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For reasons of substantial justice and equity, as the complement of the legal jurisdiction that seeks to dispense justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent to do so,[28] we thus rule, *pro hac vice*, in favor of petitioner.

WHEREFORE, the petition is *GRANTED***.** Civil Case No. 05-112452 entitled *Anita Cheng v. Spouses William Sy and Tessie Sy* is hereby ordered *REINSTATED*. No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr., and *Peralta, JJ.,* concur.

THIRD DIVISION

[G.R. No. 174986. July 7, 2009]

ARMAND O. RAQUEL-SANTOS and ANNALISSA MALLARI, *petitioners, vs.* **COURT OF APPEALS and FINVEST SECURITIES CO., INC.,** *respondents.*

[G.R. No. 175071. July 7, 2009]

PHILIPPINE STOCK EXCHANGE, INC., *petitioner, vs.* **FINVEST SECURITIES CO., INC.,** *respondent.*

[G.R. No. 181415. July 7, 2009]

FINVEST SECURITIES CO., INC., *petitioner, vs.* **TRANS-PHIL MARINE ENT., INC. and ROLAND H. GARCIA,** *respondents.*

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[28] *Id.* at 652.

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SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEALED DECISION BECOMES FINAL AS TO THE PARTY WHO DOES NOT APPEAL; MAY ONLY OPPOSE ANY MODIFICATION AS TO THE DECISION. — A party who does not appeal from a judgment can no longer seek modification or reversal of the same. He may oppose the appeal of the other party only on grounds consistent with the judgment. The appealed decision becomes final as to the party who does not appeal. Although petitioners may no longer seek affirmative relief from the trial court's decision, they may, however, oppose any modification of, or advance such arguments as may be necessary to uphold or maintain, the said decision. Considering that the order directing the payment of unliquidated cash advances is a modification of the trial court's decision, petitioners have every right to oppose the same.

2. ID.; ID.; PLEADINGS; PRAYER FOR SPECIFIC RELIEF; ABSENCE THEREOF WILL NOT DETER THE GRANT WHERE THE SAME IS WARRANTED. — It is true that lack of prayer for a specific relief will not deter the court from granting that specific relief. Even without the prayer for a particular remedy, proper relief may be granted by the court if the facts alleged in the complaint and the evidence adduced so warrant. The prayer in the complaint for other reliefs equitable and just in the premises justifies the grant of a relief not otherwise specifically prayed for. Admittedly, even if an issue has not been raised in the complaint but evidence has been presented thereon, the trial court may grant relief on the basis of such evidence. A court may rule and render judgment on the basis of the evidence before it, even though the relevant pleading has not been previously amended, provided that no surprise or prejudice to the adverse party is thereby caused. So long as the basic requirements of fair play have been met, as where litigants were given full opportunity to support their respective contentions and to object to or refute each other's evidence, the court may validly treat the pleadings as if they have been amended to conform to the evidence and proceed to adjudicate on the basis of all the evidence before it.

3. ID.; ID.; APPEALS; ISSUE RAISED FOR THE FIRST TIME ON APPEAL, NOT PROPER. — A question that was never raised

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in courts below cannot be allowed to be raised for the first time on appeal without offending basic rules of fair play, justice and due process.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS HAVE THE FORCE OF LAW BETWEEN THE CONTRACTING PARTIES. — Article 1159 of the Civil Code provides that contracts have the force of law between the contracting parties and should be complied with in good faith. Being the primary law between the parties, the contract governs the adjudication of their rights and obligations. A court has no alternative but to enforce the contractual stipulations in the manner they have been agreed upon and written.

5. ID.; SPECIAL CONTRACTS; PLEDGE; PLEDGEE HAS RIGHT TO SELL THE THING PLEDGED IN CASE PLEDGOR'S OBLIGATION NOT SATISFIED IN DUE TIME. — Article 2112 of the Civil Code gives the pledgee the right to sell the thing pledged in case the pledgor's obligation is not satisfied in due time. Under the law on contracts, *mora solvendi* or debtor's default is defined as a delay in the fulfillment of an obligation, by reason of a cause imputable to the debtor. There are three requisites necessary for a finding of default. *First,* the obligation is demandable and liquidated; s*econd,* the debtor delays performance; and *third,* the creditor judicially or extrajudicially requires the debtor's performance.

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED. — Factual findings of the trial court, particularly when affirmed by the CA, are generally binding on the Court. This is because the trial court's findings of fact are deemed conclusive and we are not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below. The Court is not a trier of facts and does not normally undertake a re-examination of the evidence presented by the contending parties during the trial of the case. The Court's jurisdiction over a petition for review on *certiorari* is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are devoid of support from the evidence on record or the assailed judgment is based on a misapprehension of facts.

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7. CIVIL LAW; OBLIGATIONS AND CONTRACTS; WHEN DEBT IS LIQUIDATED. — A debt is liquidated when the amount is known or is determinable by inspection of the terms and conditions of relevant documents. Under the attendant circumstances, it cannot be said that Finvest's debt is liquidated.

8. ID.; ID.; BREACH OF CONTRACT; REMEDIES; RESCISSION OF OBLIGATIONS. — The CA was correct in applying Article 1191 of the Civil Code, which indicates the remedies of the injured party in case there is a breach of contract: ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him. The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible. The right of a party to rescission under Article 1191 of the Civil Code is predicated on a breach of faith by the other party who violates the reciprocity between them. In a contract of sale, the seller obligates itself to transfer the ownership of and deliver a determinate thing, and the buyer to pay therefor a price certain in money or its equivalent.

9. COMMERCIAL LAW; CORPORATION CODE; SALE OF SHARES OF STOCK; PHYSICAL DELIVERY OF STOCK CERTIFICATE REQUIRED FOR THE TRANSFER OF STOCK OWNERSHIP. — In the sale of shares of stock, physical delivery of a stock certificate is one of the essential requisites for the transfer of ownership of the stocks purchased. Section 63 of the Corporation Code provides thus: SEC. 63. *Certificate of stock and transfer of shares*. — The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred *by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer*. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of

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shares transferred. No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation. For a valid transfer of stocks, the requirements are as follows: (a) there must be delivery of the stock certificate; (b) the certificate must be endorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and (c) to be valid against third parties, the transfer must be recorded in the books of the corporation.

10. CIVIL LAW; OBLIGATIONS AND CONTRACTS; RESCISSIBLE CONTRACTS; RESCISSION CREATES THE OBLIGATION TO RETURN THE OBJECT OF THE CONTRACT. — Rescission creates the obligation to return the object of the contract. This is evident from Article 1385 of the Civil Code which provides: ART. 1385. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore. Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith. In this case, indemnity for damages may be demanded from the person causing the loss. To rescind is to declare a contract void at its inception and to put an end to it as though it never was. Rescission does not merely terminate the contract and release the parties from further obligations to each other, but abrogates it from the beginning and restores the parties to their relative positions as if no contract has been made. Mutual restitution entails the return of the benefits that each party may have received as a result of the contract.

APPEARANCES OF COUNSEL

Efren C. Carag for Armand O. Raquel-Santos, *et al.*

Rodrigo Berenguer & Guno for Philippine Stock Exchange, Inc.

Martinez and Perez Law Offices for Finvest Securities, Co., Inc.

Marlon B. Mercado for Trans-Phil Marine Ent., Inc., *et al.*

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D E C I S I O N

NACHURA, *J.*:

Three petitions, arising from related events, were consolidated by this Court: G.R. Nos. 174986 and 175071 are petitions for review assailing the Court of Appeals (CA) Decision[1] in CA-G.R. CV No. 85176 dated August 9, 2006, and Resolution dated October 11, 2006; and G.R. No. 181415 is a petition for review assailing the CA Decision[2] in CA-G.R. CV No. 85430 dated September 3, 2007, and Resolution dated January 24, 2008. These cases cropped up from the failure of Finvest Securities Co., Inc. (Finvest) to meet its obligations to its clients and the Philippine Stock Exchange (PSE), allegedly caused by mishandling of Finvest's funds and property by its officers.

G.R. Nos. 174986 and 175071

Finvest is a stock brokerage corporation duly organized under Philippine laws and is a member of the PSE with one membership seat pledged to the latter. Armand O. Raquel-Santos (Raquel-Santos) was Finvest's President and nominee to the PSE from February 20, 1990 to July 16, 1998.[3] Annalissa Mallari (Mallari) was Finvest's Administrative Officer until December 31, 1998.[4]

In the course of its trading operations, Finvest incurred liabilities to PSE representing fines and penalties for non-payment of its clearing house obligations. PSE also received reports that Finvest was not meeting its obligations to its clients.[5] Consequently,

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[1] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Edgardo P. Cruz and Vicente Q. Roxas, concurring; *rollo* (G.R. No. 174986), pp. 29-39.

[2] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Amelita G. Tolentino and Regalado E. Maambong, concurring; *rollo* (G.R. No. 181415), pp. 35-53.

[3] Records (Civil Case No. 00-1589), Vol. I, p. 1.

[4] *Id.* at 2.

[5] *Id.* at 19.

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PSE indefinitely suspended Finvest from trading. The Securities and Exchange Commission (SEC) also suspended its license as broker.[6]

On June 17, 1998, PSE demanded from Finvest the payment of its obligations to the PSE in the amount of ₱4,267,339.99 and to its (Finvest's) clients within 15 days.[7] PSE also ordered Finvest to replace its nominee, Raquel-Santos.[8]

Upon failure of Finvest to settle its obligations, PSE sought authority from the SEC to take over the operations of Finvest in accordance with PSE's undertaking pursuant to Section 22(a)(5)[9] of the Revised Securities Act. On July 22, 1998, SEC acted favorably on PSE's request and authorized it to take over the operations of Finvest in order to continue preserving the latter's assets. Finvest was duly informed of the SEC's decision and was advised to refrain from making any payment, delivery of securities, or selling or otherwise encumbering any of its assets without PSE's approval.[10]

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[6] *Id.* at 18.

[7] *Id.* at 19.

[8] *Id.* at 29.

[9] Sec. 22(a)(5) of the Revised Securities Act (now Sec. 33.1[d] of The Securities Regulation Code) provides:

SEC. 22. *Registration of exchange*. — (a) Any exchange may be registered with the Commission as an exchange under the terms and conditions hereinafter provided in this Section, by filing a registration statement in such form as the Commission may prescribe, setting forth the information and accompanied by the following supporting documents below specified:

x x x x x x x x x

(5) An undertaking that in the event a member firm becomes insolvent or when the exchange shall have found that the financial condition of its member firm has so deteriorated that it cannot readily meet the demands of its customers for the delivery of securities and/or payment of sales proceeds, the exchange shall, upon order of the Commission, take over the operation of the insolvent member firm and immediately proceed to settle the member firm's liabilities to its customers: *Provided,* That stock exchanges in operation upon the effectivity of this Act shall have one year within which to submit the undertaking.

[10] Records (Civil Case No. 00-1589), Vol. I, pp. 117-119.

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As of August 11, 1998, Finvest's total obligation to PSE, representing penalties, charges and fines for violations of pertinent rules, was pegged at ₱5,990,839.99.[11] Finvest promised to settle all obligations to its clients and to PSE subject to verification of the amount due, but Finvest requested a deadline of July 31, 1999.[12] PSE granted Finvest's request, with the warning that, should Finvest fail to meet the deadline, PSE might exercise its right to sell Finvest's membership seat and use the proceeds thereof to settle its obligations to the PSE, its member-brokers and its clients.[13] On the same day, Finvest requested an appointment with PSE's concerned officer to reconcile, confirm and update the amount of the penalties, charges and fines due PSE. Finvest also advised PSE that it would be represented by Mr. Ernesto Lee, its consultant, during the said meeting.[14] After consultation with Mr. Lee, PSE revised its computation of the penalties, charges and fines and reduced the amount due to ₱3,540,421.17.[15]

In a Letter dated September 8, 1998, Finvest appealed to PSE for the approval of the following: (1) that it be given a period of up to March 30, 1999 to settle claims of clients, subject to proper documents and verification of balance; and (2) that it be allowed to settle its liabilities to PSE at an amount lower than ₱4,212,921.13 (representing penalties, charges and fines at ₱3,540,421.17 plus sanctions for violation of rules at ₱675,500.00), considering that it had never unduly exposed PSE to any legal and financial risks in connection with its clearing accounts.[16]

In reply, PSE required Finvest to acknowledge within 30 days, in whole or in part, clients' claims that had been filed

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[11] *Id.* at 21.

[12] *Id.* at 22.

[13] *Id.* at 24-25.

[14] *Id.* at 27.

[15] *Id.* at 28.

[16] *Id.* at 32-33.

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with the PSE and to settle all duly acknowledged claims by December 31, 1998. PSE resolved to consider the request for a reduction of its liabilities to PSE only after it had settled all duly acknowledged claims of its clients.[17]

On February 3, 1999, PSE inquired from Finvest if it had already settled all duly acknowledged claims of its clients and its liabilities to PSE.[18] PSE also demanded that Finvest settle its liabilities to it not later than March 31, 1999. Finvest responded by proposing that the amount of assessed penalties, charges and fines be reduced to 10%, that is, ₱354,042.17; and that full payment of the clients' claims be deferred to June 30, 1999.[19] Previously, Finvest had also requested a written clearance from PSE for renewal of the registration of its brokers and dealers with the SEC.[20]

In its Letter of February 23, 1999, PSE informed Finvest that it would only issue a written clearance after Finvest had settled its obligations to PSE and paid all acknowledged liabilities to various clients.[21] In response, Finvest repeated its appeal to be allowed to fully operate again and to pay a reduced amount on the ground that it had no adequate funds because it had been the victim of fraud committed by its employees.[22]

On April 21, 1999, PSE again sent a demand letter to Finvest, reminding the latter of the March 31, 1999 deadline.[23]

On April 26, 1999, Finvest requested a hearing to determine the amount of its liability and to exhaust the possibility of arriving at a reasonable solution, and reiterated its appeal for the resumption of its operations.[24] PSE brushed aside Finvest's request, urging

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[17] *Id.* at 34-35.

[18] *Id.* at 121.

[19] *Id.* at 122.

[20] *Id.* at 36.

[21] *Id.* at 37.

[22] *Id.* at 38-39.

[23] *Id.* at 123.

[24] *Id.* at 44.

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it instead to settle all of its obligations by May 31, 1999; otherwise, PSE would be forced to recommend to the SEC the liquidation of its assets and sell its seat at public auction,[25] pursuant to its Pledge Agreement with Finvest. Finvest protested the imposition of the deadline for being arbitrary on the ground that the claims against it had not yet been established.[26]

At this juncture, Finvest filed a Complaint with the SEC for accounting and damages with prayer for a temporary restraining order and/or preliminary injunction and *mandamus* against Raquel-Santos, Mallari and PSE. The complaint alleged that Raquel-Santos and Mallari took undue advantage of their positions by diverting to their personal use and benefit the unaccounted stock certificates and sales proceeds referred to in Annex "X" of the complaint, which was a list of the claims of Finvest's clients as of December 31, 1998. Finvest prayed that Raquel-Santos and Mallari be ordered to account for the missing stock certificates and sales proceeds and to pay the profits that would have accrued to Finvest. As against PSE, the complaint alleged that PSE violated Finvest's right to due process by illegally and arbitrarily suspending Finvest's operations, thus compounding its inability to meet the demands of its clients; and by unilaterally and arbitrarily imposing upon Finvest fines and penalties, without a hearing. The complaint prayed that an injunction be issued to prevent PSE from initiating the liquidation of Finvest and selling Finvest's seat at public auction.

Alleging that Raquel-Santos and Mallari failed to file their Answer within the reglementary period, Finvest moved for a partial judgment against them.[27] On February 4, 2000, SEC, through a Hearing Panel, rendered a Partial Judgment[28] against Raquel-Santos and Mallari, ordering them to account for the missing stock certificates and pay the damages that Finvest may sustain.

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[25] *Id.* at 45.

[26] *Id.* at 46-47.

[27] Records (Civil Case No. 00-1589), Vol. I, pp. 153-155.

[28] *Id.* at 157-162.

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Raquel-Santos and Mallari filed separate motions to set aside the partial judgment, alleging non-receipt of summons. In an Order dated April 10, 2000, SEC denied due course to the two motions.[29] Thereafter, the SEC Hearing Panel issued a writ of execution.[30]

Consequently, notices of garnishment and sale were issued against Raquel-Santos' Manila Golf Shares and Sta. Elena Golf Shares.[31] Raquel-Santos moved for the cancellation of the notice of sale, arguing that there was no basis for the sale of his shares as there was no money judgment involved, only an accounting of the allegedly missing stock certificates. According to him, only after it is established that there were missing certificates should he be held accountable. In the same motion, Raquel-Santos also endeavored to make an accounting of the stock certificates through the following documents: (a) a 35-page Stock Ledger of an inventory of securities/stock certificates as of July 31, 1998; (b) a 24-page inventory as of July 31, 1998 of stocks in the vault of Finvest; and (c) a 5-page inventory of the securities on deposit with the Philippine Central Depository, Inc.[32]

On June 29, 2000, the parties entered into an Agreement,[33] approved by the SEC *en banc* in its Order[34] of July 11, 2000, to remand the case to the Securities Investigation and Clearing Division for service of summonses to Raquel-Santos and Mallari. In turn, Raquel-Santos and Mallari agreed not to dispose of or transfer the garnished properties in the meantime, but the writs of garnishment would remain in force during the pendency of the case.

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[29] *Id.* at 256.

[30] *Id.* at 268-271.

[31] *Id.* at 366-371.

[32] *Id.* at 392-394.

[33] Records (Civil Case No. 00-1589), Vol. II, p. 7.

[34] *Id.* at 6.

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Meanwhile, on June 5, 2000, the SEC Hearing Panel granted Finvest's motion for the issuance of a preliminary injunction to enjoin PSE from initiating the liquidation of Finvest and from selling its membership seat. The SEC Hearing Panel ratiocinated that PSE's plan to sell Finvest's membership seat at public auction, despite the fact that its claims against Finvest were yet to be determined in these proceedings, was reason enough for the issuance of a preliminary injunction.[35] Upon posting of the required bond, the SEC Hearing Panel issued a writ of preliminary injunction on June 21, 2000.[36]

With the enactment of the Securities Regulation Code, the case was transferred to the Regional Trial Court (RTC), Makati City, and docketed as Civil Case No. 00-1589.

On October 2, 2001, the RTC issued an Order lifting the garnishment of Raquel-Santos' Manila Golf Club share on the ground that there must be a proper accounting to determine the amount for which Raquel-Santos and Mallari were to be held jointly and severally liable to Finvest before a writ of garnishment may be validly issued.[37] As a result, Finvest filed a motion for reconsideration and a motion to respect the SEC *en banc* Order dated July 11, 2000. The motions were denied by the RTC in its May 30, 2002 Order.[38] Through a petition for *certiorari*, the October 2, 2001 Order of the RTC was subsequently modified by the CA on December 9, 2002. The CA held that the sale of Raquel-Santos' share in Manila Golf Club was valid, subject to the outcome of the main case (Civil Case No. 00-1589). The parties were further enjoined to comply with their obligations under the July 11, 2000 Order of the SEC *en banc*.[39]

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[35] Records (Civil Case No. 00-1589), Vol. I, pp. 387-393.

[36] *Id.* at 457.

[37] Records (Civil Case No. 00-1589), Vol. II, pp. 61-66.

[38] *Id.* at 414.

[39] Records (Civil Case No. 00-1589), Vol. III, p. 251.

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In the meantime, PSE filed a Motion to Dissolve the Writ of Preliminary Injunction and/or Motion for Reconsideration[40] on the ground that it had the legal obligation to make the appropriate recommendations to the SEC on whether or not it would be to the best interest of all concerned for Finvest to be liquidated at the soonest possible time.

On April 28, 2003, the RTC issued a judgment in Civil Case No. 00-1589 in favor of Finvest:

> WHEREFORE, judgment is rendered directing that the writ of preliminary injunction issued on June 21, 2000 be declared permanent. Respondents Raquel-Santos and Mallari are ordered to render an accounting of the stock certificates listed in Annex A of the Complaint.
>
> SO ORDERED.[41]

The trial court noted that Finvest had not been remiss in addressing its dispute with the PSE. When PSE manifested its intent to liquidate Finvest and sell its seat at public auction, the amount of Finvest's liability was still unsettled, which thus makes it doubtful whether Section 22(a)(5) would apply. On the issue between Finvest and its officers (Raquel-Santos and Mallari), the trial court held that Finvest could rightfully demand an accounting from them and hold them liable for unaccounted securities since Raquel-Santos exercised control and supervision over the trading operations of Finvest and he and Mallari had custody of all securities traded.

On September 12, 2003, Finvest sought a partial reconsideration of the RTC Judgment praying that: (a) Finvest's indefinite suspension by PSE be lifted; (b) Raquel-Santos and Mallari be ordered to render an accounting of the stock certificates within 60 days from receipt of the judgment, and upon failure to do so, to jointly and severally pay Finvest ₱18,184,855.89, the value of the stocks as of December 31, 1998; and (c) Raquel-Santos be ordered to liquidate his cash advances amounting to ₱3,143,823.63 within 60 days from receipt of the judgment or,

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[40] Records (Civil Case No. 00-1589), Vol. II, pp. 68-76.

[41] Records (Civil Case No. 00-1589), Vol. III, p. 285.

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in case of failure to do so, to consider the same as unliquidated cash advances.[42]

On the prayer to lift the indefinite suspension of Finvest by PSE, the trial court found that there was, in fact, a need to allow Finvest's operation to continue to enable it to negotiate the terms and modes of payments with its claimants, settle its obligations and fully ascertain its financial condition. On the prayer to set a period within which to render the accounting, the trial court held that there was no need to set a period as Section 4, Rule 39 of the Rules on Civil Procedure already directs when such kind of judgment is enforceable. Accordingly, the RTC modified its earlier decision in its Order dated February 1, 2005, thus:

WHEREFORE, plaintiff's Motion for Partial Reconsideration is partially granted as follows –

a) The indefinite suspension of operation of plaintiff Finvest Corporation by the defendant Philippine Stock Exchange is lifted; and

b) The "Annex A" in the dispositive portion of the Judgment dated April 28, 2003 is modified to read as "Annex X".

All other reliefs are denied.[43]

PSE appealed to the CA. Finvest likewise filed a partial appeal. Raquel-Santos and Mallari also filed an appeal with the CA but the same was deemed abandoned when they failed to file their appellants' brief.[44] The appeals of Finvest and PSE were docketed as CA-G.R. CV No. 85176.

On August 9, 2006, the CA rendered a Decision granting Finvest's petition, thus:

WHEREFORE, plaintiff-appellant Finvest's partial appeal of the April 28, 2003 Judgment of the Regional Trial Court of Makati City,

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[42] *Id.* at 290.

[43] CA *rollo* (CA G.R. CV No. 85176), p. 61.

[44] *Id.* at 162.

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Branch 138 is hereby GRANTED to the effect that defendants-appellants Armand O. Raquel-Santos and Annalissa Mallari are hereby given a period of sixty (60) days from the finality of this decision to render an accounting and in the event that they will fail to do so, they are hereby ordered to jointly and severally pay Finvest the amount of eighteen million one hundred eighty-four thousand eight hundred fifty-five pesos and eighty-nine centavos (₱18,184,855.89), and for defendant-appellant Raquel-Santos to pay three million one hundred forty-three thousand eight hundred twenty-three pesos and sixty-three centavos (₱3,143,823.63). As for the appeal of defendant-appellant Philippine Stock Exchange, the same is hereby DENIED for lack of merit.

SO ORDERED.[45]

For expediency and in the interest of speedy disposition of justice, the CA set a 60-day period within which Raquel-Santos and Mallari would render an accounting. The appellate court agreed that Raquel-Santos and Mallari were guilty of gross negligence or bad faith for the wrongful disposition of the proceeds of the sale of the shares of stock that were in their custody. According to the CA, this circumstance justified the order for them to pay ₱18,184,855.89, representing the various claims of clients, and for Raquel-Santos to pay ₱3,143,823.63, representing unliquidated cash advances, in the event they failed to render the necessary accounting within the given period. Significantly, the CA also noted that Raquel-Santos and Mallari did not even dispute the affidavit of Mr. Ernesto Lee regarding the schedule of claims.

The CA opined that paragraph 5(a) of the Pledge Agreement, giving PSE the right to sell Finvest's seat in case of default, pertained to default in the payment of obligations already determined and established. The validity of the fines and penalties imposed by the PSE was yet to be substantiated. PSE could not insist on selling Finvest's seat unless its claims had been resolved with finality. It was, thus, proper to enjoin PSE from exercising whatever rights it had under the Pledge Agreement.

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[45] *Rollo* (G.R. No. 174986), p. 38.

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In their motion for reconsideration,[46] Raquel-Santos and Mallari protested the CA's order to hold them jointly and severally liable for the claims of Finvest's clients on the ground that this relief was not even prayed for in Finvest's complaint. They insisted that the proper procedure to render an accounting was to specify the beginning balance, tack the values therefor, render an accounting, and adjudge them liable for the deficiency, if any. They averred that the beginning balance must be set out by the parties or, in case of dispute, by the courts. PSE likewise filed a motion for reconsideration[47] reiterating its arguments.

On October 11, 2006, the CA denied the respective motions for reconsideration of the PSE and Raquel-Santos and Mallari.[48] The CA dismissed PSE's motion for reconsideration for being a mere rehash of its arguments. As for the issues raised by Raquel-Santos and Mallari, the CA pronounced that its order to hold Raquel-Santos and Mallari liable for the claims in case they failed to account for them was well within the reliefs prayed for by Finvest in its Complaint. The CA added that Raquel-Santos and Mallari could follow the proposed accounting procedure when they rendered an accounting pursuant to the court's order.

Raquel-Santos and Mallari and the PSE filed separate petitions for review on *certiorari* with this Court, docketed as G.R. Nos. 174986 and 175071, respectively, assailing the August 9, 2006 CA Decision and October 11, 2006 Resolution. This Court directed the consolidation of the two petitions.

G.R. No. 181415

The Court likewise directed the consolidation of G.R. No. 181415, which stems from a case between Finvest and two of its clients, Trans-Phil Marine Enterprises, Inc. (TMEI) and Roland Garcia. The facts of the case are as follows:

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[46] CA *rollo* (CA G.R. CV No. 85176), pp. 181-184.

[47] *Id.* at 186-194.

[48] *Rollo* (G.R. No. 174986), pp. 41-42.

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TMEI and Roland Garcia filed a complaint against Finvest with the SEC praying for the delivery of stock certificates and payment of dividends on the stocks they purchased. The Complaint alleged that, from February 4, 1997 to July 31, 1997, TMEI and Roland Garcia purchased shares of stock of Piltel Corporation through Finvest. In particular, TMEI purchased 63,720 shares for ₱1,122,863.13 while Garcia purchased 40,000 shares for ₱500,071.25. Finvest failed to deliver to them the stock certificates despite several demands. TMEI and Roland Garcia also claimed that they were entitled to the dividends declared by Piltel from the time they purchased the shares of stock.

In its Answer, Finvest asserted that it could not have complied with complainants' demand for the delivery of the stock certificates because it was under indefinite suspension since October 1997 and it had no means to verify or validate their claims.

During the pre-trial stage, TMEI amended its complaint by modifying its prayer for a refund of the value of the undelivered shares of stock, instead of the delivery of the stock certificates plus payment of dividends.[49] In the hearing conducted by the trial court for the purpose of determining the propriety of admitting the amended complaint, Finvest manifested that it had no objection to the admission of the amended complaint, and that it would no longer file an amended answer. Both parties manifested that they were no longer presenting any additional evidence; hence, the case was submitted for decision.[50]

On April 29, 2003, the RTC rendered a Decision in Civil Case No. 00-1579, the dispositive portion of which reads:

> WHEREFORE, judgment is rendered ordering the respondent to return to complainant Trans-[Phil] Marine Enterprises[,] Inc.[,] the value of the undelivered shares of stock of Piltel equivalent to ₱1,122,863.13 and to complainant Roland H. Garcia the value of the undelivered shares of stock of Piltel equivalent to ₱500,071.25, both

[49] Records (Civil Case No. 00-1579), pp. 120-121.

[50] *Id.* at 251.

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with interest thereon at the legal rate from the date of the filing of the Complaint.

SO ORDERED.[51]

On June 6, 2005, the RTC modified its earlier decision. The amount of ₱1,122,863.13 in the dispositive portion was reduced to ₱1,078,313.13 based on evidence showing that 2,025 Piltel shares, equivalent to ₱44,550.00, had been delivered to TMEI, which fact was not denied by the latter.[52]

Finvest appealed to the CA. On September 3, 2007, the CA rendered a Decision[53] affirming the RTC Decision. Applying Article 1191 of the Civil Code, the CA declared that since Finvest failed to comply with its obligation to deliver to TMEI and Garcia the shares of stock, Finvest was bound to return the amounts paid by them.

On January 24, 2008, the CA denied Finvest's motion for reconsideration;[54] hence, the petition for review on *certiorari*, docketed as G.R. No. 181415.

The Petition in G.R. No. 174986

Petitioners Raquel-Santos and Mallari raise the following issues:

A. THE HONORABLE COURT OF APPEALS ERRED IN NOT FIXING A BEGINNING BALANCE FOR THE ACCOUNTING ORDERED.

B. THE HONORABLE COURT OF APPEALS HAD NO JURISDICTION TO ORDAIN THE PAYMENT OF THE SUPPOSED UNLIQUIDATED ADVANCES OF PETITIONER RAQUEL-SANTOS.[55]

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[51] *Rollo* (G.R. No. 181415), pp. 60-61.

[52] *Id.* at 63.

[53] *Supra* note 2.

[54] *Rollo* (G.R. No. 181415), pp. 57-58.

[55] *Rollo* (G.R. No. 174986), p. 171.

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While conceding that they have to render an accounting of the claims stated in Annex "X", petitioners bewail the lack of statement of the beginning balance therefor. They aver that a sweeping order for them to answer all these claims does not meet the standards of fair play. They insist that, as pointed out in their motion for reconsideration filed with the CA, the proper procedure is to specify the beginning balance first.[56] Petitioners, therefore, pray that judgment be rendered fixing the beginning balance for the accounting ordered.

Petitioners further aver that the CA exceeded its jurisdiction when it ordered them to pay unliquidated cash advances. Petitioners point out that said unliquidated cash advances were not alleged, and payment thereof was not prayed for, in the complaint.[57] The alleged cash advances were only mentioned in the Supplemental Affidavit submitted by Mr. Ernesto Lee to the trial court.[58] They, therefore, pray that the order for Raquel-Santos to liquidate or pay his cash advances be deleted.

The Petition in G.R. No. 175071

PSE assigns the following errors:

I.

THE HONORABLE COURT OF APPEALS FAILED TO CONSIDER THE EVIDENCE CLEARLY SHOWING THAT THE AMOUNT OF LIABILITY OF RESPONDENT HAD ALREADY BEEN DETERMINED, SUBSTANTIATED AND ESTABLISHED NOT ONLY BY PETITIONER BUT ALSO WITH THE FULL KNOWLEDGE AND PARTICIPATION OF RESPONDENT.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN ENJOINING PETITIONER PSE FROM ENFORCING AND EXERCISING ITS RIGHT UNDER THE PLEDGE AGREEMENT.

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[56] *Id.* at 171-173.

[57] *Id.* at 173-175.

[58] *Id.* at 175-176.

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III.

APPEAL BY *CERTIORARI* UNDER RULE 45 IS PROPER CONSIDERING THAT THE HONORABLE COURT OF APPEALS MISAPPREHENDED THE FACTS OF THE CASE.[59]

PSE contends that appeal by *certiorari* is proper considering that the CA misapprehended the facts of the case. For one, the CA failed to consider the fact that PSE's claim against Finvest had been duly ascertained, computed and substantiated. PSE points out that it has made several demands on Finvest for the payment of its obligations and the amount due has been computed after consultation with Finvest's representative, Mr. Ernesto Lee. In fact, in his Letter dated September 8, 1998, Finvest's Chairman, Mr. Abelardo Licaros, already acknowledged the amount of Finvest's liabilities and obligations to PSE in the amount of ₱4,212,921.13. Finvest even proposed that its outstanding obligations to PSE be reduced to 10% of the total amount due and the deadline for its payment be extended. Considering, therefore, that Finvest already acknowledged and ascertained its obligations with PSE and yet it defaulted in the payment thereof, PSE had the right to sell at public auction Finvest's pledged seat pursuant to the Pledge Agreement and in accordance with Article 2112 of the Civil Code.

The Petition in G.R. No. 181415

In this petition, Finvest raises the following grounds:

I.

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT WHICH ORDERED THE RETURN OF THE VALUE OF THE UNDELIVERED SHARES OF STOCK AT THE TIME OF THE PURCHASE, WHICH AWARD OF DAMAGES HAVE NOT BEEN ESTABLISHED BY EVIDENCE.

II.

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN RENDERING THE DECISION WHICH TENDS

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[59] *Rollo* (G.R. No. 175071), pp. 201-202.

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TO BE IN CONFLICT WITH ANOTHER DECISION OF THE HONORABLE COURT OF APPEALS (SPECIAL FOURTEENTH DIVISION) IN CA-G.R. CV NO. 85176 (NOW PENDING BEFORE THE HONORABLE SUPREME COURT AS G.R. NO. 174986) INSOFAR AS THE AWARD OF DAMAGES TO RESPONDENTS IS CONCERNED, WHICH CONFLICTING FINDING WAS THE SAME SITUATION HEREIN PETITIONER SOUGHT TO AVOID WHEN IT MOVED FOR THE CONSOLIDATION OF BOTH CASES BEFORE THE TRIAL COURT.[60]

Finvest insists that the trial court and the CA had no basis in awarding in favor of respondents damages equivalent to the value of the undelivered shares of stock purchased by TMEI and Garcia. Finvest posits that there was no evidence to show that respondents were entitled thereto.

Finvest further contends that the order for them to pay the said shares of stock is in conflict with the CA Decision in CA-G.R. CV No. 85176, ordering Finvest's officers to render an accounting or to pay the value of stock certificates that included those covering the shares of stock purchased by TMEI and Garcia. According to Finvest, the two judgments caused an apparent confusion as to who would ultimately be held liable for the subject shares.

Respondents counter that they have sufficiently proven the value of the shares of stock through the buy confirmation slips, vouchers and official receipts, which they presented in evidence. They submit that liability for these undelivered shares of stock of its officers is a corporate liability that Finvest may not pass on to its erring officers.

The Court's Ruling

G.R. No. 174986

The petition of Raquel-Santos and Mallari has no merit.

The CA properly shunned petitioners' prayer to further modify the assailed judgment to include a beginning balance for the

[60] *Rollo* (G.R. No. 181415), p. 21.

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accounting ordered. It is well to note that petitioners' appeal from the decision of the lower court was deemed abandoned when they failed to file their appellants' brief. Not having filed an appeal, petitioners could not have obtained any affirmative relief from the appellate court other than what they obtained, if any, from the lower court. After all, a party who does not appeal from a judgment can no longer seek modification or reversal of the same. He may oppose the appeal of the other party only on grounds consistent with the judgment.[61] The appealed decision becomes final as to the party who does not appeal.

Moreover, we find no reason, at this point, to amend or modify the judgment of the CA just to include a statement of the beginning balance for the accounting ordered. This pertains to the manner in which petitioners would comply with the order to render an accounting upon its execution, which matter should not concern this Court at the moment.

In any case, the Court is not in a position to grant the relief prayed for since the proper beginning balance, if indeed necessary, is not determinable from the records. In fact, petitioners, being in possession of the records relative to the missing stock certificates, have the means to determine the beginning balance. In their motion for reconsideration of the CA Decision, petitioners themselves acknowledge that the parties must set the beginning balance and only in case of dispute will the courts be called upon to intervene.[62]

Although petitioners may no longer seek affirmative relief from the trial court's decision, they may, however, oppose any modification of, or advance such arguments as may be necessary to uphold or maintain, the said decision. Considering that the order directing the payment of unliquidated cash advances is a modification of the trial court's decision, petitioners have every right to oppose the same.

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[61] *Silliman University v. Fontelo-Paalan*, G.R. No. 170948, June 26, 2007, 525 SCRA 759, 771.

[62] CA *rollo* (CA G.R. CV No. 85176), p. 183.

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To recall, respondent Finvest's cause of action against petitioners was for accounting and damages, arising from the allegedly missing stock certificates. In relation to such cause of action, Finvest alleged in the Complaint that petitioners had sole authority and custody of the stock certificates and that they took undue advantage of their positions in diverting to their personal benefit the proceeds from the sale of the shares of stock. Finvest, therefore, prayed that Raquel-Santos and Mallari be held "jointly and severally liable to account for and/or to pay for all missing stock certificates and payables listed in Annex X [of the Complaint] and for any other subsequent claims and the corresponding profits that could have accrued to the corporation"; and "damages that the corporation may sustain by reason of and/or in relation to such missing or unaccounted stock certificates, payables, and any other subsequent claims."

In refuting petitioners' stance that the CA erred in granting a relief not prayed for in the Complaint, respondent argues that the order for Raquel-Santos to liquidate or pay his cash advances was well within its prayer for the payment of damages that Finvest will sustain in relation to the missing stock certificates.

It is true that lack of prayer for a specific relief will not deter the court from granting that specific relief. Even without the prayer for a particular remedy, proper relief may be granted by the court if the facts alleged in the complaint and the evidence adduced so warrant. The prayer in the complaint for other reliefs equitable and just in the premises justifies the grant of a relief not otherwise specifically prayed for.[63]

Admittedly, even if an issue has not been raised in the complaint but evidence has been presented thereon, the trial court may grant relief on the basis of such evidence. A court may rule and render judgment on the basis of the evidence before it, even though the relevant pleading has not been

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[63] *United Overseas Bank of the Philippines v. Rosemoor Mining and Development Corporation,* G.R. No. 172651, October 2, 2007, 534 SCRA 528, 551.

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previously amended, provided that no surprise or prejudice to the adverse party is thereby caused.[64] So long as the basic requirements of fair play have been met, as where litigants were given full opportunity to support their respective contentions and to object to or refute each other's evidence, the court may validly treat the pleadings as if they have been amended to conform to the evidence and proceed to adjudicate on the basis of all the evidence before it.[65]

Notably, the Complaint did not allege that petitioner Raquel-Santos obtained from Finvest cash advances that he failed to liquidate. The alleged cash advances were disclosed to the court in the Supplemental Affidavit[66] that Mr. Ernesto Lee submitted to the court. Attached to the Supplemental Affidavit were copies of disbursement vouchers and checks representing the cash advances made by petitioner Raquel-Santos.

We note that petitioner Raquel-Santos did not protest the order for him to pay the cash advances in his Motion for Reconsideration of the CA Decision. He raises the issue for the first time in this petition, which should not be allowed. A question that was never raised in courts below cannot be allowed to be raised for the first time on appeal without offending basic rules of fair play, justice and due process.[67] In any case, petitioner Raquel-Santos had every opportunity to refute the Supplemental Affidavit, together with the vouchers and checks, but he did not submit any counter evidence. Petitioner is clearly estopped from questioning the order for him to pay the cash advances.

G.R. No. 175071

PSE's petition is without merit.

Article 1159 of the Civil Code provides that contracts have the force of law between the contracting parties and should be

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[64] *Vlason Enterprises Corporation v. CA*, 369 Phil. 269, 304-305 (1999).

[65] *Talisay-Silay Milling Co., Inc. v Asociacion de Agricultores de Talisay-Silay, Inc.*, G.R. No. 91852, August 15, 1995, 247 SCRA 361, 378.

[66] Records, Vol. II, Civil Case No. 00-1589, pp. 250-260.

[67] *Ysmael v. Court of Appeals*, 376 Phil. 323, 335 (1999).

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complied with in good faith. Being the primary law between the parties, the contract governs the adjudication of their rights and obligations. A court has no alternative but to enforce the contractual stipulations in the manner they have been agreed upon and written.[68]

The Pledge Agreement between PSE and Finvest was entered into pursuant to PSE's by-laws which requires a member to pledge its membership seat to secure the payment of all debts or obligations due PSE and its other members arising out of, or in connection with, the present or future contracts of such member with PSE and its members. In case of default in the payment of obligations, the Pledge Agreement explicitly grants PSE the right to sell Finvest's pledged seat, *viz.*:

> 5. Default. In the event of a default by the PLEDGOR in respect to the Obligations or upon the failure of the PLEDGOR to comply with any of the provisions of this Agreement, the PLEDGEE may
>
> (a) cause the public sale at any time as the PLEDGEE may elect at its place of business or elsewhere and the PLEDGEE may, in all allowable cases, acquire or purchase the Pledged Seat and hold the same thereafter in its own right free from any claim of the PLEDGOR;
>
> (b) apply, at its option, the proceeds of any said sale, as well as all sums received or collected by the PLEDGEE from or on account of such Pledged Seat to (i) the payment of expenses incurred or paid by the PLEDGEE in connection with any sale, transfer or delivery of the Pledged Seat, and (ii) payment of the Obligations and all unpaid interests, penalties, damages, expenses, and charges accruing on the Obligations or pursuant to the By-laws and this Agreement. The balance shall be returned to the PLEDGOR.[69]

Article 2112 of the Civil Code also gives the pledgee the same right to sell the thing pledged in case the pledgor's obligation is not satisfied in due time.

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[68] *Pryce Corporation v. Philippine Amusement and Gaming Corporation*, G.R. No. 157480, May 6, 2005, 458 SCRA 164, 175-176.

[69] *Rollo* (G.R. No. 175071), p. 93.

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Under the law on contracts, *mora solvendi* or debtor's default is defined as a delay in the fulfillment of an obligation, by reason of a cause imputable to the debtor. There are three requisites necessary for a finding of default. *First*, the obligation is demandable and liquidated; s*econd*, the debtor delays performance; and *third*, the creditor judicially or extrajudicially requires the debtor's performance.[70]

In the present petition, PSE insists that Finvest's liability for fines, penalties and charges has been established, determined and substantiated, hence, liquidated.

We note however that both trial court and CA have ruled otherwise. Factual findings of the trial court, particularly when affirmed by the CA, are generally binding on the Court.[71] This is because the trial court's findings of fact are deemed conclusive and we are not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below.[72] The Court is not a trier of facts and does not normally undertake a re-examination of the evidence presented by the contending parties during the trial of the case.[73] The Court's jurisdiction over a petition for review on *certiorari* is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are devoid of support from the evidence on record or the assailed judgment is based on a misapprehension of facts.[74]

The findings of fact of both the trial court and the CA are fully supported by the records. They plainly show that the parties were negotiating to determine the exact amount of Finvest's

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[70] *Selegna Management and Development Corporation v. United Coconut Planters Bank*, G.R. No. 165662, May 3, 2006, 489 SCRA 125, 138.

[71] *Titan Construction Corporation v. Uni-Field Enterprises, Inc.*, G.R. No. 153874, March 1, 2007, 517 SCRA 180, 186.

[72] *Calicdan v. Cendaña*, G.R. No. 155080, February 5, 2004, 422 SCRA 272, 276.

[73] *Delos Santos v. Elizalde*, G.R. Nos. 141810, February 2, 2007, 514 SCRA 14, 33.

[74] *Concepcion v. Court of Appeals*, 381 Phil. 90, 96 (2000).

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obligations to PSE, during which period PSE repeatedly moved the deadlines it imposed for Finvest to pay the fines, penalties and charges, apparently to allow for more time to thresh out the details of the computation of said penalties. In the middle of those talks, PSE unceremoniously took steps to sell the pledged seat at public auction, without allowing the negotiations to come to a conclusion. This sudden decision of PSE deprived Finvest a sporting chance to settle its accountabilities before forfeiting its seat in the stock exchange. Without that seat, Finvest will lose its standing to trade and do business in the stock exchange.

A debt is liquidated when the amount is known or is determinable by inspection of the terms and conditions of relevant documents.[75] Under the attendant circumstances, it cannot be said that Finvest's debt is liquidated. At the time PSE left the negotiating table, the exact amount of Finvest's fines, penalties and charges was still in dispute and as yet undetermined. Consequently, Finvest cannot be deemed to have incurred in delay in the payment of its obligations to PSE. It cannot be made to pay an obligation the amount of which was not fully explained to it. The public sale of the pledged seat would, thus, be premature.

G.R. No. 181415

Finvest's petition is denied.

The CA was correct in applying Article 1191 of the Civil Code, which indicates the remedies of the injured party in case there is a breach of contract:

> ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
>
> The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

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[75] *Selegna Management and Development Corporation v. United Coconut Planters Bank, supra* note 72, at 141.

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Initially, respondents sought the fulfillment of Finvest's obligation to deliver the stock certificates, instead of a rescission. They changed their minds later and amended the prayer in their complaint and opted for a refund of the purchase price plus damages. The trial court allowed the amendment, there being no objection from Finvest.

The right of a party to rescission under Article 1191 of the Civil Code is predicated on a breach of faith by the other party who violates the reciprocity between them.[76] In a contract of sale, the seller obligates itself to transfer the ownership of and deliver a determinate thing, and the buyer to pay therefor a price certain in money or its equivalent. In some contracts of sale, such as the sale of real property, prior physical delivery of the thing sold or its representation is not legally required, as the execution of the Deed of Sale effectively transfers ownership of the property to the buyer through constructive delivery. Hence, delivery of the certificate of title covering the real property is not necessary to transfer ownership.

In the sale of shares of stock, physical delivery of a stock certificate is one of the essential requisites for the transfer of ownership of the stocks purchased. Section 63 of the Corporation Code provides thus:

> SEC. 63. *Certificate of stock and transfer of shares*. — The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred *by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer*. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.

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[76] *Sps. Velarde v. Court of Appeals*, 413 Phil. 360, 373 (2001).

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No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation.[77]

For a valid transfer of stocks, the requirements are as follows: (a) there must be delivery of the stock certificate; (b) the certificate must be endorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and (c) to be valid against third parties, the transfer must be recorded in the books of the corporation.[78]

Clearly, Finvest's failure to deliver the stock certificates representing the shares of stock purchased by TMEI and Garcia amounted to a substantial breach of their contract which gave rise to a right to rescind the sale.

Rescission creates the obligation to return the object of the contract. This is evident from Article 1385 of the Civil Code which provides:

ART. 1385. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.

Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith.

In this case, indemnity for damages may be demanded from the person causing the loss.

To rescind is to declare a contract void at its inception and to put an end to it as though it never was. Rescission does not merely terminate the contract and release the parties from further obligations to each other, but abrogates it from the beginning and restores the parties to their relative positions as if no contract has been made.[79]

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[77] Emphasis supplied.

[78] *Bitong v. CA,* 354 Phil. 516, 541 (1998).

[79] *Sps. Velarde v. Court of Appeals, supra* note 75, at 375.

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Mutual restitution entails the return of the benefits that each party may have received as a result of the contract. In this case, it is the purchase price that Finvest must return. The amount paid was sufficiently proven by the buy confirmation receipts, vouchers, and official/provisional receipts that respondents presented in evidence. In addition, the law awards damages to the injured party, which could be in the form of interest on the price paid,[80] as the trial court did in this case.

Lastly, we address respondents' concern over Finvest's attempt to pass its liability for the undelivered stock certificates to its officers. We find that, contrary to Finvest's stance, the CA Decision in CA-G.R. CV No. 85176, which is the subject of the two other petitions for review before this Court, is not in conflict with our present resolution. While the decision in the other case adjudges Finvest's officers liable to Finvest for the missing stock certificates, the assailed decision in this petition makes Finvest directly responsible to its clients for undelivered stock certificates. Moreover, even if Finvest's officers are blameworthy, we cannot hold them solidarily liable, as they were not impleaded as parties to this case. Consolidation of cases does not make the parties to one case parties to the other.

WHEREFORE, the petitions in G.R. No. 174986 and G.R. No. 175071 are *DENIED***.** The CA Decision in CA-G.R. CV No. 85176 dated August 9, 2006 and Resolution dated October 11, 2006 are *AFFIRMED*.

The petition in G.R. No. 181415 is likewise *DENIED*. The CA Decision in CA-G.R. CV No. 85430 dated September 3, 2007 and Resolution dated January 24, 2008 are AFFIRMED.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Velasco, Jr., and *Peralta, JJ.,* concur.

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[80] See *Congregation of the Religious of the Virgin Mary v. Orola,* G.R. No. 169790, April 30, 2008, 553 SCRA 578.