Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NEMENCIO C. PULUMBARIT, SR.,
Petitioner,

-versus-

THE COURT OF APPEALS (17TH Division Composed of JUSTICE BIENVENIDO L. REYES, Ponente; JUSTICE ROBERTO A. BARRIOS, Chairman; and JUSTICE EDGARDO F. SUNDIAM, Acting Third Member), LOURDES S. PASCUAL, LEONILA F. ACASIO, and SAN JUAN MACIAS MEMORIAL PARK, INC.,
Respondents.

G.R. NOS. 153745-46

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LOURDES S. PASCUAL, LEONILA F. ACASIO and SAN JUAN MACIAS MEMORIAL PARK, INC.,
Petitioners,

-versus-

NEMENCIO C. PULUMBARIT, SR.,
Respondent.

G.R. NO. 166573

Present:

PERALTA,* *J.*, *Acting Chairperson*
VILLARAMA, JR.,
PEREZ,**
MENDOZA,*** and
JARDELEZA, ***JJ.***

Promulgated:

October 14, 2015

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* Associate Justice Presbitero J. Velasco, Jr. recused himself from these cases due to close relation to a member of the law firm representing a party.

** Designated as Additional Member per Raffle dated September 1, 2014.

*** Designated as Additional Member per Raffle dated September 9, 2015.

DECISION

JARDELEZA, *J.*:

Before us are two consolidated petitions. G.R. Nos. 153745-46 involves a *Petition for Review on Certiorari* with *Petition for Certiorari* filed by Nemencio C. Pulumbarit to annul and set aside the *Resolution*[1] dated May 30, 2002 issued by the Court of Appeals (CA) in the consolidated cases CA-G.R. SP No. 61873 and CA-G.R. CV No. 69931. G.R. No. 166573, on the other hand, concerns a *Petition for Review on Certiorari* filed by Lourdes S. Pascual, Leonila F. Acasio and San Juan Macias Memorial Park, Inc. seeking the review of the *Decision*[2] dated September 28, 2004 rendered by the CA in CA-G.R. CV No. 69931 reversing the *Decision*[3] of Branch XX of the Regional Trial Court in Malolos, Bulacan in Civil Case No. 7250-M and ruling that the agreement entered into between the parties was a sale.

The Facts and Case Antecedents

Sometime in 1982, San Juan Macias Memorial Park, Inc. (SJMMPI), through its President Lourdes S. Pascual, authorized Atty. Soledad de Jesus to look for a buyer for the San Juan Memorial Park (Memorial Park) for P1,500,000.00.[4] Thereafter, Lourdes Pascual, Leonila F. Acasio, and the other officers of SJMMPI (Pascual *et al.*) were introduced to Nemencio Pulumbarit (Pulumbarit). The parties eventually came to an agreement, with Pulumbarit issuing eighteen (18) checks in the name of SJMMPI Secretary-Treasurer Leonila Acasio. Pulumbarit and/or his lawyer took charge of reducing the agreement into writing and securing the signatures of all concerned parties.[5]

On June 13, 1983, Pascual *et al.* sent a letter to Pulumbarit requesting for a copy of their written agreement. In another letter of even date, they also asked Pulumbarit to reissue new checks to replace the ones he previously issued.[6] Failing to get a favorable response, Pascual *et al.* filed a *Complaint for Rescission of Contract, Damages and Accounting with Prayer for Preliminary Injunction or Receivership* against Pulumbarit.[7]

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1 Seventeenth Division through Justice Bienvenido L. Reyes, with Justices Roberto A. Barrios and Edgardo F. Sundiam, concurring. *Rollo*, G.R. Nos. 153745-46, pp. 16-28.

2 Tenth Division through Justice Magdangal M. de Leon, with Justices Romeo A. Brawner and Mariano C. del Castillo, concurring. *Rollo,* G.R. No. 166573, pp. 141-159.

3 Through Honorable Judge Oscar C. Herrera, Jr. *Id.* at 80-127.

4 *Id.* at 142.

5 *Id.*

6 RTC Records, Vol. I, p. 7.

7 *Id.* at 1-6.

Proceedings before the Trial Court

In their *Complaint*, docketed as Civil Case No. 7250-M before Branch XX of the Regional Trial Court in Malolos, Bulacan, Pascual *et al.* alleged that they entered into a *contract of management with option to buy the Memorial Park* with Pulumbarit, with the latter allegedly agreeing to pay Pascual *et al.* a sum of P750,000.00 on staggered installments.[8] Under this alleged agreement, Pulumbarit's failure to make good on these installments would cause the cancellation of their contract, forfeiture of any payment already made, and surrender by Pulumbarit of possession over the Memorial Park.[9]

Pascual *et al.* claimed that they requested new checks from Pulumbarit to replace the previous ones he issued, the latter having been made payable to SJMMPI's Secretary-Treasurer Leonila Acasio, who has since then resigned from the company. Due to his refusal to issue the requested replacement checks, Pulumbarit was in breach of his obligations under their contract.

Pascual *et al.* also asserted that Pulumbarit further violated their management contract by (1) destroying the original fence surrounding the Memorial Park, (2) annexing the adjacent lots and (3) operating these and the Memorial Park under the name "Infinito Memorial Park" using the permit issued to SJMMPI without its consent and the proper governmental clearances.[10] Thus, Pascual *et al.* prayed that the court declare, among others, (1) the rescission of their agreement, (2) forfeiture of all sums paid by Pulumbarit to SJMMPI, and (3) an obligation on Pulumbarit's part to render accounting.[11]

On February 3, 1984, Pulumbarit filed a Motion praying for the dismissal of the *Complaint* for lack of cause of action, attaching a copy of the Memorandum of Agreement (MOA).[12] Pascual *et al.* amended their *Complaint* on June 5, 1984.[13] Therein, they alleged that Pulumbarit falsified their agreement, as the MOA provided did not reflect the terms and conditions agreed upon by the parties. They disputed the statement in the MOA that the agreement was a sale of all the paid-up stocks of SJMMPI and not a management agreement with option to buy. Pascual *et al.* argued that the falsified MOA was a nullity and therefore without force and effect.

In a motion filed on July 5, 1984, and pending resolution of Pulumbarit's *Motion to Dismiss*, Pascual *et al.* sought to have Pulumbarit

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8 *Id.* at 1.
9 *Id.* at 2.
10 *Id.* at 3-4.
11 *Id.* at 5.
12 *Id.* at 19-23.
13 *Id.* at 54-60.

declared in default.[14] The trial court granted this motion and allowed Pascual *et al.* to present their evidence *ex parte.*[15]

On September 5, 1984, the trial court rendered a default judgment in favor of Pascual *et al.*[16] This judgment of default was reversed by the CA on January 15, 1989 and the case was remanded to the trial court for reception of Pulumbarit's evidence.[17] Prior to the reversal of the trial court's default judgment, however, Pascual *et al.* applied for the appointment of a receiver to take possession of the Memorial Park and all its records and business transactions during the pendency of the case.[18] This application was denied by the trial court in an *Order* dated October 10, 1991.[19]

With the reversal of the earlier judgment of default, the trial court admitted Pulumbarit's *Answer.*[20] Therein, Pulumbarit denied ever having offered to manage the Memorial Park for Pascual *et al.* Presenting the signed MOA as evidence, Pulumbarit countered that SJMMPI and its officers/stockholders sold all of the subscribed capital stock of SJMMPI to him for P750,000.00 payable in installments.[21] As sole owner, Pulumbarit claimed he had no obligation to Pascual *et al.* to render accounting.

During the trial, Pascual *et al.* presented, among others, Eliodoro Constantino, a Document Examiner from the National Bureau of Investigation (NBI), to prove that Pulumbarit falsified the MOA, which caused it to not reflect their true agreement. Constantino examined the contested MOA and testified that the second page was typed from a typewriter different from the one used in typing pages one, three and four.[22]

On July 15, 2000, the trial court promulgated its questioned *Decision*[23] in favor of Pascual *et al.* The dispositive portion reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
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> a) Declaring null and void the Memorandum of Agreement dated November 1982 between Lourdes S. Pascual and Nemencio Pulumbarit, Sr. (marked exhibit "J" for the plaintiffs and Exhibit "1" for the defendants);
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> b) Rescinding the Management Contract entered into by Nemencio C. Pulumbarit, Sr. with the plaintiffs for the management of the San Juan Macias

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14 RTC records, Vol. I, p. 73.
15 *Id.* at 87-88.
16 *Id.* at 143-150.
17 *Id.* at 164-173.
18 *Id.* at 199-201.
19 RTC records, Vol. II, pp. 390-396.
20 RTC records, Vol. I, p. 175.
21 *Id.* at 79.
22 RTC records, Vol. IV, pp. 833-836.
23 *Id.* at 811-858.

> [Memorial] Park, Inc., and declaring the same to have no force and effect;
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> c) Directing Nemencio Pulumbarit, Sr. to render an accounting of his operation of the San Juan Macias Memorial Park, Inc. from the time he took over the operation thereof in 1982 up to the date of this decision; and
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> d) Ordering Nemencio C. Pulumbarit, Sr. to pay the San Juan Macias Memorial Park, Inc. the sums of P100,000.00 as actual damages and P100,000.00 by way of attorney's fees and expenses of litigation.
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> The Court also orders Nemencio Pulumbarit, Sr., as well as any and all persons acting for and in his behalf, to forthwith cease and desist from operating and engaging in the business of the San Juan Macias Memorial Park, Inc., including that being operated under the name of Infinito Memorial Park, and from engaging, in any manner whatsoever, in acts of management, ownership and administration of the aforesaid corporation. He is also directed to immediately surrender to the plaintiffs all documents, papers, deeds, accounts and sums of money relating to or the business and operation of the corporation.
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> SO ORDERED.[24]

Pulumbarit filed a *Notice of Appeal* dated August 19, 2000.[25] His appeal was docketed as **CA-G.R. CV No. 69931**.

Meanwhile, and before the transmittal of the records of Civil Case No. 7250-M to the CA, Pascual *et al.* filed with the trial court motions praying for (1) the issuance of a writ of injunction against Pulumbarit[26] and (2) the execution of the decision pending appeal.[27] The trial court granted these motions on September 13, 2000[28] pursuant to Section 4, Rule 39 of the Rules of Court.[29] Pulumbarit's subsequent motion for reconsideration[30] of this *Order* (directing discretionary execution) was denied on October 3, 2000.[31]

Aggrieved, Pulumbarit filed a *Petition for Certiorari* with the CA to nullify the writs of execution and injunction issued by the trial court, with

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24 *Id.* at 857-858.

25 *Id.* at 860-861.

26 *Id.* at 867-868.

27 *Id.* at 876-880.

28 *Id.* at 883-884.

29 Section 4. *Judgments not stayed by appeal.* — Judgments in actions for injunction, receivership, accounting and support, and such other judgments as are now or may hereafter be declared to be immediately executory, shall be enforceable after their rendition and shall not be stayed by an appeal taken therefrom, unless otherwise ordered by the trial court. On appeal therefrom, the appellate court in its discretion may make an order suspending, modifying, restoring or granting the injunction, receivership, accounting, or award of support. xxx

30 RTC records, Vol. IV, pp. 897-910.

31 *Id.* at 919-922.

prayer for the issuance of a temporary restraining order (TRO) and/or a writ of preliminary injunction.[32] This case was docketed as CA-G.R. SP No. 61873.

Proceedings before the Court of Appeals

After the conduct of oral arguments, the CA in CA G.R. SP No. 61873 issued a TRO on January 26, 2001[33] and thereafter a writ of preliminary injunction on March 28, 2001.[34] Despite this, however, Pascual *et al.*, on May 11, 2001, filed a motion in CA-G.R. CV No. 69931 seeking execution of the trial court's *Decision* pending Pulumbarit's appeal.[35] Meanwhile, CA-G.R. SP No. 61873 and CA-G.R. CV No. 69931 were ordered consolidated on November 5, 2001.[36]

Thereafter, the CA, in its questioned *Resolution* dated May 30, 2002, granted Pascual *et al.*'s motion for execution pending appeal and, as a consequence, dismissed CA-G.R. SP No. 61873 for being moot and academic.[37] On July 12, 2002, Pulumbarit filed a *Petition for Review on Certiorari* under Rule 45 (with *Petition for Certiorari* under Rule 65) seeking a review of the May 30, 2002 *Resolution*.[38] This is presently docketed as G.R. Nos. 153745-46.

As a result of the filing of G.R. Nos. 153745-46 with this Court, the CA, on September 11, 2002, resolved to suspend its May 30, 2002 *Resolution* granting Pascual's motion for execution pending appeal.[39] CA-G.R. CV No. 69931 was nevertheless declared submitted for decision on November 25, 2002.[40]

On September 28, 2004, the CA issued its *Decision* reversing the trial court's ruling in Civil Case No. 7250-M. Pascual *et al.*'s motion for reconsideration[41] dated October 19, 2004 was denied by the CA in its *Resolution*[42] dated January 12, 2005. Aggrieved, Pascual *et al.* filed a petition[43] seeking the review of this *Decision*, hence, G.R. No. 166573.

G.R Nos. 153745-46 were consolidated with G.R. No. 166573 by virtue of this Court's *Resolution* dated February 7, 2007.[44]

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32 And alternative prayer to be allowed to file a counter-bond to lift the writ of execution pending appeal issued by the trial court in accordance with Section 3, Rule 39 of the Rules of Court. CA *rollo*, CA-G.R. SP No. 61873, pp. 2-25.

33 CA *rollo*, CA-G.R. SP No. 61873, pp. 93-94.

34 *Id.* at 316-317.

35 CA *rollo*, CA-G.R. CV No. 69931, pp. 19-40.

36 *Id.* at 278.

37 *Id.* at 301-313.

38 *Rollo*, G.R. Nos. 153745-46, pp. 35-123.

39 CA *rollo*, CA-G.R. CV No. 69931, pp. 449-452.

40 *Id.* at 494.

41 *Id.* at 579-612.

42 *Id.* at 663-664.

43 *Rollo*, G.R. No. 166573, pp. 9-46.

44 *Rollo*, G.R. Nos. 153745-46, p. 675.

Issues

We find the issues, as raised in the consolidated petitions, to be as follows:

(1) Whether Pascual *et al.*'s filing of an *Urgent Motion for Execution Pending Appeal* in CA-G.R. CV No. 69931, despite knowledge of the pendency of CA-G.R. SP No. 61873, constituted forum shopping;
(2) Whether the consolidation of CA-G.R. CV No. 69931 with CA-G.R. SP No. 61873 violated the internal rules of the CA, resulting to an infringement of Pulumbarit's right to due process;
(3) Whether the filing of the motion for execution pending appeal in CA-G.R. CV No. 69931 rendered CA-G.R. SP No. 61873 moot and academic;
(4) Whether the grant of the motion for execution pending appeal by the CA was proper;
(5) Whether the finding of fact in the application for receivership constituted *res judicata* as to the issue of the true agreement between the parties; and
(6) Whether the agreement between the parties was one for sale or management of the memorial park.

We rule on the issues.

Ruling of the Court

Pascual et al. committed abuse of court processes.

The trial court, upon Pascual *et al.*'s motion, allowed the execution of its *Decision* pending Pulumbarit's appeal of the same with the CA.[45] When the CA (in CA-G.R. SP No. 61873) issued writs against said discretionary execution, Pascual *et al.* filed a motion seeking to do exactly that what the court has already enjoined, albeit this time before the CA in CA-G.R. CV No. 69931. This act, according to Pulumbarit, constitutes "a specie (sic) of deliberate and willful forum-shopping"[46] which should not be countenanced by this Court.

Strictly speaking, Pascual *et al.* did not commit forum shopping. Forum shopping exists when the elements of *litis pendentia* are present, or when a final judgment in one case will amount to *res judicata* in another.[47] Here, any action by the CA on Pascual *et al.*'s **motion** in CA-G.R. CV No.

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45 RTC records, Vol. IV, pp. 883-884.
46 Petition, *rollo*, G.R. Nos. 153745-46, pp. 90-94.
47 *Young v. Keng Seng*, G.R. No. 143464, March 5, 2003, 398 SCRA 629, 638.

69931 is provisional in nature, such that it can in no way constitute as *res judicata* in CA-G.R. SP No. 61873. Moreover, forum shopping requires the identity of parties, rights or causes of action, and reliefs sought in two or more pending cases.[48] Here, there is no identity of relief and/or cause of action. CA-G.R. SP No. 61873 is limited to a determination of whether grave abuse of discretion was committed by the trial court in granting execution pending appeal while Pascual *et al.*'s motion in CA-G.R. CV No. 69931 involves a determination by the CA whether there are "good reasons" warranting the grant of discretionary execution.

We, however, note with disapproval the circumstances surrounding Pascual *et al.*'s filing of said motion.

In *In the Matter of Contempt Proceedings Against Ventura O. Ducat and Teng Mariano and Cruz Law Offices,*[49] we resolved to grant a petition to cite respondents Ducat *et al.* in contempt for delaying the satisfaction of a final judgment against them "by re-filing motions and attempting to re-open finally settled issues through the expediency of hiring a new counsel." We ruled:

> We grant the motion of petitioner as we find respondent Ventura O. Ducat and his counsel Atty. Elgar Cruz guilty of indirect contempt of court pursuant to Sec. 3, Rule 71, of the Rules of Court.
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> xxx
>
> A comparison of the Urgent Omnibus Motion filed on 14 September 1993 with the urgent motion to declare failure of auction sale of the Wack Wack properly filed on 18 August 1994 discloses that the latter motion merely echoed the allegations found in the former motion. Furthermore, both motions prayed for the **same** relief, namely, the annulment of the auction sale conducted on 7 September 1992. In effect, respondents **asked the trial court in the 18 August 1994 motion to resolve an issue which has been settled by the same court as early as 3 November 1993, affirmed by the Court of Appeals on 31 January 1994, and by this Court on 11 July 1994.** Equally disdainful is the fact that the motion for reconsideration of the 11 July 1994 ruling was still pending before this Court when respondents filed the 18 August 1994 motion. **The foregoing actuation demonstrates defiance of the authority and dignity of this Court and disrespect of the administration of justice.**[50]
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> (Emphasis and underscoring supplied.)

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48 *Id.*

49 G.R. No. 117266, March 13, 1997, 269 SCRA 615.

50 *Id.* at 621-622.

Here, the CA in CA-G.R. SP No. 61873 issued the TRO and the writ of preliminary injunction against the discretionary execution on January 26, 2001 and March 28, 2001, respectively.[51] On April 16, 2001, Pulumbarit posted the required bond amounting to P500,000.00.[52] Pascual *et al.*, on the other hand, filed their motion for execution pending *appeal* in CA-G.R. CV No. 69931 on May 11, 2001, nearly four months after the issuance of the TRO, two months after the writ of injunction and almost a month from Pulumbarit's posting of the bond.

Said motion is clearly an attempt on Pascual *et al.*'s part to undermine the TRO and writ of preliminary injunction earlier issued in CA-G.R. SP No. 61873 in Pulumbarit's favor. (Notably, Pascual *et al.* do not appear to have sought the reconsideration of the issuance of said injunctive orders.) Not unlike *Ducat*, therefore, Pascual's filing of the motion in CA-G.R. CV No. 69931 demonstrates defiance of, if not lack of due respect for, the authority of the CA which earlier issued injunctive writs against the execution *by the trial court* of the appealed *Decision*.

The consolidation of CA-G.R. CV No. 69931 with CA-G.R. SP No. 61873 was proper; no violation of Pulumbarit's right to due process.

Pulumbarit asserts that the consolidation of CA-G.R. CV No. 69931 with CA-G.R. SP No. 61873 is void *ab initio* for violating the Revised Internal Rules of the Court of Appeals (RIRCA):

> ...we respectfully submit that the consolidation is void ab initio for flagrant violation of RIRCA on (aa) Raffle of Cases, (bb) the Procedural Jurisdiction of the Justice to whom the Appeal Case is Raffled; (cc) Consolidation of Cases, and what cases can be consolidated, (dd) The Justice who can consider and act in specific incidents; and (ee) Processing of Special Civil Actions and Procedural Jurisdiction of the Justice to whom a Special Civil Action is raffled...[53]

The consolidation being void *ab initio*, Pulumbarit argues that the May 30, 2002 *Resolution* subsequently issued is also null and void for being violative of his "right to procedure (sic) due process."[54]

Pulumbarit errs.

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51 CA *rollo*, CA-G.R. SP No. 61873, pp. 93-94; 419-420.
52 *Id.* at 381-383.
53 Petition, *rollo*, G.R. Nos. 153745-46, p. 86.
54 *Id.* at 90.

In *Spouses Fortaleza v. Spouses Lapitan,* we reiterated the established doctrine that there are no vested rights to rules of procedure.[55] *Spouses Fortaleza* involved a case wherein the Justice assigned to complete the records also decided the case on the merits, in alleged violation of the Court of Appeals' internal two-raffle system. This procedural shortcut, according to Spouses Fortaleza, evinced the appellate court's bias and prejudgment in favor of Spouses Lapitan. We rejected their argument and ruled thus:

> xxx [T]he two-raffle system is already abandoned under the 2009 IRCA. As the rule now stands, the Justice to whom a case is raffled shall act on it both at the completion stage and for the decision on the merits xxx
>
> Corollarily, the alleged defect in the processing of this case before the CA has been effectively cured. We stress that rules of procedure may be modified at any time and become effective at once, so long as the change does not affect vested rights. **Moreover, it is equally axiomatic that there are no vested rights to rules of procedure. Thus, unless spouses Fortaleza can establish a right by virtue of some statute or law, the alleged violation is not an actionable wrong. At any rate, the 2002 IRCA does not provide for the effect of non-compliance with the two-raffle system on the validity of the decision. Notably too, it does not prohibit the assignment by raffle of a case for study and report to a Justice who handled the same during its completion stage.**[56]
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> (Emphasis and underscoring supplied.)

The RIRCA are rules which govern the **internal** operations of the CA. It is not intended to implicate substantial rights. The rules governing case assignments, for example, do not give rise to a right on the part of a litigant to have his case heard by any particular division of the court or the *Decision* penned by a particular Justice.[57] Barring exceptional circumstances, parties

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55 G.R. No. 178288, August 15, 2012, 678 SCRA 469, 480.

56 *Id.* at 479-480.

57 Sections 6 and 7, Rule 3, 1999 Internal Rules of the Court of Appeals, do not provide for a right of the parties to have their case be heard by a particular division or be decided by a particular Justice. They also do not provide for a right of the parties to be heard on the matter of case assignment and raffle. Sections 6 and 7 provide:

> Section 6. *Raffle of Cases.* — Assignment of cases to a particular Justice shall be done strictly by raffle, whether it be the first raffle for completion of records or the second raffle for study and report, subject to the following rules:
>
> (a) All appealed cases for completion shall be raffled to individual Justices;
>
> (b) All appealed cases, the records of which have been completed, shall be re-raffled for assignment to a Justice for study and report;
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> (c) Special cases or petitions, including petitions for review under Rules 42 and 43 of the Rules of Court, annulment of judgments under Rule 47, special civil actions under Rules 65 and 66, special proceedings under Rules 71 and 102 of said Rules, and all other petitions, shall be raffled to a Justice for completions, study and report; and

are not heard on case raffling and similar matters,[58] as in fact internal rules can generally be modified at any time with the changes becoming immediately effective.

Granting, for the sake of argument, that there *was* some oversight in relation to the observance of the RIRCA procedure, Pulumbarit nevertheless failed to establish an actionable wrong separate from the alleged breach of the said internal rules. Contrary to what he would have this Court believe, we are convinced that there was no denial of Pulumbarit's right to due process. The record clearly shows that Pulumbarit was given (and, in fact, availed of) every opportunity to present his case, by way of both pleadings and oral arguments, and pursue the appropriate reliefs before the CA. As in fact, the CA issued, in his favor, a TRO on January 26, 2001[59] and a writ of preliminary injunction on March 28, 2001.[60]

(d) When a Justice to whom a case is raffled cannot, for any cause or reason, act thereon, the case shall be re-raffled. (Sec. 5, Rule 3, RIRCA)

Section 7. *Raffle Procedure.* —

a. The raffle of cases shall be open to the public and conducted daily at 10:30 a.m., except in special raffle.

b. The raffle of cases shall be conducted by the Raffle Committee composed of the Justices of a Division chosen for the day which shall choose by Raffle the Raffle Committee for the following day. The staff of the committee shall be designated by the Presiding Justice for one year, unless sooner changed.

c. To assure equality in the number and nature of cases assigned to each Justice, separate listings shall be made of cases falling under the following categories: (1) appealed civil cases; (2) appealed criminal cases; (3) appealed criminal cases with detention prisoners; (4) *habeas corpus* cases; (5) labor cases; (6) agrarian cases; (7) Civil Service Commission and Ombudsman cases; (8) other petitions; and (9) cases involving substitution of a *ponente*, or requiring the temporary designation of a Justice or Justices to fill a temporary vacancy, or calling for the creation of a Division of five.

d. All requests for substitution and notices of inhibition shall be attached to the *rollo*.

e. No special raffle shall be conducted except on grounds of urgent necessity and only when authorized in writing by the Presiding Justice or in his absence or unavailability, by the most senior Justice present. The special raffle shall be conducted by the Raffle Committee for the day or by any of its members present; otherwise, the Presiding Justice himself shall conduct the raffle or may assign another Justice to do so. No special raffle shall be conducted after office hours.

f. The Raffle Staff shall furnish the Justices with the results of the raffle not later than the following working day.

g. Upon retirement or cessation from office of a Justice, his pending cases shall be re-raffled within three (3) months, unless otherwise directed by the Presiding Justice, to the other Justices, except in those cases contemplated in Section 3 (e), Rule 12 hereof, which shall be re-raffled between the remaining Justices of the Division who participated therein.

h. Whenever a Justice goes on leave, or three (3) months before he retires, he shall be exempt from the raffle of cases. (Sec. 6, Rule 3, RIRCA)

58 *Id.*

59 CA *rollo*, CA-G.R. SP No. 61873, pp. 93-94.

60 *Id.* at 316.

Aside from being heard in oral argument, Pulumbarit also filed with the CA several other pleadings, including (a) a *Respectful Reiteration of the Application* for a TRO and or *Writ of Preliminary Injunction* dated January 15, 2001;[61] (b) *Petitioner's Memorandum in Summation of the Points* raised in the Oral Arguments of February 27, 2001 and in *Refutation of the Arguments of Private Respondents* dated March 5, 2001 as his *Memorandum of Authorities.*[62] Clearly, there was no denial of his right to due process.

CA-G.R. SP No. 61873 not rendered moot and academic by the filing of the motion for execution pending appeal in CA-G.R. CV No. 69931.

In its questioned *Resolution* dated May 30, 2002, the CA ruled that, even assuming the trial court erred in allowing execution pending appeal, Pascual *et al.* still had the right to apply for a similar writ before the appellate court. It was in this sense that the CA ruled that the central issues raised in CA-G.R. SP No. 61873 have been rendered moot and academic by the filing of the motion.[63]

We disagree.

To reiterate, Pascual *et al.*'s motion in CA-G.R. CV No. 69931 seeks the CA's approval to execute the trial court's *Decision* pending final disposition of Pulumbarit's appeal. CA-G.R. SP No. 61873, on the other hand, is an action to determine whether grave abuse of discretion was committed by the trial court when it allowed execution pending appeal. The subjects of Pascual *et al.*'s motion in CA-G.R. CV No. 69931 and Pulumbarit's petition in CA-G.R. SP No. 61873 concern two different, albeit closely related, issues. Furthermore, any action on a motion for execution pending appeal is only **provisional** in nature. The grant or denial (as the case may be) of such a motion is always *without prejudice to the court's final disposition of the case* and the issues raised therein. In fact, Section 3, Rule 39 of the Rules of Court allows the party against whom the execution of a decision pending appeal is directed to stay the execution by posting a *supersedeas* bond.[64] Section 5 of the same rule also provides that where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, the trial court may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances.[65]

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61 CA *rollo*, CA-G.R. SP No. 61873, pp. 85-91.

62 *Id.* at 180-206.

63 CA Resolution dated May 30, 2002, *rollo*, CA-G.R. CV No. 69931, p. 308.

64 Section 3. *Stay of discretionary execution.* — Discretionary execution issued under the preceding section may be stayed upon approval by the proper court of a sufficient *supersedeas* bond filed by the party against whom it is directed, conditioned upon the performance of the judgment or order allowed to be executed in case it shall be finally sustained in whole or in part. The bond thus given may be proceeded against on motion with notice to the surety.

65 Section 5. *Effect of reversal of executed judgment.* — Where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, the trial court may, on motion, issue such

For these reasons, the grant by the CA of a motion for execution pending appeal, being provisional in nature, could therefore not have rendered CA-G.R. SP No. 61873 moot and academic. In the same way, if not arguably more so, much less can the *mere* filing of such a motion warrant the dismissal of CA-G.R. SP No. 61873 on the ground of mootness. Thus, the CA committed a reversible error when it dismissed CA-G.R. SP No. 61873.

Reasons cited are insufficient to justify grant of execution pending appeal.

Section 2, Rule 30 of the Rules of Court provides, in part, that discretionary execution (or execution pending appeal) may only issue "upon good reasons to be stated in a special order after due hearing."

Good reason must consist of superior or exceptional circumstances of such urgency as to outweigh the injury or damage that the losing party may suffer, should the appealed judgment be reversed later.[66]

Our ruling in *Diesel Construction Company, Inc. (DCCI) v. Jollibee Foods Corporation (JFC)*[67] is particularly instructive. Citing possible financial distress to be caused by a "protracted delay in the reimbursement" of the costs prayed for, DCCI moved for the discretionary execution of the trial court's decision awarding escalated construction costs in its favor.[68] The CA, however, allowed a stay of execution upon the JFC's posting of a *supersedeas* bond.[69] When the matter was brought before this Court for resolution, we ruled **against** said discretionary execution, thus:

> The financial distress of a juridical entity is **not** comparable to a case involving a natural person - such as a very old and sickly one without any means of livelihood, an heir seeking an order for support and monthly allowance for subsistence, or one who dies.
>
> Indeed, **the alleged financial distress of a corporation does not outweigh <u>the long standing general policy of enforcing only final and executory judgments</u>.** Certainly, a juridical entity like petitioner corporation, has other than extraordinary execution, alternative remedies like loans, advances, internal cash generation and the like to address its precarious financial condition.[70]

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orders of restitution or reparation of damages as equity and justice may warrant under the circumstances.

66 *Diesel Construction Company, Inc. v. Jollibee Foods Corporation*, G.R. No. 136805, January 28, 2000, 323 SCRA 844.

67 *Id.*

68 *Id.* at 849-850.

69 *Id.* at 851.

70 *Id.* at 860.

(Emphasis and underscoring supplied.)

In this case, the grant by the CA of Pascual *et al.*'s motion for discretionary/extraordinary execution was founded on the following reasons: (1) to stop Pulumbarit from continuing to receive money from the sale of the lots and (2) to save the property from distraint and public auction.[71] We find the foregoing reasons insufficient to justify the execution of the trial court's *Decision* pending final resolution of Pulumbarit's appeal.

For one, there is no urgent and pressing need for the immediate execution of the *Decision* considering that, as noted by the CA itself, Pulumbarit had been in possession of the subject Memorial Park for the past twenty years.[72] Assuming the affirmance of the trial court's *Decision* in Pascual *et al.*'s favor, Pulumbarit would still have to surrender possession of the Park and account for all of its finances.[73]

Secondly, and as in the case of *DCCI v. JFC*, there are alternative remedies (*i.e.* re-application for receivership, loans and redemption, among others) available to Pascual *et al.* that may more appropriately address their concerns arising from the possible distraint and auction of the Memorial Park. The existence of these remedies, in our view, negates the claim of urgency necessary to justify execution of the trial court's *Decision* pending final resolution of Pulumbarit's appeal.

The finding of fact in the application for receivership did not constitute res judicata as to the issue of the true agreement between Pulumbarit and Pascual et al.

In its questioned *Decision*, the CA found that Pascual *et al.* was bound by the finding made by the trial court (in relation to their application for receivership) that the agreement between the parties was one for sale and not management. Thus:

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71 CA Resolution dated May 30, 2002, CA *rollo*, CA-G.R. CV No. 69931, pp. 311-312.

72 Meanwhile, it appears from the records that the writs of execution and injunction issued by the trial court were partially executed. According to the Sheriff's Reports dated September 25, 2000 and September 28, 2000, the writs were served on Mr. Mariano Pulumbarit, the person in-charge of the business of the Memorial Park, at the premises of the memorial park. It also appears that Mr. Mariano Pulumbarit consequently provided the cash vouchers, daily cash position report, interment order, collection notice, contract date, price list, green copy of provisional receipt, deed of sale, certificate of perpetual care, and cash receivables but failed to turn-over all the documents pertaining to the Memorial Park. Thereafter, the premises were locked and copies of the writs of execution and injunction were served on Mr. Nemencio Pulumbarit, Sr. at his office. The latter, however, refused to give the remaining documents.

73 Pascual *et al.* admitted in their *Private Respondent's Memorandum* dated August 10, 2001 that they already have administration and control of the memorial park. However, we resolve the issue of whether execution pending appeal of the trial court's decision was proper on the basis of the reasons cited by the Court of Appeals in its May 30, 2002 Resolution.

> This Court is convinced that the trial court was bound by said findings of fact, especially considering that it was the same court (through then Presiding Judge Amante M. Laforteza) which made said findings. Material facts or questions which were in issue in a former action and were there admitted or judicially determined are conclusively settled by a judgment rendered therein and that such facts or questions become res judicata and may not again be litigated in a subsequent action between the same parties or their privies, regardless of the form the issue may take in the subsequent action, whether the subsequent action involves the same or a different form or proceeding, or whether the second action is upon the same or a different cause of action, subject matter, claim or demand, as the earlier action. In such cases, it is also immaterial that the two actions are based on different grounds, or tried on different theories, or instituted for different purposes, and seek different reliefs.[74]

We reverse the ruling of the CA on this matter. *Res judicata* by conclusiveness of judgment does not apply in this case.

In *Social Security Commission v. Rizal Poultry and Livestock Association*,[75] we laid down the requirements of *res judicata* in the concept of "conclusiveness of judgment," to wit:

> There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action.
>
> **But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein.** This is the concept of *res judicata* known as "conclusiveness of judgment." Stated differently, any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court **in which judgment is rendered on the merits is conclusively settled by the judgment therein** and cannot again be litigated between the parties and their privies, whether or not the claim, demand, purpose, or subject matter of the two actions is the same.[76]
>
> xxx
>
> (Emphasis and underscoring supplied.)

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74 *Rollo*, G.R. No. 166573, p. 157.
75 G.R. No. 167050, June 1, 2011, 650 SCRA 50.
76 *Id.* at 56-57.

The application of the doctrine of *res judicata* either in the concept of bar by prior judgment or conclusiveness of judgment requires or presupposes the existence of two independent **actions**.

Since receivership may be resorted to either as a principal action or an ancillary remedy,[77] it is imperative to first determine the nature of the application for receivership in this case. If, for example, it is found that Pascual *et al.* filed a *separate action for receivership*, the findings of fact made by the court therein may be held to be **conclusive** as to the "true" nature of the parties' agreement in the action for rescission of contract, damages and accounting. If, on the other hand, the application was made *ancillary to the principal action for rescission*, a finding made in the course of the resolution of said application would not bar the same court, after an exhaustive litigation of the main issues before it, from later on arriving at a different finding of fact.

The records show that Pascual *et al.*'s "*petition for receivership*" was filed *with the same court and under Civil Case No. 7250-M,*[78] *specifically,* for the appointment of a receiver to preserve their rights over the Memorial Park during the pendency of the suit with Pulumbarit. It is thus an application for an ancillary remedy made during the course of the main action for rescission.[79] Being a provisional remedy, the appointment of a receiver would always be *without prejudice* to the final outcome of the main case. A finding of fact made in the course of the resolution of said application cannot therefore constitute *res judicata* for purposes of the issues implicated in the main case. As in fact, the trial court in this case, in the end, found for Pascual *et al.* and ruled that the agreement between the parties was not a sale, but a management contract.

Agreement between the parties was a ***contract to sell*** *the shares of SJMMPI and not a contract of sale or a management contract with option to buy.*

Pascual *et al.* do not dispute that they entered into an agreement with Pulumbarit. What they take issue with are the terms and conditions in the MOA which allegedly do not reflect the terms and conditions actually agreed upon by the parties.[80] Hence, they prayed, among others, that the MOA be declared null and void and/or rescinded and without force and effect and that Pulumbarit be ordered to "render an accounting of his

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77 FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM, (Vol. I, 7th Revised Ed. 1999), p. 661.

78 RTC records, Vol. II, pp. 199-201.

79 RULES OF COURT, Rule 59, Sec. 1.

80 RTC records, Vol. I, p. 56.

operation effective from the date of his takeover and to surrender all documents, papers, deeds and sums of money in accordance therewith."[81]

In ruling that the contract between the parties was a **sale**, the CA reasoned thus:

> As between the verbal agreement for the management of the memorial park and the *Memorandum of Agreement* evidencing the intention of the parties to sell the memorial park, **this Court is inclined to give more weight to the written agreement of the parties which was duly signed by the incorporators**. Although Lourdes Sevilla Pascual, one of the incorporators, did not sign said *Memorandum of Agreement*, she freely executed another document to signify the sale of her shares in the corporation.
>
> The agreement or contract between the parties is the formal expression of the parties' rights, duties and obligations. **It is the best evidence of the intention of the parties.** Thus, when the terms of an agreement have been reduced into writing, it is considered as containing all the terms agreed upon, and there can be, between the parties and their successors-in-interest, no evidence of such terms other than the contents of the written agreement. xxx
>
> Although the investigation of the National Bureau of Investigation (NBI) on the *Memorandum of Agreement* yielded a finding that the second page differed in terms of type size and type design from pages 1, 3 and 4, this does not nullify the entire agreement, especially because page 3 thereof bore the signatures of the incorporators. The signatures on page 3 are of utmost significance for it may be safely concluded that pages 1 and 4 also bear the approval of the signatories. Notably, **page 1 of the *Memorandum of Agreement* clearly shows the intention of the parties to sell the memorial park...**
>
> xxx
>
> Assuming *arguendo* that no evidentiary weight could be given to the *Memorandum of Agreement*, **the evidence on record would still show that appellee Dr. Pascual really intended to sell the memorial park. This is shown by the letter of authority given to Atty. Soledad Pascual who was tasked to look for a buyer for the memorial park.** xxx
>
> It is absurd to sustain the trial court's finding that the agreement was for the management of the memorial park. Notably, **appellant already paid more than P400,000.00, a substantial amount especially at the time of its payment, the early 80s. If the agreement was really for the management of the memorial park, it should have**

81 *Id.* at 58.

> **been the corporation which should be paying appellant. In fact, no evidence was presented by appellee Dr. Pascual on the compensation of appellant for his management of the memorial park.**
>
> xxx[82]
>
> (Emphasis supplied.)

We affirm the findings of the CA insofar as it ruled that the parties did **not** contemplate a management contract with option to buy. We nevertheless rule that the agreement entered into by the parties was not a contract of sale, but rather, a **contract to sell** the shares of SJMMPI.[83]

The text of the MOA between the parties shows that their agreement was a contract to sell SJMMPI shares. The pertinent portion of page three of the MOA reads:

> xxx
>
> 4. The shares of stocks stated above and subject matter of this Agreement **will only be transferred** in the name of the PARTY OF THE SECOND PART, its heirs, successors and assigns **upon full payment and/or full satisfaction thereon of the consideration of this agreement**.[84]

While Pascual *et al.* are technically correct in arguing that they did not enter into a **contract of sale** with Pulumbarit, they cannot deny the existence of the stipulation in page three of the MOA evidencing a **contract to sell** and negating their claim of a management contract with option to buy. Notably, page three bears the signatures of Pulumbarit, Pascual, and the other SJMMPI stockholders.[85] We further note that Pascual did not dispute the authenticity of her signature appearing on page three of the MOA. Neither did she allege during the course of the proceedings that she signed another document or entered into another written transaction with Pulumbarit aside from the MOA.

Even though the NBI Questioned Document Report No. 102-384[86] (Report) stated that page two of the document was typed from a typewriter

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82 *Rollo*, G.R. No. 166573, pp. 152-155.

83 "In a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold; in a contract to sell, ownership is, by agreement, reserved in the vendor and is not to pass to the vendee until full payment of the purchase price. Otherwise stated, in a contract of sale, the vendor loses ownership over the property and cannot recover it until and unless the contract is resolved or rescinded; whereas, in a contract to sell, title is retained by the vendor until full payment of the price. In the latter contract, payment of the price is a positive suspensive condition, failure of which is not a breach but an event that prevents the obligation of the vendor to convey title from becoming effective." *Spouses Torrecampo v. Alindogan, Sr.*, G.R. No. 156405, February 28, 2007, 517 SCRA 84, 88, citing *Salazar v. Court of Appeals*, G.R. No. 118203, July 5, 1996, 258 SCRA 317. Underscoring supplied.

84 Exhibit "J," RTC records, Vol. I, p. 23.

85 *Id.*

86 Exhibit "K," *id.* at 43-44.

different from that used in typing pages one, three and four, the same report was inconclusive as to the possibility of falsification. The Report does not contain any categorical statement from the NBI Examiner that the pages were substituted or that the MOA was spurious or falsified.

Even if we were to assume, for the sake of argument, that page two was in fact substituted on the ground that its type size and design are different from the type size and design used in the other three pages of the MOA, then we can infer that the *other* three pages (one of which bore the authenticating signatures of the party) were not substituted, all three having exactly the same type size and design. We can also further deduce that the provisions in these un-substituted pages reflect the "true" terms and conditions agreed upon between the parties.

This is significant as page one, which we have now established to not have been substituted, clearly sets forth, in the preambular clauses, the parties' positive intent to enter into a contract to sell:

> WHEREAS, THE PARTY OF THE FIRST PART **have offered to sell all their rights, interest and participations with San Juan Macias Memorial Park, Inc.,** to the extent indicated above to the PARTY OF THE SECOND PART and the PARTY OF THE SECOND PART has **accepted the offer** of the PARTY OF THE FIRST PART.[87]
>
> (Emphasis and underscoring supplied.)

That Pascual *et al.* really intended to sell SJMPPI is further shown by the document earlier issued to Atty. De Jesus authorizing her to look for a **buyer** for the Memorial Park and negotiate the **sale** of the corporation.[88] It is immaterial that the authorization given to Atty. De Jesus had already expired by the time the MOA between the parties was signed as this does not diminish the intention of Pascual *et al.* to sell the Memorial Park at or about the time they entered into the agreement with Pulumbarit. That there are as yet no SJMMPI stock certificates in Pulumbarit's name and possession, does not negate the character of the contract to sell between the parties.

Pascual *et al.* claim that Pulumbarit, in his reply to their letters of June 13, 1983,[89] July 14, 1983[90] and August 18, 1983,[91] impliedly admitted that the true agreement between the parties was for the management of the memorial park. This is belied by the records. The letter reads:

> Your letter dated 18 August 1983 on behalf of San Juan Macias Memorial Park, Inc., to our client Nemencio

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87 Exhibit "J," *id.* at 21.
88 RTC records, Vol. II, p. 368.
89 Exhibit "F," *id.* at 255; Exhibit "G," *id.* at 256.
90 Exhibit "H," *id.* at 257.
91 Exhibit "I," *id.* at 258.

> Pulumbarit, Sr. has been referred to us for appropriate reply.
>
> In connection therewith, please be advised that our client is ready and willing to comply with your request as embodied in your letter. However, a certain Ms. Lourdes S. Pascual, a major stock holder (sic) of San Juan Macias Memorial Park, Inc. had complained to us that she has not as yet receive (sic) a single centavo as her share from this transaction and threatened us that she will not sign the **memorandum of agreement** executed by your client in favor of our client, till she has been paid. In view of this development, our client decided to suspend paying your client until the claim of Ms. Pascual has been settled. We wish to assure you that our client has the money to pay your client anytime the claim of Ms. Pascual has been settled. We suggest, therefore, that you urged (sic) your client to thresh out this claim of Ms. Pascual as soon as possible in order that we could immediately comply with your request.[92]
>
> (Emphasis supplied.)

Contrary to Pascual *et al.*'s claim, there is nothing in the letter to show an admission, whether express or implied, on Pulumbarit's part that their agreement was for management of SJMMPI.

Most telling of the real agreement between Pulumbarit and Pascual *et al.* was the undisputed fact that the former made payments to the latter, and not vice versa. As the CA correctly declared, it was indeed absurd for a person rendering service to pay compensation to his employers. If Pascual *et al.*'s version of the agreement is to be believed, they should have been the ones paying Pulumbarit for managing the Memorial Park and not the other way around.

During the trial, Acasio testified that as "compensation" for his services, Pulumbarit (who had by then already paid between P500,000.00 to P700,000.00 to manage a Park previously put up for sale for P1,500,000.00) will be paid for expenses incurred in the course of management and given an option to buy the Park after two years.[93] These terms simply do not occur in the ordinary course of business and we are hard-pressed to imagine a reasonable person agreeing to such a business arrangement. The evidence on record overwhelmingly shows that the contract between the parties was indeed a contract to sell the shares of SJMMPI and the Memorial Park.

WHEREFORE, and in view of the foregoing, we resolve to:

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92 Exhibit "I-1," RTC records, Vol. I, p. 117.

93 TSN, April 25, 1995, p.7.

(1) **GRANT** G.R. Nos. 153745-46. The Court of Appeals' *Resolution* dated May 30, 2002 in CA-G.R. SP No. 61873 is hereby **ANNULLED** and **SET ASIDE**; and

(2) **DENY** G.R. No. 166573 for lack of merit and **AFFIRM** the *Decision* of the Court of Appeals in CA-G.R. CV No. 69931 with the **MODIFICATION** that the agreement between herein parties is a contract to sell (not a contract of sale of) SJMMPI shares.

SO ORDERED.

FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE C. MENDOZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice