SUPREME COURT
THIRD DIVISION

FLORENCIO G. BERNARDO,
***Petitioner*,**

-versus-

G.R. No. 106153
July 14, 1997

THE HON. SPECIAL SIXTH DIVISION OF THE COURT OF APPEALS and JIMMY TOMAS,
***Respondents*.**
x----------x

D E C I S I O N

PANGANIBAN, *J.*:

Did the trial court deny due process to the petitioner by its refusal to grant new trial and/or to reopen the case in spite of the fact that the defendant was unable to participate and to present his evidence due to the death of the handling lawyer of the law firm representing him

and the failure of the new attorney to follow the rules on substitution of counsel?

In its original Decision,[1] the Court of Appeals[2] answered the foregoing question in the affirmative and ordered the trial court to reopen the proceedings to enable the petitioner to present his evidence. Upon reconsideration, however said Court[3] reversed itself and affirmed the regional trial court's ruling that petitioner's failure to present his side was due to his own fault or negligence. Undaunted, petitioner filed before this Court the present petition for certiorari, mandamus and prohibition under Rule 65 of the Rules of Court praying for the nullification of the Amended Decision[4] of the Respondent Court of Appeals promulgated on March 5, 1992 and its Resolution[5] denying petitioner's Motion for Reconsideration, promulgated on July 3, 1992.

The dispositive portion of the challenged Amended Decision reads:

> "Construed in the light of the above rule, We find the Motion for Reconsideration well taken and grant the same. The decision dated December 27, 1991 is hereby withdrawn and set aside and the Decision of the trial court is AFFIRMED."

Originally handled by this Court's First Division, the case was transferred to the Third Division by a Resolution (of the First Division) dated November 23, 1995. After due deliberation on the various submissions of the parties, the Court assigned the undersigned ponente to write the Court's Decision.

The Facts

On November 17, 1988, Private Respondent Jimmy Tomas filed before the Regional Trial Court of Kalookan City, Branch 127,[6] a Complaint[7] for recovery of possession, quieting of title and damages with preliminary mandatory injunction against Petitioner Florencio Bernardo, the National Housing Authority (NHA), Raymundo Dizon, Jr. and Jose Vasquez in their official capacities as general manager and project manager, respectively, of NHA. The first pleading filed by therein Defendant Bernardo was an ex parte motion[8] for extension of time to file an answer signed by "Atty. Jose B. Puerto" as counsel.

When the answer[9] was submitted later, his counsel became "Puerto Nuñez & Associates," but with the same "Jose B. Puerto" signing. Thereafter, all pleadings on behalf of Bernardo during the pre-trial were filed by said law firm, and the other parties furnished him with their own pleadings through the same firm.

It appears that the lot subject of the complaint was the object of a double sale by the NHA to Plaintiff Tomas and to Defendant Bernardo. The parties failed to reach an amicable settlement during the pre-trial. Thus, on November 6, 1990, the trial judge issued an order terminating pre-trial and scheduling initial trial on the merits on December 5, 1990. Counsel for plaintiff, however, requested for a resetting since the plaintiff was going out of the country and would be back only at the end of the year. This was granted and the hearing was reset to January 9, 1991. Later, the court realized that said date fell on a Wednesday, a day reserved for criminal cases. The hearing was thus reset anew to February 5, 1991. On this date, plaintiff's and NHA's respective counsels appeared. However, neither Defendant Bernardo nor his counsel[10] came despite due notice. During the proceedings, the court interpreter informed the judge that an "associate of Atty. Puerto" allegedly called to say that Atty. Puerto had died.[11] Pending official and verified notification of such death, the court decided to proceed with reception of evidence from the plaintiff. It was only on June 7, 1991, after Plaintiff Tomas and the NHA concluded the presentation of their respective evidence, that Atty. Marcelo J. Abibas, Jr. filed a notice of appearance[12] as new counsel for Bernardo, mentioning therein the death of Atty. Puerto.

Without acting on the notice filed by Bernardo's new counsel and without receiving evidence from Defendant Bernardo, the trial court promulgated its Decision[13] on June 11, 1991. The dispositive portion of said decision reads:

> "WHEREFORE, in view of all the foregoing considerations, judgment is hereby rendered in favor of plaintiff:
>
> "a) Declaring that Lot 3, Block 6, Phase III-C of the Development Project at Dagat-Dagatan, Kalookan City, was validly awarded and sold by defendant NHA to plaintiff Jimmy Tomas and, therefore, the latter is

entitled to the ownership and possession thereof, and to this end defendant NHA is ordered to execute such other documents, as may be necessary in order to transfer full ownership and possession thereof to said plaintiff;

"b) Ordering defendant Florencio Bernardo to remove and to demolish the house he erected on said lot and thereafter deliver unto said plaintiff the peaceful possession of the same lot;

"c) Ordering defendant Florencio Bernardo to pay plaintiff the amounts of P100,000.00 actual damages, P200,000.00 as moral damages, P200,000.00 as exemplary damages, P30,000.00 as attorney's fees plus P500.00 per appearance, as well as the costs of suit;

"d) Dismissing defendant Bernardo's counterclaim and cross-claim for lack of merit/substantiation; and

"e) Ordering defendant NHA to refund under proper receipt to defendant Florencio Bernardo the sum of P615,000.00 which the latter paid to and was accepted by the former."[14]

Bernardo, through his new counsel, filed a nine-page Omnibus Motion[15] seeking (1) reconsideration of the above Decision, (2) reopening of the case and (3) a new trial on the grounds that he had been denied his substantive right to due process, particularly the right to be heard, and that said Decision was contrary to law. In an Order[16] dated August 7, 1991, the trial judge denied the motion, reasoning thus:

"The foregoing indeed illustrated a clear instance of a grossly negligent party shifting the blame from his own self to the court. We say 'grossly negligent' because there was absolutely no justification for a client not to get in touch with his lawyer, much less to be ignorant or unaware of the latter's death. And in the same manner that it is the duty of the lawyer to inform the

court of the death of his client who is a party in a pending litigation, so is a client-party obligated to inform the court of the death of his lawyer.

x x x

"Furthermore, new counsel knew or must have known that the raw information as to the death of Atty. Puerto was not even a verified information because when he entered his appearance on June 2, 1991 all he could say was that Atty. Puerto died recently. It was only on June 25, 1991 or after the lapse of almost five (5) months when he was able to produce a death certificate evidencing death of Atty. Puerto on January 28, 1991.

"Furthermore, since it was the law firm of PUERTO, NUÑEZ & ASSOCIATES who represented defendant Florencio Bernardo in this case, it behooved any partner or employee therein to inform this Court that Atty. Puerto of said law firm who was handling this case was already dead and that nobody in the same law firm was taking over from said Atty. Puerto.

x x x

"In any event, there was no meritorious defense by defendant Florencio Bernardo to speak of in this case.

"The truth of the matter is that defendant Florencio Bernardo had been forewarned that the acceptance of his money totaling P615,600.00 on April 14, 1988 by the Project Office through the Project Manager, did not constitute a valid award to him of subject lot. He know (sic) or must have known that all the actuations of the Project Manager were subject to the approval of the General Manager of defendant NHA. Furthermore, defendant Bernardo knew or must have known that under Memorandum Circular No. 528 dated 29 October 1987 (or very much prior to Bernardo's payment of P615,600.00 on April 14, 1988), Project Officers were ordered to cease-desist from accepting payments/deposits from applicants of commercial/industrial lots until after approval of final award has been issued by NHA (Exh. 'E').

> "When defendant Bernardo, therefore, did not await the approval by the NHA of his payment of P615,600.00 through the issuance of a final award to him, said defendant took a risk the consequences of which he alone must suffer. Since the award to plaintiff was the one approved by defendant NHA, as in fact the agreement to sell subject lot was executed in his favor, there was no valid defense whatsoever which defendant Bernardo could raise against plaintiff."[17]

On September 4, 1991, Bernardo filed his Notice[18] of appeal. However, the appeal was denied due course by the trial court upon opposition by Tomas' counsel on the ground that it was filed beyond the reglementary period to appeal. Hence, on September 24, 1991, Bernardo filed before the Court of Appeals a petition for certiorari, mandamus, prohibition with injunction and a special prayer for the issuance of a temporary restraining order.[19] A supplement[20] thereto dated October 8, 1991 was filed through his collaborating counsel — Gonzales, Batiller, Bilog & Associates. On December 27, 1991, the Court of Appeals (Sixth Division) promulgated a Decision[21] in favor of Petitioner Bernardo, ordering the trial judge to set the case "for hearing for the reception of petitioner's evidence after which a decision be rendered based on the evidence and applicable law." The appellate court reasoned thus:

> "The steps for the substitution of counsel are clear in the Rules. But these rules are not inflexible when a strict adherence thereto would result in injustice, and a decision which gives premium on technicalities. It is therefore our opinion that as of June 7, 1991, Atty. Marcelo J. Abibas, Jr. became the petitioner's new counsel. This being so, copy of the decision should have been sent to him. Since this was not complied with, and without being technical about it, his receipt on June 24, 1991 of the decision is considered as the date from which the reglementary 15-day period to appeal should commence to run. Thus, when petitioner filed his Omnibus Motion on June 25, 1991, this was well within the 15-day period. And when the motion was denied on August 7, 1991 and received by petitioner on August 23, 1991, there were fourteen more days left for petitioner within which to perfect his appeal. When he filed his

> Notice of Appeal on September 4, 1991, it was only the 13th day of the appeal period."[22]

Respondent Tomas moved for the reconsideration of the above Decision. After Petitioner Bernardo filed his opposition thereto, the Respondent Court, this time through a Special Sixth Division,[23] reversed its original decision and affirmed the trial court's judgment. It justified its change of mind this wise:

> "In resolving this Motion for Reconsideration, we feel constrained to consider as crucial the failure of a party to comply with the rules on substitution of counsel. When a party is represented by counsel of record, service of orders and notices must be made upon the said attorney and notice to the client and to any other lawyer, not the counsel of record, is not notice in law. (See Chainani vs. Tancinco, 90 Phil. 862). In order that there may be substitution of attorneys in a given case, there must be (1) written application for substitution; (2) a written consent of the client; (3) a written consent of the attorney to be substituted; and (4) in case such written consent cannot be procured, there must be filed with the application for substitution proof of the service of notice of such motion in a manner required by the rules on the attorney to be substituted. (Cortez vs. Court of Appeals, L-32547, May 9, 1978; 83 SCRA 316; Sumadchat vs. Court of Appeals, 111 SCRA 488). Where the procedure for substitution of attorney is not followed, the attorney who appears on record before the filing of the application for substitution should be regarded as the attorney entitled to be served with all the notices and pleadings, and the client is answerable for the shortcomings of his counsel on record. (See Ramos vs. Potenciano, 118 Phil. 1435) The filing of notice of appearance by a new counsel does not amount to official substitution of counsel of record. The courts may not presume that the counsel of record had already been substituted by new counsel merely from the filing of formal appearance by the latter. (Sumadchat vs. Court of Appeals, L-58197; January 30, 1982; 111 SCRA 488)."[24]

Bernardo's motion for reconsideration of the above Amended Decision was denied via a Resolution[25] promulgated on July 3, 1992.

Not satisfied with the said Amended Decision and Resolution, petitioner filed the present petition to this Court.

Issue

The petitioner raises a single issue:

> "Respondent Court committed grave abuse of discretion amounting to lack of or in excess of jurisdiction when it initially granted the petition based on legal and equitable grounds in favor of petitioner as contained in its decision dated 27 December 1991 but thereafter reversed itself by withdrawing and setting aside said decision and in lieu thereof enter another one reversing it entirely and consequently affirming the questioned decision, orders and writ issued by respondent judge and the notice to vacate issued by respondent sheriff and such error was further compounded when respondent court denied the motion for reconsideration filed by petitioner despite sufficient factual, legal and equitable grounds of record that justify the grant of the petition as explained in its decision dated 27 December 1991 and as argued by petitioner in his pleadings/comments."[26] (Emphasis in the original)

Preliminarily, this Court clarifies that although petitioner refers to a "respondent judge" and a "respondent sheriff" in his petition, said "respondents" were not, however, impleaded as parties in the instant petition. It is, therefore, an error on the part of the petitioner to attack either of these judicial officers because he filed this petition against only "The Hon. Special Sixth Division of the Court of Appeals and Jimmy Tomas" as respondents.

In support of his petition, Bernardo argues that although "a court of justice is entitled to correct itself," it is grave abuse of discretion to do so "in a case where it would do away unceremoniously with the most cherished Constitutional right of petitioner to due process of law," or when technicality would desert its objective of giving the parties the chance to present their side of the issue."[27] Petitioner also claims that Respondent Tomas merely prayed that Respondent Court's original decision be modified such that a new trial would be denied the petitioner and only his appeal would be given due course.

However, Respondent Court went beyond such reliefs prayed for, and instead reversed entirely its original decision. Petitioner contends that, in effect, Respondent Court of Appeals sanctioned the illegal proceedings in the trial court which had failed to accord him his substantive right to due process.

In brief, petitioner maintains that the Court of Appeals (and the trial court) committed grave abuse of discretion in depriving him of due process by failing to reopen the trial proceedings to enable him to present evidence to support his defenses, counterclaim and crossclaim.

The Court's Ruling

The petition is not meritorious, except as to the award of damages.

Preliminary Issue: Rule 65 or Rule 45?

As the outset, this Court notes that the proper remedy of Petitioner Bernardo should have been an appeal under Rule 45 of the Rules of Court. We have time and again reminded members of the bench and bar that a special civil action for certiorari under Rule 65 lies only when "there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law."[28] Certiorari cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy,[29] certiorari not being a substitute for lost appeal.[30] The remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[31] For this procedural lapse, the petition should thus be denied outright. Moreover, there are even more cogent reasons for denying the petition on the merits.

Main Issue: No Denial of Due Process

Under Section 26, Rule 138 of the Rules of Court and established jurisprudence, a valid substitution of counsel has the following requirements: (1) the filing of a written application for substitution; (2) the client's written consent; (3) the consent of the substituted lawyer if such consent can be obtained; and, in case such written consent cannot be procured, (4) a proof of service of notice of such motion on the attorney to be substituted in the manner required by

the Rules.[32] Where death of the previous attorney is the cause of substitution of the counsel, a verified proof of the death of such attorney (usually a death certificate) must accompany the notice of appearance of the new counsel.

Clearly, petitioner failed to comply with the above requirements. His new counsel's notice of appearance[33] merely mentioned that Atty. Jose B. Puerto "recently died." A verified certificate of death was not attached thereto. It has been held that courts may not presume that the counsel of record has been substituted by a second counsel merely from the filing of a formal appearance by the latter.[34]

In any event, mere mention of the death of Atty. Puerto was of no moment for it was the law firm of Puerto Nuñez & Associates, — not merely Atty. Jose Puerto — which was the legal representative of petitioner. The death of said attorney did not extinguish the lawyer-client relationship between the firm and Bernardo.[35]

This Court is not unmindful of the belated attestation[36] of the former secretary[37] of said law office that the other partner, Dr. Constantino Nuñez, allegedly died even before 1986; that two associates[38] ceased to be connected with the firm since 1989; while a third associate, Atty. Jose Acejas predeceased Atty. Puerto in March 1990, thereby leaving Atty. Puerto as the only lawyer in the office. But, obviously, it was petitioner's former counsel who misled the trial court into believing that "Puerto Nuñez and Associates," a law firm consisting of more than one lawyer, continued to legally represent Bernardo. Courts may presume that a law firm that represented itself as such, with at least two name partners and more than one associate is composed of at least three lawyers.[39] It is not the duty of the courts to inquire during the progress of a case whether the partnership continues to exist lawfully, or the partners are still alive or its associates are still connected with the firm.

Jurisprudence teems with pronouncements that a client is bound by the conduct, negligence and mistakes of his counsel. Only when the counsel's actuations are gross or palpable, resulting in serious injustice to the client, that the courts should accord relief to the party.[40] A thorough review of the instant case reveals that the negligence of the law firm engaged by the petitioner to defend his

cause, and the error of his new counsel in giving a defective substitution and notice of the death of his former counsel, did not result in deprivation of due process to said party. Hence, a nullification of the Respondent Court's Amended Decision grounded on grave abuse of discretion is not warranted.

It should be stressed that petitioner was able to file his motion for reconsideration in which he presented his legal defenses with respect to the main subject of the original complaint.[41] His arguments were substantially discussed and debunked by the trial court in its order disposing of said motion.[42] Such motion for reconsideration cured whatever defect there may have been, if any, as regards the alleged denial of due process.[43] It is a time-honored ruling that lack of opportunity to be heard, and not necessarily absence of prior notice, constitutes violation of due process.[44]

Worth mentioning is the fact that petitioner was likewise not entirely blameless in his alleged deprivation of his day in court. In a recent case,[45] this Court enunciated:

> "Litigants, represented by counsel, should not expect that all they need to do is sit back, relax and await the outcome of their case. They should give the necessary assistance to their counsel for what is at stake is their interest in the case."[46]

In his concurring opinion in Republic vs. Sandiganbayan,[47] Mr. Justice Teodoro R. Padilla emphasized the value and significance of the party's presence and diligence in the advancement of his cause, thus:

> "An almost lifetime of experience in litigation is the best witness to the indispensability of party's presence (aside from his lawyer, in case he has the assistance of counsel) in order to litigate with any reasonable opportunity of success especially during the cross-examination of adverse party's witnesses — where the truth must be determined — every counsel worth his salt must have the assistance and presence of his client on the spot, for the client invariably knows the facts far better than his counsel. In short, even in civil cases, the presence of party (as

> distinguished from his lawyer alone) is essential to due process."[48]

True enough, the party-litigant should not rely totally on his counsel to litigate his case even if the latter expressly assures that the former's presence in court will no longer be needed. No prudent party will leave the fate of his case entirely to his lawyer. Absence in one or two hearings may be negligible but want of inquiry or update on the status of his case for several months (four, in this case) is inexcusable. It is the duty of a party-litigant to be in contact with his counsel from time to time in order to be informed of the progress of his case.[49] Petitioner simply claims that he was busy with his gravel and sand and trading businesses which involved frequent traveling from Manila to outlying provinces. But this was not a justifiable excuse for him to fail to ask about the developments in his case or to ask somebody to make the query for him. Petitioner failed to act with prudence and diligence; hence, his plea that he was not accorded the right to due process cannot elicit this Court's approval or even sympathy.[50]

Notwithstanding the above discussed negligence or failure of private respondent, we note that he was not left without any relief. The trial court's decision affirmed by the Respondent Court required the NHA to refund the amounts he had remitted for the erroneous award of the lot to him. This relief we find fair and equitable.

Damages

The award by the trial court, affirmed by Respondent Court, of actual, moral and exemplary damages to Private Respondent Tomas in the sums of P100,000.00, P200,000.00 and P200,000.00, respectively, is however erroneous.

Basic is the rule that to recover actual damages, the amount of loss must not only be capable of proof but must actually be proven with a reasonable degree of certainty, premised upon competent proof or best evidence obtainable.[51]

Private Respondent Tomas' claim for actual damages was only premised upon his testimony as follows:

> "Q What is the basis of your actual damages that you suffered in this proceedings?
>
> A The basis of the actual damages that I suffered was that I was deprived of my business and also my relation with my friends and counterparts in the business has been cancelled in making the assembly plant of water pumps, sir."[52]

No other evidence was proffered to substantiate his bare statements. How the amount of P100,000.00 was arrived at was never shown; thus, said amount remains a pure speculation.[53] Private respondent's self-serving testimonial evidence, if it may be called such, is definitely insufficient to support an award of compensatory damages.

Neither did private respondent establish the legal basis for his claimed moral damages. Although such damages are incapable of exact estimation and do not necessitate proof of pecuniary loss for them to be awarded — the amount of indemnity being left to the discretion of the court — it is still essential to prove that: (1) injury must have been suffered by the claimant and (2) such injury must have sprung from any of the cases listed in Articles 2219 and 2220 of the Civil Code.[54] It is not enough that one merely says he suffered mental anguish, serious anxiety, social humiliation, wounded feelings and the like as a result of the actuations of the other party.[55] Invariably, such actions must be shown to have been willfully done in bad faith or with ill motive.[56] Bad faith or ill motive under the law cannot be presumed but must be established with clear and convincing evidence.[57]

This Court finds the grant of actual and moral damages to be untenable and substantially devoid of legal basis. Private respondent not being entitled to these damages, an award of exemplary damages is likewise baseless.[58] Finally, where the award of moral and exemplary damages is eliminated, so must the award for attorney's fees be deleted.[59] Private respondent has not shown entitlement thereto pursuant to the Civil Code.[60] As petitioner was not able to present contradictory evidence, private respondent's ex parte claims for damages must be carefully reviewed and any doubt should be resolved against the latter.

WHEREFORE, premises considered, the assailed Amended Decision of Respondent Court of Appeals promulgated on March 5, 1992 and its Resolution of July 3, 1992 affirming the decision of the Regional Trial Court of Kalookan City, Branch 127, in Civil Case No. C-13614, are hereby **AFFIRMED** with the **MODIFICATION** that the trial court's award of actual, moral and exemplary damages and attorney's fees is **DELETED.**

SO ORDERED.

Narvasa, *C.J.*, Davide, Jr., Melo and Francisco, *JJ.*, concur.

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[1] Promulgated on December 27, 1991; rollo, pp. 196-206.
[2] Sixth Division composed of J. Jose C. Campos, Jr., Chairman and ponente, with JJ. Venancio D. Aldecoa, Jr. and Filemon H. Mendoza, concurring.
[3] Special Sixth Division composed of J. Jose C. Campos, Jr., Chairman and ponente, with JJ. Alicia V. Sempio-Dy (acting third member) and Filemon H. Mendoza, concurring.
[4] Rollo, pp. 227-230.
[5] Ibid., pp. 248-249.
[6] Presided by Judge Manuel J.N. Serapio.
[7] Docketed as Civil Case No. C-13614.
[8] Rollo, pp. 52-53.
[9] Ibid., pp. 136-145.
[10] Atty. Jose B. Puerto consistently represented Bernardo during pre-trial proceedings.
[11] TSN, February 5, 1991, p. 4.
[12] Rollo, p. 101.
[13] Ibid., pp. 102-113.
[14] RTC Decision, pp. 11-12; rollo, pp. 112-113.
[15] Rollo, pp. 114-122.
[16] Ibid., pp. 137-141.
[17] RTC Order, pp. 4-5; rollo, pp. 140-141.
[18] Rollo, p. 142.
[19] Docketed as CA-G.R. SP No. 26097; rollo, pp. 27-55.
[20] Rollo, pp. 157-159.
[21] Ibid., pp. 196-206.
[22] CA Decision, pp. 6-7.
[23] Sempio-Dy, J. replaced Aldecoa, J. as the third member of the original Sixth Division; see notes 2 and 3.
[24] Assailed Amended Decision, pp. 1-2; rollo, pp. 227-228.

[25] Rollo, pp. 248-249.
[26] Petition, pp. 11-12; rollo, pp. 12-13.
[27] Ibid., p. 12; rollo, p. 13.
[28] Dela Paz vs. Panis, 245 SCRA 248, 250, June 22, 1995.
[29] Felizardo vs. Court of Appeals, 233 SCRA 220, June 15, 1994.
[30] Delos Santos-Reyes vs. Montesa, Jr., 247 SCRA 77, 84, August 7, 1995.
[31] Oriental Media, Inc. vs. Court of Appeals, 250 SCRA 647, 653, December 6, 1995.
[32] Yu vs. Court of Appeals, 135 SCRA 181, 189-190, February 28, 1985, citing Aban vs. Enage, 120 SCRA 778, February 25, 1983, and Phil. Apparel Workers Union vs. NLRC, 125 SCRA 391, October 27, 1983.
[33] Rollo, p. 101.
[34] Sumadchat vs. Court of Appeals, 111 SCRA 488, 499, January 30, 1982.
[35] B.R. Sebastian Enterprises, Inc. vs. Court of Appeals, 206 SCRA 28, 37, February 7, 1992.
[36] Rollo, pp. 177-179.
[37] Felicisima P. Liongson.
[38] Atty. Quintin Muning and Teodorico Pangilinan.
[39] Cf. Antonio vs. Court of Appeals, 153 SCRA 592, 599, August 31, 1987.
[40] People vs. Salido, et al., G.R. No. 116208, July 5, 1996, citing several cases; San Miguel Corporation vs. Laguesma, 236 SCRA 595, 601, September 21, 1994, citing Villa Rhecar Bus vs. De la Cruz, 157 SCRA 13, January 7, 1988.
[41] Omnibus Motion, pp. 6-8; rollo, pp. 119-121.
[42] RTC Order dated August 7, 1991; rollo, p. 140(a).
[43] Rubenecia vs. Civil Service Commission, 244 SCRA 640, 652, May 31, 1995; Jao vs. Court of Appeals, 251 SCRA 391, 397, December 19, 1995; See also Salonga vs. Court of Appeals, G.R. No. 111478, March 13, 1997.
[44] Cornejo vs. Secretary of Justice, 57 SCRA 663, June 28, 1974; Sumadchat vs. Court of Appeals, supra, p. 501.
[45] Greenhills Airconditioning and Services, Inc. vs. NLRC, 245 SCRA 384, June 27, 1995.
[46] Ibid., p. 390.
[47] 239 SCRA 529, December 28, 1994.
[48] Ibid., p. 538.
[49] Fernandez vs. Tam Tiong Tick, 1 SCRA 1138, April 28, 1961; Florendo vs. Florendo, 27 SCRA 432, March 28, 1969.
[50] B.R. Sebastian Enterprises, Inc. vs. Court of Appeals, supra, p. 39.
[51] Del Mundo vs. Court of Appeals, 240 SCRA 348, 356, January 20, 1995; People vs. Rosario, 246 SCRA 658, 671, July 18, 1995.
[52] TSN, March 5, 1991, p. 5.
[53] Scott Consultants & Resource Development Corp., Inc. vs. Court of Appeals, 242 SCRA 393, 404-405, March 16, 1995.
[54] Del Mundo, supra.
[55] TSN, March 5, 1991, p. 6.
[56] Chua vs. Court of Appeals, 242 SCRA 341, 345, March 14, 1995.
[57] Philippine Air Lines vs. Miano, 242 SCRA 235, 240, March 8, 1995, citing LBC vs. Court of Appeals, 236 SCRA 602, September 21, 1994.

[58] Article 2234, Civil Code; Scott Consultants, supra, p. 405.
[59] Philippine Air Lines vs. Miano, supra.
[60] Article 2208, Civil Code.