



Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. No. 142248 **December 16, 2004**

REBECCA GUTIERREZ, petitioner,
vs.

**THE SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT, PHILIPPINE OVERSEAS
EMPLOYMENT ADMINISTRATION, REMPAC PLACEMENT AGENCY AND SIDDCOR INSURANCE
CORPORATION**, respondents.

DECISION

CARPIO MORALES, J.:

On petition for review on *certiorari* under Rule 45 of the Rules of Court are the Court of Appeals December 17, 1999 Resolution¹ dismissing petitioner Rebecca Gutierrez' petition for certiorari and its February 21, 2000 Resolution² denying her motion for reconsideration.

On September 4, 1997, petitioner filed a complaint before the Philippine Overseas Employment Administration (POEA), docketed as POEA Case No. RV 97-09-0829, against respondent Rempac Placement Agency (REMPAC) for violation of Articles 32, 34 (a), (b), (i) and 116 of the Labor Code, as amended.³ Petitioner also impleaded as defendant respondent Siddcor Insurance Corporation (SIDDCOR), the surety of REMPAC.

Sometime in February 1995, petitioner applied with REMPAC for employment abroad as a domestic helper. Her application having been granted, she departed for Malaysia on June 17, 1995. She returned to the Philippines on August 28, 1997.⁴ She later filed a complaint against REMPAC for, in the main, illegal deduction from and withholding of her salaries.

In her complaint, petitioner alleged that she paid REMPAC, on its requirement, ₱50,000.00, between June 1995 and June 1996. Petitioner was later to state during the hearing of the case that she actually paid REMPAC ₱3,000.00 representing processing fee and ₱1,500.00 for medical examinations, she clarifying that the amount of ₱50,000.00 she mentioned in her Sworn Statement-complaint⁵ was the aggregate salary deductions made by her employer in Malaysia; that under the provisions of the Standard Employment Contract for Filipino Household Workers⁶ dated April 5, 1995 which she signed, she was supposed to be paid at least US\$200 or its equivalent in Malaysian currency amounting to MYR540 per month; and that her Malaysian employer in fact agreed to pay her MYR580 per month, but she received only MYR100 a month, her employer informing her that the MYR480 deduction (MYR580-480) was made upon the instruction of a certain Evelina S. Grudo of REMPAC.

REMPAC and SIDDCOR failed to file their respective Answers despite receipt of the October 28, 1997 Show Cause Order⁷ issued by the POEA directing them to submit their explanation under oath to the complaint.

By Order⁸ of October 26, 1998, POEA Administrator Reynaldo A. Regalado dismissed the complaint for lack of merit.

Petitioner filed an appeal⁹ before the Secretary of the Department of Labor and Employment (DOLE) which dismissed it by Order¹⁰ of January 26, 1999.

Her Motion for Reconsideration¹¹ having been denied by Order¹² of July 27, 1999, she filed a Special Motion for Extension of Time to File Petition for Certiorari¹³ before the Court of Appeals (CA), praying for an additional

period of fifteen days from October 11, 1999 or until October 26, 1999 within which to file her petition for certiorari.

By Resolution¹⁴ of November 11, 1999, the CA granted the Special Motion for Extension and gave petitioner a non-extendible period of fifteen days from the lapse of the original reglementary period within which to file her petition.

On October 26, 1999, petitioner filed her Petition for Certiorari,¹⁵ docketed as CA-G.R. S.P. No. 55585.

The CA, however, dismissed petitioner's petition, by Resolution of December 17, 2000, pursuant to Section 7 of Rule 43¹⁶ of the Rules of Court, it noting that (1) there was no complete statement of material dates in the petition, petitioner having failed to state the date she received a copy of the January 26, 1999 DOLE Order, (2) the verification with certification on non-forum shopping was executed by counsel and not by petitioner, (3) there was no affidavit of service, and (4) the copies of the January 26, 1999 and July 27, 1999 DOLE Orders were mere photocopies.¹⁷

Petitioner filed a Motion for Reconsideration¹⁸ of the December 17, 1999 CA Resolution. And she filed a Supplemental Motion for Reconsideration¹⁹ by which she submitted (1) a Verification with Certification of Non-Forum Shopping which she herself executed,²⁰ (2) a duly notarized Affidavit of Service,²¹ and (3) certified true copies of the January 26, 1999 and July 27, 1999 DOLE Orders.²²

By Resolution of February 21, 2000, the CA denied petitioner's Motion for Reconsideration in this wise:

In connection with the petitioner' (sic) Motion for Reconsideration dated January 18, 2000, we find that none of the copies of the petition as submitted contains as attachments the **duplicate** original copies of the questioned orders of January 26, 1999 and July 27, 1999.

Moreover, the statement of material dates is incomplete in that it failed to state when the petitioner received a copy of the order denying her motion for reconsideration.

Section 3, Rule 46 of the 1997 Rules of Civil Procedure, as corrected by Supreme Court Circular No. 39-98 provides:

"SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements.* – The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

"In actions filed under Rule 65, the petitioner shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

"xxx xxx xxx"

The same circular further added a second paragraph to Section 4, Rule 65, to wit:

"xxx xxx xxx"

"If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days."²³ (Emphasis and underscoring supplied)

By a subsequent Resolution²⁴ of March 20, 2000, the CA, passing on petitioner's Supplemental Motion for Reconsideration, resolved to merely note it.

Since despite submission of the Supplemental Motion for Reconsideration, petitioner still failed to comply with either Sec. 3, Rule 46 of the 1997 Rules of [C]ivil Procedure as corrected by Supreme Court Circular No. 39-98 or Sec. 4, Rule 65 as amended, petitioner's supplemental motion for reconsideration is merely noted in view of the February 21, 2000 resolution denying her motion for reconsideration.²⁵ (Underscoring supplied)

Hence, the present petition for review on certiorari²⁶ raising the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN DISMISSING THE PETITION FOR CERTIORARI AND IN DISREGARDING THE MOTION FOR RECONSIDERATION FILED BY PETITIONER.

II.

WHETHER OR NOT THE GROUNDS CITED BY PETITIONER'S COUNSEL IN THE MOTION FOR RECONSIDERATION FILED WITH THE HONORABLE COURT OF APPEALS ALLOWS THE RELAXATION OF THE STRINGENT APPLICATION OF THE RULES ON PROCEDURE SPECIFICALLY ON LABOR CASES IN THE PARAMOUNT INTEREST OF SUBSTANTIAL JUSTICE.

III.

WHETHER OR NOT THERE WAS SUBSTANTIAL COMPLIANCE BY THE PETITIONER WITH THE PROVISIONS OF SEC. 3, RULE 46 AND RULE 65, RESPECTIVELY, OF THE 1997 RULES OF CIVIL PROCEDURE.

IV.

WHETHER OR NOT THE HONORABLE (sic) COURT OF APPEALS ERRED IN NOT GIVING DUE COURSE TO THE PETITION FOR CERTIORARI DESPITE THE FACT THAT IT WAS IMPRESSED WITH MERIT.

V.

WHETHER OR NOT PRIVATE RESPONDENT REMPAC PLACEMENT AGENCY IS LIABLE FOR VIOLATION OF ARTICLES 32, 34(a), (b), (i) AND 116 OF THE NEW LABOR CODE, AS AMENDED.

VI.

WHETHER OR NOT THE TECHNICAL RULES OF EVIDENCE ARE APPLICABLE IN THE CASE UNDER REVIEW INVOLVING CLAIMS OF OVERSEAS CONTRACT WORKERS.²⁷

In its Comment²⁸ of January 14, 2002, SIDDCOR avers that the petition for certiorari before the CA was correctly dismissed as it was filed twenty nine days beyond the 60-day period mandated by Section 4, Rule 65 of the Rules of Court, arguing as follows:

Applying Section 4 of Rule 65 of the Rules of Court and considering that herein petitioner had received, on March 11, 1999 the decision of the Secretary of the Department of Labor and Employment affirming POEA Order dated [October] 26, 1998 she ha[d] therefore sixty (60) days to file the subject petition for certiorari. But instead, it had filed a Motion for Reconsideration on March 19, 1999, consuming eight (8) days and on August 6, 1999 through her counsel petitioner had received the subject Order dated July 27, 1999 denying her motion for reconsideration. She therefore, ha[d] fifty eight (58) remaining days or until September 27, 1999 within which to file her petition for certiorari or any appropriate pleading, contrary to her allegation that the last day was on October 26, 1999.²⁹

The petition is impressed with merit.

Section 3 of Rule 46 of the Rules of Court provides:

SEC. 3. *Contents and filing of petition; effect of non-compliance with requirements.*- The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or (final) order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by

his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of P500.00 for costs at the time of the filing of the petition.

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

There are three material dates that must be stated in a petition for certiorari brought under Rule 65. First, the date when notice of the judgment or final order or resolution was received; second, the date when a motion for new trial or for reconsideration when one such was filed; and third, the date when notice of the denial thereof was received.³⁰

In the petition filed before the CA,³¹ petitioner indicated therein that she received a copy of the January 26, 1999 DOLE Order on March 11, 1999, after which she filed a Motion for Reconsideration thereof on March 19, 1999,³² and that she received the July 27, 1999 DOLE Order denying the Motion for Reconsideration on August 6, 1999.³³ It is noted, however, that petitioner erred with respect to the date of her receipt of the DOLE Order of July 27, 1999, for the records show that she actually received it on August 20, 1999.³⁴

While this Court has held that there is substantial compliance with the rule mandating statement of material dates if the same is executed by an attorney, it being presumed that facts alleged by him are true to his knowledge and belief,³⁵ the same does not apply as regards the rule requiring the filing of a certification against forum shopping. Such certification must be signed by the plaintiff or any of the principal parties and not by the attorney.³⁶ For such certification is a peculiar personal representation on the part of the principal party, an assurance given to the court or other tribunal that there are no other pending cases involving basically the same parties, issues and causes of action.³⁷

x x x Obviously it is the petitioner, and not always the counsel whose professional services have been retained for a particular case, who is in the best position to know whether he or it actually filed or caused the filing of a petition in that case. Hence, a certification against forum shopping by counsel is a defective certification.³⁸

To merit the Court's consideration, however, a petitioner must show reasonable cause for failure to personally sign the certification and manifest that the outright dismissal of the petition would defeat the administration of justice.³⁹

The verification and certification of non-forum shopping attached to the petition filed before the CA was signed not by petitioner but by her counsel, Atty. Salvador Hipolito.⁴⁰ Atty. Hipolito therein reasoned that he was unable to have petitioner affix her signature as her father died and was buried on the date the petition was filed before the CA.⁴¹

In her Supplemental Motion for Reconsideration filed before the CA, however, petitioner attached a certification of non-forum shopping duly executed by her. This is may be considered as substantial compliance with the Rules.⁴²

With respect to the non-attachment of the affidavit of service, the records bear that the petition filed before the CA was accompanied by the original registry receipts (Registry Receipt Nos. 1129-1132)⁴³ issued by the San Fernando, Pampanga Post Office, indicating that the petition and its annexes were served upon the parties. The Supplemental Motion for Reconsideration⁴⁴ was accompanied too by an affidavit of service. This Court thus finds that there was substantial compliance with the Rules.⁴⁵

Respecting the requirement of the Rules that the petition for certiorari be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof:⁴⁶

The terms "certified true copy" and "duplicate original" were clarified in Administrative Circular 3-96, the pertinent portions of which read:

1. The "duplicate original copy" shall be understood to be that copy of the decision, judgment, resolution or order which is intended for and furnished to a party in the case or proceeding in the court or adjudicative body which rendered and issued the same. The "certified true copy" thereof shall be such other copy furnished to a party at his instance or in his behalf, duly authenticated by the authorized officers or representatives of the issuing entity as hereinbefore specified.

2. The duplicate original copy must be duly signed or initialed by the authorities or the corresponding officer or representative of the issuing entity, or shall at least bear the dry seal thereof or any other official indication of the authenticity and completeness of such copy. xxx

3. The certified true copy must further comply with all the regulations therefore of the issuing entity and it is the authenticated original of such certified true copy, and not a mere xerox copy thereof, which shall be utilized as an annex to the petition or other initiatory pleading.

Petitioner avers that she attached duplicate original copies of the assailed DOLE Orders to her petition for certiorari before the CA. A scrutiny of the records, however, shows that what she submitted were mere photocopies. Still, this Court finds that there was substantial compliance with the Rules⁴⁷ since petitioner attached to her Supplemental Motion for Reconsideration certified true copies of the questioned DOLE Orders.⁴⁸

There is ample jurisprudence holding that the subsequent and substantial compliance of an appellant may call for the relaxation of the rules of procedure. In *Cusi-Hernandez vs. Diaz* and *Piglas-Kamao vs. National Labor Relations Commission*, we ruled that the subsequent submission of the missing documents with the motion for reconsideration amounts to substantial compliance. The reasons behind the failure of the petitioners in these two cases to comply with the required attachments were no longer scrutinized. What we found noteworthy in each case was the fact that the petitioners therein substantially complied with the formal requirements. We ordered the remand of the petitions in these cases to the Court of Appeals, stressing the ruling that by precipitately dismissing the petitions "the appellate court clearly put a premium on technicalities at the expense of a just resolution of the case."

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If we were to apply the rules of procedure in a very rigid and technical sense, as what the Court of Appeals would have it in this case, the ends of justice would be defeated. In *Cusi-Hernandez vs. Diaz*, where the formal requirements were liberally construed and substantial compliance was recognized, we explained that rules of procedure are mere tools designed to expedite the decision or resolution of cases and other matters pending in court. Hence, a strict and rigid application of technicalities that tend to frustrate rather than promote substantial justice must be avoided. We further declared that:

"Cases should be determined on the merits, after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections. In that way, the ends of justice would be served better."⁴⁹

One final point. Contrary to SIDDCOR's averments, this Court finds that the petition for certiorari before the CA, which was filed on October 26, 1990, was on time. As priorly discussed, petitioner received the January 26, 1999 DOLE Order on March 11, 1999, filed a Motion for Reconsideration thereof on March 19, 1999, and received the July 26, 1999 DOLE Order denying such Motion on August 20, 1999.

In view of the retroactive application of procedural laws,⁵⁰ Section 4, Rule 65 of the 1997 Rules of Procedure, as amended by A.M. No. 00-2-03 which took effect on September 1, 2000, is the governing provision. It states:

SEC. 4. When and where petition filed. – The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court, exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.

Petitioner then had until October 19, 1999 to file a petition for certiorari before the CA. On October 11, 1999, however, as earlier stated, she filed a Special Motion for Extension of Time to File Petition for Certiorari praying

that she be allowed an additional fifteen day period or until October 26, 1999 within which to file the petition which was granted by the CA. She did file one such on October 26, 1999.

En passant, the petition would still have been considered timely filed under Section 4 of Rule 65⁵¹ before its amendment by A.M. No. 00-2-03-SC.⁵²

The emerging trend in the rulings of this Court is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.⁵³ This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses.⁵⁴ For, it is far better to dispose of a case on the merits which is a primordial end rather than on a technicality, if it be the case, that may result in injustice.⁵⁵

WHEREFORE, the assailed Resolutions of the Court of Appeals dated December 17, 1999 and February 21, 2000 are SET ASIDE. The case is REMANDED to the Court of Appeals which is hereby DIRECTED to reinstate the petition for certiorari in CA-G.R. SP No. 55585 in light of the foregoing discussions and to take appropriate action thereon.

SO ORDERED.

*Panganiban, (Chairman), Sandoval-Gutierrez, and Garcia, JJ., concur.
Corona, J., on leave.*

Footnotes

¹ *Rollo* at 96-97.

² *Id.* at 119-120.

³ ART. 32. Fees to be paid by workers. – Any person applying with a private fee charging employment agency for employment assistance shall not be charged any fee until he has obtained employment through its efforts or has actually commenced employment. Such fee shall be always covered with the appropriate receipt clearly showing the amount paid. The Secretary of Labor shall promulgate a schedule of allowable fees.

ART. 34. Prohibited practices. – It shall be unlawful for any individual, entity, licensee, or holder of authority:

(a) To charge or accept, directly or indirectly, any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor, or to make a worker pay any amount greater than that actually received by him as a loan or advance;

(b) To furnish or publish any false notice or information or document in relation to recruitment of employment;

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(i) To substitute or alter employment contracts approved and verified by the Department of Labor from the time of actual signing thereof by the parties up to and including the periods of expiration of the same without the approval of the Secretary of Labor;

ART. 116. Withholding of wages and kickbacks prohibited. – It shall be unlawful for any person directly or indirectly, to withhold any amount from the wages of a worker or induce him to give up any part of his wages by force, stealth, intimidation, threat or by any other means whatsoever without the worker's consent.

⁴ *Rollo* at 38.

⁵ *Id.* at 38-39.

⁶ *Id.* at 64-67.

⁷ POEA Records.

⁸ *Rollo* at 40-44.

⁹ *Id.* at 45-50.

¹⁰ *Id.* at 51-54.

¹¹ *Id.* at 55-61.

¹² *Id.* at 76-80.

¹³ CA Rollo at 2-3.

¹⁴ *Id.* at 6-7.

¹⁵ *Id.* at 8-18.

¹⁶ SEC. 7. *Effect of failure to comply with requirements.* – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

¹⁷ CA Rollo at 62-63.

¹⁸ *Id.* at 65-70.

¹⁹ *Id.* at 78-90.

²⁰ *Id.* at 81.

²¹ *Id.* at 82.

²² *Id.* at 83-89.

²³ *Id.* at 77-77-A.

²⁴ *Id.* at 91.

²⁵ *Ibid.*

²⁶ Rollo at 9-37.

²⁷ *Id.* at 15-16.

²⁸ *Id.* at 230-238.

²⁹ *Id.* at 232.

³⁰ *Lapid v. Laurea*, 391 SCRA 277, 284 (2002) (citation omitted).

³¹ CA Rollo at 8.

³² *Ibid.*

³³ *Id.* at 10.

³⁴ *Id.* at 23.

³⁵ *Santos v. Court of Appeals*, 360 SCRA 521, 525 (2001).

³⁶ *Mendigorin v. Cabantog*, 387 SCRA 655, 660-661 (2002) (citations omitted), *Republic v. Carmel Development, Inc.* 377 SCRA 459, 475 (2002) (citation omitted),

³⁷ *United Residents of Dominican Hill, Inc. v. Commission on the Settlement of Land Problems*, 353 SCRA 782, 800 (2001).

³⁸ *Far Eastern Shipping Company v. Court of Appeals*, 297 SCRA 30, 53 (1998).

- ³⁹ *Ortiz v. Court of Appeals*, 299 SCRA 708, 712 (1998).
- ⁴⁰ CA Rollo at 17-18.
- ⁴¹ *Id.* at 18.
- ⁴² *Vide: Far Eastern Shipping Company v. Court of Appeals*, 297 SCRA 30 (1998).
- ⁴³ CA Rollo at 18.
- ⁴⁴ *Id.* at 82.
- ⁴⁵ *Vide: Añonuevo v. Court of Appeals*, 411 SCRA 621 (2003), *Active Realty & Development Corporation v. Daroya*, 382 SCRA 152 (2002), *Ace Navigation Co., Inc. v. Court of Appeals*, 338 SCRA 70 (2000).
- ⁴⁶ *Paras v. Baldado*, 354 SCRA 141, 145 (2001).
- ⁴⁷ *Vide: Añonuevo v. Court of Appeals*, 411 SCRA 621 (2003), *Serrano v. Galant Maritime Services, Inc.* 408 SCRA 523 (2003), *Paras v. Baldado*, 354 SCRA 141 (2001).
- ⁴⁸ CA Rollo at 83-89.
- ⁴⁹ *Jaro v. Court of Appeals*, 377 SCRA 282, 297-298 (2002) (citation omitted).
- ⁵⁰ *Presidential Commission on Good Government v. Desierto*, 349 SCRA 767, 772 (2001) (citations omitted).
- ⁵¹ "If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days."
- ⁵² Petitioner had until October 11, 1999 within which to file the petition. On even date, she filed her Special Motion for Extension of Time to File Petition for Certiorari which was granted by the appellate court.
- ⁵³ *Añonuevo, Jr. v. Court of Appeals*, 411 SCRA 621, 626 (2003) (citation omitted).
- ⁵⁴ *El Reyno Homes, Inc. v. Ong*, 397 SCRA 563 (2003).
- ⁵⁵ *Serrano v. Galant Maritime Services, Inc.*, 408 SCRA 523, 528 (2003) (citations omitted).