gather all the assets and administer the same for the benefit of its creditors, exercising all the powers necessary for these purposes."

Under Article 1323 of the Civil Code, an offer becomes ineffective upon the death, civil interdiction, insanity, or insolvency of either party before acceptance is conveyed. The reason for this is that:

> The contract is not perfected except by the concurrence of two wills which exist and continue until the moment that they occur. The contract is not yet perfected at any time before acceptance is conveyed; hence, the disappearance of either party or his loss of capacity before perfection prevents the contractual tie from being formed.

It has been said that where upon the insolvency of a bank a receiver therefor is appointed, the assets of the bank pass beyond its control into the possession and control of the receiver whose duty it is to administer the assets for the benefit of the creditors of the bank. Thus, the appointment of a receiver operates to suspend the authority of the bank and of its directors and officers over its property and effects, such authority being reposed in the receiver, and in this respect, the receivership is equivalent to an injunction to restrain the bank officers from intermeddling with the property of the bank in any way.

In a nutshell, the insolvency of a bank and the consequent appointment of a receiver restrict the bank's capacity to act, especially in relation to its property, Applying Article 1323 of the Civil Code, Ong's offer to purchase the subject lots became ineffective because the PVB became insolvent before the bank's acceptance of the offer came to his knowledge. Hence, the purported contract of sale between them did not reach the stage of perfection. Corollary, he cannot invoke the resolution of the bank approving his bid as basis for his alleged right to buy the disputed properties.

FEDERICO SERRA, *Petitioner,* -versus - THE HON. COURT OF APPEALS AND RIZAL COMMERCIAL BANKING CORPORATION, *Respondents.*
G.R. No. 103338, SECOND DIVISION, January 4, 1994, NOCON, *J.*

Article 1479 of the New Civil Code *states "A promise to buy and sell a determinate thing for a price certain is reciprocally demandable. An accepted unilateral promise to buy or sell a determinate thing for* ***a price certain*** *is binding upon the promisor if the promise* ***is supported by a consideration distinct from the price****."*

A price is certain if it is so with reference to another thing certain, or when the determination thereof is left to the judgment of a specified person or persons.

In this case, the petitioner and respondent bank entered into a contract of lease with option to buy. After acting on his obligations in the contract, the respondent bank then informed the latter of its want to exercise its option. However, petitioner replied that he was no longer selling the property. He insists that the option was not supported by any condition distinct from the price, hence, not binding upon him.

FACTS:

Petitioner is the owner of a 374 square meter parcel of land in Masbate. In 1975, respondent bank negotiated with petitioner for the purchase of the then unregistered property. On 20 May 1975, a contract of LEASE WITH OPTION TO BUY was instead forged by the parties, which stated:

"(a) the lessor leases unto the lessee, and the lessee accepts in lease, the parcel of land to have and to hold the same for a period of 25 years from 1 June 1971 to 1 June 2000. The lessee shall have the option to purchase said parcel of land within 10 years from the date of signing this contract at a price not higher than P210.00 per square meter. The lessor undertakes to register said parcel of land under the Torrens System and all expenses appurtenant thereto shall be for his sole account.
xxx"

Within 3 years, petitioner complied with his part of the agreement by registering the property and placing it under the Torrens System. Petitioner argues that as soon as he had the property registered, he kept on pursuing the manager of the branch to effect the sale of the agreement. However, on 4 September 1984, respondent bank decided to exercise its option (to buy the property at agreed price of nor more than P210.00 per square meter or total of P78,430.00) and thus informed the petitioner via letter. Petitioner declined and reasoned that he is no longer selling the property.

Respondent bank filed a complaint for specific performance and damages against petitioner. Petitioner contended, among others, that (a) the option was not supported by any consideration distinct from the price and hence not binding upon him; (b) the option was predicated on the condition that it be done or exercised within a reasonable time after the registration of the land under the Torrens System; and (c) that there was no price certain.

The trial court and Court of Appeals found that contract was valid, that the option is supported by a distinct and separate consideration, and that there is on basis in granting an adjustment in rental.

Respondent further argues that the "price not greater than 200 pesos" is not a price certain, and that there was no consideration to support the option, hence the option cannot be exercised.

ISSUE:

Whether or not the "price not greater than 200 pesos" is a price certain. (YES)

RULING:

The price "not greater than 200 pesos" is certain or definite. **A price is certain if it is so with reference to another thing certain, or when the determination thereof is left to the judgment of a specified person or persons.** Moreover, contracts are always to be construed in accordance to their sense, and meaning of terms, which the parties have used.

One of the stipulation in their contract states that "the lessee shall have the option to purchase said parcel of land within 10 years from the date of signing this contract at a price not higher than **P210.00 per square meter**."

In this case, there is clear evidence that the intention of the parties was to peg the price at 210 pesos per square meter. The petitioner had the land titled under the Torrens System and pursued the bank manager to effect the sale immediately. Evidently, he perfectly understood the terms of the contract, and acted upon the conditions therein.
Thus, the price being certain, the contract of lease with option to buy between the petitioner and respondent bank was valid, because there was a price certain and that the consideration was distinct from the price to support the option given to the lessee.

SALVADOR P. MALBAROSA, *Petitioner,* -versus - HON. COURT OF APPEALS AND S.E.A. DEVELOPMENT CORP., *Respondents.*
G.R. No. 125761, SECOND DIVISION, April 30, 2003, CALLEJO, SR, *J.*

***Under Article 1319 of the New Civil Code**, the consent by a party is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. An offer may be reached at any time until it is accepted. An offer that is not accepted does not give rise to a consent. The contract does not come into existence. To produce a contract, there must be acceptance of the offer which may be express or implied but must not qualify the terms of the offer. The acceptance must be absolute, unconditional and without variance of any sort from the offer.*

In this case, petitioner was offered by respondent, thus needing petitioner's acceptance. However, before relaying petitioner's conformity, respondent had already withdrawn its offer. Thus, raising the issue concerning the effectivity of petitioner's conformity and if there was any perfected contract at all.

FACTS:

Philtectic Corporation and Commonwealth Insurance Co., Inc. were only two of the group of companies wholly-owned and controlled by respondent S.E.A. Development Corporation (SEADC). The petitioner Salvador P. Malbarosa was the president and general manager of Philtectic Corporation, and an officer of other corporations belonging to the SEADC group of companies. The respondent assigned to the petitioner one of its vehicles.

In January 1990, petitioner intimated to Vice-Chariman Senen Valero his desire to retire from the SEADC group of companies. Petitioner sent a letter to Senend tendering his resignation and added his requiest for the payment of his incentive compensation for 1989.

The respondent made its offer through its Vice-Chairman of the Board of Directors, Senen Valero. On March 16, 1990, Da Costa handed over the original of the March 14, 1990 Letter-offer of the respondent to the petitioner. The respondent required the petitioner to accept the offer by affixing

his signature on the space provided in said letter-offer and writing the date of said acceptance, thus foreclosing an implied acceptance or any other mode of acceptance by the petitioner. However, when the letter-offer of the respondent was delivered to the petitioner on March 16, 1990, he did not accept or reject the same for the reason that he needed time to decide whether to reject or accept the same.

It was only on April 7, 1990 when the petitioner appended to his letter to the respondent a copy of the said March 14, 1990 Letter-offer bearing his conformity that he notified the respondent of his acceptance to said offer. But then, the respondent, through Philtectic Corporation, had already withdrawn its offer and had already notified the petitioner of said withdrawal via respondent's letter dated April 4, 1990, which was delivered to the petitioner on the same day.

RTC ruled that there was no perfected contract.
The Court of Appeals affirmed the ruling of the RTC.

ISSUE:

Whether or not there was a valid acceptance on the petitioner. (NO)

RULING:

Under Article 1319 of the New Civil Code, the consent by a party is manifested by the **meeting of the offer and the acceptance upon the thing and the cause** which are to constitute the contract. An offer may be reached at any time until it is accepted.

An offer that is not accepted does not give rise to a consent. The contract does not come into existence.
Notably, acceptance of an offer must be made known to the offeror. The contract is perfected only from the time an acceptance of an offer is made known to the offeror.

Thus, there is no contract perfected between the petitioner and the respondent corporation. Petitioner failed to transmit the said copy of conformity to the respondent.

WERR CORPORATION INTERNATIONAL, *Petitioner,* -versus - HIGHLANDS PRIME, INC., *Respondent.*
G.R. No. 187580, SECOND DIVISION, February 8, 2017, JARDELEZA, SR, *J.*

Art. 1234 of the Civil Code states: If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee.

In addition, Art. 1376 states: The usage or custom of the place shall be borne in mind in the interpretation of the ambiguities of a contract, and shall fill the omission of stipulations which are ordinarily established.

The law and rules are intended to balance the allocation and burden of costs between the contractor and the project owner so that the contractor still achieves a return for its completed work, and the project owner will not incur further costs.

FACTS:

Highlands Prime, Inc. (HPI) and Werr Corporation International (Werr) are domestic corporations engaged in property development and construction, respectively. For the construction of 54 residential units contained in three clusters of five-storey condominium structures, known as "The Horizon-Westridge Project," in Tagaytay. The project was not completed on the last extension given. Thus, HPI terminated its contract with Werr.

Not having received any payment, Werr filed a Complaint for arbitration against HPI before the CIAC to recover the ₱14,834,926.71 representing the balance of its retention money. In its Answer, HPI countered that it does not owe Werr because the balance of the retention money answered for the payments made to suppliers and for the additional costs and expenses incurred after termination of the contract. By way of counterclaim, HPI prayed for the payment of liquidated damages

After due proceedings, the CIAC rendered its Decision on August 11, 2008 where it granted Werr's claim for the balance of the retention money and arbitration costs. It also granted HPI's claim for liquidated damages in the amount of ₱2,535,059.0l equivalent to 9.327 days of delay, but denied its counterclaim for damages, attorney's fees, and litigation expenses.

The CIAC further ruled that Werr incurred only 9.327 days of delay. Citing Article 137629 of the Civil Code and considering the failure of the Agreement to state otherwise, it applied the industry practice in the construction industry that liquidated damages do not accrue after achieving substantial compliance. While according to the CA, delay should be computed from October 27, 2006 until termination of the contract on November 28, 2006, or 33 days, since the contract prevails over the industry practice.

Werr argues that the CA erred in modifying the CIAC decision on the amount of liquidated damages and arbitration costs. It insists that the appellate court disregarded Articles 1234, 1235, and 1376 of the Civil Code and the industry practice. On the other hand, HPI argues that Werr was unjustly enriched when the CA disallowed HPI' s recovery of the amounts it paid to suppliers.

ISSUE:

Whether or not the industry practice of computing liquidated damages only up to substantial completion of the project applies in the computation of liquidated damages. Consequently, whether delay should be computed until termination of the contract or until substantial completion of the project.

RULING:

The Civil Code provides:

Art. 1234. If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee.

Art. 1376. The usage or custom of the place shall be borne in mind in the interpretation of the ambiguities of a contract, and shall fill the omission of stipulations which are ordinarily established.

Substantial completion of the project equates to achievement of 95% project completion which excuses the contractor from the payment of liquidated damages. Clause 41.5 of the Agreement is undoubtedly a valid stipulation. However, while clause 41.5 requires payment of liquidated damages if there is delay, it is silent as to the period until when liquidated damages shall run. The Agreement does not state that liquidated damages is due until termination of the project; neither does it completely reject that it is only due until substantial completion of the project. This omission in the Agreement may be supplemented by the provisions of the Civil Code, industry practice, and the CIAP Document No. 102. Hence, the industry practice that substantial compliance excuses the contractor from payment of liquidated damages applies to the Agreement.

WERR cannot benefit from the effects of substantial compliance. Here, there is no dispute that Werr failed to prove that it completed 95% of the project before or at the time of the termination of the contract. As found by CIAC, it failed to present evidence as to what accomplishment it achieved from the time of the last billing until the termination of the contract. What was admitted as accomplishment at the last billing is 93.18%. For this reason, even if we adopt the rule that no liquidated damages shall run after the date of substantial completion of the project, Werr cannot claim benefit for it failed to meet the condition precedent, i.e., the contractor has successfully proven that it actually achieved 95% completion rate.

More importantly, Werr failed to show that it is the construction industry's practice to project the date of substantial completion of a project, and to compute the period of delay based on the rate in past progress billings just as what the CIAC has done. Consequently, the CIAC erred when it assumed that Werr continued to perform works, and if it did, that it performed them at the rate of accomplishment of the previous works in the absence of evidence.

GUZMAN, BOCALING & CO., *petitioner* -versus- RAOUL S.V. BONNEVIE, *respondent*
G.R. No. 86150, FIRST DIVISION, March 2, 1992, CRUZ, *J.*

Under Article 1380 to 1381(3) of the Civil Code, a contract otherwise valid may nonetheless be subsequently ***rescinded by reason of injury to third persons, like creditors****.*

In the present case, the Bonnevies could be considered as creditors since they had substantial interests that were prejudiced by the sale of the subject property to the petitioner without recognizing their right of first priority under the Contract of Lease.

A purchaser in good faith is one who buys the property of another without notice that some other person has a right to or interest in such property. Good faith connotes an honest intention to abstain from taking unconscientious advantage of another

In the present case, the petitioner admitted that it was aware of the lease in favor of the Bonnevies, who were occupying the subject property at the time it was sold to it. It had notice of the lease of the property by the Bonnevies and such knowledge should have cautioned it to look into the agreement to determine if it involved stipulations that would prejudice its own interests

FACTS:

A parcel of land owned by the Intestate Estate of Jose L. Reynoso was leased to Raoul S. Bonnevie and Christopher Bonnevie for a period of one year beginning August 8, 1976, at a monthly rental of

Php 4,000. The contract of lease contained a stipulation that the lessees shall be given a first priority to purchase the property in case the lessor decides to sell the leased property.

On November 3, 1976, Reynoso notified the private respondents that she was selling the leased premises for Php 600,000 less a mortgage loan of Php 100,000 and was giving them 30 days from receipt of the letter to decide whether they would buy the property or not.

On January 20, 1977, Reynoso informed them that due to their failure to exercise their right of first priority, she had already sold the property. The private respondents informed Reynoso that they did not received any letter and advised her agent to inform them officially should she decide to sell the property.

The leased premises were sold to petitioner Guzman, Bocaling & Co. and Reynoso demanded the respondents to vacate the premises within 15 days for their failure to pay rentals for four months. The parties submitted a Compromise Agreement in which the Raoul S.V. Bonnevie shall vacate the premises not later than October 31, 1979.

However, Reynoso filed a motion for execution due to the failure of private respondents to comply with the Compromise Agreement. Private respondent filed a motion to set aside the decision of the City Court as well as the Compromise Agreement on the ground that Reynoso had not delivered to him the records of payments and receipts of all rentals by or for the account of defendants.

On April 29, 1980, while the ejectment case was pending, the private respondents filed an action for annulment of the sale between Reynoso and petitioner Guzman, Bocailing & Co and required Reynoso to sell the property to them under the same terms and conditions agreed upon in the Contract of Sale in favor of the petitioner.

The Court of Appeals affirmed the decision of the CFI ordering the private respondents to vacate the premises. The Court of Appeals also considered the petitioner as a buyer in bad faith and ordered Reynoso to execute the deed of sale in favor of the Bonnevies. Hence, the appeal by the petitioner before the Supreme Court.

ISSUE:

1. Whether or not the contract is not voidable but rescissible. (YES)

2. Whether or not the petitioner is a buyer in bad faith. (YES)

RULING:

I.
Under Article 1380 to 1381(3) of the Civil Code, a contract otherwise valid may nonetheless be subsequently **rescinded by reason of injury to third persons, like creditors**. In the present case, the Bonnevies could be considered as creditors since they had substantial interests that were prejudiced by the sale of the subject property to the petitioner without recognizing their right of first priority under the Contract of Lease.

II.
The acquisition by a third person of the property subject of the contract is an obstacle to the action for its rescission where it is shown that such third person is in lawful possession of the subject of the contract and that he **did not act in bad faith**. A purchaser in good faith is **one who buys the property of another without notice that some other person has a right to or interest in such property**. Good faith connotes an honest intention to abstain from taking unconscientious advantage of another

In the present case, the petitioner admitted that it was aware of the lease in favor of the Bonnevies, who were occupying the subject property at the time it was sold to it. It had notice of the lease of the property by the Bonnevies and such knowledge should have cautioned it to look into the agreement to determine if it involved stipulations that would prejudice its own interests.

EQUATORIAL REALTY DEVELOPMENT, INC. & CARMELO & BAUERMANN, INC., petitioners, vs. MAYFAIR THEATER, INC., respondent.
G.R. No. 106063, EN BANC, November 21, 1996, HERMOSISIMA, JR., J.

An option is a contract granting a privilege to buy or sell within an agreed time and at a determined price. It is a separate and distinct contract from that which the parties may enter into upon the consummation of the option. It must be supported by a separate consideration, which does not exist in this case. In the instant case, the right of first refusal is an integral part of the contracts of lease. The consideration is built into the reciprocal obligations of the parties.

FACTS:

Carmelo owned a parcel of land, together with two 2-storey buildings constructed thereon. He then entered into a contract of lease with Mayfair for the latter's lease of Carmelo's properties for use by Mayfair as a motion picture theater and for a term of twenty (20) years. Both contracts contained a paragraph (Paragraph 8) which reads that should the lessor desire to sell the property, the lessee shall be given 30 days exclusive option to purchase the same. If the property is sold someone other than the lessee, the former shall respect the contract of lease. Subsequently, Mayfair was informed by Carmelo about the desire of a third person to purchase the whole property. Mayfair sent a letter to Carmelo reiterating Paragraph 8. Carmelo, however, did not respond. Four years later, the property was sold to a third person. Mayfair filed a petition to annul the sale.

ISSUE:

Whether or not Paragraph 8 is an option clause/contract (NO)

RULING:

The Supreme Court held that Paragraph 8 is a contract of a right of first refusal. Article 1479 states that: "an accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from the price." Observe, however, that the option is not the contract of sale itself. The optionee has the right, but not the obligation, to buy. Once the option is exercised timely, i.e., the offer is accepted before a breach of the option, a bilateral promise to sell and to buy ensues and both parties are then reciprocally bound to comply with their respective undertakings.

In this case, the Court held that no option to purchase in contemplation of the second paragraph of Article 1479 of the Civil Code, has been granted to Mayfair under the said lease contracts. The rationale behind this decision is the necessity of a separate consideration in an option contract, which does not exist in this case. An option is a contract granting a privilege to buy or sell within an agreed time and at a determined price. It is a separate and distinct contract from that which the parties may enter into upon the consummation of the option. It must be supported by consideration. In the instant case, the right of first refusal is an integral part of the contracts of lease. The consideration is built into the reciprocal obligations of the parties.

The contracted sale of the property should be rescinded.

REPUBLIC OF THE PHILIPPINES, Represented by the SOCIAL SECURITY SYSTEM, Petitioner, v. JERRY V. DAVID, Respondent.

G.R. NO. 155634, THIRD DIVISION, August 16, 2004, PANGANIBAN, J

Under the terms of the subject Contract, "actual possession" cannot be equated with "actual occupancy." Inasmuch as the housing unit was physically occupied by parties other than those intended to be benefited by the housing program of the Social Security System, there was a clear violation of the Contract. Since respondent did not comply with his obligations, rescission is proper.

FACTS:

[Respondent] Jerry V. David is an employee of the SSS. Pursuant to its Employees' Housing Loan Program, SSS awarded David a house and lot. A Deed of Conditional Sale over the subject property was thereafter executed between the parties. On reports that there were violations of the contract from the housing awardees, SSS conducted an investigation. It was found that David committed two (2) violations of his deed of conditional sale, to wit: (1) neither the [respondent] nor his immediate family resided and/or occupied the said housing unit, and (2) he allowed a certain Buenaventura Penus to possess and occupy the property. As a consequence of these violations, SSS sent a letter to David formally revoking, terminating and/or rescinding the deed of conditional sale. However, the latter refused to vacate and surrender possession of the subject property, prompting SSS to institute a complaint.

ISSUE:

Whether or not rescission is proper (YES)

RULING:

The Deed of Conditional Sale required "actual physical possession at all times," not just simple possession. It contends that the material occupation of the property by other persons ran counter to the objective of the Social Security System (SSS) housing program to restrict the use and enjoyment of the housing units to SSS employees and their immediate families only. Plainly, the primary intention behind the stipulations is to restrict the sale, the use and the benefit of the housing units to SSS employees and their immediate families only.

In the case at bar, the Court held that there was no actual occupancy. Actual occupancy connotes "something real, or actually existing, as opposed to something merely possible, or to something which is presumptive or constructive." Unlike possession, it can only be actual or real, not

constructive. The uncontroverted fact remains that it was not respondent and/or his immediate family, but Penus and his wife, who had lived in the property since 1992; and that it was from Penus that Domingo took over possession in 1996. Thus, while it may be conceded that respondent "possessed" the property through his caretakers, there is no escaping the fact that he and/or his immediate family did not "actually occupy" it; and that he allowed other persons to benefit from its use.

AIR FRANCE, petitioner, vs. HONORABLE COURT OF APPEALS, JOSE G. GANA (Deceased), CLARA A. GANA, RAMON GANA, MANUEL GANA, MARIA TERESA GANA, ROBERTO GANA, JAIME JAVIER GANA, CLOTILDE VDA. DE AREVALO, and EMILY SAN JUAN, respondents.
G.R. No. L-57339, FIRST DIVISION, December 29, 1983, MELENCIO-HERRERA, J.

Pursuant to tariff rules and regulations of the International Air Transportation Association, the passenger must undertake the final portion of his journey by departing from the last point at which he has made a voluntary stop before the expiry of this limit (parag. 3.1.2.) ... That is the time allowed a passenger to begin and to complete his trip (parags. 3.2 and 3.3.). ... A ticket can no longer be used for travel if its validity has expired before the passenger completes his trip. From the foregoing rules, it is clear that AIR FRANCE cannot be faulted for breach of contract when it dishonored the tickets of the GANAS after 8 May 1971 since those tickets expired on said date.

FACTS:

Sometime in February, 1970, the late Jose G. Gana and his family, numbering nine (the GANAS), purchased from AIR FRANCE through Imperial Travels, Incorporated, a duly authorized travel agent, nine (9) "open-dated" air passage tickets for the Manila/Osaka/Tokyo/Manila route. The GANAS paid a total of US$2,528.85 for their economy and first class fares. The GANAS also paid travel taxes of P100.00 for each passenger. On 24 April 1970, AIR FRANCE exchanged or substituted the aforementioned tickets with other tickets for the same route. The aforesaid tickets were valid until 8 May 1971, the date written under the printed words "Non valuable apres de (meaning, "not valid after the"). They were warned that although the tickets could be used by the GANAS if they left on 7 May 1971, the tickets would no longer be valid for the rest of their trip because the tickets would then have expired on 8 May 1971.

Notwithstanding the warnings, the GANAS departed from Manila in the afternoon of 7 May 1971. However, for the Osaka/Tokyo flight on 17 May 1971, Japan Airlines refused to honor the tickets because of their expiration, and the GANAS had to purchase new tickets. They encountered the same difficulty with respect to their return trip to Manila as AIR FRANCE also refused to honor their tickets. They were able to return only after pre-payment in Manila, through their relatives, of the readjusted rates.

Because of this, the GANAS commenced an action against AIRFRANCE for breach of contract of carriage.

ISSUE:

Whether or not there was a breach of contract of carriage on the part of AIRFRANCE (NO)

RULING:

Pursuant to tariff rules and regulations of the International Air Transportation Association (IATA), included in paragraphs 9, 10, and 11 of the Stipulations of Fact between the parties in the Trial Court, dated 31 March 1973, an airplane ticket is valid for one year. "The passenger must undertake the final portion of his journey by departing from the last point at which he has made a voluntary stop before the expiry of this limit (parag. 3.1.2.) ... That is the time allowed a passenger to begin and to complete his trip (parags. 3.2 and 3.3.). ... A ticket can no longer be used for travel if its validity has expired before the passenger completes his trip (parag. 3.5.1.) ... To complete the trip, the passenger must purchase a new ticket for the remaining portion of the journey" (ibid.)

From the foregoing rules, it is clear that AIR FRANCE cannot be faulted for breach of contract when it dishonored the tickets of the GANAS after 8 May 1971 since those tickets expired on said date; nor when it required the GANAS to buy new tickets or have their tickets re-issued for the Tokyo/Manila segment of their trip. Neither can it be said that, when upon sale of the new tickets, it imposed additional charges representing fare differentials, it was motivated by self-interest or unjust enrichment considering that an increase of fares took effect, as authorized by the Civil Aeronautics Board (CAB) in April, 1971. This procedure is well in accord with the IATA tariff rules.

SPOUSES VICTOR and EUNA BINUA, Petitioners, vs. LUCIA P. ONG, Respondent.
G.R. No. 207176, FIRST DIVISION, June 18, 2014, REYES, J

In cases involving mortgages, a preponderance of the evidence is essential to establish its invalidity, and in order to show fraud, duress, or undue influence of a mortgage, clear and convincing proof is necessary.

Based on the petitioners' own allegations, what the respondent did was merely inform them of petitioner Edna's conviction in the criminal cases for estafa. It might have evoked a sense of fear or dread on the petitioners' part, but certainly there is nothing unjust, unlawful or evil in the respondent's act.

FACTS:

Petitioner Edna (Euna Binua) was found guilty of estafa. She sought to avoid criminal liability by settling her indebtedness through the execution of separate real estate mortgages over petitioner Victor's properties. Thereafter, Edna filed a motion for new trial, which was granted by the RTC. Consequently, the RTC-Branch 2 rendered a Decision, ordering petitioner to pay the respondent the amount of ₱2,285,000.00 as actual damages, with ten percent (10%) interest, and other damages. The RTC-Branch 2 ruled that the presentation of a promissory note dated March 4, 1997 novated the original agreement between them into a civil obligation.

Petitioner Edna, however, failed to settle her obligation, forcing the respondent to foreclose the mortgage on the properties, with the latter as the highest bidder during the public sale. The petitioners then filed the case for the Declaration of Nullity of Mortgage Contracts, alleging that the mortgage documents were "executed under duress, as the [petitioners] at the time of the execution of said deeds were still suffering from the effect of the conviction of [petitioner] Edna, and could not have been freely entered into said contracts."

ISSUE:

Whether or not consent was vitiated (NO)

RULING:

Article 1390(2) of the Civil Code provides that contracts where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud are voidable or annullable. Article 1335 of the Civil Code, meanwhile, states that "[t]here is intimidation when one of the contracting parties is compelled by a reasonable and well-grounded fear of an imminent and grave evil upon his person or property, or upon the person or property of his spouse, descendants or ascendants, to give his consent." The same article, however, further states that "[a] threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent."

In cases involving mortgages, a preponderance of the evidence is essential to establish its invalidity, and in order to show fraud, duress, or undue influence of a mortgage, clear and convincing proof is necessary.

Based on the petitioners' own allegations, what the respondent did was merely inform them of petitioner Edna's conviction in the criminal cases for estafa. It might have evoked a sense of fear or dread on the petitioners' part, but certainly there is nothing unjust, unlawful or evil in the respondent's act. The petitioners also failed to show how such information was used by the respondent in coercing them into signing the mortgages. The petitioners must remember that petitioner Edna's conviction was a result of a valid judicial process and even without the respondent allegedly "ramming it into petitioner Victor's throat," petitioner Edna's imprisonment would be a legal consequence of such conviction.

SAN MIGUEL PROPERTIES, INC., *Petitioner*, *v.* BF HOMES, INC., *Respondent*. G.R. No. 169343, FIRST DIVISION, August 5, 2015, LEONARDO-DE CASTRO, *J.*

Article 1358(1) of the Civil Code requires that "[a]cts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property" must appear in a public document; and sales of real property or of an interest therein shall be governed by Article 1403(2) and 1405 of the same Code. Pertinent portions of Articles 1403(2) and 1405 of the Civil Code are reproduced below:

> ***Art. 1403**. The following contracts are unenforceable, unless they are ratified:*
>
> *x x x x*
> *(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum, thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:*
> *x x x x*
> *(e) An agreement of the leasing for a longer period than one year, or for the sale of real property or of an interest therein;*
> *x x x x*

> ***Art. 1405****. Contracts infringing the Statute of Frauds, referred to in No. 2 of Article 1403, are ratified by the failure to object to the presentation of oral evidence to prove the same, or by the acceptance of benefit under them.*

The contracts of sale of the 130 Italia II lots between BF Homes and SMPI were actually reduced into writing into the three Deeds of Absolute Sale which were signed by the representatives of the two corporations. The only defect was that the Deeds were not notarized and, therefore, were not public documents as required by Article 1358(1) of the Civil Code.

Nonetheless, the Deeds of Absolute Sale are enforceable. First, the Deeds are already in writing and signed by the parties, and only lack notarization, a formality which SMPI could compel BF Homes to comply with. As private documents, the Deeds are still binding between the parties and the conveyance of the 130 Italia II lots by BF Homes to SMPI by virtue of said Deeds is valid. And second, the Deeds were already ratified as BF Homes had accepted the benefits from said contracts when it received full payment from SMPI of the purchase price for the 130 Italia II lots. The Deeds were also substantially performed considering that BF Homes had previously delivered to SMPI the TCTs for 110 out of the 130 lots, only refusing to deliver the TCTs for the remaining 20 lots.

Moreover, even assuming for the sake of argument that Orendain/FBO Networks Management, Inc. did act without or beyond his/its authority as receiver in entering into the contracts of sale of the 130 Italia II lots with SMPI, then the said contracts were merely unenforceable and could be ratified, Article 1403(1) of the Civil Code provides: "Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers"

As the OP observed, BF Homes ratified the Deeds of Absolute Sale with SMPI by accepting full payment from SMPI of the purchase price for the 130 Italia II lots, and fully implementing the transaction covered by the first two Deeds and partially implementing the third by delivering the TCTs for 110 of the 130 lots. Receiving full payment for the 130 Italia II lots from SMPI also estops BF Homes from denying the authority of Orendain/FBO Networks Management, Inc. to enter into the Deeds of Absolute Sale.

FACTS:

BF Homes, Inc. (BF Homes), the owner of several parcels of land particularly identified as Italia II lots, is represented by Florencio B. Orendain (Orendain), as rehabilitation receiver appointed by the Securities and Exchange Commission (SEC); and San Miguel Properties, Inc. (SMPI), represented by Federico C. Gonzales, President, entered into three successive Deeds of Absolute Sale whereby the former sold to the latter a total of 130 Italia II lots with a combined area of 44,345 square meters for the aggregate consideration of P106,247,701.00.

SMPI completed the payments for the 130 Italia II lots in December 1995. In compliance with Section 37 of all the three Deeds of Absolute Sale, BF Homes delivered the Transfer Certificates of Title (TCTs) to SMPI but only for 110 of the 130 Italia II lots purchased by SMPI. SMPI, thru counsel, sent BF Homes a letter on May 20, 1996 demanding the delivery of the remaining 20 TCTs. Despite receipt of the afore-mentioned letter, BF Homes failed or refused to heed the demand. Consequently, SMPI filed a Complaint for specific performance with damages before the HLURB on August 24, 2000 to compel BF Homes to deliver the remaining 20 TCTs to SMPI.

BF Homes alleged that the Deeds of Absolute Sale executed in 1992 to 1993 were entered into by Orendain in his personal capacity and without authority, as his appointment as rehabilitation receiver was revoked by the SEC. In support of its counterclaims, BF Homes averred that the consideration paid by SMPI for the 130 Italia II lots was grossly inadequate and disadvantageous to BF Homes; and that the Deeds of Absolute Sale were undated and not notarized.

SMPI countered that the validity of the three Deeds of Absolute Sale was already upheld by the SEC in its Omnibus Order dated November 7, 1994, and the motion for reconsideration of BF Homes of said Omnibus Order was denied by the SEC in its subsequent Order dated August 22, 1995. Both Orders were deemed final, executory, and unappealable by the SEC in another Omnibus Order dated July 31, 1996. As a result, the Deeds of Absolute Sale were binding on BF Homes. SMPI further maintained that Orendain was authorized to sign the Deeds of Absolute Sale for and in behalf of FBO Networks Management, Inc. - the receiver which the SEC appointed to replace Orendain, upon the latter's motion to convert his involvement in the receivership from an individual to a corporate capacity. SMPI additionally asserted that absent substantiation, the allegation of BF Homes of inadequate consideration for the sale of the Italia II lots was self-serving; and that despite being undated and not notarized, the Deeds of Absolute Sale were valid since they contained the essential elements of a contract. And even assuming that the Deeds of Absolute Sale may be rescinded, SMPI argued that BF Homes did not offer and was not prepared to return the consideration paid by SMPI, plus interest.

HLURB Board of Commissioners rendered its finding no evidence to support the argument that the SEC had upheld with finality on the sales transaction entered into by Orendain with [SMPI]. On the contrary the order of the SEC stated that the closing report of the receiver is being accepted for inclusion of the records and not an admittance (sic) or acceptance of the merits and veracity of the contents thereof. The issue of whether Orendain had authority to sell the lots is still unresolved. OP reversed.

In its Decision, the Court of Appeals agreed with the OP that the HLURB had the primary and exclusive jurisdiction to resolve the complaint for specific performance and damages of SMPI and should not have suspended the proceedings until the SEC had ruled with finality on the issue of Orendain's authority to sell the 130 Italia II lots to SMPI. Certainly, in the instant case, [SMPI] is a buyer within the contemplation of P.D. 957.

ISSUE:

Whether or not SMPI is entitled to the delivery of the remaining 20 TCTs for the lots it purchased from BF Homes. (YES)

RULING:

Section 25 of Presidential Decree No. 957 explicitly mandates that "[t]he owner or developer shall deliver the title of the [subdivision] lot or [condominium] unit to the buyer upon full payment of the lot or unit."

Section 3 of all the three Deeds of Absolute Sale also reads: 3. [BF Homes] likewise covenants to deliver to [SMPI] the properties free and clear of tenants, if any, and shall submit any and all titles, documents and/or papers which may be required to effect the transfer of the properties to [SMPI][.]

In the case at bench, SMPI submitted adequate proof showing full payment to and receipt by BF Homes of the purchase price for the 130 Italia II lots as fixed in the Deeds of Absolute Sale. BF Homes expressly admitted receipt of some payments, while it remained silent as to the others without presenting controverting evidence. Upon full payment by SMPI of the purchase price for the 130 Italia II lots to BF Homes, it became mandatory upon BF Homes to deliver the TCTs for said lots to SMPI.

To justify its refusal to deliver the remaining 20 TCTs to SMPI, BF Homes asserts that 1) the Deeds of Absolute Sale were undated and not notarized; 2) Orendain did not have or exceeded his authority as receiver in entering into the contracts of sale of the Italia II lots with SMPI; and 3) the consideration for the said Italia II lots were grossly inadequate and disadvantageous for BF Homes.

The Court is not persuaded.

Article 1358(1) of the Civil Code requires that "[a]cts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property" must appear in a public document; and sales of real property or of an interest therein shall be governed by Article 1403(2) and 1405 of the same Code. Pertinent portions of Articles 1403(2) and 1405 of the Civil Code are reproduced below:

> **Art. 1403**. The following contracts are unenforceable, unless they are ratified:
>
> x x x x
> (2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum, thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:
> x x x x
>
> (e) An agreement of the leasing for a longer period than one year, or for the sale of real property or of an interest therein;
>
> x x x x
>
> **Art. 1405**. Contracts infringing the Statute of Frauds, referred to in No. 2 of Article 1403, are ratified by the failure to object to the presentation of oral evidence to prove the same, or by the acceptance of benefit under them.

The contracts of sale of the 130 Italia II lots between BF Homes and SMPI were actually reduced into writing into the three Deeds of Absolute Sale which were signed by the representatives of the two corporations. The only defect was that the Deeds were not notarized and, therefore, were not public documents as required by Article 1358(1) of the Civil Code.

Nonetheless, the Deeds of Absolute Sale are enforceable. *First,* the Deeds are already in writing and signed by the parties, and only lack notarization, a formality which SMPI could compel BF Homes to comply with. As private documents, the Deeds are still binding between the parties and the conveyance of the 130 Italia II lots by BF Homes to SMPI by virtue of said Deeds is valid. And *second,* the Deeds were already ratified as BF Homes had accepted the benefits from said contracts when it received full payment from SMPI of the purchase price for the 130 Italia II lots.

The Deeds were also substantially performed considering that BF Homes had previously delivered to SMPI the TCTs for 110 out of the 130 lots, only refusing to deliver the TCTs for the remaining 20 lots.

BF Homes cannot insist on the lack of authority of Orendain as receiver to sign the Deeds of Absolute Sale for the 130 Italia II lots. While it is true the SEC revoked the appointment of Orendain as rehabilitation receiver of BF Homes in 1989, the SEC thereafter immediately appointed FBO Networks Management, Inc., in replacement as receiver. Orendain was the Chairman of FBO Networks Management, Inc. Hence, when Orendain signed the Deeds of Absolute Sale for the 130 Italia II lots, he did so as Chairman of FBO Networks Management, Inc., the appointed receiver of BF Homes.

Moreover, even assuming for the sake of argument that Orendain/FBO Networks Management, Inc. did act without or beyond his/its authority as receiver in entering into the contracts of sale of the 130 Italia II lots with SMPI, then the said contracts were merely unenforceable and could be ratified, Article 1403(1) of the Civil Code provides: "Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers"

As the OP observed, BF Homes ratified the Deeds of Absolute Sale with SMPI by accepting full payment from SMPI of the purchase price for the 130 Italia II lots, and fully implementing the transaction covered by the first two Deeds and partially implementing the third by delivering the TCTs for 110 of the 130 lots. Receiving full payment for the 130 Italia II lots from SMPI also estops BF Homes from denying the authority of Orendain/FBO Networks Management, Inc. to enter into the Deeds of Absolute Sale.

GREGORIO F. AVERIA and SYLVANNA A. VERGARA, representing the absentee heir TERESA AVERIA, *petitioners*, *vs. DOMINGO AVERIA, ANGEL AVERIA, FELIPE* AVERIA, and the Heirs of FELIMON F. AVERIA, *respondents.* G.R. No. 141877, THIRD DIVISION, August 13, 2004, CARPIO-MORALES, *J.*

Indeed, except for the testimony of petitioner Gregorio bearing on the verbal sale to him by Macaria of the property, the testimonies of petitioners' witnesses Sylvanna Vergara Clutario and Flora Lazaro Rivera bearing on the same matter were not objected to by respondents. Just as the testimonies of Gregorio, Jr. and Veronica Bautista bearing on the receipt by respondent Domingo on July 23, 1983 from Gregorio's wife of P5,000.00 representing partial payment of the P10,000.00 valuation of his (Domingo's) 1/6 share in the property, and of the testimony of Felimon Dagondon bearing on the receipt by Domingo of P5,000.00 from Gregorio were not objected to. Following Article 1403 of the Civil Code, the contracts which infringed the Statute of Frauds were ratified by the failure to object to the presentation of parol evidence, hence, enforceable.

> ***Art. 1403.*** *The following contracts are unenforceable, unless they are ratified:*
> *(1) . . .*
> *(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement thereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party charged, or by this agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:*
> *(a) . . .;*

(b) . . .;
(e) an agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein;
(f) . . ."

Contrary then to the finding of the CA, the admission of parol evidence upon which the trial court anchored its decision in favor of respondents is not irregular and is not foreclosed by Article 1403. In any event, the Statute of Frauds applies only to executory contracts and not to contracts which are either partially or totally performed. In the case at bar, petitioners claimed that there was total performance of the contracts, full payment of the objects thereof having already been made and the vendee Gregorio having, even after Macaria's death in 1983, continued to occupy the property until and after the filing on January 19, 1989 of the complaint subject of the case at bar as in fact he is still occupying it.

In proving the fact of partial or total performance, oral evidence may be received as what the trial court in the case at bar did. Noted civilist Arturo M. Tolentino elucidates on the matter:

> *The statute of frauds is not applicable to contracts which are either totally or partially performed, on the theory that there is a wide field for the commission of frauds in executory contracts which can only be prevented by requiring them to be in writing, a fact which is reduced to a minimum in executed contracts because the intention of the parties becomes apparent by their execution, and execution concludes, in most cases, the rights of the parties. However it is not enough for a party to allege partial performance in order to render the Statute of Frauds inapplicable; such partial performance must be duly proved. But neither is such party required to establish such partial performance by documentary proof before he could have the opportunity to introduce oral testimony on the transaction. The partial performance may be proved by either documentary or oral evidence.*

FACTS:

Macaria Francisco (Macaria) and Marcos Averia contracted marriage which bore six issues, namely: Gregorio, Teresa, Domingo, Angel, Felipe and Felimon. Macaria was widowed and she contracted a second marriage with Roberto Romero (Romero) which bore no issue.

Romero died on February 28, 1968, leaving three adjoining residential lots. In a Deed of Extrajudicial Partition and Summary Settlement of the Estate of Romero, the house and lot containing 150 square meters at 725 Extremadura Street, Sampaloc was apportioned to Macaria. Alleging that fraud was employed by her co-heirs in the partition, Macaria filed an action for annulment of title and damages before the Court of First Instance of Manila against her co-heirs which adjudged Macaria as entitled to an additional 30 square meters of the estate of Romero became final and executory.

Macaria's son Gregorio and his family and daughter Teresa's family lived with her at Extremadura until her death on March 28, 1983. Close to six years after Macaria's demise or on January 19, 1989, her children Domingo, Angel and Felipe, along with Susan Pelayo vda. de Averia (widow of Macaria's deceased son Felimon), filed before the RTC of Manila a complaint against their brother Gregorio and niece Sylvanna Vergara "representing her absentee mother" Teresa Averia, for judicial partition of the Extremadura property inclusive of the 30 square meters judicially awarded.

The defendants Gregorio and Sylvanna Vergara, in their Answer to the Complaint, countered that Gregorio and his late wife Agripina spent for the litigation expenses in Civil Case No. 79955, upon the request of Macaria; that from 1974 to 1983, Macaria was bedridden and it was Gregorio's wife Agripina who nursed and took care of her; that ***before Macaria died, she verbally sold to the spouses Gregorio and Agripina one-half (½) of her Extremadura property.***

Gregorio and Sylvanna further countered that the plaintiff **Domingo sold and assigned to the spouses Gregorio and Agripina his one sixth (1/6) share in the remaining ½ portion of the Extremadura property.**

Gregorio and Sylvanna concluded in their Answer that the plaintiffs are not co-owners of the Extremadura property as ½ thereof is solely owned by Gregorio and 1/6 of the other half representing Domingo's share thereof had already been sold and assigned by him (Domingo) to Gregorio and his wife who died on May 20, 1987.

RTC rendered a decision of July 19, 1991 which declared Gregorio Averia had been awarded by their mother with ½ portion of the property and that Domingo Averia sold 1/6 of [his] share of the remaining ½ portion of the property to defendant Gregorio.

CA reversed the trial court decision. In reversing the trial court, the appellate court, noting that the alleged transfers made by Macaria and Domingo in favor of Gregorio were bereft of any written memoranda, held that it was error for the trial court to rely solely on the evidence adduced by the defendants consisting of the testimonies of Gregorio, Veronica Bautista, Sylvanna Vergara Clutario, Atty. Mario C.R. Domingo, Felimon Dagondon and Gregorio Averia, Jr. Thus, the alleged conveyances purportedly made by Macaria and Domingo Averia are unenforceable as the requirements under the Statute of Frauds have not been complied with. Article 1403, 2(e) of the New Civil Code.

The two (2) transactions in question being agreements for the sale of real property or of an interest therein are in clear contravention of the prescription **that it must be in writing and subscribed by the party charged or by an agent thereof.** Hence, the strong insistence by defendants-appellees on the verbal conveyances cannot be made the basis for the alleged ownership over the undivided interests claimed by Gregorio Averia.

In the vain attempt to salvage the situation, defendants-appellees however argue that the Article 1403 or the Statute of Frauds does not apply because the same only refers to purely executory contracts and not to partially or completely executed contracts.

This contention is untenable. It was not amply demonstrated how such alleged transfers were executed since plaintiffs-appellants have vigorously objected and opposed the claims of ownership by defendants-appellees. He who asserts a fact or the affirmative of an issue has the burden of proving it. Defendants-appellees miserably failed in this respect.

ISSUE:

Whether or not CA erred in finding that the alleged conveyances by Macaria and Domingo to Gregorio is unenforceable. (YES)

RULING:

Indeed, except for the testimony of petitioner Gregorio bearing on the verbal sale to him by Macaria of the property, *the testimonies of petitioners' witnesses Sylvanna Vergara Clutario and Flora Lazaro Rivera* bearing on the same matter were not objected to by respondents. Just as the *testimonies of Gregorio, Jr. and Veronica Bautista* bearing on the receipt by respondent Domingo on July 23, 1983 from Gregorio's wife of P5,000.00 representing partial payment of the P10,000.00 valuation of his (Domingo's) 1/6 share in the property, and of the *testimony of Felimon Dagondon* bearing on the receipt by Domingo of P5,000.00 from Gregorio were not objected to. Following Article 1403 of the Civil Code, the contracts which infringed the Statute of Frauds were ratified by the failure to object to the presentation of parol evidence, hence, enforceable.

> **Art. 1403.** The following contracts are unenforceable, unless they are ratified:
> (1) . . .
> (2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement thereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party charged, or by this agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:
> (a) . . .;
> (b) . . .;
> (e) an agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein;
> (f) . . ."

Contrary then to the finding of the CA, the admission of parol evidence upon which the trial court anchored its decision in favor of respondents is not irregular and is not foreclosed by Article 1403. In any event, the Statute of Frauds applies only to *executory* contracts and not to contracts which are either partially or totally performed. In the case at bar, petitioners claimed that there was total performance of the contracts, full payment of the objects thereof having already been made and the vendee Gregorio having, even after Macaria's death in 1983, continued to occupy the property until and after the filing on January 19, 1989 of the complaint subject of the case at bar as in fact he is still occupying it.

In proving the fact of partial or total performance, oral evidence may be received as what the trial court in the case at bar did. Noted civilist Arturo M. Tolentino elucidates on the matter:

The statute of frauds is *not applicable to contracts which are either totally or partially performed*, on the theory that there is a wide field for the commission of frauds in executory contracts which can only be prevented by requiring them to be in writing, a fact which is reduced to a minimum in executed contracts because the intention of the parties becomes apparent by their execution, and execution concludes, in most cases, the rights of the parties. *However it is not enough for a party to allege partial performance in order to render the Statute of Frauds inapplicable; such partial performance must be duly proved. But neither is such party required to establish such partial performance by documentary proof before he could have the opportunity to introduce oral testimony on the transaction. The partial performance may be proved by either documentary or oral evidence*.

The testimonies of petitioners' witnesses being credible and straightforward, the trial court did not err in giving them credence. The testimony of Sylvana Vergara Clutario, daughter of Teresa, in fact

was more than sufficient to prove the conveyance of half of the subject property by Macaria to Gregorio. Not only on account of Sylvana's manner of testifying that her testimony should be given weight. Her testimony was against the interest of her mother Teresa whom she represented, her mother being also an heir of Macaria. If the transfer by Macaria to Gregorio of ½ of the property is upheld as valid and enforceable, then the share of the other heirs including Sylvanna's mother would considerably be reduced.

In sum, not only did petitioners' witnesses prove, by their testimonies, the forging of the contracts of sale or assignment. They proved the full performance or execution of the contracts as well. The CA decision is set aside and the case is remanded to the trial court for appropriate action.

FELIX GOCHAN AND SONS REALTY CORPORATION AND STA. LUCIA REALTY AND DEVELOPMENT CORPORATION, *Petitioners*, *v.* HEIRS OF RAYMUNDO BABA, namely, BESTRA BABA, MARICEL BABA, CRESENCIA BABA, ANTONIO BABA, and PETRONILA BABA, represented by Attorney-in-fact VIRGINIA SUMALINOG, *respondents*. G.R. No. 138945, THIRD DIVISION, August 19, 2003, YNARES-SANTIAGO, *J.*

The purpose of an action or suit and the law to govern it, including the period of prescription, is to be determined by the complaint itself, its allegations and prayer for relief. Thus, while the issues of possession and fraud are material to the prescriptibility of suits captioned as reconveyance and quieting of title, it would not be so where, from the allegations of the complaint, the action is in reality one for declaration of nullity of contracts on the ground of absence of the essential requisites thereof. These contracts are void ad initio and actions to declare their inexistence do not prescribe.

In Delos Reyes v. Court of Appeals, it was held that one of the requisites of a valid contract under Article 1318 of the Civil Code, namely, the consent and the capacity to give consent of the parties to the contract, is an indispensable condition for the existence of consent. There is no effective consent in law without the capacity to give such consent. In other words, legal consent presupposes capacity. Thus, there is said to be no consent, and consequently, no contract when the agreement is entered into by one in behalf of another who has never given him authorization therefor unless he has by law a right to represent the latter.

In Heirs of Romana Ingjug-Tiro v. Casals, the Court, applying Article 1410 of the Civil Code declared that a claim of prescription is unavailing where the assailed conveyance is void ab initio with respect to those who had no knowledge of the transaction. The case involved a fraudulent sale and extrajudicial settlement of a lot executed without the knowledge and consent of some of the co-owners. It was held that the sale of the realty is void in so far as it prejudiced the shares of said co-owners and that the issuance of a certificate of title over the whole property in favor of the vendee does not divest the other co-owners of the shares that rightfully belonged to them. The nullity of the said sale proceeds from the absence of legal capacity and consent to dispose of the property. Thus

Article 1458 of the New Civil Code provides: By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent. It is essential that the vendors be the owners of the property sold otherwise they cannot dispose that which does not belong to them. As the Romans put it: Nemo dat quod non habet. No one can give more than what he has. The sale of the realty to respondents is null and void insofar as it prejudiced petitioners' interests and participation therein. At best, only the ownership of the shares of Luisa, Maria and Guillerma in the disputed property could have been transferred to respondents.

Consequently, respondents could not have acquired ownership over the land to the extent of the shares of petitioners. The issuance of a certificate of title in their favor could not vest upon them ownership of the entire property; neither could it validate the purchase thereof which is null and void. Registration does not vest title; it is merely the evidence of such title. Our land registration laws do not give the holder any better title than what he actually has. Being null and void, the sale to respondents of petitioners' shares produced no legal effects whatsoever.

FACTS:

Lot No. 3537, a conjugal property of spouses Raymundo Baba and Dorotea Inot, was originally titled under Original Certificate of Title No. RO-0820, in the name of Dorotea. After Raymundos demise in 1947, an extrajudicial settlement of his estate, including Lot No. 3537, was executed on December 8, 1966, among the heirs of Raymundo, namely, Dorotea and his 2 children, Victoriano and Gregorio Baba. One-half undivided portion of the 6,326 square meter lot was adjudicated in favor of Dorotea, and the other half divided between Victoriano and Gregorio. On December 28, 1966, Dorotea, Victoriano and Gregorio, in consideration of the amount of P2,346.70, sold Lot No. 3537 to petitioner Felix Gochan and Sons Realty Corporation (Gochan Realty). Consequently, OCT No. RO-0820 was cancelled and in lieu thereof, Transfer Certificate of Title No. T-1842, dated February 23, 1968 was issued in favor of Gochan Realty. Sometime in 1995, the latter entered into a joint venture agreement with Sta. Lucia Realty and Development Corporation Inc. for the development, among others, of Lot No. 3537, into a subdivision.

On June 13, 1996, respondents Bestra, Maricel, Crecencia, Antonio, and Petronila, all surnamed Baba, filed a complaint for quieting of title and reconveyance with damages against petitioners. They alleged that they are among the 7 children of Dorotea and Raymundo; that petitioners connived with Dorotea, Victoriano and Gregorio Baba in executing the extrajudicial settlement and deed of sale which fraudulently deprived them of their hereditary share in Lot No. 3537; and that said ***transactions are void insofar as their respective shares are concerned because they never consented to the said sale and extrajudicial settlement***, which came to their knowledge barely a year prior to the filing of the complaint.

In its answer, petitioner Gochan Realty averred that respondents have no personality to sue because they are not children of Dorotea and Raymundo; that even assuming they are lawful heirs of the spouses, ***their action is barred by estoppel, laches and prescription*** for having been filed more than 28 years after the issuance of the TCT in its name; and that any defect in the transactions leading to its acquisition of Lot No. 3537 will not affect its title because it is a purchaser in good faith and for value.

On May 3, 1997, the complaint for quieting of title and reconveyance with damages filed against petitioner was dismissed on the ground of prescription and laches. The trial court ruled that respondents' action is one for enforcement of implied or constructive trust based on fraud which prescribes in 10 years from the issuance of title over the property. Hence, respondents' action was barred by prescription and laches for having been filed after 28 years from the time Gochan Realty obtained title to the property.

CA reversed. While it also found that respondents' action is a suit to enforce an implied or constructive trust based on fraud, it ruled that since respondents are in possession of the disputed

property, their action cannot be barred by prescription and laches, being in the nature of a suit for quieting of title.

ISSUE:

Whether or not from the allegations of the complaint, there exists a cause of action to declare the inexistence of the contract of sale with respect to the shares of respondents in Lot No. 3537 on the ground of absence of any of the essential requisites of a valid contract. (YES)

RULING:

In determining whether the complaint is barred by the statute of limitations, both courts held that respondents action is grounded on fraud, and applied the rule that the fraudulent conveyance of the property creates an implied trust, an obligation created by law, which prescribes in ten years from the date of the issuance of the certificate of title. However, the Court of Appeals held that such an action does not prescribe when the disputed property is in the possession of the plaintiff seeking reconveyance. ***The issue of possession, however, is not material in the case at bar.*** A circumspect scrutiny of the complaint reveals that although the respondents describe the extrajudicial settlement and deed of sale as fraudulent insofar as their shares are concerned, their action in reality seeks to declare said deeds as inexistent for lack of consent, an essential element for the existence of a contract. The settled rule is that the purpose of an action or suit and the law to govern it, including the period of prescription, is to be determined by the complaint itself, its allegations and prayer for relief.

In the case at bar, ***the allegations of the complaint unmistakably assail the extrajudicial settlement and deed of sale with respect to their share on the ground of absence of consent.***

Hence, for purposes of determining whether respondents' action has prescribed, fraud in the conveyance of the disputed lot and the possession thereof by the respondents are not material. The fact that the conveyance of a property was fraudulent, either because it was procured without the knowledge of some of the co-owners or by virtue of the owners forged signature or by a fictitious deed of sale, does not automatically make fraud the basis for reconveyance of the disputed property. The real question in the instant case (without, however, prejudging the validity or invalidity of the sale to Gochan Realty), is whether or not from the allegations of the complaint, there exists a cause of action to declare the inexistence of the contract of sale with respect to the shares of respondents in Lot No. 3537 on the ground of absence of any of the essential requisites of a valid contract. If the answer is in the negative, then the dismissal of the complaint must be upheld, otherwise, the dismissal on the ground of prescription is erroneous because actions for the declaration of inexistence of contracts on the ground of absence of any of the essential requisites thereof do not prescribe.

In *Delos Reyes v. Court of Appeals*, it was held that one of the requisites of a valid contract under Article 1318 of the Civil Code, namely, the consent and the capacity to give consent of the parties to the contract, is an indispensable condition for the existence of consent. There is no effective consent in law without the capacity to give such consent. In other words, legal consent presupposes capacity. Thus, there is said to be no consent, and consequently, no contract when the agreement is entered into by one in behalf of another who has never given him authorization therefor unless he has by law a right to represent the latter.

In *Heirs of Romana Ingjug-Tiro v. Casals*, the Court, applying Article 1410 of the Civil Code declared that a claim of prescription is unavailing where the assailed conveyance is void ab initio with respect to those who had no knowledge of the transaction. The case involved a fraudulent sale and extrajudicial settlement of a lot executed without the knowledge and consent of some of the co-owners. It was held that the sale of the realty is void in so far as it prejudiced the shares of said co-owners and that the issuance of a certificate of title over the whole property in favor of the vendee does not divest the other co-owners of the shares that rightfully belonged to them. The nullity of the said sale proceeds from the absence of legal capacity and consent to dispose of the property. Thus

Article 1458 of the New Civil Code provides: By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent. It is essential that the vendors be the owners of the property sold otherwise they cannot dispose that which does not belong to them. As the Romans put it: *Nemo dat quod non habet*. No one can give more than what he has. The sale of the realty to respondents is null and void insofar as it prejudiced petitioners' interests and participation therein. At best, only the ownership of the shares of Luisa, Maria and Guillerma in the disputed property could have been transferred to respondents.

Consequently, respondents could not have acquired ownership over the land to the extent of the shares of petitioners. The issuance of a certificate of title in their favor could not vest upon them ownership of the entire property; neither could it validate the purchase thereof which is null and void. Registration does not vest title; it is merely the evidence of such title. Our land registration laws do not give the holder any better title than what he actually has. Being null and void, the sale to respondents of petitioners' shares produced no legal effects whatsoever.

Nemo dat quod non habet. No one can give more than what he has. Assuming that the allegations in respondents complaint are true, their claim that the execution of the extrajudicial settlement and the deed of sale involving Lot No. 3537, which led to the issuance of a certificate of title in the name of Gochan Realty, was without their knowledge or consent, gives rise to an imprescriptible cause of action to declare said transactions inexistent on the ground of absence of legal capacity and consent. Hence, the dismissal of respondent's complaint on the ground of prescription was erroneous.

On the other hand, laches is defined as failure or neglect for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier. It is negligence or omission to assert a right within a reasonable time, warranting presumption that the party entitled to assert it has abandoned it or has declined to assert it. Its elements are: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation which the complaint seeks a remedy; (2) delay in asserting the complainants rights, the complainant having had knowledge or notice of the defendants conduct as having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right in which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held barred.

The trial court thus erred in dismissing respondents complaint on the ground of prescription and laches, and while the Court of Appeals is correct in ordering the reinstatement of the complaint, its decision is sustained on a different ground.

DAVID P. FORNILDA, JUAN P. FORNILDA, EMILIA P. FORNILDA OLILI, LEOCADIA P. FORNILDA LABAYEN and ANGELA P. FORNILDA GUTIERREZ, *Petitioners,* -versus- REGIONAL TRIAL COURT BRANCH 164, PASIG, JOAQUIN C. ANTONIO Deputy Sheriff, RTC, 4JR Tanay, Rizal and ATTY. SERGIO I. AMONOY, *Respondents*.

G.R. No. 72306, SECOND DIVISION, October 6, 1988, Melencio-Herrera, *J.*

Considering that the mortgage contract, entered into in contravention of Article 1491 of the Civil Code, supra, is expressly prohibited by law, the same must be held inexistent and void ab initio considering that the mortgage contract, entered into in contravention of Article 1491 of the Civil Code, supra, is expressly prohibited by law, the same must be held inexistent and void ab initio.

The Controverted Parcels could not have been the object of any mortgage contract in favor of Respondent Amonoy and consequently neither of a foreclosure sale. By analogy, the illegality must be held to extend to whatsover results directly from the illegal source. Such being the case, the Trial Court did not acquire any jurisdiction over the subject matter of the Foreclosure Case and the judgment rendered therein could not have attained any finality and could be attacked at any time. Neither could it have been a bar to the action brought by petitioners for its annulment by reason of res judicata.

FACTS

A Project of Partition was filed in the Intestate Court whereby the Controverted Parcels were adjudicated to Alfonso I. Fornilda and Asuncion M. Pasamba. On 12 January 1965, the Court approved the Project of Partition. It was not until 6 August 1969, however, that the estate was declared closed and terminated after estate and inheritance taxes had been paid, the claims against the estate settled and all properties adjudicated. Eight (8) days thereafter, Alfonso I. Fornilda and Asuncion M. Pasamba executed a Contract of Mortgage wherein they mortgaged the Controverted Parcels to Respondent Amonoy as security for the payment of his attorney's fees for services rendered in the aforementioned intestate proceedings, in the amount of P27,600.00. Asuncion M. Pasamba and Alfonso I Fornilda both died thereafter. Petitioners are some of the heirs of Alfonso I. Fornilda.

Since the mortgage indebtedness was not paid, on 21 January 1970, Respondent Amonoy instituted foreclosure proceedings before the Court of First Instance of Rizal, at Pasig, Branch VIII. The trial court rendered judgement in favor of Respondent Amonoy, and the Controverted Parcels were sold to the latter as the sole bidder in an auction sale. Petitioners then filed an annulment case before the then Court of First Instance of Rizal, at Pasig which put in issue the propriety of the mortgage, the validity of the judgement in the foreclosure case, and the tenability of the acquisitions by Respondent Amonoy at the Sheriffs sale. Of particular relevance is the contention that the mortgage and the Sheriffs sales were null and void as contrary to the positive statutory injunction in Article 1491 (5) of the Civil Code, which prohibits attorneys from purchasing, even at a public or judicial auction, properties and rights in litigation, and that the Trial Court, in the Foreclosure Case, had never acquired jurisdiction over the subject matter of the action, i.e., the Controverted Parcels.

The trial court dismissed the annulment case whose judgement was affirmed by the CA.

ISSUE

1. Whether or not the mortgage constituted on the Controverted Parcels in favor of Respondent Amonoy comes within the scope of the prohibition in Article 1491 of the Civil Code (YES); and
2. Whether or not the action has already prescribed. (NO)

RULING

1. A lawyer is prohibited from acquiring either by purchase or assignment the property or rights involved which are the object of the litigation in which they intervene by virtue of their profession. The rationale advanced for the prohibition is that public policy disallows the transactions in view of the fiduciary relationship involved i.e., the relation of trust and confidence and the peculiar control exercised by these persons.

   In the instant case, it is undisputed that the Controverted Parcels were part of the estate of the late Julio M. Catolos subject of intestate estate proceedings, wherein Respondent Amonoy acted as counsel for some of the heirs from 1959 until 1968. Also, while the Project of Partition was approved on 12 January 1965, it was not until 6 August 1969 that the estate was declared closed and terminated. At the time the mortgage was executed, therefore, the relationship of lawyer and client still existed, the very relation of trust and confidence sought to be protected by the prohibition, when a lawyer occupies a vantage position to press upon or dictate terms to an harassed client. What is more, the mortgage was executed only eight (8) days after approval of the Project of Partition thereby evincing a clear intention on Respondent Amonoy's part to protect his own interests and ride roughshod over that of his clients.

2. Considering that the mortgage contract, entered into in contravention of Article 1491 of the Civil Code, *supra*, is expressly prohibited by law, the same must be held inexistent and void *ab initio* considering that the mortgage contract, entered into in contravention of Article 1491 of the Civil Code, *supra*, is expressly prohibited by law, the same must be held inexistent and void *ab initio.*

   The Controverted Parcels could not have been the object of any mortgage contract in favor of Respondent Amonoy and consequently neither of a foreclosure sale. By analogy, the illegality must be held to extend to whatsover results directly from the illegal source. Such being the case, the Trial Court did not acquire any jurisdiction over the subject matter of the Foreclosure Case and the judgment rendered therein could not have attained any finality and could be attacked at any time. Neither could it have been a bar to the action brought by petitioners for its annulment by reason of res judicata.

RAFAEL G. SUNTAY, substituted by his heirs, namely: ROSARIO, RAFAEL JR., APOLINARIO, RAYMUND, MARIA VICTORIA, MARIA ROSARIO, and MARIA LOURDES, all surnamed SUNTAY, *Petitioners,* -versus- THE HONORABLE COURT OF APPEALS and FEDERICO C. SUNTAY, *Respondents.*

G.R. No. 114950, FIRST DIVISION, December 19, 1995, Hermosisima, Jr., *J.*

Indeed the most protuberant index of simulation is the complete absence of an attempt in any manner on the part of the late Rafael to assert his rights of ownership over the land and rice mill in question.

After the sale, he should have entered the land and occupied the premises thereof. He did not even attempt to. If he stood as owner, he would have collected rentals from Federico for the use and occupation of the land and its improvements. All that the late Rafael had was a title in his name.

FACTS

Respondent Federico Suntay is the registered owner of a parcel of land which had a rice mill in it. A rice miller, respondent Federico applied as a miller-contractor of the then National Rice and Corn Corporation (NARIC). His application, although prepared by his nephew-lawyer, petitioner Rafael Suntay, was disapproved because at that time, respondent Federico was tied up with several unpaid loans. For purposes of circumvention, he allowed petitioner Rafael to make the application for him. Rafael prepared the deed of sale (first deed) wherein respondent Federico sold the parcel of and the rice mill to Rafael. Less than three months after this conveyance, a counter sale was prepared and signed by Rafael who also caused its delivery to Federico (second deed). Through this counter conveyance, the same parcel of land with all its existing structures was sold by Rafael back to Federico.

Upon the execution and registration of the first deed, the Certificate of Title in the name of Federico was cancelled and in lieu thereof, a Transfer Certificate of Title was issued in the name of Rafael. Even after the execution of the deed, Federico remained in possession of the property sold in concept of owner. Significantly, notwithstanding the fact that Rafael became the titled owner of said land and rice mill, he never made any attempt to take possession thereof at any time, while Federico continued to exercise rights of absolute ownership over the property.

Federico then requested that Rafael deliver his copy of the TCT so that Federico could have the counter deed of sale in his favor registered in his name. Rafael refused and argued that the second deed was void. Thus, Federico filed a complaint for reconveyance and damages against Rafael, assailing the validity of the first deed on the ground that it was simulated.

The trial court and the CA, initially, held that the first deed was valid. However, the CA reversed itself later on and found the first deed to be invalid for being absolutely simulated

ISSUE

Whether or not the first deed is void for being absolutely simulated (YES)

RULING

The record is replete with circumstances that establish the closeness, mutual trust and business and professional interdependence between the late Rafael and private respondent. The late Rafael Suntay and private respondent Federico Suntay were relatives, undisputedly, whose blood relation was the foundation of their professional and business relationship. The CA simply took a second look at the evidence on record as was its bounden duty upon the filing of a motion for reconsideration and could no longer ignore that the close relationship between the late Rafael and private respondent was indeed a badge of simulation.

Indeed the most protuberant index of simulation is the complete absence of an attempt in any manner on the part of the late Rafael to assert his rights of ownership over the land and rice mill in question. After the sale, he should have entered the land and occupied the premises thereof. He did

not even attempt to. If he stood as owner, he would have collected rentals from Federico for the use and occupation of the land and its improvements. All that the late Rafael had was a title in his name. The failure of the late Rafael to take exclusive possession of the property allegedly sold to him is a clear badge of fraud. The fact that, notwithstanding the title transfer, Federico remained in actual possession, cultivation and occupation of the disputed lot from the time the deed of sale was executed until the present, is a circumstance which is unmistakably added proof of the fictitiousness of the said transfer, the same being contrary to the principle of ownership.

TEJA MARKETING AND/OR ANGEL JAUCIAN, *Petitioner,* -versus- HONORABLE INTERMEDIATE APPELLATE COURT and PEDRO N. NALE, *Respondents.*
G.R. No. L-65510, SECOND DIVISION, March 9, 1987, Paras, *J.*

Although not outrightly penalized as a criminal offense, the kabit system is invariably recognized as being contrary to public policy and, therefore, void and in existent under Article 1409 of the Civil Code. It is a fundamental principle that the court will not aid either party to enforce an illegal contract, but will leave both where it finds then. Upon this premise it would be error to accord the parties relief from their predicament. Article 1412 of the Civil Code denies them such aid.

FACTS

Nale bought from the Petitioner a motorcycle with complete accessories and a sidecar in the total consideration of P8,000.00. Out of the total purchase price Nale gave a down-payment of P1,700.00 with a promise that he would pay Petitioner the balance within sixty days. A chattel mortgage was constituted as a security for the payment of the balance of the purchase price. The records of the LTC show that the motorcycle sold to Nale was first mortgaged to the Teja Marketing by Angel Jaucian though the Teja Marketing and Angel Jaucian are one and the same, because it was made to appear that way only as Nale had no franchise of his own and he attached the unit to the petitioner's MCH Line. The agreement also of the parties here was for the Petitioner to undertake the yearly registration of the motorcycle with the Land Transportation Commission. The petitioner, however failed to register the motorcycle on that year on the ground that the Nale failed to comply with some requirements such as the payment of the insurance premiums and the bringing of the motorcycle to the LTC for stenciling, Petitioner saying that Nale was hiding the motorcycle from him. Lastly, Petitioner explained also that though the ownership of the motorcycle was already transferred to Nale the vehicle was still mortgaged with the consent of the latter to the Rural Bank of Camaligan for the reason that all motorcycle purchased from Petitioner on credit was rediscounted with the bank.

Eventually, petitioner Teja Marketing and/or Angel Jaucian filed an action for "Sum of Money with Damages" against private respondent Pedro N. Nale in the City Court of Naga City. Nale, for his part, claimed that because of this failure of Petitioner to comply with his obligation to register the motorcycle, he suffered damages when he failed to claim any insurance indemnity which would amount to no less than P15,000.00 for the more than two times that the motorcycle figured in accidents aside from the loss of the daily income of P15.00 as boundary fee beginning October 1976 when the motorcycle was impounded by the LTC for not being registered. The City Court rendered judgment in favor of petitioner. The Intermediate Appellate Court held that as the purchase of the motorcycle for operation as a trimobile under the franchise of the private respondent Jaucian, pursuant to what is commonly known as the "kabit system", without the prior approval of the Board of Transportation (formerly the Public Service Commission) was an illegal transaction involving the fictitious registration of the motor vehicle in the name of the private respondent so

that he may traffic with the privileges of his franchise, or certificate of public convenience, to operate a tricycle service, the parties being in pari delicto, neither of them may bring an action against the other to enforce their illegal contract,

ISSUE

Whether or not the *"in pari delicto"* doctrine applies (YES)

RULING

Unquestionably, the parties herein operated under an arrangement, commonly known as the "kabit system" whereby a person who has been granted a certificate of public convenience allows another person who owns motor vehicles to operate under such franchise for a fee. A certificate of public convenience is a special privilege conferred by the government. Abuse of this privilege by the grantees thereof cannot be countenanced. The "kabit system" has been Identified as one of the root causes of the prevalence of graft and corruption in the government transportation offices.

Although not outrightly penalized as a criminal offense, the kabit system is invariably recognized as being contrary to public policy and, therefore, void and in existent under Article 1409 of the Civil Code. It is a fundamental principle that the court will not aid either party to enforce an illegal contract, but will leave both where it finds then. Upon this premise it would be error to accord the parties relief from their predicament. Article 1412 of the Civil Code denies them such aid.

DEVELOPMENT BANK OF THE PHILIPPINES (DBP), *Petitioner,* -versus- THE HONORABLE MIDPAINTAO L. ADIL, Judge of the Second Branch of the Court of First Instance of Iloilo and SPOUSES PATRICIO CONFESOR and JOVITA VILLAFUERTE, *Respondents.*
G.R. No. L-48889, FIRST DIVISION, May 11, 1989, GANCAYCO, *J.*

Under Article 165 of the Civil Code, the husband is the administrator of the conjugal partnership. As such administrator, all debts and obligations contracted by the husband for the benefit of the conjugal partnership, are chargeable to the conjugal partnership. No doubt, in this case, respondent Confesor signed the second promissory note for the benefit of the conjugal partnership. Hence the conjugal partnership is liable for this obligation.

FACTS:

On February 10, 1940 spouses Patricio Confesor and Jovita Villafuerte obtained an agricultural loan from the Agricultural and Industrial Bank (AIB), now the Development Bank of the Philippines (DBP) in the sum of PHP 2,000.00. The loan was evidenced by a promissory note of said date whereby they bound themselves jointly and severally to pay the account in ten equal yearly amortizations. However, the obligation remained outstanding and unpaid even after the lapse of the ten-year period. Thus, Confesor executed a second promissory note acknowledging loan and promising pay the same on or before June 15, 1961, but the spouses were still unable to pay the obligation.

ISSUE:

1. Whether or not the right to prescription may be renounced or waived. (YES)

2. Whether or not the second promissory note executed can bind the conjugal partnership. (YES)

RULING:

1. The right to prescription may be waived or renounced. There is no doubt that prescription has set in as to the first promissory note of February 10, 1940. However, when respondent Confesor executed the second promissory note on April 11, 1961 whereby he promised to pay the amount covered by the previous promissory note on or before June 15, 1961, and upon failure to do so, agreed to the foreclosure of the mortgage, said respondent thereby effectively and expressly renounced and waived his right to the prescription of the action covering the first promissory note. This is not a mere case of acknowledgment of a debt that has prescribed but a new promise to pay the debt. The consideration of the new promissory note is the pre-existing obligation under the first promissory note. The statutory limitation bars the remedy but does not discharge the debt.

2. Under Article 165 of the Civil Code, the husband is the administrator of the conjugal partnership. As such administrator, all debts and obligations contracted by the husband for the benefit of the conjugal partnership, are chargeable to the conjugal partnership. No doubt, in this case, respondent Confesor signed the second promissory note for the benefit of the conjugal partnership. Hence the conjugal partnership is liable for this obligation.

ROBLETT INDUSTRIAL CONSTRUCTION CORPORATION, *Petitioner,* -versus- COURT OF APPEALS and CONTRACTORS EQUIPMENT CORPORATION, *Respondents.*
G.R. No. 116682, FIRST DIVISION, January 02, 1977, BELLOSILLO, *J.*

Estoppel in pais arises when one, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts.

FACTS:

Respondent Contractors Equipment Corporation (CEC) instituted an action for a sum of money against petitioner Roblett Industrial Construction Corporation (RICC) before the Regional Trial Court of Makati alleging that in 1985 it leased to the latter various construction equipment which it used in its projects. As a result, RICC incurred unpaid accounts amounting to P342,909.38.

The balance started on 19 December 1985 when RICC Assistant Vice President for Finance Candelario S. Aller Jr. entered into an Agreement with CEC where it confirmed petitioner's account. A day before the execution of their Agreement, RICC paid CEC P10,000.00 in postdated checks which when deposited were dishonoured.

On 24 July 1986 Mariano R. Manaligod, Jr., General Manager of CEC, sent a letter of demand to petitioner through its Vice President for Finance regarding the latter's overdue account and sought settlement thereof on or before 31 July 1986. In reply, petitioner requested for thirty (30) days to have enough time to look for funds to substantially settle its account.

Aller Jr. declared that he signed the Agreement with the real intention of having proof of payment. Additionally, Baltazar Banlot, Vice President for Finance of RICC, claimed that after deliberation and

audit it appeared that petitioner overpaid respondent by P12,000.00 on the basis of the latter's Equipment Daily Time Reports for 2 May to 14 June 1985. He claimed however that the Agreement was not approved by the Board and that he did not authorize Aller Jr. to sign thereon.

The RTC rendered judgment ordering RICC to pay CEC, which was affirmed by the CA.

ISSUE:

Whether or not estoppel *in pais* is present in this case (YES).

RULING:

Estoppel *in pais* arises when one, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or *through culpable negligence*, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts. This doctrine obtains in the present case. A statement of account for P376,350.18 covering the period above mentioned was received from respondent by petitioner with nary a protest from the latter. Neither did petitioner controvert the demand letter concerning the overdue account of P237,909.38; on the contrary, it asked for ample time to source funds to substantially settle the account. Thus, the petition was denied by the Supreme Court and the decision of the RTC and CA were affirmed.

FELIX BUCTON AND NICANORA GABAR BUCTON, *Petitioners,* -versus- ZOSIMO GABAR, JOSEFINA LLAMOSO GABAR AND THE HONORABLE COURT OF APPEALS, *Respondents.*
G.R. No. L-36359, SECOND DIVISION, January 31, 1974, ANTONIO, *J.*

FACTS:

Plaintif Nicanora Gabar Bucton, wife of her co-plaintiff Felix Bucton, and also the sister of defendant Zosimo Gabar, husband of his co-defendant Josefina Llamoso Gabar.

The case involves an action for specific performance praying that defendant-spouses Gabar be ordered to execute in favour of plaintiffs Bucton a deed of sale of the western half of a parcel of land having an area of 728 sq. m. covered by TCT No. II (from OCT No. 6337) of the office of the Register of Deeds of Misamis Oriental.

Evidence show that sometime in 1946 defendant Josefina Llamoso Gabar bought the above-mentioned land from the spouses Villarin on installment basis, to wit, P500 down, the balance payable in instalments. Josefina entered into a verbal agreement with her sister-in-law, plaintiff Nicanora Gabar Bucton, that the latter would pay one-half of the price (P3,000) and would then own one-half of the land. Thus, Nicanora gave Josefin the initial amount of P1,000, then P400, P1,000, all with receipts. Plaintiffs Bucton took possession of the land and built a house, then another house for rent. They then moved to another house and converted their portion as a dormitory.

The Bucton spouses then sought to obtain a separate title for their portion of the land in question. The Gabar spouse repeatedly declined to accommodate plaintiffs. Their excuse: the entire land was still mortgaged with the Philippine National Bank as guarantee for defendants' loan.

The RTC rendered a decision against the defendant-spouses, which was later reversed the CA based on Article 1144 that requires all actions be brought within ten years from the time the right action accrues upon: 1) a written contract; 2) an obligation created by law; 3) a judgment.

ISSUE:

Whether or not the Bucton spouses became the owners of the property by purchase of the property from the Gabar spouses (YES).

RULING:

The Supreme Court reversed the Court of Appeals ruling.

There is no question that petitioner Nicanora Gabar Bucton paid P1,500.00 to respondent Josefina Gabar as purchase price of one-half of the lot now covered by TCT No. II, for respondent Court of Appeals found as a fact "that plaintiffs really paid for a portion of the lot in question pursuant to their agreement with the defendants that they would own one-half (1/2) of the land." That sale, although not consigned in a public instrument or formal writing, is nevertheless valid and binding between petitioners and private respondents, for the time-honored rule is that even a verbal contract of sale or real estate produces legal effects between the parties. Although at the time said petitioner paid P1,000.00 as part payment of the purchase price on January 19, 1946, private respondents were not yet the owners of the lot, they became such owners on January 24, 1947, when a deed of sale was executed in their favor by the Villarin spouses. In the premises, Article 1434 of the Civil Code, which provides that "[w]hen a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee," is applicable. Thus, the payment by petitioner Nicanora Gabar Bucton of P1,000.00 on January 19, 1946, her second payment of P400.00 on May 2, 1948, and the compensation, up to the amount of P100.00 (out of the P1,000.00-loan obtained by private respondents from petitioners on July 30, 1951), resulted in the full payment of the purchase price and the consequential acquisition by petitioners of ownership over one-half of the lot. Petitioners therefore became owners of the one-half portion of the lot in question by virtue of a sale which, though not evidenced by a formal deed, was nevertheless proved by both documentary and parole evidence.

SECURITIES AND EXCHANGE COMMISSION, *Petitioners,* -versus- HON. REYNALDO M. LAIGO, in his capacity as Presiding Judge of the Regional Trial Court, National Capital Judicial Region, Makati City, Branch 56, GLICERIA AYAD, SAHLEE DELOS REYES and ANTONIO P. HUETE, JR., *Respondents.*

G.R. No. 188639, SECOND DIVISION, September 2, 2015, MENDOZA, *J.*

Improvidently ordering the inclusion of the trust fund in Legacy's insolvency estate without regard to the avowed state policy of protecting the consumer of pre-need plans, as laid down in the SRC, the New Rules, and the Pre-Need Code, constitutes grave abuse of discretion.

FACTS:

Republic Act (R.A.) No. 8799, otherwise known as the Securities Regulation Code (SRC), specifically Section 16 thereof, mandated the Securities and Exchange Commission (SEC) to prescribe rules and regulations governing the pre-need industry.

Pursuant thereto, the SEC issued the corresponding New Rules on the Registration and Sale of Pre-Need Plans (*New Rules*) to govern the pre-need industry prior to the enactment of R.A. No. 9829, otherwise known as the Pre-need Code of the Philippines (*Pre-Need Code*). It required from the pre-need providers the creation of trust funds as a requirement for registration.

Legacy, being a pre-need provider, complied with the trust fund requirement and entered into a trust agreement with the Land Bank of the Philippines. In mid-2000, the industry collapsed for a range of reasons. Legacy, like the others, was unable to pay its obligations to the planholders.

This resulted in Legacy being the subject of a petition for involuntary insolvency filed on February 18, 2009 by private respondents in their capacity as planholders. Through its manifestation filed in the RTC, Legacy did not object to the proceedings. Accordingly, it was declared insolvent by the RTC. The trial court also ordered Legacy to submit an inventory of its assets and liabilities pursuant to Sections 15 and 16 of Act No. 1956, otherwise known as the Insolvency Law, the applicable bankruptcy law at that time.

The RTC ordered the SEC, being the pre-need industry's regulator, to submit the documents pertaining to Legacy's assets and liabilities. the SEC opposed the inclusion of the trust fund in the inventory of corporate assets on the ground that to do so would contravene the New Rules which treated trust funds as principally established for the exclusive purpose of guaranteeing the delivery of benefits due to the planholders.

However, despite the opposition of the SEC, Judge Laigo ordered the insolvency Assignee, Gener T. Mendoza (Assignee) to take possession of the trust fund. Judge Laigo viewed the trust fund as Legacy's corporate assets and, for said reason, included it in the insolvent's estate.

ISSUE:

Whether or not Judge Laigo was correct in ordering the inclusion of the trust fund in Legacy's insolvency estate (NO).

RULING:

The Trust Fund is for the sole benefit of the planholders and cannot be used to satisfy the claims of other creditors of Legacy. It is clear from Section 16 of R.A. 8799 that the underlying congressional intent is to make the planholders the exclusive beneficiaries. It has been said that what is within the spirit is within the law even if it is not within the letter of the law because the spirit prevails over the letter.

This will by the legislature was fortified with the enactment of R.A. No. 9829 or the Pre-Need Code in 2009. The Congress, because of the chaos confounding the industry at the time, considered it necessary to provide a stronger legal framework so that no entity could claim that the mandate and delegated authority of the SEC under the SRC was nebulous. The Pre-Need Code cemented the regulatory framework governing the pre-need industry with precise specifics to ensure that the rights of the pre-need planholders would be categorically defined and protected.

Improvidently ordering the inclusion of the trust fund in Legacy's insolvency estate without regard to the avowed state policy of protecting the consumer of pre-need plans, as laid down in the SRC,

the New Rules, and the Pre-Need Code, constitutes grave abuse of discretion. The RTC should have known, and ought to know, the overarching consideration the Congress intended in requiring the establishment of trust funds — to uphold first and foremost the interest of the planholders.

The Court upholds its duty to protect the ordinary Filipino workers who are seeking a future for their children through pre-need contracts. Their incredibly long wait is over as this is the moment when their rightful and exclusive right to the trust funds, created primarily for them, is judicially respected and affirmed.

EMILIA O'LACO and HUCO LUNA, *Petitioners*, -versus- VALENTIN CO CHO CHIT, O LAY KIA and COURT OF APPEALS, *Respondents.*
G.R. No. 58010, FIRST DIVISION, March 31, 1993, BELLOSILLO, *J.*

By definition, trust relations between parties may either be express or implied. Express trusts are those which are created by the direct and positive acts of the parties, by some writing or deed, or will, or by words evincing an intention to create a trust. Implied trusts are those which, without being express, are deducible from the nature of the transaction as matters of intent, or which are superinduced on the transaction by operation of law as matters of equity, independently of the particular intention of the parties.

FACTS:

The case involves half-sisters each claiming ownership over a parcel of land. While petitioner Emilia O'Laco asserts that she merely left the certificate of title covering the property with private respondent O Lay Kia for safekeeping, the latter who is the former's older sister insists that the title was in her possession because she and her husband bought the property from their conjugal funds.

The RTC declared that there was no trust relation of any sort between the sisters. The Court of Appeals ruled otherwise.

ISSUE:

Whether or not there was a trust relations between the sisters. (YES)

RULING:

By definition, trust relations between parties may either be express or implied. Express trusts are those which are created by the direct and positive acts of the parties, by some writing or deed, or will, or by words evincing an intention to create a trust. Implied trusts are those which, without being express, are deducible from the nature of the transaction as matters of intent, or which are superinduced on the transaction by operation of law as matters of equity, independently of the particular intention of the parties.

Implied trust may either be resulting or constructive trusts, both coming into being by operation of law. Resulting trusts are based on the equitable doctrine that valuable consideration and not legal title determines the equitable title or interest and are presumed always to have been contemplated by the parties. They arise from the nature or circumstances of the consideration involved in a transaction whereby one person thereby becomes invested with legal title but is obligated in equity to hold his legal title for the benefit of another. On the other hand, constructive trusts are created by

the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold.

Unlike express trusts concerning immovables or any interest therein which cannot be proved by parol evidence, implied trusts may be established by oral evidence. However, in order to establish an implied trust in real property by parol evidence, the proof should be as fully convincing as if the acts giving rise to the trust obligation were proven by an authentic document. It cannot be established upon vague and inconclusive proof. After a thorough review of the evidence on record, the Supreme Court held that a resulting trust was indeed intended by the parties under Art. 1448 of the New Civil Code which states — "Art. 1448. There is an implied trust when property is sold, and the legal estate is granted to one party but *the price is paid by another for the purpose of having the beneficial interest of the property.* The former is the trustee, while the latter is the beneficiary..." As stipulated by the parties, the document of sale, the owner's duplicate copy of the certificate of title, insurance policies, receipt of initial premium of insurance coverage and real estate tax receipts were all in the possession of respondent-spouses which they offered in evidence. As emphatically asserted by respondent O Lay Kia, the reason why these documents of ownership remained with her is that the land in question belonged to her. Indeed, there can be no persuasive rationalization for the possession of these documents of ownership by respondent-spouses for seventeen (17) years after the Oroquieta property was purchased in 1943 than that of precluding its possible sale, alienation or conveyance by Emilia O'Laco, absent any machination or fraud. This continued possession of the documents, together with other corroborating evidence spread on record, strongly suggests that Emilia O'Laco merely held the Oroquieta property in trust for respondent-spouses.

As differentiated from constructive trusts, where the settled rule is that prescription may supervene, in resulting trust, the rule of imprescriptibility may apply for as long as the trustee has not repudiated the trust. Once the resulting trust is repudiated, however, it is converted into a constructive trust and is subject to prescription. A resulting trust is repudiated if the following requisites concur: (a) the trustee has performed unequivocal acts of repudiation amounting to an ouster of the *cestui qui trust;* (b) such positive acts of repudiation have been made known to the *cestui qui trust;* and, (c) the evidence thereon is clear and convincing. In *Tale v. Court of Appeals* the Court categorically ruled that an action for reconveyance based on an implied or constructive trust must perforce prescribe in ten (10) years, and not otherwise, thereby modifying previous decisions holding that the prescriptive period was four (4) years. So long as the trustee recognizes the trust, the beneficiary may rely upon the recognition, and ordinarily will not be in fault for omitting to bring an action to enforce his rights. There is no running of the prescriptive period if the trustee expressly recognizes the resulting trust. Since the complaint for breach of trust was filed by respondent-spouses two (2) months after acquiring knowledge of the sale, the action therefore has not yet prescribed.

CHIAO LIONG TAN, *Petitioner*, -versus- THE HONORABLE COURT OF APPEALS, HON. MANUEL T. MURO, Presiding Judge, RTC of Manila, Branch 54 and TAN BAN YONG, *Respondents.*
G.R. No. 106251, SECOND DIVISION, November 19, 1993, NOCON, *J.*

FACTS:

Petitioner Chiao Liong Tan claims to be the owner of a motor vehicle, particularly described as Isuzu Elf van, 1976 Model with Motor No. 44999-2 and Chassis No. 9646780 which he purchased in March, 1987. As owner thereof, petitioner says he has been in possession, enjoyment and utilization of the said motor vehicle until it was taken from him by his older brother, Tan Ban Yong, the private respondent.

Chiao Liong Tan relies principally on the fact that the Isuzu Elf van is registered in his name. He claims in his testimony before the trial court that the said vehicle was purchased from Balintawak Isuzu Motor Center for a price of over P100,000.00; that he sent his brother to pay for the van and the receipt for payment was placed in Chiao's name because it was his money that was used to pay for the vehicle; that he allowed his brother to use the van because the latter was working for his company, the CLT Industries; and that his brother later refused to return the van to him and appropriated the same for himself.

Tan Ban Yong testified that CLT Industries is a family business that was placed in Chiao's name because at that time he was then leaving for the United States and petitioner is the remaining Filipino in the family residing in the Philippines. When the family business needed a vehicle in 1987 for use in the delivery of machinery to its customers, he asked petitioner to look for a vehicle and gave him the amount of P5,000.00 to be deposited as down payment for an Isuzu Elf Van which would be available in about a month. After a month, he himself paid the whole price out of a loan of P140,000.00 which he obtained from a friend.

The RTC ruled in favor of Tan Ban Yong and the decision was affirmed by the CA.

ISSUE:

Whether or not there was implied trust between Chiao Liong Tan and Tan Ban Yong. (YES)

RULING:

The New Civil Code recognizes cases of implied trust other than those enumerated therein. Thus, although no specific provision could be cited to apply to the parties herein, it is undeniable that an implied trust was created when the certificate of registration of the motor vehicle was placed in the name of petitioner although the price thereof was not paid by him but by private respondent. The principle that a trustee who puts a certificate of registration in his name cannot repudiate the trust by relying on the registration is one of the well-known limitations upon a title. A trust, which derives its strength from the confidence one reposes on another especially between brothers, does not lose that character simply because of what appears in a legal document.

RECENT JURISPRUDENCE

LOURDES VALDERAMA, *Petitioner,* -versus- SONIA ARGUELLES AND LORNA ARGUELLES, *Respondents*.

G.R. No. 223660, FIRST DIVISION, April 2, 2018, TIJAM, J.

A notice of lis pendens is a mere incident of an action which does not create any right nor lien. It may be cancelled without a court hearing. In contrast, an adverse claim constitutes a lien on a property. As such, the cancellation of an adverse claim is still necessary to render it ineffective, otherwise, the

inscription will remain annotated and shall continue as a lien upon the property. Given the different attributes and characteristics of an adverse claim vis-a-vis a notice of lis pendens, this Court is led to no other conclusion but that the said two remedies may be availed of at the same time.

FACTS:

Respondents alleged that on November 18, 2004, Conchita Amongo Francia, who was the registered owner of a parcel of land consisting of one thousand (1000) square meters located in Sampaloc, Manila (subject property), freely and voluntarily executed an absolute deed of sale of the subject property in favor of respondents. The subject property was subsequently registered in the names of respondents.

On November 14, 2007, Conchita filed an affidavit of adverse claim. On January 24, 2008, Conchita died. As registered owners of the subject property, respondents prayed for the **cancellation of the adverse claim** in the petition subject of this controversy.

On February 10, 2010, petitioner and Tarcila Lopez, as full-blooded sisters of Conchita, filed an opposition to the petition. They claimed that upon Conchita's death, the latter's claims and rights against the subject property were transmitted to her heirs by operation of law. They also argued that the sale of the subject property to the respondents was simulated.

Meanwhile, while the petition to cancel adverse claim was pending before the RTC, respondents filed a complaint for recovery of ownership and physical possession of a piece of realty and its improvements with damages and with prayer for the issuance of temporary restraining order and/or writ of preliminary injunction against petitioner and Tarcila, among others.

In light of the respondent's filing of the complaint, petitioner and Tarcila **filed a notice of *lis pendens*** with respect to the TCT No. 266311

Respondents filed a manifestation and motion praying for the outright cancellation of the adverse claim annotated on the TCT No. 266311 on the ground that petitioner's subsequent filing of notice of *lis pendens* rendered the issue moot and academic.

The RTC issued a Resolution ordering the cancellation of the adverse claim. In arriving at the said ruling, the RTC reasoned, that it cannot disregard the pronouncement of the court in ***Villaflor vs. Juerzan*****,** G.R. No. 35205 which states that a Notice of *Lis Pendens* between the parties concerning Notice of Adverse Claim calls for the cancellation thereof.

The CA rendered a decision dismissing petitioner's appeal for lack of merit. The CA held that the issue on cancellation of adverse claim is a question of law since its resolution would not involve an examination of the evidence but only an application of the law on a particular set of facts. Having raised a sole question of law, the petition was dismissed by the CA pursuant to Section 2, Rule 50 of the Rules of Court.

ISSUE:

Whether the subsequent annotation of a notice of *lis pendens* on a certificate of title renders the case for cancellation of adverse claim on the same title moot and academic. (NO)

RULING:

At the crux of the present controversy is this Court's ruling in the case of *Villaflor*. Admittedly, the present case involves the same issue resolved by this Court in *Villaflor*. However, the *Villaflor* ruling **stemmed from a different factual milieu**. As pointed out by the petitioner, in the case at bar, the respondents are the ones who filed the case subject of the notice of *lis pendens*. Further, the ruling in *Villaflor* specifically highlighted the fact that the related civil case was already terminated and attained finality. Here, the civil case filed by the respondents is still pending before the RTC.

An adverse claim and a notice of lis pendens under P.D. 1529 are not of the same nature and do not serve the same purpose.

As distinguished from an adverse claim, the notice of *lis pendens* is ordinarily recorded without the intervention of the court where the action is pending. Moreover, a notice of *lis pendens* neither affects the merits of a case nor creates a right or a lien. The notice is but an extrajudicial incident in an action. It is intended merely to constructively advise, or warn, all people who deal with the property that they so deal with it at their own risk, and whatever rights they may acquire in the property in any voluntary transaction are subject to the results of the action. Corollarily, unlike the rule in adverse claims, the cancellation of a notice *lis pendens* is also a mere incident in the action, and may be ordered by the Court having jurisdiction of it at any given time. Its continuance or removal is not contingent on the existence of a final judgment in the action, and ordinarily has no effect on the merits thereof.

The law and jurisprudence provide clear distinctions between an annotation of an adverse claim, on one hand, and an annotation of a notice of *lis pendens* on the other. In sum, the main differences between the two are as follows: (1) an adverse claim protects the right of a claimant during the pendency of a **controversy** while a notice of *lis pendens* protects the right of the claimant during the pendency of the **action or litigation**; and (2) an adverse claim may only be cancelled upon filing of a petition before the court which **shall conduct a hearing on its validity** while a notice of *lis pendens* may be cancelled **without a court hearing**.

The ruling of this Court in the case of Ty Sin Tei v. Dy Piao is applicable in this case. The aforecited rationale of this Court in *Ty Sin Tei* is more in accordance with the basic tenets of fair play and justice. As previously discussed, a notice of *lis pendens* is a mere incident of an action which does not create any right nor lien. It may be cancelled without a court hearing. In contrast, an adverse claim constitutes a lien on a property. As such, the cancellation of an adverse claim is still necessary to render it ineffective, otherwise, the inscription will remain annotated and shall continue as a lien upon the property. Given the different attributes and characteristics of an adverse claim *vis-a-vis* a notice of *lis pendens*, this Court is led to no other conclusion but that the said two remedies may be availed of at the same time.

CATALINA F. ISLA, ELIZABETH ISLA, AND GILBERT F. ISLA, *Petitioners*, -versus- GENEVIRA P. ESTORGA, *Respondent*.
G.R. No. 233974, SECOND DIVISION, July 02, 2018, PERLAS-BERNABE, *J*.

Anent monetary interest, the parties are free to stipulate their preferred rate. However, courts are allowed to equitably temper interest rates that are found to be excessive, iniquitous, unconscionable,

and/or exorbitant. In such, the legal rate of interest prevailing at the time the agreement was entered into is applied by the Court.

In this case, the stipulated interest of 10% per month was found to be unconscionable, and thus, the courts a quo struck down the same and pegged a new monetary interest of 12% per annum, which was the prevailing legal rate of interest for loans and forbearances of money at the time the loan was contracted on December 6, 2004.

FACTS:

On December 6, 2004, petitioners obtained a loan in the amount of P100,000.00 from respondent, payable anytime from six months to one year and subject to interest at the rate of 10% per month, payable on or before the end of each month. As security, a real estate mortgage was constituted over a land located in Pasay City registered under the name of Edilberto Isla, who is married to Catalina.

When petitioners failed to pay the said loan, respondent sought assistance from the barangay, and consequently, a Kasulatan ng Pautang dated December 8, 2005 was executed. Petitioners, however, failed to comply with its terms, prompting respondent to send a demand letter dated November 16, 2006. Once more, petitioners failed to comply with the demand, causing respondent to file a Petition for Judicial Foreclosure against them before the RTC.

Petitioners maintained that the subject mortgage was not a real estate mortgage but a mere loan, and that the stipulated interest of 10 per month was exorbitant and grossly unconscionable. They also insisted that since petitioners were not the absolute owners of the subject property - as the same was allegedly owned by Edilberto – they could not have validly constituted the subject mortgage thereon.

The RTC granted the Petition for Judicial Foreclosure and directed petitioners to pay respondent the amounts of P100,000.00 with twelve percent 12% interest per annum from December 2007 until fully paid and P20,000.00 as attorney's fees. In the event that petitioners fail to pay the said amounts within a period of 6 months from receipt of a copy of the RTC Decision, it held that the subject property will be foreclosed and sold at public auction to satisfy the mortgage debt, and the surplus, if any, will be delivered to petitioners with reasonable interest under the law.

Aggrieved, respondent appealed to the CA.

The CA affirmed with modification the RTC Decision, and accordingly, ordered petitioners to pay respondent P100,000.00 representing the principal of the loan obligation; an amount equivalent to 12% of P100,000.00 computed per year from November 16, 2006 (as distinguished from the RTC decision which fixed the start date at December 2007) until full payment, representing interest on the loan; an amount equivalent to 6% of the sums due computed from the finality of the CA Decision until full payment, representing legal interest; and P20,000.00 as attorney's fees. It likewise held that the stipulated interest of ten percent 10% per month on the real estate mortgage is exorbitant.
In their petition, petitioners contest the interest imposed on the principal amount of the loan at the rate of twelve percent 12% per annum from the date of extrajudicial demand until full payment. In this regard, they argue that pursuant to ECE Realty and Development, Inc. v. Hernandez the applicable interest rate should only be six percent 6%.

ISSUE:

Whether or not the CA erred in awarding 12% interest on the principal obligation until full payment

RULING:

No.

There are two types of interest, namely, monetary interest and compensatory interest. Monetary interest is the compensation fixed by the parties for the use or forbearance of money. On the other hand, compensatory interest is that imposed by law or by the courts as penalty or indemnity for damages. Accordingly, the right to recover interest arises only either by virtue of a contract (monetary interest) or as damages for delay or failure to pay the principal loan on which the interest is demanded (compensatory interest).

Anent monetary interest, the parties are free to stipulate their preferred rate. However, **courts are allowed to equitably temper interest rates that are found to be excessive, iniquitous, unconscionable, and/or exorbitant**, such as stipulated interest rates of three percent (3%) per month or higher. In such instances, it is well to clarify that only the unconscionable interest rate is nullified and deemed not written in the contract; whereas the parties' agreement on the payment of interest on the principal loan obligation subsists. **It is as if the parties failed to specify the interest rate to be imposed on the principal amount, in which case the legal rate of interest prevailing at the time the agreement was entered into is applied by the Court**. This is because, according to jurisprudence, the legal rate of interest is the presumptive reasonable compensation for borrowed money.

In this case, petitioners and respondent entered into a loan obligation and clearly stipulated for the payment of monetary interest. However, the **stipulated interest of 10% per month was found to be unconscionable, and thus, the courts a quo struck down the same and pegged a new monetary interest of 12% per annum, which was the prevailing legal rate of interest for loans and forbearances of money at the time the loan was contracted** on December 6, 2004.
Applying this, the loan obtained by respondents from petitioners is deemed subjected to conventional interest at the rate of 12% per annum, the legal rate of interest at the time the parties executed their agreement. Moreover, should conventional interest still be due as of July 1, 2013, the rate of 12% per annum shall persist as the rate of conventional interest. Stated otherwise, the legal rate of interest, when applied as conventional interest, shall always be the legal rate at the time the agreement was executed and shall not be susceptible to shifts in rate.

The Court rules that the CA correctly imposed a monetary interest rate of 12% per annum on the principal loan obligation of petitioners to respondent, reckoned from the date of extrajudicial demand until finality of this ruling. **Petitioner's reliance on ECE Realty is misplaced because unlike in this case, the amount due therein does not partake of a loan obligation or forbearance of money.**

SECURITY BANK CORPORATION, *Petitioner*, -versus- SPOUSES RODRIGO and ERLINDA MERCADO, *Respondents*.
G.R. No. 192934, FIRST DIVISION, June 27, 2018, JARDELEZA, J.

Failure to advertise a mortgage foreclosure sale in compliance with statutory requirements constitutes a jurisdictional defect which invalidates the sale. This jurisdictional requirement may not be waived by the parties; to allow them to do so would convert the required public sale into a private sale. Thus, the statutory provisions governing publication of notice of mortgage foreclosure sale must be strictly complied with and that even slight deviations therefrom will invalidate the notice and render the sale at least voidable.

In this case, the errors in the notice consist of: (1) TCT No. T-33150- "Lot 952-C-1" which should be "Lot 952-C-1-B;" (2) TCT No. T-89822 "Lot 1931, Cadm- 164-D" which should be "Lot 1931 Cadm 464-D;''64 and (3) the omission of the location. While the errors seem inconsequential, they in fact constitute data important to prospective bidders when they decide whether to acquire any of the lots announced to be auctioned. First, the published notice misidentified the identity of the properties. Since the lot numbers are misstated, the notice effectively identified lots other than the ones sought to be sold. Second, the published notice omitted the exact locations of the properties. As a result, prospective buyers are left completely unaware of the type of neighborhood and conforming areas they may consider buying into. With the properties misidentified and their locations omitted, the properties' sizes and ultimately, the determination of their probable market prices, are consequently compromised. The errors are of such nature that they will significantly affect the public's decision on whether to participate in the public auction. We find that the errors can deter or mislead bidders, depreciate the value of the properties or prevent the process from fetching a fair price.

FACTS:

On September 13, 1996, Security Bank granted spouses Mercado a revolving credit line in the amount of P1,000,000.00. To secure the credit line, the spouses Mercado executed a Real Estate Mortgage in favor of Security Bank over their properties covered by Transfer Certificate of Title (TCT) No. T-103519 (located in Lipa City, Batangas), and TCT No. T-89822 (located in San Jose, Batangas). The spouses Mercado executed another Real Estate Mortgage in favor of Security Bank this time over their properties located in Batangas City, Batangas covered by TCT Nos. T-33150, T-34288, and T-34289 to secure an additional amount of P7,000,000.00 under the same revolving credit agreement.

Subsequently, the spouses Mercado defaulted in their payment under the revolving credit line agreement. Security Bank requested the spouses Mercado to update their account, and sent a final demand letter on March 31, 1999.12 Thereafter, it filed a petition for extrajudicial foreclosure pursuant to Act No. 3135,13 as amended, with respect to the parcel of land situated in Lipa City. Security Bank likewise filed a similar petition with the Office of the Clerk of Court and Ex-Officio Sheriff of the RTC of Batangas City with respect to the parcels of land located in San Jose, Batangas and Batangas City.

The respective notices of the foreclosure sales of the properties were published in newspapers of general circulation once a week for three consecutive weeks as required by Act No. 3135, as amended. However, the publication of the notices of the foreclosure of the properties in Batangas City and San Jose, Batangas contained errors with respect to their technical description. Security Bank caused the publication of an erratum in a newspaper to correct these errors. The corrections

consist of the following: (1) TCT No. 33150 – "Lot 952-C-1" to "Lot 952-C-1-B;" and (2) TCT No. 89822 – "Lot 1931 Cadm- 164-D" to "Lot 1931 Cadm 464-D." The erratum was published only once, and did not correct the lack of indication of location in both cases.

The foreclosure sale of the parcel of land in Lipa City, Batangas was held wherein Security Bank was adjudged as the winning bidder. A similar foreclosure sale was conducted over the parcels of land in Batangas City and San Jose, Batangas where Security Bank was likewise adjudged as the winning bidder. The spouses Mercado offered to redeem the foreclosed properties for P10,000,000.00. However, Security Bank allegedly refused the offer and made a counter-offer in the amount of P15,000,000.00.

The spouses Mercado filed a complaint for annulment of foreclosure sale, damages, injunction, specific performance, and accounting with application for temporary restraining order and/or preliminary injunction with the RTC of Batangas City. In the complaint, the spouses Mercado averred that: (1) the parcel of land in San Jose, Batangas should not have been foreclosed together with the properties in Batangas City because they are covered by separate real estate mortgages; (2) the requirements of posting and publication of the notice under Act No. 3135, as amended, were not complied with; (3) Security Bank acted arbitrarily in disallowing the redemption of the foreclosed properties for P10,000,000.00; (4) the total price for all of the parcels of land only amounted to P4723,620.00; and (5) the interests and the penalties imposed by Security Bank on their obligations were iniquitous and unconscionable.

Meanwhile, Security Bank, after having consolidated its titles to the foreclosed parcels of land, filed an ex-parte petition for issuance of a writ of possession over the parcels of land located in Batangas City and San Jose, Batangas.

RTC declared that: (1) the foreclosure sales of the five parcels of land void; (2) the interest rates contained in the revolving credit line agreement void for being potestative or solely based on the will of Security Bank; and (3) thesum of P8,000,000.00 as the true and correct obligation of the spouses Mercado to Security Bank. RTC modified its Decision in an Amendatory Order where it declared that: (1) only the foreclosure sales of the parcels of land in Batangas City and San Jose, Batangas are void as it has no jurisdiction over the properties in Lipa City, Batangas; (2) the obligation of the spouses Mercado is P7,500,000.00, after deducting P500,000.00 from the principal loan of P1,000,000.00; and (3) as "cost of money," the obligation shall bear the interest at the rate of 6% from the time of date of the Amendatory Order until fully paid. The CA, on appeal, affirmed with modifications the RTC Amended Decision.

ISSUES:

(1) Whether the foreclosure sales of the parcels of land in Batangas City and San Jose, Batangas are valid. (NO)

(2) Whether the provisions on interest rate in the revolving credit line agreement and its addendum are void for being violative of the principle of mutuality of contracts. (YES)

(3) Whether interest and penalty are due and demandable from date of auction sale until finality of the judgment declaring the foreclosure void under the doctrine of operative facts. (NO)

RULING:

(1) The foreclosure sales of the properties in Batangas City and San Jose, Batangas are void for non-compliance with the publication requirement of the notice of sale.
Act No. 3135, as amended, provides for the statutory requirements for a valid extrajudicial foreclosure sale. Among the requisites is a valid notice of sale. Section 3, as amended, requires that when the value of the property reaches a threshold, the notice of sale must be published once a week for at least three consecutive weeks in a newspaper of general circulation:

Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

Failure to advertise a mortgage foreclosure sale in compliance with statutory requirements constitutes a jurisdictional defect which invalidates the sale. This jurisdictional requirement may not be waived by the parties; to allow them to do so would convert the required public sale into a private sale. Thus, the statutory provisions governing publication of notice of mortgage foreclosure sale must be strictly complied with and that even slight deviations therefrom will invalidate the notice and render the sale at least voidable.

Nevertheless, the validity of a notice of sale is not affected by immaterial errors. Only a substantial error or omission in a notice of sale will render the notice insufficient and vitiate the sale. An error is substantial if it will deter or mislead bidders, depreciate the value of the property or prevent it from bringing a fair price.

In this case, the errors in the notice consist of: (1) TCT No. T-33150- "Lot 952-C-1" which should be "Lot 952-C-1-B;" (2) TCT No. T-89822 "Lot 1931, Cadm- 164-D" which should be "Lot 1931 Cadm 464-D;''64 and (3) the omission of the location. While the errors seem inconsequential, they in fact constitute data important to prospective bidders when they decide whether to acquire any of the lots announced to be auctioned. First, the published notice misidentified the identity of the properties. Since the lot numbers are misstated, the notice effectively identified lots other than the ones sought to be sold. Second, the published notice omitted the exact locations of the properties. As a result, prospective buyers are left completely unaware of the type of neighborhood and conforming areas they may consider buying into. With the properties misidentified and their locations omitted, the properties' sizes and ultimately, the determination of their probable market prices, are consequently compromised. The errors are of such nature that they will significantly affect the public's decision on whether to participate in the public auction. We find that the errors can deter or mislead bidders, depreciate the value of the properties or prevent the process from fetching a fair price.

The publication of a single erratum, however, does not cure the defect. As correctly pointed out by the RTC, "[t]he act of making only one corrective publication in the publication requirement, instead of three (3) corrections is a fatal omission committed by the mortgagee bank." To reiterate, the published notices that contain fatal errors are nullities. Thus, the erratum is considered as a new notice that is subject to the publication requirement for once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city where the property is located. Here, however, it was published only once.

(2) The interest rate provisions in the parties' agreement violate the principle of mutuality of contracts.

The principle of mutuality of contracts is found in Article 1308 of the New Civil Code, which states that contracts must bind both contracting parties, and its validity or compliance cannot be left to the will of one of them. The binding effect of any agreement between parties to a contract is premised on two settled principles: (I) that any obligation arising from contract has the force of law between the parties; and (2) that there must be mutuality between the parties based on their essential equality. As such, any contract which appears to be heavily weighed in favor of one of the parties so as to lead to an unconscionable result is void. Likewise, any stipulation regarding the validity or compliance of the contract that is potestative or is left solely to the will of one of the parties is invalid. This holds true not only as to the original terms of the contract but also to its modifications. Consequently, any change in a contract must be made with the consent of the contracting parties, and must be mutually agreed upon. Otherwise, it has no binding effect.

Stipulations as to the payment of interest are subject to the principle of mutuality of contracts. As a principal condition and an important component in contracts of loan, interest rates are only allowed if agreed upon by express stipulation of the parties, and only when reduced into writing.

Here, the spouses Mercado supposedly: (1) agreed to pay an annual interest based on a "floating rate of interest;" (2) to be determined solely by Security Bank; (3) on the basis of Security Bank's own prevailing lending rate; (4) which shall not exceed the total monthly prevailing rate as computed by Security Bank; and (5) without need of additional confirmation to the interests stipulated as computed by Security Bank.

Notably, stipulations on floating rate of interest differ from escalation clauses. Escalation clauses are stipulations which allow for the increase (as well as the mandatory decrease) of the original fixed interest rate. Meanwhile, floating rates of interest refer to the variable interest rate stated on a market-based reference rate agreed upon by the parties. The former refers to the method by which fixed rates may be increased, while the latter pertains to the interest rate itself that is not fixed. Nevertheless, both are contractual provisions that entail adjustment of interest rates subject to the principle of mutuality of contracts. Thus, while the cited cases involve escalation clauses, the principles they lay down on mutuality equally apply to floating interest rate clauses.

The Banko Sentral ng Pilipinas (BSP) Manual of Regulations for Banks (MORB) allows banks and borrowers to agree on a floating rate of interest, provided that it must be based on market-based reference rates:

§ X305.3 Floating rates of interest. The rate of interest on a floating rate loan during each interest period shall be stated on the basis of Manila Reference Rates (MRRs), T-Bill Rates or other market based reference rates plus a margin as may be agreed upon by the parties.

The MRRs for various interest periods shall be determined and announced by the Bangko Sentral every week and shall be based on the weighted average of the interest rates paid during the immediately preceding week by the ten (10) KBs with the highest combined levels of outstanding deposit substitutes and time deposits, on promissory notes issued and time deposits received by such banks, of P100,000 and over per transaction account, with maturities corresponding to the interest periods tor which such MRRs are being determined. Such rates and the composition of the sample KBs shall be reviewed and determined at the beginning of every calendar semester on the

basis of the banks' combined levels of outstanding deposit substitutes and time deposits as of 31 May or 30 November, as the case may be.

The rate of interest on floating rate loans existing and outstanding as of 23 December 1995 shall continue to be determined on the basis of the MRRs obtained in accordance with the provisions of the rules existing as of 01 January 1989: Provided, however, That the parties to such existing floating rate loan agreements are not precluded from amending or modifying their loan agreements by adopting a floating rate of interest determined on the basis of the TBR or other market based reference rates.

Where the loan agreement provides for a floating interest rate, the interest period, which shall be such period of time for which the rate of interest is fixed, shall be such period as may be agreed upon by the parties.

For the purpose of computing the MRRs, banks shall accomplish the report forms, RS Form 2D and Form 2E (BSP 5-17-34A).

This BSP requirement is consistent with the principle that the determination of interest rates cannot be left solely to the will of one party. It further emphasizes that the reference rate must be stated in writing, and must be agreed upon by the parties.

The authority to change the interest rate was given to Security Bank alone as the lender, without need of the written assent of the spouses Mercado. This unbridled discretion given to Security Bank is evidenced by the clause "I hereby give my continuing consent without need of additional confirmation to the interests stipulated as computed by [Security Bank]." The lopsidedness of the imposition of interest rates is further highlighted by the lack of a breakdown of the interest rates imposed by Security Bank in its statement of account accompanying its demand letter.

The interest rate to be imposed is determined solely by Security Bank for lack of a stated, valid reference rate. The reference rate of "Security Bank's prevailing lending rate" is not pegged on a market-based reference rate as required by the BSP. The stipulated interest rate based on "Security Bank's prevailing lending rate" is not synonymous with "prevailing market rate." For one, Security Bank is still the one who determines its own prevailing lending rate. More, the argument that Security Bank is guided by other facts (or external factors such as Singapore Rate, London Rate, Inter-Bank Rate) in determining its prevailing monthly rate fails because these reference rates are not contained in writing as required by law and the BSP.

Nevertheless, while we find that no stipulated interest rate may be imposed on the obligation, legal interest may still be imposed on the outstanding loan. Eastern Shipping Lines, Inc. v. Court of Appeals and Nacar v. Gallery Frames provide that in the absence of a stipulated interest. a loan obligation shall earn legal interest from the time of default, i.e., from judicial or extrajudicial demand.

(3) For purposes of computing when legal interest shall run, it is enough that the debtor be in default on the principal obligation. To be considered in default under the revolving credit line agreement, the borrower need not be in default for the whole amount, but for any amount due. The spouses Mercado never challenged Security Bank's claim that they defaulted as to the payment of the principal obligation of P8,000,000.00. Thus, we find they have defaulted to this amount at the time Security Bank made an extrajudicial demand on March 31, 1999.

We also find no merit in their argument that penalty charges should not be imposed. While we see no legal basis to strike down the penalty stipulation, however, we reduce the penalty of 2% per month or 24% per annum for being iniquitous and unconscionable as allowed under Article 1229 of the Civil Code.

In MCMP Construction Corp. v. Monark Equipment Corp.,103 we declared the rate of 36% per annum unconscionable and reduced it to 6% per annum. We thus similarly reduce the penalty here from 24% per annum to 6% per annum from the time of default, i.e., extrajudicial demand.

We also modify the amount of the outstanding obligation of the spouses Mercado to Security Bank. To recall, the foreclosure sale over the parcel of land in Lipa City is not affected by the annulment proceedings. We thus find that the proceeds of the foreclosure sale over the parcel of land in Lipa City in the amount of P483,120.00 should be applied to the principal obligation of P8,000,000.00 plus interest and penalty from extrajudicial demand (March 31, 1999) until date of foreclosure sale (October 19, 1999). The resulting deficiency shall earn legal interest at the rate of 12% from the filing of Security Bank's answer with counterclaim105 on January 5, 2001 until June 30, 2013, and shall earn legal interest at the present rate of 6% from July 1, 2013 until finality of judgment.

SPOUSES GODFREY and MA. TERESA TEVES, *Petitioners,* -versus- INTEGRATED CREDIT & CORPORATE SERVICES, CO. (now CAROL AQUI), *Respondent*.
G.R. No. 216714, FIRST DIVISION, April 4, 2018, DEL CASTILLO, J.

On the contention that the RTC — sitting as a land registration court — does not have jurisdiction to award back rentals or grant relief which should otherwise be sought in an ordinary civil action, this is no longer tenable. The distinction between the trial court acting as a land registration court with limited jurisdiction, on the one hand, and a trial court acting as an ordinary court exercising general jurisdiction, on the other, has already been removed with the effectivity of Presidential Decree No. 1529, or the Property Registration Decree.

FACTS:

Sometime in 1996, Standard Chartered Bank extended various loans to petitioners Godfrey and Ma. Teresa Teves. As security, petitioners mortgaged their property covered by Transfer Certificate of Title No. 107520 (the subject property).

Petitioners defaulted in their loan payments. Standard extrajudicially foreclosed on the mortgage, and the property was sold to Integrated Credit and Corporate Services Co. (ICCS). A new certificate of title was issued in favor of ICCS after petitioners failed to redeem the subject property upon the expiration of the redemption period on May 23, 2007.

ICCS filed a petition for the issuance of a wit of possession. During the proceedings, or in May, 2010, ICCS was substituted by respondent Carol Aqui who appears to have acquired the property from ICCS, and a new certificate of title was issued in Aqui's favor.

On July 14, 2010, the RTC issued two Orders.

The first, issued the writ of possession. The second, ordered the defendants to deliver to petitioner and/or deposit with the Court the monthly rentals of the subject property covering the period from May 24, 2007 up to the time they surrender the possession thereof to the petitioner. Petitioners filed a Partial Motion for Reconsideration of the Second Order, but RTC denied the same.

Petitioners filed a Petition for *Certiorari* before the CA. The latter dismissed the Petition filed under Rule 65 being an improper remedy. It ratiocinated that the orders subject of the petition partakes the nature of a judgment or final order which is appealable under Rule 41 of the Rules of Court.

Petitioners, praying that this Court set aside the second order of the RTC, argue that Aqui should file an independent action — and not simply seek the same in her petition for issuance of a writ of possession, since (a) the RTC, sitting as a land registration court, does not have jurisdiction to award back rentals or grant relief which should otherwise be sought in an ordinary civil action; and (b) Act No. 3135, as amended by Act No. 4118, contains no provision authorizing the award of back rentals to the purchaser at auction.

ISSUE:

Whether back rentals can be awarded in an ex parte application for writ of possession under Act 3135. (YES)

RULING:

When the redemption period expired on May 23, 2007, ICCS became the owner of the subject property and was, from then on, entitled to the fruits thereof. Petitioners ceased to be the owners of the subject property, and had no right to the same as well as to its fruits. Under Section 32, Rule 39 of the Rules, on Execution, Satisfaction and Effect of Judgments, all rents, earnings and income derived from the property pending redemption shall belong to the judgment obligor, but only until the expiration of his period of redemption. Thus, if petitioners leased out the property to third parties after their period for redemption expired, as was in fact the case here, the rentals collected properly belonged to ICCS or Aqui, as the case may be. Petitioners had no right to collect them.

On the contention that the RTC — sitting as a land registration court — does not have jurisdiction to award back rentals or grant relief which should otherwise be sought in an ordinary civil action, this is no longer tenable. The distinction between the trial court acting as a land registration court with limited jurisdiction, on the one hand, and a trial court acting as an ordinary court exercising general jurisdiction, on the other, has already been removed with the effectivity of Presidential Decree No. 1529, or the Property Registration Decree. "The change has simplified registration proceedings by conferring upon the designated trial courts the authority to act not only on applications for 'original registration' but also 'over all petitions filed after original registration of title, with power to hear and determine all questions arising from such applications or petition.'" Moreover, under Section 6, Rule 135 of the Rules, on Powers and Duties of Courts and Judicial Officers, it is provided that —

> Sec. 6. *Means to carry jurisdiction into effect.* — When by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other

> means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.

Given the above-cited rule and the pronouncement in *China Banking Corporation v. Spouses Lozada*, it can be understood why the RTC issued the two separate Orders of July 14, 2010 The First Order was issued relative to the main remedy sought by ICCS — that is, for the court to issue a writ of possession. The Second Order was issued pursuant to the court's authority under Section 6 of Rule 135 of the Rules, to the end that a patent inequity may be immediately remedied and justice served in accordance with the objective of the Rules to secure a just, speedy and inexpensive disposition of every action and proceeding. In the eyes of the law, petitioners clearly had no right to collect rent from the lessee of the subject property; they were no longer the owners thereof, yet they continued to collect and appropriate for themselves the rentals on the property to which ICCS was entitled. This is a clear case of unjust enrichment that the courts may not simply ignore.

VICTORIA N. RACELIS, IN HER CAPACITY AS ADMINISTRATOR, *Petitioner,* -versus- SPOUSES GERMIL JAVIER and REBECCA JAVIER, *Respondents.*
G.R. No. 189609, THIRD DIVISION, January 29, 2018, LEONEN, *J.*

In Goldstein v. Roces:

Nobody has in any manner disputed, objected to, or placed any difficulties in the way of plaintiff's peaceful enjoyment, or his quiet and peaceable possession of the floor he occupies. The lessors, therefore, have not failed to maintain him in the peaceful enjoyment of the floor leased to him and he continues to enjoy this status without the slightest change, without the least opposition on the part of any one. That there was a disturbance of the peace or order in which he maintained his things in the leased story does not mean that he lost the peaceful enjoyment of the thing rented. The peace would likewise have been disturbed or lost had some tenant of the Hotel de Francia, living above the floor leased by plaintiff, continually poured water on the latter's bar and sprinkled his bar-tender and his customers and tarnished his furniture; or had some gay patrons of the hotel gone down into his saloon and broken his crockery or glassware, or stunned him with deafening noises. Numerous examples could be given to show how the lessee might fail peacefully to enjoy the floor leased by him, in all of which cases he would, of course, have a right of action for the recovery of damages from those who disturbed his peace, but he would have no action against the lessor to compel the latter to maintain him in his peaceful enjoyment of the thing rented. The lessor can do nothing, nor is it incumbent upon him to do anything, in the examples or cases mentioned, to restore his lessees peace.

True it is that, pursuant to paragraph 3, of article 1554, the lessor must maintain the lessee in the peaceful enjoyment of the lease during all of the time covered by the contract, and that, in consequence thereof, he is obliged to remove such obstacles as impede said enjoyment; but, as in warranty in a case of eviction (to which doctrine the one we are now examining is very similar, since it is necessary, as we have explained, that the cause of eviction be in a certain manner imputable to the vendor, which must be understood as saying that it must be prior to the sale), the obstacles to enjoyment which the lessor must remove are those that in some manner or other cast doubt upon the right by virtue of which the lessor himself executed the lease and, strictly speaking, it is this right that the lessor should guarantee to the lessee.

Lessees are entitled to suspend the payment of rent under Article 1658 of the Civil Code if their legal possession is disturbed. Acts of physical disturbance that do not affect legal possession is beyond the scope of this rule. Lessees who exercise their right under Article 1658 of the Civil Code are not freed from the obligations imposed by law or contract. Assuming that parties were entitled to invoke their right under Article 1658 of the Civil Code, this does exonerate them from their obligation under Article 1657 of the civil Code "to pay the price of the lease according to the terms stipulated."

FACTS:

Before his death, the late Pedro Nacu, Sr. (Nacu) appointed his daughter, Racelis, to administer his properties, among which was a residential house and lot located in Marikina City. Nacu requested his heirs to sell this property first. Acting on this request, Racelis immediately advertised it for sale.

In August 2001, the Spouses Javier offered to purchase the Marikina property. However, they could not afford to pay the price of P3,500,000.00. The parties agreed on a month-to-month lease and rent of P11,000.00 per month. The Spouses Javier used the property as their residence and as the site of their tutorial school, the Niño Good Shepherd Tutorial Center.

Sometime in July 2002, Racelis inquired whether the Spouses Javier were still interested to purchase the property. The Spouses Javier reassured her of their commitment and even promised to pay P100,000.00 to buy them more time within which to pay the purchase price. On July 26, 2002, the Spouses Javier tendered the sum of P65,000.00 representing "initial payment or goodwill money." On several occasions, they tendered small sums of money to complete the promised P100,000.00, but by the end of 2003, they only delivered a total of P78,000.00.

Meanwhile, they continued to lease the property. They consistently paid rent but started to fall behind by February 2004. Realizing that the Spouses Javier had no genuine intention of purchasing the property, Racelis wrote to inform them that her family had decided to terminate the lease agreement and to offer the property to other interested buyers. **In the same letter, Racelis demanded that they vacate the property by May 30, 2004.**

The Spouses Javier refused to vacate due to the ongoing operation of their tutorial business. They insisted that the sum of P78,000.00 was advanced rent and proposed that this amount be applied to their outstanding liability until they vacate the premises. Disagreeing on the application of the P78,000.00, Racelis and the Spouses Javier brought the matter to the barangay for conciliation. Unfortunately, the parties failed to reach a settlement. During the proceedings, Racelis demanded the Spouses Javier to vacate the premises by the end of April 30, 2004. However, the Spouses Javier refused to give up possession of the property and even refused to pay rent for the succeeding months.

On May 12, 2004, Racelis caused the disconnection of the electrical service over the property forcing the Spouses Javier to purchase a generator. This matter became the subject of a complaint for damages filed by the Spouses Javier against Racelis. Racelis was absolved from liability.

Meanwhile, Racelis filed a complaint for ejectment against the Spouses Javier before the Metropolitan Trial Court in Marikina City. The case was docketed as Civil Case No. 04-7710. Racelis alleged that she agreed to lease the property to the Spouses Javier based on the understanding that they would eventually purchase it. Spouses Javier averred that they never agreed to purchase the

property from Racelis because they found a more affordable property at Greenheights Subdivision in Marikina City. They claimed that the amount of P78,000.00 was actually advanced rent. During trial, the Spouses Javier vacated the property and moved to their new residence at Greenheights Subdivision

On August 19, 2005, the Metropolitan Trial Court rendered a Decision dismissing the complaint. It ruled that the Spouses Javier were entitled to suspend the payment of rent under Article 1658 of the Civil Code due to Racelis' act of disconnecting electric service over the property.

The Metropolitan Trial Court declared that the Spouses Javier's obligation had been extinguished. Their advanced rent and deposit were sufficient to cover their unpaid rent. The Metropolitan Trial Court, however, did not characterize the P78,000.00 as advanced rent but as earnest money.

On appeal, the Regional Trial Court rendered a Decision reversing the Metropolitan Trial Court August 19, 2005 Decision. The Regional Trial Court held that the Spouses Javier were not justified in suspending rental payments. However, their liability could not be offset by the P78,000.00. The Regional Trial Court explained that the parties entered into two (2) separate and distinct contracts—a lease contract and a contract of sale. Based on the evidence presented, the P78,000.00 was not intended as advanced rent, but as part of the purchase price of the property. The Spouses Javier moved for reconsideration. The Regional Trial Court reduced the Spouses Javier's unpaid rentals by their advanced rental deposit. They were ordered to pay P54,000.00 instead. The Spouses Javier appeal.

On January 13, 2009, the Court of Appeals rendered a Decision declaring the Spouses Javier justified in withholding rental payments due to the disconnection of electrical service over the property. Nevertheless, the Court of Appeals stated that they were not exonerated from their obligation to pay accrued rent. On the other hand, Racelis was bound to return the sum of P78,000.00 in view of her waiver. Racelis moved for reconsideration but her motion was denied in the Court of Appeals. On November 25, 2009, Racelis filed a Petition for Review

ISSUE:

Whether respondents Spouses Germil and Rebecca Javier can invoke their right to suspend the payment of rent under Article 1658 of the Civil Code. (NO)

RULING:

A **contract of lease** is a "consensual, bilateral, onerous and commutative contract by which the owner temporarily grants the use of his property to another who undertakes to pay rent therefor."

Article 1658 of the Civil Code allows a lessee to postpone the payment of rent if the lessor fails to either (1) "make the necessary repairs" on the property or (2) "maintain the lessee in peaceful and adequate enjoyment of the property leased." This provision implements the obligation imposed on lessors under Article 1654(3) of the Civil Code.

The failure to maintain the lessee in the peaceful and adequate enjoyment of the property leased does not contemplate all acts of disturbance. **Lessees may suspend the payment of rent under Article 1658 of the Civil Code only if their legal possession is disrupted.**

In this case, the disconnection of electrical service over the leased premises on May 14, 2004 was not just an act of physical disturbance but one that is meant to remove respondents from the leased premises and disturb their legal possession as lessees. Ordinarily, this would have entitled respondents to invoke the right accorded by Article 1658 of the Civil Code.

However, this rule will not apply in the present case because the lease had already expired when petitioner requested for the temporary disconnection of electrical service. Petitioner demanded respondents to vacate the premises by May 30, 2004. Instead of surrendering the premises to petitioner, respondents unlawfully withheld possession of the property. Respondents continued to stay in the premises until they moved to their new residence on September 26, 2004. At that point, petitioner was no longer obligated to maintain respondents in the "peaceful and adequate enjoyment of the lease for the entire duration of the contract." Therefore, respondents cannot use the disconnection of electrical service as justification to suspend the payment of rent.

Assuming that respondents were entitled **to invoke their right under Article 1658 of the Civil Code, this does exonerate them from their obligation under Article 1657 of the civil Code "to pay the price of the lease according to the terms stipulated."**

Lessees who exercise their right under Article 1658 of the Civil Code are not freed from the obligations imposed by law or contract. Moreover, respondents' obligation to pay rent was not extinguished when they transferred to their new residence. Respondents are liable for a reasonable amount of rent for the use and continued occupation of the property upon the expiration of the lease. To hold otherwise would unjustly enrich respondents at petitioner's expense.

BENJAMIN EVANGELISTA *v.* SCREENEX, INC., represented by ALEXANDER G. YU
G.R. No. 211564, November 20, 2017, First Division, SERENO, C.J.:

The acceptance of a check implies an undertaking of due diligence in presenting it for payment, and if he from whom it is received sustains loss by want of such diligence, it will be held to operate as actual payment of the debt or obligation for which it was given.

FACTS:

Screenex, Inc. represented by Alexander Yu issued two checks to Evangelista in September 1991 pursuant to a loan obtained by the latter. The first was a UCPB check for ₱1,000,000 and the second, a Chinabank check for ₱500, 000. There were also vouchers of Screenex that were signed by the accused evidencing that he received the 2 checks in acceptance of the loan granted to him. In turn, Petitioner issued two open-dated UCPB checks both pay to the order of Screenex, Inc. The checks issued by Evangelista were held in safekeeping by Philip Gotuaco, Sr, the father-in-law of the Respondent. These were kept by him until his death in 2004.

In 2005, Petitioner was charged with a violation of BP 22 for the issuance of the two UCPB checks for issuing to Respondent checks for value despite knowing that there were insufficient funds at the time of its issuance, and when subsequently presented within 90 days from the date thereof, was dishonored by the drawee bank for the reason "ACCOUNT CLOSED." Despite receipt of notice of such dishonor, the said accused failed to pay said payee the face amount of said checks or to make arrangement for full payment thereof within 5 banking days after receiving notice.

The METC acquitted Petitioner for failure to prove the third element of BP 22 at the time of the issuance of the check to the payee, the latter did not have sufficient funds in, or credit with, the drawee bank for payment of the check in full upon its presentment. Here, there was a failure to prove Evangelista's receipt of the demand letter. Thus, there was a failure to establish *prima faci*e evidence of knowledge of the insufficiency of funds on the part of Evangelista. However, petitioner was made liable to pay the corresponding civil obligation since the checks were in the creditor's possession, which is sufficient evidence of an unpaid debt.

The RTC affirmed the MeTC decision *in toto* as regards civil liability. In ruling against the Respondent, the Court said that the alleged payment of Evangelista is an affirmative defense thathe failed to discharge and that prescription has not settled yet as the 10-year period must be counted from the time the right of action accrues as per Art. 1144 of the New Civil Code. Here, the reckoning point of prescription has not yet been established since there was no evidence as to the date of maturity of the loan obligation. The RTC also stressed that the right of action in this case is not upon a written contract. Hence, Art. 1144 does not apply.

Evangelista filed a petition for review before the CA insisting that the lower court erred in finding him liable to pay the sum with interest at 12% per annum from the date of filing until full payment. He further alleged that witness Yu was not competent to testify on the loan transaction; that the insertion of the date on the checks without the knowledge of the accused was an alteration that avoided the checks; and that the obligation had been extinguished by prescription.

The CA denied the petition. It held that (a) the reckoning time for the prescriptive period began when the instrument was issued and the corresponding check returned by the bank to its depositor; (b) the issue of prescription was raised for the first time on appeal with the RTC; (c) the writing of the date on the check cannot be considered as an alteration, as the checks were undated, so there was nothing to change to begin with; (d) the loan obligation was never denied by petitioner, who claimed that it was settled in 1992, but failed to show any proof of payment.

ISSUE:

Whether or not Evangelista should be made liable to pay the civil liability.

RULING:

NO. The Court ruled in favor of Petitioner on 3 grounds: *First*, a check is discharged by any other act which will discharge a simple contract for the payment of money. *Second*, prescription allows the court to dismiss the case motu propio. And *third*, the delivery of the check produces the effect of payment when through the fault of the creditor they have been impaired. On the first and second grounds, the civil action deemed instituted with the criminal action in B.P. 22 cases is treated as an "independent civil liability based on contract.

By definition, a check is a bill of exchange drawn on a bank payable on demand. It is a negotiable instrument — written and signed by a drawer containing an unconditional order to pay on demand a sum certain in money. It is an undertaking that the drawer will pay the amount indicated thereon. **Section 119 of the NIL, however, states that a negotiable instrument like a check may be discharged by any other act which will discharge a simple contract for the payment of money**.

A check therefore is subject to prescription of actions upon a written contract, that is, the action must be brought from the time the right of action accrues. Barring any extrajudicial or judicial demand that may toll the 10-year prescription period and any evidence which may indicate any other time when the obligation to pay is due, **the cause of action based on a check is reckoned from the date indicated on the check.**

If the check is undated, however, as in the present petition, the cause of action is reckoned from the date of the issuance of the check.This is pursuant to Section 17 of the NIL which provides that an undated check is presumed dated as of the time of its issuance. The Court also stressed that although the date on a check may be filled, this must be done strictly in accordance with the authority given and within a reasonable time. Here, Yu, even assuming that was authorized**, failed to insert the dates within a reasonable time**. The insertion was made after more than 10 years from the issuance of the checks. Thus, the cause of action on the checks has become stale, hence, time-barred. No written extrajudicial or judicial demand was shown to have been made within 10 years which could have tolled the period. Prescription has set in which allows the Court to dismiss the case motu propio. The dismissal may be made albeit this ground has been raised belatedly for the first time on appeal.

As regards the third ground, Art. 1249 of the Civil Code and Sec. 186 of the NIL requires the presentment of checks within a reasonable time after their issuance. In *Papa v. Valencia*, it was held that **the acceptance of a check implies an undertaking of due diligence in presenting it for payment, and if he from whom it is received sustains loss by want of such diligence, it will be held to operate as actual payment of the debt or obligation for which it was given**. It has, likewise, been held that if no presentment is made at all, the drawer cannot be held liable irrespective of loss or injury unless presentment is otherwise excused. This is in harmony with Article 1249 of the Civil Code under which payment by way of check or other negotiable instrument is conditioned on its being cashed, except when through the fault of the creditor, the instrument is impaired. The payee of a check would be a creditor under this provision and if its no-payment is caused by his negligence, payment will be deemed effected and the obligation for which the check was given as conditional payment will be discharged.

In the present case, Respondent's subsequent failure to encash the checks within a period of 10 years or more, not only resulted in the checks becoming stale but also had the effect of payment. Petitioner is considered discharged from his obligation to pay and can no longer be pronounced civilly liable for the amounts indicated thereon.