

MOTION FOR RECONSIDERATION

July 27, 2001

REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT
NATIONAL CAPITAL JUDICIAL REGION
BRANCH 111, PASAY CITY

WILSON P. ORFINADA, ET AL.,
Plaintiffs,

- versus -

CIVIL CASE NO. 3957-P

MACARIO J. RODRIGUEZ, ET AL.,
Defendants.

X-----X

ANACLETO MADRIGAL ACOP &
JULIAN M. TALLANO,
Intervenors.

X-----X

MOTION FOR RECONSIDERATION

The Office of the Solicitor General (OSG) to this Honorable Court respectfully moves for a reconsideration of the Order dated July 11, 2001 was received on July 16, 2001. The dispositive portion of the said Order reads:

WHEREFORE, premises considered, the following documents duly appended to the petition are hereby reconstituted as integral part of the records of this case and shall carry the same force, validity and effect as that of the destroyed original copy. In particular, these documents are:

1. Decision With Compromise Agreement dated February 4, 1972; consisting of 139 pages (Exh. "F" and its submarkings);
2. Clarificatory Order dated March 21, 1971 consisting of 30 pages (Exh. "H" and its submarkings);
3. Clarificatory Decision dated January 19, 1976 consisting of 60 pages (Exh. "I"; sic 58 pages);
4. Third Alias Writ of Execution, Possession and Demolition dated May 23, 1989 consisting of 55 pages (Exh. "A");

Sec. 6. Execution by Motion or by independent action. – A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

Since the orders were issued as early as 1971, these can no longer be executed or implemented as the 10-year period mandated by the above-quoted procedural rule had lapsed.

The OSG had already made the contention in its Comment dated November 17, 1988, wherein it argued:

4. Finally, assuming their intrinsic validity, the admission of the subject documents would appear to be a mere academic exercise considering that these can no longer be executed for since more than 10 years have elapsed from the promulgation of the clarificatory judgment. This is pursuant to Section 6, Rule 39 of the Rules of Court which mandates that:

Sec. 6. Execution by motion or by independent action. – A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitation, a judgment may be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

Whether or not the subject clarificatory judgment and writ of execution are valid and/or can be executed is material to intervenor's motion through on

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its face it merely seeks their admission into the records. It would be safe to assume that the admission of these documents is not solely for admission's sake. Intervenor can certainly be expected to eventually seek execution of the subject court processes.

Significantly, this Honorable Court had previously ruled that stale orders cannot be executed. Thus:

The Clarificatory Order of January 19, 1976, assuming it validly exists and attained finality, is a judgment independently by itself notwithstanding, the fact that it was rendered precisely to modify and revise the decision of November 4, 1975. As such, and under the Rules (Sec. 6 of Rule 39, Rules of Civil Procedure as Amended 1997) it can no longer be enforced by a mere motion for more than five (5) years had already elapsed from the time it supposedly attained finality. Definitely, this court had ceased to have jurisdiction to execute by mere motion the document judgment assuming its validity exists (*Vda. De Decena vs. Delos Angeles*, 39 SCRA 94).

It cannot also be revived by a new action because under Section 6 of Rule 39, the judgment sought to be revived must not be barred by prescription. Considering that more than ten (10) years had already elapsed counted from the date (January 19, 1976) said judgment becomes final, the right to enforce the judgment had already prescribed (Art. 1144 (8), Civil Code) and any action which may be instituted to revive or enforce the said judgment is dismissible. (*PNP vs. Pacific Commission House*, 27 SCRA 766).

(p. 3, Order dated July 7, 1999)

In effect, the OSG is merely asking that this Honorable Court uphold its own prior ruling.

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PRAYER

WHEREFORE, it is respectfully prayed that the Order dated July 11, 2001 be set aside.

Makati City, for Pasay City, July 27, 2001.

SIMEON V. MARCELO

Solicitor General

IBP Lifetime Roll No. 0145, September 22, 1993

Nestor J. Ballacillo

NESTOR J. BALLACILLO

Assistant Solicitor General

IBP No. 360830, February 22, 2001


TOMAS M. NAVARRO

Solicitor

IBP No. 360839, February 22, 2001

Office of the Solicitor General

134 Amorsolo Street, Legaspi Village

Makati City

NOTICE OF HEARING

Atty. Teresita D. Abella
RCC Realty & Development Corporation
No. 4435 Calatagan Street
Palanan, Makati city

The Branch Clerk of Court
RTC – National Capital Judicial Rgion
Branch 111, Pasay City

Greetings:

Please take notice that on August 10, 2001 at 9:00 o'clock in the morning or as soon thereafter as the matter may be heard, undersigned counsel will submit the foregoing Motion for Reconsideration for the consideration and approval of the Court. Accordingly, the Branch Clerk of Court. Accordingly, the Branch Clerk of Court is requested to include the motion in the calendar of the Court for that day.


TOMAS M. NAVARRO

Solicitor

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E X P L A N A T I O N
(Under Section 11, Rule 13,
New Rules on Civil Procedure)

This pleading is not served personally because the OSG does not have sufficient personnel to personally serve all numerous pleadings it prepares evryday.


TOMAS M. NAVARRO
Solicitor

Copy furnished:

Atty. Teresits D. Abella
RCC Realty & Development Corporation
No. 4435 Calatagan Street
Palanan, Makati City

TMN/rsb/OC9309
MR-Orfinada/40