CHANROBLES PUBLISHING COMPANY

SUPREME COURT
THIRD DIVISION

LITONJUA GROUP OF COMPANIES, EDDIE LITONJUA and DANILO LITONJUA,
Petitioners,

-versus-

G.R. No. 143723
June 28, 2001

TERESITA VIGAN,
Respondent.
x----------x

D E C I S I O N

GONZAGA-REYES, *J.*:

In this Petition for Review on Certiorari, petitioners seek to annul and set aside the (1) Decision[1] of the respondent Court of Appeals dated March 20, 2000 which reversed and set aside the decision of the National Labor Relations Commission finding respondent guilty of abandonment and (2) Resolution[2] dated June 19, 2000 denying petitioners' motion for reconsideration.

The factual backdrop as found by the respondent Court of Appeals is as follows:[3]

"As to the factual milieu, the contending parties have diametrically opposed versions. Vigan tells it this way: She was hired by the Litonjua Group of Companies on February 2, 1979 as telex operator. Later, she was assigned as accounting and payroll clerk under the supervision of Danilo Litonjua. She had been performing well until 1995, when Danilo Litonjua who was already naturally a (sic) very ill-tempered, ill-mouthed and violent employer, became more so due to business problems. In fact, a complaint letter (Annex "I", p. 85, rollo) was sent by the Litonjua Employees to the father and his junior regarding the boorishness of their kin Danilo Litonjua but apparently the management just glossed over this.

Danilo Litonjua became particularly angry with Vigan and threw a stapler at her when she refused to give him money upon the instructions of Eddie Litonjua. From then on, Danilo Litonjua had been rabid towards her — berated and bad-mouthed her, calling her a "mental case" "psycho", "sira ulo", etc. and even threatened to hit her for some petty matters. Danilo Litonjua even went so far as to lock her up in the comfort room and preventing others to help her out. Not contented, Danilo Litonjua would order the security guards to forcibly eject her or prevent her entry in the office premises whenever he was angry. This occurred twice in July of 1995, first on the 5th then on the 7th. The incidents prompted Vigan to write Danilo Litonjua letters asking why she was treated so and what was her fault (Annexes "F", "G" & "K", pp. 82, 83 8 87, rollo). She suspected that Danilo Litonjua wanted her out for he would not let her inside the office such that even while abroad he would order the guards by phone to bar her. She pleaded for forgiveness or at least for explanation but it fell on deaf ears.

Later, Danilo Litonjua changed tack and charged that Vigan had been hysterical, emotional and created scenes at the office. He even required her to secure psychiatric assistance. (Annexes "L" to "N", pp. 88-90, rollo) But despite proof that she was not suffering from psychosis or organic brain syndrome as certified to by a Psychiatrist of Danilo Litonjua's choice (Annex "H", p. 84, rollo), still she was denied by the guards entry to her work upon instructions again of Danilo Litonjua. Left with no

alternative, Vigan filed this case for illegal dismissal, alleging she was receiving a monthly salary of P8,000.00 at the time she was unlawfully terminated.

The Litonjuas have a different version. They negate the existence of the Litonjua Group of Companies and the connection of Eduardo Litonjua thereto. They contend that Vigan was employed by ACT Theater, where Danilo Litonjua is a Director. They dispute the charge of illegal dismissal for it was Vigan who ceased to report for work despite notices and likewise contest the P8,000.00 monthly salary alleged by Vigan, claiming it was merely P6,850.00.

They claim that Vigan was a habitual absentee specially on Tuesdays that fell within three days before and after the "15th" day and "30th" day of every month. Her performance had been satisfactory, but then starting March 15, 1996 she had become emotional, hysterical, uncontrollable and created disturbances at the office with her crying and shouting for no reason at all. The incident was repeated on April 3, 1996, May 24, 1996 and on June 4, 1996. Thus alarmed, on July 24, 1996 Vigan was required by management to undergo medical and psychological examination at the company's expense and naming three doctors to attend to her. Dr. Baltazar Reyes and Dr. Tony Perlas of the Philippine General Hospital and Dr. Lourdes Ignacio of the Medical Center Manila. But they claim that Vigan refused to comply.

On August 2, 1996, Vigan again had another breakdown, hysterical, shouting and crying as usual for about an hour, and then she just left the premises without a word. The next day, August 3, 1996, Saturday, she came to the office and explained she was not feeling well the day before. After that Vigan went AWOL and did not heed telegram notices from her employer made on August 26, 1996 and on September 9, 1996 (Annexes "1" & "2" pp. 108 to 109, rollo). She instead filed the instant suit for illegal dismissal."

On June 10, 1997, Labor Arbiter Ernesto S. Dinopol rendered his Decision[4] finding Vigan diseased and unfit for work under Article

284 of the Labor Code[5] and awarded the corresponding separation pay as follows:[6]

> WHEREFORE, judgment is hereby rendered ordering respondents LITONJUA GROUP OF COMPANIES, EDDIE K. LITONJUA and DANILO LITONJUA to jointly and severally pay complainant TERESITA Y. VIGAN, the following amounts:
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> | | |
> |---|---|
> | Separation pay (P4,000 x 18) years | = P72,000.00 |
> | Proportionate 13th month pay (P8,000 x 8 months over 12) | = 4,666.66 |
> | TOTAL AWARD: | P76,666.66 |
>
> All other causes of action are DISMISSED for lack of merit. "

Vigan appealed the decision to the National Labor Relations Commission which modified[7] the arbiter's decision by ruling that Art. 284 of the Labor Code is inapplicable in the instant case but affirmed the legality of the termination of the complainant based on her having effectively abandoned her job; the rest of the decision was affirmed. Vigan moved for a partial reconsideration which was denied in a resolution dated August 7, 1998.

Dissatisfied, Vigan filed a petition for certiorari with the respondent Court of Appeals which rendered its assailed decision dated March 20, 2000 reversing the NLRC Resolution. The dispositive portion of the decision reads:[8]

> "WHEREFORE, premises considered, the assailed NLRC Decision and Resolution are hereby REVERSED and SET ASIDE. In its stead judgment is rendered ordering the respondents LITONJUA GROUP OF COMPANIES, EDDIE K. LITONJUA and DANILO LITONJUA jointly and severally to:
>
> (a) Reinstate complainant TERESITA Y. VIGAN if she so desires;

(b) pay her separation compensation in the sum of P8,000.00 multiplied by her years of service counted from February 2, 1979 up to the time this Decision becomes final; and in either case to pay Vigan;

(c) full back wages from the time she was illegally dismissed up to the date of the finality of this Decision;

(d) moral damages in the amount of P40,000.00;

(e) exemplary damages in the amount of P15,000.00; and

(f) attorney's fees of P10,000.00.

SO ORDERED."

Litonjuas filed their motion for reconsideration which was denied in a resolution dated June 19, 2000.

Petitioners Litonjuas filed the instant petition for review on certiorari alleging the following grounds:

I

WHETHER OR NOT "LITONJUA GROUP OF COMPANIES", WHICH HAS NO JURIDICAL PERSONALITY, BUT ONLY A GENERIC NAME TO DESCRIBE THE VARIOUS COMPANIES WHICH THE LITONJUA FAMILY HAS INTERESTS, CAN BE LEGALLY CONSTRUED AS RESPONDENT'S EMPLOYER.

II

WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED AS A MATTER OF LAW IN HOLDING THAT RESPONDENT WAS ILLEGALLY DISMISSED FROM HER EMPLOYMENT, INSTEAD OF AFFIRMING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION

THAT SHE HAD ABANDONED HER JOB OR THAT OF LABOR ARBITER ERNESTO DINOPOL HOLDING THAT SHE SHOULD BE SEPARATED ON THE GROUND OF DISEASE UNDER ARTICLE 284 OF THE LABOR CODE, CONSIDERING THAT SHE HAS EXHIBITED A PATTERN OF PSYCHOLOGICAL AND MENTAL DISTURBANCE WHICH ADMITTEDLY NO LONGER MADE HER PHYSICALLY FIT TO WORK.

III

WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED AS A MATTER OF LAW IN DIRECTING RESPONDENT'S REINSTATEMENT AT HER OWN CHOICE OR PAYMENT OF SEPARATION PAY OF ONE MONTH SALARY FOR EVERY YEAR OF SERVICE AND BACKWAGES.

IV

THE COURT OF APPEALS SERIOUSLY ERRED AS A MATTER OF LAW IN HOLDING PETITIONERS LIABLE FOR MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.

Anent the first assigned error, petitioners allege that the Litonjua group of companies cannot be a party to this suit for it is not a legal entity with juridical personality but is merely a generic name used to describe collectively the various companies in which the Litonjua family has business interest; that the real employer of respondent Vigan was the ACT theater Incorporated where Danilo Litonjua is a member of the Board of Directors while Eddie Litonjua was not connected in any capacity.

Petitioners' argument is meritorious. Only natural or juridical persons or entities authorized by law may be parties to a civil action and every action must be prosecuted and defended in the name of the real parties in interest.[9] Petitioners' claim that Litonjua Group of Companies is not a legal entity with juridical personality hence cannot be a party to this suit deserves consideration since respondent failed to prove otherwise. In fact, respondent Vigan's own allegation

in her Memorandum supported petitioner's claim that Litonjua group of companies does not exist when she stated therein that instead of naming each and every corporation of the Litonjua family where she had rendered accounting and payroll works, she simply referred to these corporations as the Litonjua group of companies, thus, respondent merely used such generic name to describe collectively the various corporations in which the Litonjua family has business interest. Considering the non-existence of the Litonjua group of companies as a juridical entity and petitioner Eddie Litonjua's denial of his connection in any capacity with the ACT Theater, the supposed company where Vigan was employed, petitioner Eddie Litonjuas should also be excluded as a party in this case since respondent Vigan failed to prove Eddie Litonjua's participation in the instant case. It is respondent Vigan, being the party asserting a fact, who has the burden of proof as to such fact[10] which however, she failed to discharge.

Next, petitioners claim that the complaint for illegal dismissal was prematurely filed since Vigan was not dismissed, actual or constructive, from her employment as the records show that despite being absent without official leave since August 5, 1996 and her receipt of two telegram notices sent to her by petitioners on August 26, and September 9, 1996 for her to report for work, she failed to do so and yet petitioners had not done any act to dismiss her. Petitioners deny Vigan's claim that she had been physically barred from entering the work premises.

Petitioners thus contend that since respondent Vigan was not illegally dismissed from employment, the respondent court's order reinstating the latter, awarding her separation pay equivalent to one month salary per year of service as well as backwages, damages and attorney's fees have no factual and legal basis.

We are not persuaded.

The above arguments relate mainly to the correctness of the factual findings of the Court of Appeals and the award of damages. This Court has consistently affirmed that the findings of fact of the Court of Appeals are as a rule binding upon it, subject to certain exceptions, one of which is when the factual findings of the Court of Appeals are

contrary to those of the trial court (or administrative body, as the case may be).[11] However, it bears emphasizing that mere disagreement between the Court of Appeals and the trial court as to the facts of a case does not of itself warrant this Court's review of the same. It has been held that the doctrine that the findings of fact made by the Court of Appeals, being conclusive in nature, are binding on this Court, applies even if the Court of Appeals was in disagreement with the lower court as to the weight of evidence with a consequent reversal of its findings of fact, so long as the findings of the Court of Appeals are borne out by the record or based on substantial evidence.[12]

We have gone over the records of this case and found no cogent reason to disagree with the respondent court's findings that respondent Vigan did not abandon her job but was illegally dismissed. Petitioners' claim that despite two (2) telegram notices dated August 26 and September 9, 1996 respectively sent to respondent Vigan to report for work, the latter did not heed the demands and absented herself since August 5, 1996 was belied by the respondent's evidence, as it was upon instructions of petitioner Danilo Litonjua to the guards on duty that she could not enter the premises of her workplace. In fact, in her letter dated August 30, 1996 addressed to petitioner Danilo Litonjua, respondent Vigan had complained of petitioner Danilo's inhumane treatment in barring her from entering her workplace, to wit:

> "Sukdulan na po ang pang-aaping dinaranas ko sa inyo, sir. Since August 5 etc. I was always approached by your guard Batutay and harassed by your men to vacate my cubicle as per your strict order. Only this August 7 that you succeeded as you order the door locked for me only. As per our agreement Aug. 27 at Jollibee (sic) gave me assurance that I willingly undergo psychiatric test I could freely report for work without intimidating me, you won't anymore charge me of insubordination. You won't disturb my family anymore, so why do you advice to try to go back Aug. 30 but as always to be barred by guard Batutay? Sir, with my 18 years of loyal service, all I need is a little respect. Tao ako sir, hindi hayop. Malaki ang nawawala sa akin."

Notwithstanding the fact the she was refused entrance to her workplace, respondent Vigan, to show her earnest desire to report for work, would sneak her way into the premises and punched her time card but she could not resume work as the guards in the company gate would prevent her per petitioner Danilo Litonjua's instructions. It appears also that respondent Vigan wrote petitioner Danilo a letter dated September 9, 1996 notifying him that per his instructions, she had made an appointment for a psychiatric test on September 11, 1996 and requested him to make a check payable to Dr. Lourdes Ladrido-Ignacio in the amount of P800.00 consultation fee as they agreed upon. She underwent a psychiatric examination as a result of which Dr. Ignacio issued a medical certificate as follows:[13]

> "This is to certify that MISS TERESITA VIGAN has come for psychiatric evaluation on September 11 and 17, 1996. The psychiatric interview and mental status examination did not reveal any symptoms of psychosis or organic brain syndrome. She showed anxiety but this was deemed a realistic reaction to her present job difficulties."

Respondent's actuations militate against petitioners' claim that she did not heed the notices to return to work and abandoned her job. She had been going to her workplace to report for work but was prevented from resuming her work upon the instructions of petitioner Danilo Litonjua. It would be the height of injustice to allow an employee to claim as a ground for abandonment a situation which he himself had brought about.[14]

We fully agree with the respondent court's ratiocination on the illegality of Vigan's dismissal, to wit:[15]

> "The basic issue is whether Vigan's employment was terminated by illegal dismissal or by abandonment of work, and We hold that this was a case of illegal dismissal."

Shopworn is the rule on abandonment that the immediate filing of a case for illegal dismissal negates the same. Mark that Vigan promptly filed this suit for illegal dismissal when her attempts to enter the premises of her workplace became futile and the efforts to bar and eject her became unmistakable. In the more recent case of Rizada vs.

NLRC (G.R. No. 96982, September 21, 1999), the Supreme Court reiterated anew the hoary rule that:

> "To constitute abandonment two elements must concur (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts . Abandoning one's job means the deliberate, unjustified refusal of the employee to resume his employment and the burden of proof is on the employer to show a clear and deliberate intent on the part of the employee to discontinue employment.
>
> Abandonment is a matter of intention and cannot be lightly inferred, much less legally presumed from certain equivocal acts. (Shin Industrial vs. National Labor Relations Commission, 164 SCRA 8).

An employee who forthwith took steps to protest his dismissal cannot be said to have abandoned his work." (Toogue vs. National Labor Relations Commission, 238 SCRA 241), as where the employee immediately filed a complaint for illegal dismissal to seek reinstatement (Tolong Aqua Culture Corp., et al. vs. National Labor Relations Commission, G.R. 122268, November 12, 1996) (emphasis supplied).

Note that in the instant case Vigan was even pleading to be allowed to work but she was prevented by the guards thereat upon the orders of Danilo Litonjua. These are disclosed by her letters (Annexes "F", "G", "K", "Q", "R" and "U", pp. 82, 83, 87, 93, 94 & 97, rollo), the entries in her time cards (Annexes "P", "S", "W" and "X", pp. 92, 95, 99 & 100, rollo) and her compliance when required to see a psychiatrist (Annex "H", p. 84, rollo). On the other hand there is complete silence from the Litonjuas on these matters, including on the collective manifesto of several employees against Danilo Litonjua and his highhanded ways (Annex "I", p. 85). They chose to ignore material and telling points. They even alleged that Vigan refused to comply with their request for her to have medical examination (Comment, pp. 164-171, rollo and Memorandum for the Respondents, pp. 215-222, rollo), an unmitigated falsity in the face of clear proofs that she complied with

their directive and was given a clean bill of mental health by a reputable psychiatrist of their choice.

For emphasis, We shall quote with seeming triteness the dictum laid down in Mendoza vs. NLRC (supra) regarding the unflinching rule in illegal dismissal cases:

> "That the employer bears the burden of proof. To establish a case of abandonment, the employer must prove the employees deliberate and unjustified refusal to resume employment without any intention of returning.
>
> Mere absence from work, especially where the employee has been verbally told not to report, cannot by itself constitute abandonment. To repeat, the employer has the burden of proving overt acts on the employee's part which demonstrate a desire or intention to abandon her work."

The NLRC had erred in shifting the onus probandi to Vigan in the charge of abandonment against her, while the Litonjuas failed to discharge their burden. Though they may not have verbally told Vigan not to report for work but the act of ordering the guards not to let her in was just as clear a notice. Vigan's plight was akin to that of the truck helper in the case of Masagana Concrete Products, et al. vs. NLRC (G.R. No. 106916, September 3, 1999) who was likewise prevented from coming to work.

While there was no formal termination of his services, Mariñas, was constructively dismissed when he was accused of tampering the "vale sheet" and prevented from returning to work. Constructive dismissal does not always involve forthright dismissal or diminution in rank, compensation, benefit and privileges. For an act of clear discrimination insensibility or disdain by an employer may become so unbearable on the part of the employee that it could foreclose any choice by him except to forego his continued employment. In this case, Mariñas had to resign from his job because he was prevented from returning back to work unless he admitted his mistake in writing and he was not given any opportunity to contest the charge against him. It is a rule often repeated that unsubstantiated accusation without anything more are not synonymous with guilt and

unless a clear, valid, just or authorized ground for dismissing an employee is established by the employer the dismissal shall be considered unfounded.

Similarly, Vigan was accused of having mental, emotional and physical disorders (Annex "M", p. 89, rollo), but per medical examination it was proven that hers was pure anxiety as a realistic reaction to her present job difficulties. She was charged of habitual absenteeism on Tuesdays that fell within three days before and after the "15th" day and "30th" day of every month (Litonjua's Position Paper, pp. 101-107, rollo). This is preposterous for how many Tuesdays in a year would fall within three days before and after the "15th" day and "30th" day of every month? By no extrapolation can this be habitual absenteeism."

Since respondent Vigan was illegally dismissed from her employment, she is entitled to: (1) either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and (2) backwages.[16] As correctly disposed by the respondent Court:[17]

> "Thus finding that Vigan was illegally dismissed, she is entitled to the following:
>
> > 1) Either reinstatement, if viable, or separation pay if reinstatement is no longer viable; and 2) Backwages, Backwages and separation pay are distinct relief given to alleviate the economic damage by an illegally dismissed employee. Hence, an award of separation pay in lieu of reinstatement does not bar an award of backwages, computed from the time of illegal dismissal up to the date of the finality of the Decision without qualification or deduction. Separation pay, equivalent to one month's salary for every year of service, is awarded as an alternative to reinstatement when the latter is no longer an option. Separation pay is computed from the commencement of employment up to the time of termination, including the imputed service for which the employee is entitled to backwages, with the salary rate prevailing at the end of the period of putative service being the basis for computation (Masagana Concrete

> Products, et al. vs. NLRC, supra). In case of a fraction of at least six (6) months in the length of service, the same shall be considered as one year in computing the separation pay. With regard to backwages, it meant literal "full backwages" that is inclusive of allowances and other benefits or their monetary equivalent computed from the time of her actual reinstatement, if it is still viable or up to the time the Decision in her favor becomes final — without deducting from back wages the earning derived elsewhere, if there is any, by Vigan during the period of her illegal dismissal. (Lopez vs. NLRC, 297 SCRA 508).

In other words, Vigan is entitled to reinstatement, which perhaps is no longer viable due to the strained relations between the parties, or separation pay of P8,000.00 for every year of service and backwages of another P8,000 per month reckoned from the time she last received salary from the Litonjuas up to the date of the finality of this Decision. Mark again that We allowed the P8,000.00 claim of Vigan as her last salary received for again the Litonjuas failed to validly refute the same."

We likewise affirm respondent court's award of moral and exemplary damages to the respondent. As a rule, moral damages are recoverable only where the dismissal of the employee was attended by bad faith or fraud or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy. We find that bad faith attended respondent's dismissal from her employment. Bad faith involves a state of mind dominated by ill will or motive. It implies a conscious and intentional design to do a wrongful act for a dishonest purpose or some moral obliquity.[18] Petitioner Danilo Litonjua showed ill will in treating respondent Vigan in a very unfair and cruel manner which made her suffer anxieties by reason of such job difficulties. The report to work notices sent by petitioners to respondent Vigan was just part of the ploy to make it appear that the latter abandoned her work but in reality, Vigan was barred from entering her work premises. We fully subscribe to respondent's position that petitioners' action was for the purpose of removing her from her employment. Respondent Vigan is also entitled to exemplary damages as her dismissal was effected in an oppressive and malevolent manner.[19]

We also find that there is a basis for the award of attorney's fees. It is settled that in actions for recovery of wages or where an employee was forced to litigate and incur expenses to protect his rights and interest, he is entitled to an award of attorney's fees.[20]

WHEREFORE, premises considered, the decision of the respondent Court of Appeals dated March 20, 2000 is hereby **AFFIRMED** with the **MODIFICATION** that Litonjua Group of Companies and Eddie Litonjua are dropped as parties in the instant case.

SO ORDERED.

Melo, *J.*, *(Chairman),* Vitug, Panganiban and Sandoval-Gutierrez, *JJ.*, concur.

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[1] CA-G.R. SP No. 49338; Penned by Justice Roberto A. Barrios concurred in by Justices Eubolo G. Verzola and Eriberto U. Rosario, Jr. Rollo, pp. 44-56.
[2] Rollo, pp. 58-60.
[3] Rollo, pp. 46-49.
[4] Docketed as NLRC-NCR Case No. 00-12-07827-96.
[5] "An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employee; Provided that he is paid separation pay equivalent to at least one (1) month salary or to one-:half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year."
[6] Rollo, pp. 36-37.
[7] Docketed as NLRC NCR Case No. 013777-97; Penned by Commissioner Alberto R. Quimpo, concurred in by Commissioner Vicente S.E. Veloso while Presiding Commissioner Rogelio I. Rayala was on official leave.
[8] Rollo, pp. 55-56.
[9] Sections 1 and 2, Rule 3, Rules of Court.
[10] Imperial Victory Shipping Agency vs. NLRC, 200 SCRA 178.
[11] Litonjua vs. CA, 286 SCRA 136 citing Consolidated Bank 8 Trust Corp. vs. CA, 246 SCRA 193, Suntay vs. CA, 251 SCRA 430.
[12] Uniland Resources vs. DBP, 200 SCRA 751 citing Alsua-Betts vs. CA, 92 SCRA 332.
[13] CA Rollo, p. 84, Annex "H".
[14] Tan vs. NLRC, 271 SCRA 216 citing Togue vs. NLRC, 238 SCRA 241, 246-247.

[15] Rollo, pp. 50-53.
[16] Masagana Concrete Products vs. NLRC, 313 SCRA 576 citing Aurora Land Projects Corporation vs. NLRC, 266 SCRA 48.
[17] Rollo, pp. 53-54.
[18] Ford Philippines, Inc. vs. CA, 267 SCRA 320; Equitable Banking Corporation vs. NLRC, 273 SCRA 352; Tumbiga vs. NLRC, 274 SCRA 338 citing Far East Bank and Trust Co., vs. CA, 241 SCRA 671.
[19] Estiva vs. NLRC, 225 SCRA 169.
[20] Rasonable vs. NLRC, 253 SCRA 817 citing Article 2208 (7), New Civil Code; Sebuguero vs. NLRC, Sept. 27, 1995; Article 2208 (2), New Civil Code; Gaco vs. NLRC, 230 SCRA 260.

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