Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BANK OF THE PHILIPPINE ISLANDS SECURITIES CORPORATION,
Petitioner,

- *versus* -

EDGARDO V. GUEVARA,
Respondent.

G.R. No. 167052

Present:

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:
MAR 1 1 2015

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DECISION

LEONARDO-DE CASTRO, *J.*:

Before the Court is a Petition for Review under Rule 45 of the Rules of Court seeking the reversal and setting aside of the Decision[1] dated December 19, 2003 and Resolution[2] dated February 9, 2005 of the Court Appeals in CA-G.R. CV No. 69348, affirming the Decision[3] dated September 11, 2000 of the Regional Trial Court (RTC) of Makati City, Branch 57 in Civil Case No. 92-1445. The RTC acted favorably on the action instituted by respondent Edgardo V. Guevara for the enforcement of a foreign judgment, particularly, the Order[4] dated March 13, 1990 of the United States (U.S.) District Court for the Southern District of Texas, Houston Division (U.S. District Court), in Civil Action No. H-86-440, and ordered petitioner Bank of the Philippine Islands (BPI) Securities Corporation to pay respondent (a) the sum of US$49,500.00 with legal interest; (b) ₱250,000.00 attorney's fees and litigation expenses; and (c) costs of suit.

The facts are culled from the records of the case.

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1 *Rollo*, pp. 87-103; penned by Associate Justice Eugenio S. Labitoria with Associate Justices Mercedes Gozo-Dadole and Rosmari D. Carandang, concurring.

2 Id. at 105-112; penned by Associate Justice Marina L. Buzon with Associate Justices Mario L. Guariña III and Santiago Javier Ranada, concurring.

3 Id. at 113-117.

4 Records (Vol. I), pp. 7-9; penned by U.S. District Judge Kenneth M. Hoyt.

Ayala Corporation, a holding company, and its subsidiaries are engaged in a wide array of businesses including real estate, financial services, telecommunications, water and used water, electronics manufacturing services, automotive dealership and distributorship, business process outsourcing, power, renewable energy, and transport infrastructure.[5]

In the 1980s, Ayala Corporation was the majority stockholder of Ayala Investment and Development Corporation (AIDC). AIDC, in turn, wholly owned Philsec Investment Corporation (PHILSEC), a domestic stock brokerage firm, which was subsequently bought by petitioner; and Ayala International Finance Limited (AIFL), a Hong Kong deposit-taking corporation, which eventually became BPI International Finance Limited (BPI-IFL). PHILSEC was a member of the Makati Stock Exchange and the rules of the said organization required that a stockbroker maintain an amount of security equal to at least 50% of a client's outstanding debt.

Respondent was hired by Ayala Corporation in 1958. Respondent later became the Head of the Legal Department of Ayala Corporation and then the President of PHILSEC from September 1, 1980 to December 31, 1983. Thereafter, respondent served as Vice-President of Ayala Corporation until his retirement on August 31, 1997.

While PHILSEC President, one of respondent's obligations was to resolve the outstanding loans of Ventura O. Ducat (Ducat), which the latter obtained separately from PHILSEC and AIFL. Although Ducat constituted a pledge of his stock portfolio valued at approximately US$1.4 million, Ducat's loans already amounted to US$3.1 million. Because the security for Ducat's debts fell below the 50% requirement of the Makati Stock Exchange, the trading privileges of PHILSEC was in peril of being suspended.

Ducat proposed to settle his debts by an exchange of assets. Ducat owned several pieces of real estate in Houston, Texas, in partnership with Drago Daic (Daic), President of 1488, Inc., a U.S.-based corporation. Respondent relayed Ducat's proposal to Enrique Zobel (Zobel), the Chief Executive Officer of Ayala Corporation. Zobel was amenable to Ducat's proposal but advised respondent to send Thomas Gomez (Gomez), an AIFL employee who traveled often to the U.S., to evaluate Ducat's properties.

In December of 1982, Gomez examined several parcels of real estate that were being offered by Ducat and 1488, Inc. for the exchange. Gomez, in a telex to respondent, recommended the acceptance of a parcel of land in Harris County, Texas (Harris County property), which was believed to be worth around US$2.9 million. Gomez further opined that the "swap would

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5 http://www.ayala.com.ph/about_us/page/about-ayala (Last visited on March 3, 2015)

be fair and reasonable" and that it would be better to take this opportunity rather than pursue a prolonged legal battle with Ducat. Gomez's recommendation was brought to Zobel's attention. The property-for-debt exchange was subsequently approved by the AIFL Board of Directors even without a prior appraisal of the Harris County property. However, before the exchange actually closed, an AIFL director asked respondent to obtain such an appraisal.

William Craig (Craig), a former owner of the Harris County property, conducted the appraisal of the market value of the said property. In his January 1983 appraisal, Craig estimated the fair market value of the Harris County property at US$3,365,000.

Negotiations finally culminated in an Agreement,[6] executed on January 27, 1983 in Makati City, Philippines, among 1488, Inc., represented by Daic; Ducat, represented by Precioso Perlas (Perlas); AIFL, represented by Joselito Gallardo (Gallardo); and PHILSEC and Athona Holdings, N. V. (ATHONA), both represented by respondent. Under the Agreement, the total amount of Ducat's debts was reduced from US$3.1 million to US$2.5 million; ATHONA, a company wholly owned by PHILSEC and AIFL, would buy the Harris County property from 1488, Inc. for the price of US$2,807,209.02; PHILSEC and AIFL would grant ATHONA a loan of US$2.5 million, which ATHONA would entirely use as initial payment for the purchase price of the Harris County property; ATHONA would execute a promissory note in favor of 1488, Inc. in the sum of US$307,209.02 to cover the balance of the purchase price for the Harris County property; upon its receipt of the initial payment of US$2.5 million from ATHONA, 1488, Inc. would then fully pay Ducat's debts to PHILSEC and AIFL in the same amount; for their part, PHILSEC and AIFL would release and transfer possession of Ducat's pledged stock portfolio to 1488, Inc.; and 1488, Inc. would become the new creditor of Ducat, subject to such other terms as they might agree upon.

The series of transactions per the Agreement was eventually executed. However, after acquiring the Harris County property, ATHONA had difficulty selling the same. Despite repeated demands by 1488, Inc., ATHONA failed to pay its promissory note for the balance of the purchase price for the Harris County property, and PHILSEC and AIFL refused to release the remainder of Ducat's stock portfolio, claiming that they were defrauded into believing that the said property had a fair market value higher than it actually had.

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[6] Records (Vol. I), pp. 58-69.

Civil Action No. H-86-440 before the U.S. District Court of Southern District of Texas, Houston Division

On October 17, 1985, 1488, Inc. instituted a suit against PHILSEC, AIFL, and ATHONA for (a) misrepresenting that an active market existed for two shares of stock included in Ducat's portfolio when, in fact, said shares were to be withdrawn from the trading list; (b) conversion of the stock portfolio; (c) fraud, as ATHONA had never intended to abide by the provisions of its promissory note when they signed it; and (d) acting in concert as a common enterprise or in the alternative, that ATHONA was the alter ego of PHILSEC and AIFL. The suit was docketed as Civil Action No. H-86-440 before the U.S. District Court.

PHILSEC, AIFL, and ATHONA filed counterclaims against 1488, Inc., Daic, Craig, Ducat, and respondent, for the recovery of damages and excess payment or, in the alternative, the rescission of the sale of the Harris County property, alleging fraud, negligence, and conspiracy on the part of counter-defendants who knew or should have known that the value of said property was less than the appraisal value assigned to it by Craig.

Before the referral of the case to the jury for verdict, the U.S. District Court dropped respondent as counter-defendant for lack of evidence to support the allegations against him. Respondent then moved in open court to sanction petitioner (formerly PHILSEC), AIFL, and ATHONA based on Rule 11 of the U.S. Federal Rules of Civil Procedure.[7]

In its Order dated March 13, 1990, the U.S. District Court stated that on February 14, 1990, after trial, the jury returned a verdict for 1488, Inc.

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[7] Rule 11. Signing of Pleadings, Motions, and Other Papers; Sanctions.

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper, that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee. (Records [Vol. I], p. 636.)

In the same Order, the U.S. District Court ruled favorably on respondent's pending motion for sanction, thus:

> During the course of the trial, the Court was required to review plaintiff's Exhibit No. 91 to determine whether the exhibit should be admitted. After reviewing the exhibit and hearing the evidence, the Court concluded that the defendants' counterclaims against Edgardo V. Guevara are frivolous and brought against him simply to humiliate and embarrass him. It is the opinion of the Court that the defendants, Philsec Investment Corporation, A/K/A BPI Securities, Inc., and Ayala International Finance Limited, should be sanctioned appropriately based on Fed. R. Civ. P. 11 and the Court's inherent powers to punish unconscionable conduct. Based upon the motion and affidavit of Edgardo V. Guevara, the Court finds that $49,450 is reasonable punishment.
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> ORDERED that defendants, Philsec Investment Corporation A/K/A BPI Securities, Inc., and Ayala International Finance Limited, jointly and severally, shall pay to Edgardo V. Guevara $49,450 within 30 days of the entry of this order.[8]

Petitioner, AIFL, and ATHONA appealed the jury verdict, as well as the aforementioned order of the U.S. District Court for them to pay respondent US$49,450.00; while 1488, Inc. appealed a post-judgment decision of the U.S. District Court to amend the amount of attorney's fees awarded. The appeals were docketed as Case No. 90-2370 before the U.S. Court of Appeals, Fifth Circuit.

The U.S. Court of Appeals rendered its Decision on September 3, 1991 affirming the verdict in favor of 1488, Inc. The U.S. Court of Appeals found no basis for the allegations of fraud made by petitioner, AIFL, and ATHONA against 1488, Inc., Daic, Craig, and Ducat:

> [2] To state a cause of action for fraud under Texas law, a plaintiff must allege sufficient facts to show:
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> (1) that a material representation was made;
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> (2) that it was false;
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> (3) that when the speaker made it he knew that it was false or made it recklessly without any knowledge of the truth and as a positive assertion;
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> (4) that he made it with the intention that it should be acted on by the party;
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> (5) that the party acted in reliance upon it;
>
> (6) that he thereby suffered injury.
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> *Stone v. Lawyers Title Ins. Corp.*, 554 S.W.2d 183, 185 (Tex.1977). We agree with the district court's decision to grant a directed verdict against

[8] Records (Vol. I), p. 9.

the defendants. The defendants failed to allege sufficient facts to establish the elements necessary to demonstrate fraud. In particular, the defendants have failed to allege any facts that would tend to show that the plaintiff or any of the third party defendants made a false representation or a representation with reckless disregard as to its truth.

The Houston real estate market was extremely volatile during the late 1970's and the early 1980's. Like a stream of hot air, property values rose rapidly as the heat and fury generated by speculation and construction plans mounted, but, just as rapidly, the climate cooled and the high-flying market came crashing to an all time low. The real estate transaction involved in this case was certainly affected by this environment of capriciousness. Moreover, a number of additional variables may have contributed to the uncertainty of its value. For instance, the land abutted a two-lane asphalt road that had been targeted by the state for conversion into a major multi-lane divided highway. Water and sewage treatment facilities were located near the boundary lines of the property. In addition, Houston's lack of conventional zoning ordinances meant that the value of the property could fluctuate depending upon the use (commercial or residential) for which the property would ultimately be used.

[3] The fact that the defendants were unable to sell the property at the price for which it had been appraised does not demonstrate that the plaintiff or the third party defendants knew that the value of the property was less than the appraised value, nor does it establish that the opposing parties were guilty of negligent misrepresentation or negligence.

[4] In support of their allegation of fraud, the defendants rely heavily on a loan application completed by 1488 shortly before the subject property was transferred to Athona. *See* Defendant's Exhibit 29. At the time, 1488 still owed approximately $300,000 to Republic of Texas Savings Association on its original loan for the subject property. The debt had matured and 1488 was planning to move the loan to Home Savings Association of Houston, that is, take out a loan from Home Savings to pay off the debt to Republic. 1488 had planned to borrow $350,000 for that purpose. A line item on the Home Savings loan application form asked for the amount of the loan as a percentage of the appraised value of the land. A figure of thirty-nine percent was typed into that space, and the defendants suggest that this proves that the plaintiff knew Craig's appraisal was erroneous. The defendants reason that if the $350,000 loan amount was only thirty-nine percent of the land's appraised value, then the real estate must have been worth approximately $897,436.

Although their analysis is sound, the conclusion reached by the defendants cannot withstand additional scrutiny. At the time that the loan application was completed, 1488 did not request to have a new appraisal done for the property. Instead, 1488 planned to use the numbers that had been generated for a quasi-appraisal done in 1977. The 1977 report purported only to "supplement" an earlier appraisal that had been conducted in 1974, and the supplement described its function as estimating market value "for mortgage loan purposes" only. *See* Defendant's Trial Exhibit 4. The two page supplement was based on such old information that even the Home Savings Association would not accept it without additional collateral as security for the loan. *See* Record on Appeal, Vol. 17 at 5-29 to 5-30. The loan, however, was never made because the property was transferred to Athona, and the outstanding loan

to Republic was paid off as part of that transaction. In addition, the loan application itself was never signed by anyone affiliated with 1488. The district court was correct in dismissing this argument in support of the defendant's fraud allegations.

[5] The defendants also allege that the plaintiff and counter defendants knew that Craig's appraisal was fraudulent because the purchaser's statement signed by their own representative, and the seller's statement, signed by the plaintiff, as well as the title insurance policy all recited a purchase price of $643,416.12. Robert Higgs, general counsel for 1488, explained that because of the nature of the transaction, 1488, for tax purposes, wanted the purchase price on the closing statement to reflect only that amount of cash actually exchanged at the closing as well as the promissory note given at the closing. *See* Record on Appeal, Vol. 17 at 5-127. Although the closing documents recite a purchase price well under the actual sales price, nothing indicates that any of the parties actually believed the property to be worth less than the sales amount.

The defendants also assert that it was error for the district court to deny them permission to designate O. Frank McPherson, a Houston appraiser, as an expert witness after the cutoff date established by a pretrial order for such designations. The defendants contend that the error prevented them from presenting facts that would support their fraud allegations. Although the defendants were allowed to present the testimony of another expert witness on the subject of valuation, they argue that McPherson's testimony was critical because he had performed an appraisal of the property for the Texas Highway Department close to the time period during which Craig had made his appraisal. McPherson's appraisal was performed as part of the State's condemnation proceedings that preceded the planned highway expansion next to the subject property.

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[9] In their briefs, the defendants fail to provide an adequate explanation for their failure to identify their expert witness in accordance with the district court's pretrial order. This law suit was initiated in 1985, and the defendants had until November of 1988 to designate their expert witnesses. The defendants were aware of the condemnation proceedings, and they, therefore, had approximately three years to determine the identity of any appraiser used by the state. The defendants simply failed to make this inquiry.

Enforcement of the district court's pretrial order did not leave the defendants without an expert witness on the issue of valuation, and the available expert had also conducted appraisals for the Texas Highway Department in the area surrounding the subject property. x x x

Although the degree of prejudice suffered by the plaintiff due to the late designation of an expert would not have been great, a district court still has the discretion to control pretrial discovery and sanction a party's failure to follow a scheduling order. *See id.* at 791. Such action is particularly appropriate here, where the defendants have failed to provide an adequate explanation for their failure to identify their expert within the designated timetable.

x x x x

> The defendants failed to produce enough evidence from which fraud could be inferred to justify the submission of the issue to a jury. Conclusional allegations or speculation regarding what the plaintiff knew or did not know concerning the value of the subject property are insufficient to withstand a motion for a directed verdict. The district court committed no error in granting the motion.
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> Since the defendants failed to present the district court with any facts that would tend to show that the plaintiffs committed a fraud against them, their claim of a conspiracy to commit fraud must also fail.[9]

The U.S. Court of Appeals likewise adjudged that petitioner, AIFL, and ATHONA failed to prove negligence on the part of 1488, Inc., Daic, Craig, and Ducat in the appraisal of the market value of the said property:

> [10, 11] The defendants have likewise failed to present any facts that would tend to support their claim of negligent misrepresentation or negligence. The defendants rely on assumptions and unsupportable conclusions of law in establishing their case for negligence: "*Assuming* the Property's true value is less than $800,000, it is reasonable to *assume* that the counter defendants failed to exercise reasonable care or competence . . ." Brief for Athona at 45-46 x x x. A party may not rely on assumptions of fact to carry their case forward. The defendants have presented no facts to suggest that the plaintiff was negligent in acquiring its appraisal. The plaintiff hired Craig, a real estate broker, to perform the appraisal after the defendants had already given their initial approval for the transaction. Craig had performed real estate appraisals in the past, and Texas law permits real estate brokers to conduct such appraisals, *see* Tex.Rev.Civ.Stat.Ann. art. 6573a, §2(2)(E) (Vernon Supp. 1988) (Original version at Tex.Rev.Civ.Stat.Ann. art. 6573a, §4(1)(e) (Vernon 1969). These facts do not support a claim of negligence.
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> For the foregoing reasons the district court committed no error in granting a directed verdict against the counterclaims advanced by the defendants.[10]

The U.S. Court of Appeals, however, vacated the award of exemplary damages in favor of 1488, Inc. for the fraudulent misrepresentation regarding the marketability of the two shares of stock in Ducat's portfolio. Under Texas law, a jury may not award damages unless it was determined that the plaintiff had also sustained actual damages. The U.S. Court of Appeals agreed with petitioner, AIFL, and ATHONA that 1488, Inc. brought its suit alleging fraudulent misrepresentation after the two-year statute of limitation had expired. The misrepresentation issue should never have gone to the jury. Therefore, the jury's finding of actual damages is nullified; and since the jury verdict is left without a specific finding of actual damages, the award of exemplary damages must be vacated.

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9 Id. at 268-271.

10 Id. at 271-272.

The U.S. Court of Appeals also vacated the award of Rule 11 sanctions in favor of respondent and against petitioner, AIFL, and ATHONA for being rendered without due process, and remanded the issue to the U.S. District Court:

> [18-20] The Rule 11 motion was first made by Guevara on February 14, 1990, and the court immediately ruled on the issue without giving the defendants an opportunity to prepare a written response. *See* Record on Appeal, Vol. 22 at 10-25 to 10-37. Although, the defendants were given an opportunity to speak, we conclude that the hearing failed to comport with the requirements of due process, which demand that the defendants be provided with adequate notice and an opportunity to prepare a response. *See Henderson v. Department of Public Safety and Corrections*, 901 F.2d 1288, 1293-94 (5th Cir.1990). Providing specific notice and an opportunity to respond is particularly important in cases, such as the one before us, in which the sanctions have been imposed on the clients and not the attorneys. *See Donaldson v. Clark*, 819 F.2d 1551, 1560 (11th Cir.1987) ("If sanctions are proposed to be imposed on the client, due process will demand more specific notice because the client is likely unaware of the existence of Rule 11 and should be given the opportunity to prepare a defense."). A separate hearing is not a prerequisite to the imposition of Rule 11 sanctions, *see Donaldson*, 819 F.2d at 1560 n. 12, but the defendants in this case, should have been given more of an opportunity to respond to the motion than that provided at the hearing in which the motion was first raised. Providing the defendant with an opportunity to mount a defense "on the spot" does not comport with due process. Given that the defendants were not provided with adequate notice or an opportunity to be heard, we vacate the award of sanctions and remand so that the district court can provide the defendants with an adequate opportunity to be heard.[11]

Finally, the U.S. Court of Appeals similarly vacated the award of attorney's fees and remanded the matter to the U.S. District Court for recalculation to conform with the requirements provided in the promissory note.

In accordance with the Decision dated September 3, 1991 of the U.S. Court of Appeals, the U.S. District Court issued an Order[12] dated October 28, 1991 giving petitioner, AIFL, and ATHONA 20 days to formally respond to respondent's motion for Rule 11 sanctions. Petitioner, AIFL, and ATHONA jointly filed before the U.S. District Court their opposition to respondent's motion for Rule 11 sanctions.[13] Respondent filed his reply to the opposition, to which petitioner, AIFL, and ATHONA, in turn, filed a reply-brief.[14]

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11 Id. at 274-275.
12 Id. at 277-278.
13 Id. at 279-288.
14 Id. at 289-298 and 591-598.

In an Order[15] dated December 31, 1991, the U.S. District Court still found respondent's motion for Rule 11 sanctions meritorious and reinstated its Order dated March 13, 1990:

> The basis of the Court's prior decision as well as now is the fact that the defendants filed suit against Guevara with knowledge that the basis of the suit was unfounded. In the defendants' file was an appraisal from an international appraisal firm, which the defendants refused to disclose during discovery and was only discovered at a bench conference during a discussion about appraisers. Based on the defendants' own appraisers, no basis existed for a suit by the defendants against their employee.
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> The previous judgment entered by this Court is REINSTATED.

The above-quoted Order of the U.S. District Court attained finality as it was no longer appealed by petitioner, AIFL, and ATHONA.

Through a letter dated February 18, 1992, respondent demanded that petitioner pay the amount of US$49,450.00 awarded by the U.S. District Court in its Order dated March 13, 1990. Given the continuous failure and/or refusal of petitioner to comply with the said Order of the U.S. District Court, respondent instituted an action for the enforcement of the same, which was docketed as Civil Case No. 92-1445 and raffled to the RTC of Makati City, Branch 57.

Civil Case No. 92-1445 before Branch 57 of the RTC of Makati City

In his Complaint for the enforcement of the Order dated March 13, 1990 of the U.S. District Court in Civil Action No. H-86-440, respondent prayed that petitioner be ordered to pay:

> 1. The sum of US$49,450.00 or its equivalent in Philippine Pesos x x x with interest from date of demand;
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> 2. Attorney's fees and litigation expenses in the sum of ₱250,000.00;
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> 3. Exemplary damages of ₱200,000.00; and
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> 4. Costs of the suit.[16]

In its Amended Answer *Ad Cautelam*,[17] petitioner opposed the enforcement of the Order dated March 13, 1990 of the U.S. District Court on the grounds that it was rendered upon a clear mistake of law or fact and/or in violation of its right to due process.

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15 Id. at 10-11.
16 Id. at 3.
17 Id. at 328.

In the course of the pre-trial and scheduled trial proceedings, the parties respectively manifested before the court that they were dispensing with the presentation of their witnesses since the subject matter of their testimonies had already been stipulated upon.[18]

Thereafter, the parties formally offered their respective evidence which entirely consisted of documentary exhibits. Respondent submitted authenticated and certified true copies of Rule 11 of the U.S. Federal Rules of Civil Procedure;[19] the Orders dated March 13, 1990, October 28, 1991, and December 31, 1991 of the U.S. District Court in Civil Action No. H-86-440;[20] the Decision dated September 3, 1991 of the U.S. Court of Appeals in Case No. 90-2370;[21] and the opposition to respondent's motion for Rule 11 sanctions and reply-brief filed by PHILSEC, AIFL, and ATHONA before the U.S. District Court.[22] Petitioner presented photocopies of pleadings, documents, and transcripts of stenographic notes in Civil Action No. H-86-440 before the U.S. District Court;[23] the pleadings filed in other cases related to Civil Case No. 92-1440;[24] and a summary of lawyer's fees incurred by petitioner in the U.S.[25] The RTC admitted in evidence the documentary exhibits of the parties in its Orders dated September 21, 1998 and February 8, 1999,[26] and then deemed the case submitted for decision.

The RTC rendered a Decision on September 11, 2000 with the following dispositive portion:

> WHEREFORE, judgment is hereby rendered in favor of [respondent] Edgardo V. Guevara ordering [petitioner] BPI Securities Corporation to pay [respondent] the following:
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> 1. the sum of US$49,500.00 with legal interest from the filing of this case until fully paid;
>
> 2. the sum of ₱250,000.00 as attorney's fees and litigation expenses; and
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> 3. the costs of suit.
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> An award of exemplary damages for ₱200,000.00 is denied for being speculative.[27]

Petitioner appealed to the Court of Appeals, assigning the following errors on the part of the RTC:

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18 Id. at 574, 651, and 665.
19 Id. at 636.
20 Id. at 578-580, 589-590, and 619-620.
21 Id. at 581-588.
22 Id. at 609-618 and 591-598.
23 Records (Vols. II-V); Exhibits 1-46.
24 Id.; Exhibits 47-51.
25 Id.; Exhibit 52.
26 Records (Vol. I), pp. 575 and 640; 679 and 714.
27 *Rollo*, p. 117.

> A. The trial court erred in not passing upon the merit or validity of [petitioner's] defenses against the enforcement of the foreign judgment in the Philippines.
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> Had the trial court considered [petitioner's] defenses, it would have concluded that the foreign judgment was not enforceable because it was made upon a clear mistake of law or fact and/or was made in violation of the [petitioner's] right to due process.
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> B. The trial court erred in not utilizing the standard for determining the enforceability of the foreign award that was agreed upon by the parties to this case during the pre-trial, namely, did the defendants in the Houston case (PHILSEC, AIFL, AND ATHONA) have reasonable grounds to implead [respondent] in the Houston case based upon the body of the evidence submitted therein. Thus, whether or not PHILSEC, AIFL and ATHONA ultimately prevailed against [respondent] was immaterial or irrelevant; the question only was whether they had reasonable grounds to proceed against him, for if they had, then there was admittedly no basis for the Rule 11 award against them by the Houston Court.
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> x x x x
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> C. In the light of its ruling, the trial court failed to pass upon and resolve the other issues and/or defenses expressly raised by [petitioner], including the defense that PHILSEC, AIFL, and ATHONA were deprived of their right to defend themselves against the Rule 11 sanction and the main decision because of the prohibitive cost of legal representation in the us and also because of the gross negligence of its US counsel. x x x.[28]

In its Decision dated December 19, 2003, the Fifth Division of the Court of Appeals decreed:

> **WHEREFORE**, the Decision dated 11 September 2000 in Civil Case No. 92-1445 of the Regional Trial Court of Makati, Branch 57, is hereby **AFFIRMED** in all respect with costs against [petitioner].[29]

In its Motion for Reconsideration,[30] petitioner lamented that the Fifth Division of the Court of Appeals failed to resolve on its own petitioner's appeal as the Decision dated December 19, 2003 of the said Division was copied almost *verbatim* from respondent's brief. Thus, petitioner prayed that the Fifth Division of the Court of Appeals recuse itself from deciding petitioner's Motion for Reconsideration and that the case be re-raffled to another division.

The Fifth Division of the Court of Appeals maintained in its Resolution dated May 25, 2004 that the issues and contentions of the parties were all duly passed upon and that the case was decided according to its

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28 CA *rollo*, pp. 20-21.
29 *Rollo*, p. 102.
30 CA *rollo*, pp. 180-197.

merits. The said Division, nonetheless, abstained from resolving petitioner's Motion for Reconsideration and directed the re-raffle of the case.[31]

Petitioner's Motion for Reconsideration was re-raffled to and subsequently resolved by the Tenth Division of the Court of Appeals. In its Resolution dated February 9, 2005, the Tenth Division of the appellate court denied the said Motion for lack of merit.[32]

Hence, petitioner seeks recourse from this Court via the instant Petition for Review, insisting that the Court of Appeals erred in affirming the RTC judgment which enforced the Order dated March 13, 1990 of the U.S. District Court in Civil Action No. H-86-440.

Petitioner contends that it was not accorded by the Court of Appeals the right to refute the foreign judgment pursuant to Rule 39, Section 48 of the Rules of Court because the appellate court gave the effect of *res judicata* to the said foreign judgment. The Court of Appeals copied wholesale or *verbatim* the respondent's brief without addressing the body of evidence adduced by petitioner showing that it had reasonable grounds to implead respondent in Civil Action No. H-86-440.

Petitioner asserts that the U.S. District Court committed a clear mistake of law and fact in its issuance of the Order dated March 13, 1990, thus, said Order is unenforceable in this jurisdiction. Petitioner discusses in detail its evidence proving that respondent, together with 1488, Inc., Ducat, Craig, and Daic, induced petitioner to agree to a fraudulent deal. Petitioner points out that respondent had the duty of looking for an independent and competent appraiser of the market value of the Harris County property; that instead of choosing an unbiased and skilled appraiser, respondent connived with 1488, Inc., Ducat, and Daic in selecting Craig, who turned out to be the former owner of the Harris County property and a close associate of 1488, Inc. and Daic; and that respondent endorsed to petitioner Craig's appraisal of the market value of the Harris County property, which was overvalued by more than 400%.

According to petitioner, it had reasonable grounds to implead respondent in Civil Action No. H-86-440 so the sanction imposed upon it under Rule 11 of the U.S. Federal Rules of Civil Procedure was unjustified. Petitioner additionally argues that there is no basis for the U.S. District Court to impose upon it the Rule 11 sanction as there is nothing in the said provision which allows "the imposition of sanctions for simply bringing a meritless lawsuit." If the Rule 11 sanction was imposed upon petitioner as punishment for impleading a party (when it had reasonable basis for doing so) and not prevailing against said party, then, petitioner claims that such a sanction is against Philippine public policy and should not be enforced in this jurisdiction. Settled in this jurisdiction that there should be no premium

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31 Id. at 250-251.

32 Id. at 260-267.

attached to the right to litigate, otherwise parties would be very hesitant to assert a claim in court.

Petitioner further alleges that it was denied due process in Civil Action No H-86-440 because: (1) the U.S. District Court imposed the Rule 11 sanction on the basis of a single document, *i.e.*, the letter dated September 26, 1983 of Bruce C. Bossom, a partner at Jones Lang Wooton, a firm of chartered surveyors and international real estate consultants, addressed to a Mr. Senen L. Matoto of AIFL (marked as Exhibit 91 before the U.S. District Court), which was never admitted into evidence; (2) in said letter, Jones Lang Wooton was "soliciting a listing agreement" and in which the "said firm unilaterally, without being asked as to the value of the [Harris County] property, indicated a value for the [same] which approximate[d] with the value given in the Craig appraisal," hence, it cannot be used as basis to conclude that petitioner, AIFL, and ATHONA assented to Craig's appraisal of the Harris County property; (3) the counsel who represented petitioner, AIFL, and ATHONA in Civil Action No. H-86-440 before the U.S. District Court was grossly ignorant and/or negligent in the prosecution of their counterclaims and/or in proving their defenses, such as when said counsel failed to present an expert witness who could have testified as to the actual market value of the Harris County property or when said counsel failed to discredit respondent's credibility despite the availability of evidence that respondent had been previously fined by the Philippine Securities and Exchange Commission for "stock manipulation;" and (4) the excessive and unconscionable legal fees charged by their U.S. counsel effectively prevented them from making further appeal.

The Court finds the Petition bereft of merit.

In *Mijares v. Rañada*,[33] the Court extensively discussed the underlying principles for the recognition and enforcement of foreign judgments in Philippine jurisdiction:

> There is no obligatory rule derived from treaties or conventions that requires the Philippines to recognize foreign judgments, or allow a procedure for the enforcement thereof. However, generally accepted principles of international law, by virtue of the incorporation clause of the Constitution, form part of the laws of the land even if they do not derive from treaty obligations. The classical formulation in international law sees those customary rules accepted as binding result from the combination two elements: the established, widespread, and consistent practice on the part of States; and a psychological element known as the *opinion juris sive necessitates* (opinion as to law or necessity). Implicit in the latter element is a belief that the practice in question is rendered obligatory by the existence of a rule of law requiring it.
>
> While the definite conceptual parameters of the recognition and enforcement of foreign judgments have not been authoritatively established, the Court can assert with certainty that such an undertaking is

[33] 495 Phil. 372, 395-397 (2005).

> among those generally accepted principles of international law. As earlier demonstrated, there is a widespread practice among states accepting in principle the need for such recognition and enforcement, albeit subject to limitations of varying degrees. The fact that there is no binding universal treaty governing the practice is not indicative of a widespread rejection of the principle, but only a disagreement as to the imposable specific rules governing the procedure for recognition and enforcement.
>
> Aside from the widespread practice, it is indubitable that the procedure for recognition and enforcement is embodied in the rules of law, whether statutory or jurisprudential, adopted in various foreign jurisdictions. In the Philippines, this is evidenced primarily by Section 48, Rule 39 of the Rules of Court which has existed in its current form since the early 1900s. Certainly, the Philippine legal system has long ago accepted into its jurisprudence and procedural rules the viability of an action for enforcement of foreign judgment, as well as the requisites for such valid enforcement, as derived from internationally accepted doctrines. Again, there may be distinctions as to the rules adopted by each particular state, but they all prescind from the premise that there is a rule of law obliging states to allow for, however generally, the recognition and enforcement of a foreign judgment. The bare principle, to our mind, has attained the status of *opinio juris* in international practice.
>
> This is a significant proposition, as it acknowledges that the procedure and requisites outlined in Section 48, Rule 39 derive their efficacy not merely from the procedural rule, but by virtue of the incorporation clause of the Constitution. Rules of procedure are promulgated by the Supreme Court, and could very well be abrogated or revised by the high court itself. Yet the Supreme Court is obliged, as are all State components, to obey the laws of the land, including generally accepted principles of international law which form part thereof, such as those ensuring the qualified recognition and enforcement of foreign judgments. (Citations omitted.)

It is an established international legal principle that final judgments of foreign courts of competent jurisdiction are reciprocally respected and rendered efficacious subject to certain conditions that vary in different countries.[34] In the Philippines, a judgment or final order of a foreign tribunal cannot be enforced simply by execution. Such judgment or order merely creates a right of action, and its non-satisfaction is the cause of action by which a suit can be brought upon for its enforcement.[35] An action for the enforcement of a foreign judgment or final order in this jurisdiction is governed by Rule 39, Section 48 of the Rules of Court, which provides:

> SEC. 48. *Effect of foreign judgments or final orders.* – The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is as follows:
>
> (a) In case of a judgment or final order upon a specific thing, the judgment or final order is conclusive upon the title to the thing; and

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34 *St. Aviation Services Co., Pte., Ltd. v. Grand International Airways, Inc.*, 535 Phil. 757, 762 (2006).

35 *See* Florenz D. Regalado, *Remedial Law Compendium*, Volume II (Ninth Revised Edition), p. 524; citing *Perkins v. Benguet Consolidated Mining Co.*, 93 Phil. 1035 (1953).

> (b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.
>
> In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

The Court expounded in *Mijares* on the application of the aforequoted provision:

> There is an evident distinction between a foreign judgment in an action *in rem* and one *in personam*. For an action *in rem*, the foreign judgment is deemed conclusive upon the title to the thing, while in an action *in personam*, the foreign judgment is presumptive, and not conclusive, of a right as between the parties and their successors in interest by a subsequent title. However, in both cases, the foreign judgment is susceptible to impeachment in our local courts on the grounds of want of jurisdiction or notice to the party, collusion, fraud, or clear mistake of law or fact. Thus, the party aggrieved by the foreign judgment is entitled to defend against the enforcement of such decision in the local forum. It is essential that there should be an opportunity to challenge the foreign judgment, in order for the court in this jurisdiction to properly determine its efficacy.
>
> It is clear then that **it is usually necessary for an action to be filed in order to enforce a foreign judgment, even if such judgment has conclusive effect as in the case of *in rem* actions, if only for the purpose of allowing the losing party an opportunity to challenge the foreign judgment, and in order for the court to properly determine its efficacy. Consequently, the party attacking a foreign judgment has the burden of overcoming the presumption of its validity**.
>
> The rules are silent as to what initiatory procedure must be undertaken in order to enforce a foreign judgment in the Philippines. But there is no question that the filing of a civil complaint is an appropriate measure for such purpose. A civil action is one by which a party sues another for the enforcement or protection of a right, and clearly an action to enforce a foreign judgment is in essence a vindication of a right prescinding either from a "conclusive judgment upon title" or the "presumptive evidence of a right." Absent perhaps a statutory grant of jurisdiction to a quasi-judicial body, the claim for enforcement of judgment must be brought before the regular courts.
>
> There are distinctions, nuanced but discernible, between the cause of action arising from the enforcement of a foreign judgment, and that arising from the facts or allegations that occasioned the foreign judgment. They may pertain to the same set of facts, but there is an essential difference in the right-duty correlatives that are sought to be vindicated. For example, in a complaint for damages against a tortfeasor, the cause of action emanates from the violation of the right of the complainant through the act or omission of the respondent. On the other hand, **in a complaint for the enforcement of a foreign judgment awarding damages from the same tortfeasor, for the violation of the same right through the**

> **same manner of action, the cause of action derives not from the tortious act but from the foreign judgment itself**.
>
> More importantly, the matters for proof are different. Using the above example, the complainant will have to establish before the court the tortious act or omission committed by the tortfeasor, who in turn is allowed to rebut these factual allegations or prove extenuating circumstances. Extensive litigation is thus conducted on the facts, and from there the right to and amount of damages are assessed. On the other hand, **in an action to enforce a foreign judgment, the matter left for proof is the foreign judgment itself, and not the facts from which it prescinds.**
>
> As stated in Section 48, Rule 39, the **actionable issues are generally restricted to a review of jurisdiction of the foreign court, the service of personal notice, collusion, fraud, or mistake of fact or law. The limitations on review [are] in consonance with a strong and pervasive policy in all legal systems to limit repetitive litigation on claims and issues. Otherwise known as the policy of preclusion, it seeks to protect party expectations resulting from previous litigation, to safeguard against the harassment of defendants, to insure that the task of courts not be increased by never-ending litigation of the same disputes, and – in a larger sense – to promote what Lord Coke in the *Ferrer's Case* of 1599 stated to be the goal of all law: "rest and quietness." If every judgment of a foreign court were reviewable on the merits, the plaintiff would be forced back on his/her original cause of action, rendering immaterial the previously concluded litigation**.[36] (Emphases supplied, citations omitted.)

Also relevant herein are the following pronouncements of the Court in *Minoru Fujiki v. Marinay*[37]:

> A petition to recognize a foreign judgment declaring a marriage void does not require relitigation under a Philippine court of the case as if it were a new petition for declaration of nullity of marriage. **Philippine courts cannot presume to know the foreign laws under which the foreign judgment was rendered. They cannot substitute their judgment on the status, condition and legal capacity of the foreign citizen who is under the jurisdiction of another state. Thus, Philippine courts can only recognize the foreign judgment <u>as a fact</u> according to the rules of evidence.**
>
> Section 48(b), Rule 39 of the Rules of Court provides that a foreign judgment or final order against a person creates a "presumptive evidence of a right as between the parties and their successors in interest by a subsequent title." Moreover, Section 48 of the Rules of Court states that "the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact." **Thus, Philippine courts exercise limited review on foreign judgments. Courts are not allowed to delve into the merits of a foreign judgment. Once a foreign judgment is admitted and proven in a Philippine court, it can only be repelled on grounds external to its merits, *i.e.*, "want of jurisdiction, want of notice to the party,**

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36 *Mijares v. Rañada*, supra note 33 at 383-386.

37 G.R. No. 196049, June 26, 2013, 700 SCRA 69, 91-92.

> **collusion, fraud, or clear mistake of law or fact." The rule on limited review embodies the policy of efficiency and the protection of party expectations, as well as respecting the jurisdiction of other states**. (Emphases supplied, citations omitted.)

As the foregoing jurisprudence had established, recognition and enforcement of a foreign judgment or final order requires only proof of fact of the said judgment or final order. In an action *in personam*, as in the case at bar, the foreign judgment or final order enjoys the disputable presumption of validity. It is the party attacking the foreign judgment or final order that is tasked with the burden of overcoming its presumptive validity.[38] A foreign judgment or final order may only be repelled on grounds external to its merits, particularly, want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

The fact of a foreign final order in this case is not disputed. It was duly established by evidence submitted to the RTC that the U.S. District Court issued an Order on March 13, 1990 in Civil Action No. H-86-440 ordering petitioner, AIFL, and ATHONA, to pay respondent the sum of US$49,450.00 as sanction for filing a frivolous suit against respondent, in violation of Rule 11 of the U.S. Federal Rules of Civil Procedure. The said Order became final when its reinstatement in the Order dated December 31, 1991 of the U.S. District Court was no longer appealed by petitioner, AIFL, and/or ATHONA.

The Order dated March 13, 1990 of the U.S. District Court in Civil Action No. H-86-440 is presumptive evidence of the right of respondent to demand from petitioner the payment of US$49,450.00 even in this jurisdiction. The next question then is whether petitioner was able to discharge the burden of overcoming the presumptive validity of said Order.

The Court rules in the negative.

In complete disregard of the limited review by Philippine courts of foreign judgments or final orders, petitioner opposes the enforcement of the Order dated March 13, 1990 of the U.S. District Court on the very same allegations, arguments, and evidence presented before and considered by the U.S. District Court when it rendered its verdict imposing the Rule 11 sanction against petitioner. Petitioner attempts to convince the Court that it is necessary to look into the merits of the Order dated March 13, 1990 because the U.S. District Court committed clear mistake of law and fact in issuing the same. The Court, however, is not convinced. A Philippine court will not substitute its own interpretation of any provision of the law or rules of procedure of another country, nor review and pronounce its own judgment on the sufficiency of evidence presented before a competent court of another jurisdiction. Any purported mistake petitioner attributes to the U.S. District Court in the latter's issuance of the Order dated March 13,

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[38] *Philippine Aluminum Wheels, Inc. v. Fasgi Enterprises, Inc.*, 396 Phil. 893, 909-910 (2000).

1990 would merely constitute an error of judgment in the exercise of its legitimate jurisdiction, which could have been corrected by a timely appeal before the U.S. Court of Appeals.

Petitioner cannot insist that the RTC and the Court of Appeals resolve the issue of whether or not petitioner, AIFL, and ATHONA had reasonable grounds to implead respondent as a counter-defendant in Civil Action No. H-86-440. Although petitioner submitted such an issue for resolution by the RTC in its Pre-Trial Brief, the RTC did not issue any pre-trial order actually adopting the same. In addition, petitioner was also unable to lay the basis, whether in U.S. or Philippine jurisdiction, for the use of the "reasonable grounds standard" for determining a party's liability for or exemption from the sanctions imposed for violations of Rule 11 of the U.S. Federal Rules of Civil Procedure. Equally baseless is petitioner's assertion that the Rule 11 sanction is contrary to public policy and in effect, puts a premium on the right to litigate. It bears to stress that the U.S. District Court imposed the Rule 11 sanction upon petitioner, AIFL, and ATHONA for their frivolous counterclaims against respondent intended to simply humiliate and embarrass respondent; and not because petitioner, AIFL, and ATHONA impleaded but lost to respondent.

Contrary to the claims of petitioner, both the RTC and the Court of Appeals carefully considered the allegations, arguments, and evidence presented by petitioner to repel the Order dated March 13, 1990 of the U.S. District Court in Civil Action No. H-86-440. Worthy of reproducing herein are the following portions of the RTC judgment:

> [Petitioner's] contention that the judgment sought to be enforced herein is violative of its right to due process and contrary to public policy because the Houston Court relied upon Exhibit 91 (which is [petitioner BPI Securities'] Exh. "1" in this case) and the US Court disregarded the evidence on record in the Houston Action is unavailing. **Whether or not said Exhibit 91 (petitioner's Exh. "1") is inadmissible or is not entitled to any weight is a question which should have been addressed to the US of Court of Appeals by [petitioner]. To ask a Philippine court to pass upon the admissibility or weight of Exh. 91 is violative of our public policy not to substitute our judgment for that of a competent court of another jurisdiction.**
>
> [Petitioner] does not deny the fact that the judgment awarding sanctions based on [Rule 11 of the U.S.] Federal Rules of Civil Procedure was elevated to the United States Court of Appeals for the Fifth Circuit which remanded the case to the District Court precisely to give [petitioner] a reasonable opportunity to be heard. After remand, the District Court ordered [petitioner] to file its response to the motion of [respondent] for sanctions and after the filing of their respective briefs, the District Court reinstated the former judgment.
>
> Certainly, under these circumstances, the claim of violation of due process cannot be sustained since [petitioner] was given reasonable opportunity to present its side before the imposition of sanctions.

x x x x

[Petitioner] likewise argued that the US District Court committed a clear mistake of law or fact and in support thereof presented Exhibits "10" to "18" to establish that the fair market value of the Houston property in January 1983 was no longer US$800,000.00 by the admissions against interest of 1488 itself, of Craig who submitted the fraudulent appraisal, and by the previous owners of the said property and to "show that [respondent] Guevara was either directly involved in the conspiracy against the Houston defendants in submitting to the latter a fraudulent appraisal of W. Craig (or was at least responsible to the Houston defendants for the injury that they suffered) and that the Houston defendants had reasonable basis to implead him as a defendant in the Houston Case on account of his participation in the conspiracy or his fault of responsibility for the injury suffered by them."

However, none of these documents show that [respondent] had any participation nor knowledge in the execution, custody or other intervention with respect to the said. **Thus, said Exhibits "10" to "18" are irrelevant and immaterial to the issue of the enforceability of a foreign judgment. It must be emphasized that the imposition of the sanctions under [Rule 11 of the U.S.] Federal Rules of Civil Procedure did not flow from the merits of the civil case in the US District Court but from the lack of even an iota of evidence against [respondent] Guevara.** To quote the US District Court:

THE COURT

x x x x

I am disturbed about that. I don't see any evidence at all in this case, after listening to all of this evidence, that there ever was a lawsuit that could have been brought against Guevara, and even after all of the discovery was done, there was still no evidence of a conspiracy. There is no evidence of any conspiracy to this good day that he could have been, but there is no proof of it, and that's what we base these lawsuits on. That's what the Rule 11 is designed to do, to deal with the circumstance.

So, I brought it up to Mr. Guevara because I know the frustration, and irrespective as to whether or not he brought it up, it would have been my position, my own position as an officer of this Court to sanction the defendants in this case. That is my opinion, that they are to be sanctioned because they have brought all of the power that they have in the Philippines to bear and put pressure on this man so that he would have to come over 10,000 miles to defend himself or to hire lawyers to defend himself against a totally frivolous claim.[39] (Emphases supplied.)

As for petitioner's contention that the Fifth Division of the Court of Appeals, in its Decision dated December 19, 2003, copied *verbatim* or

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39 *Rollo*, pp. 115-117.

wholesale from respondent's brief, the Court refers to its ruling in *Halley v. Printwell, Inc.*,[40] thus:

> It is noted that the petition for review merely generally alleges that starting from its page 5, the decision of the RTC "copied verbatim the allegations of herein Respondents in its Memorandum before the said court," as if "the Memorandum was the draft of the Decision of the Regional Trial Court of Pasig," but fails to specify either the portions allegedly lifted verbatim from the memorandum, or why she regards the decision as copied. The omission renders the petition for review insufficient to support her contention, considering that the mere similarity in language or thought between Printwell's memorandum and the trial court's decision did not necessarily justify the conclusion that the RTC simply lifted verbatim or copied from the memorandum.
>
> It is to be observed in this connection that a trial or appellate judge may occasionally view a party's memorandum or brief as worthy of due consideration either entirely or partly. When he does so, the judge may adopt and incorporate in his adjudication the memorandum or the parts of it he deems suitable, and yet not be guilty of the accusation of lifting or copying from the memorandum. This is because of the avowed objective of the memorandum to contribute in the proper illumination and correct determination of the controversy. Nor is there anything untoward in the congruence of ideas and views about the legal issues between himself and the party drafting the memorandum. The frequency of similarities in argumentation, phraseology, expression, and citation of authorities between the decisions of the courts and the memoranda of the parties, which may be great or small, can be fairly attributable to the adherence by our courts of law and the legal profession to widely know nor universally accepted precedents set in earlier judicial actions with identical factual milieus or posing related judicial dilemmas. (Citations omitted.)

The Court is unmoved by petitioner's allegations of denial of due process because of its U.S. counsel's exorbitant fees and negligence. As aptly pointed out by respondent in his Memorandum:

> On the specific claim that petitioner has been denied legal representation in the United States in view of the exorbitant legal fees of US counsel, petitioner is now estopped from asserting that the costs of litigation resulted in a denial of due process because it was petitioner which impleaded Guevara. If petitioner cannot prosecute a case to its final stages, then it should not have filed a counterclaim against Guevara in the first place. Moreover, there is no showing that petitioner could not find a less expensive counsel. Surely, petitioner could have secured the services of another counsel whose fees were more "affordable."[41]

Moreover, petitioner is bound by the negligence of its counsel. The declarations of the Court in *Gotesco Properties, Inc. v. Moral*[42] is applicable to petitioner:

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40 G.R. No. 157549, May 30, 2011, 649 SCRA 116, 130-131.

41 *Rollo*, p. 176.

42 G.R. No. 176834, November 21, 2012, 686 SCRA 102, 108.

> The general rule is that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique. The basis is the tenet that an act performed by counsel within the scope of a "general or implied authority" is regarded as an act of the client. While the application of this general rule certainly depends upon the surrounding circumstances of a given case, there are exceptions recognized by this Court: "(1) where reckless or gross negligence of counsel deprives the client of due process of law; (2) when its application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require."
>
> The present case does not fall under the said exceptions. In *Amil v. Court of Appeals*, the Court held that "to fall within the exceptional circumstance relied upon x x x, it must be shown that the negligence of counsel must be so gross that the client is deprived of his day in court. Thus, "where a party was given the opportunity to defend [its] interests in due course, [it] cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process." To properly claim gross negligence on the part of the counsel, the petitioner must show that the counsel was guilty of nothing short of a clear abandonment of the client's cause. (Citations omitted.)

Finally, it is without question that the U.S. District Court, in its Order dated March 13, 1990 in Civil Action No. H-86-440, ordered petitioner, AIFL, and ATHONA to pay respondent US$49,450.00 as sanction for violating Rule 11 of the U.S. Federal Rules of Civil Procedure. The Court noticed that throughout its Decision dated September 11, 2000 in Civil Case No. 92-1445, the RTC variably mentioned the amount of Rule 11 sanction imposed by the U.S. District Court as US$49,450.00 and US$49,500.00, the latter obviously being a typographical error. In the dispositive portion, though, the RTC ordered petitioner to pay respondent US$49,500.00, which the Court hereby corrects *motu proprio* to US$49,450.00 in conformity with the U.S. District Court Order being enforced.

The Court notes that during the pendency of the instant Petition before this Court, respondent passed away on August 17, 2007, and is survived and substituted by his heirs, namely: Ofelia B. Guevara, Ma. Leticia G. Allado, Jose Edgardo B. Guevara, Jose Emmanuel B. Guevara, and Ma. Joselina G. Gepuela.

WHEREFORE, the instant Petition is hereby **DENIED** for lack of merit. The Decision dated December 19, 2003 and Resolution dated February 9, 2005 of the Court Appeals in CA-G.R. CV No. 69348, affirming the Decision dated September 11, 2000 of the Regional Trial Court of Makati City, Branch 57 in Civil Case No. 92-1445, is hereby **AFFIRMED with MODIFICATION** that petitioner BPI Securities Corporation is ordered to pay respondent Edgardo V. Guevara the sum of US$49,450.00 or its equivalent in Philippine Peso, with interest at six percent (6%) per annum

from the filing of the case before the trial court on May 28, 1992 until fully paid.[43]

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

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43 Following the guidelines on interest in *Eastern Shipping Lines, Inc. v. Court of Appeals* (G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-97) and *Nacar v. Gallery Frames* (G.R. No. 189871, August 13, 2013, 703 SCRA 439, 457-459).

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice