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Costs against the petitioner.

SO ORDERED.

Puno (Chairperson), Sandoval-Gutierrez, Corona, and *Azcuna, JJ.,* concur.

SECOND DIVISION

[G.R. No. 149429. October 9, 2006]

HADJI MAHMUD L. JAMMANG and ALMA SHIPPING LINES, INC., *petitioners, vs.* **TAKAHASHI TRADING CO., LTD., and SINOTRANS SHANDONG COMPANY,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; NO BASIS TO BIND PETITIONER SOLIDARILY WITH THE COMPANY THAT TRANSACTED WITH RESPONDENT IN THE AGREEMENT; BEING A JURIDICAL PERSON, THE COMPANY HAS A PERSONALITY SEPARATE AND DISTINCT FROM THE STOCKHOLDERS OR MEMBERS WHO COMPOSE IT.— It is clear from the wording of the supplemental agreement that it was Alma Shipping Lines, Inc. which entered thereto and not petitioner Jammang. The former, being a juridical person, has a personality separate and distinct from the stockholders or members who compose it. Therefore, as it was the company that transacted with Sinotrans in the agreement, there is no basis for petitioner Jammang to be bound solidarily with the company. In addition, petitioner Jammang was neither a stockholder nor an officer of the company. As a general manager, he was only a mere employee.

2. ID.; AGENCY; THE SUPPLEMENTAL AGREEMENT WAS NOT A SPECIAL POWER OF ATTORNEY NECESSARY TO DESIGNATE PETITIONER TO PERFORM ACTS OF DOMINION OVER THE SUBJECT GOODS IN ACCORDANCE

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WITH ARTICLE 1878 OF THE CIVIL CODE.— Petitioner Jammang was not an agent of respondents. The supplemental agreement was not a special power of attorney necessary to designate him to perform acts of dominion over the subject goods in accordance with Article 1878 of the Civil Code. Likewise, nothing in the Report of Business Development indicated that petitioner was acting as the agent of Sinotrans. He was merely reporting about the business conditions in Zamboanga. As a matter of fact, it was Pablo Palis who, on direct testimony, categorically declared that he was Sinotrans' agent. Palis' judicial admission of the agency existing between him and the respondents was never contradicted. Moreover, even assuming that petitioner was Sinotrans' agent, he cannot be held liable for the amount of US$266,000 when the evidence on record is bereft of any showing that he received the proceeds of the sale. Under Article 1897 of the Civil Code, the agent is not obliged to pay the price but is merely obliged to deliver the price which he received from the buyer. Furthermore, the supplemental agreement clearly shows that the obligation of petitioner to remit the amount of US$266,000 was conditioned upon receipt of payment from the collectibles. If agency existed, the obligation to remit the money arises only after the same had been received by the agent.

APPEARANCES OF COUNSEL

Abello Concepcion Regala & Cruz for petitioners.
Rico & Associates for respondents.

D E C I S I O N

AZCUNA, *J.*:

This is a petition for review on *certiorari*[1] which seeks to set aside the decision and resolution of the Court of Appeals (CA) promulgated on May 16, 2001 and August 9, 2001, respectively, in CA-G.R. CV No. 64197 entitled "*Takahashi Trading Co., Ltd. and Sinotrans Shandong Company v. Hadji Mahmud I. Jammang and Alma Shipping Lines, Inc.*"

[1] Under Rule 45 of the Rules of Court.

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The CA affirmed *in toto* the entire decision of the Regional Trial Court (RTC) of Pasig City, Branch 167, in Civil Case No. 65340, which ruled in favor of herein respondent Sinotrans Shandong Company which filed an action for the collection of a sum of money against petitioner Jammang pursuant to the provisions of their supplemental agreement.

Petitioner Hadji Mahmud I. Jammang is a trader and the owner of the MV Queen Alma, a vessel engaged in the shipment of barter goods from Singapore to Jolo, Philippines. He is also the general manager of co-petitioner Alma Shipping Lines, Inc. (Alma), a duly-organized and existing domestic corporation.

Respondent Takahashi Trading Co., Ltd. (Takahashi) is a foreign corporation duly licensed to transact business in the Philippines, while co-respondent Sinotrans Shandong Company (Sinotrans) is a foreign corporation organized and existing under the laws of the People's Republic of China.

The facts of the case are as follows:[2]

Petitioner Jammang has been engaged in the trading business for over fifteen years, and is a pioneer in the establishment of trade relations between Zamboanga City and nearby Asian countries such as Taiwan, Malaysia and Indonesia. As stated earlier, Jammang is also the general manager of Alma Shipping Lines, being the owner and operator of the MV Queen Alma.

Sometime in October of 1993, Hiroaki Takahashi, the president of respondent Takahashi, introduced Jammang to Sinotrans because the latter was scouting for a supplier of Chinese goods for his buyers in Labuan, Malaysia. Sinotrans agreed to supply said respondent with Chinese goods on the condition that the latter will act as a sales agent of petitioner Sinotrans. It was agreed that Jammang shall turn over the proceeds of the sale, less mark-up, and return unsold goods, if any, to Sinotrans. On the other hand, Jammang and Takahashi agreed to split equally whatever profit may be derived from the sale of Sinotrans' goods.

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[2] *Rollo*, pp. 82-85, 205-210.

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Upon Jammang's assurances that he had ready buyers in the area, two shipments of goods consisting of bleached or printed cotton, garlic and *lungkow* vermicelli (*sotanghon*) were made by Sinotrans from Qingdao, China to Labuan, Malaysia. The goods, valued at US$696,337, were consigned to Takahashi. Contrary to the representation and assurances of Jammang, however, there were no ready buyers in Labuan, Malaysia. For two months, Takahashi was forced to store the goods in a warehouse for a fee.

Nevertheless, Jammang was able to convince Sinotrans and Takahashi to allow him to bring the goods to Zamboanga City, Philippines, where he again claimed to have ready buyers. He promised to turn over the proceeds of the sale, as well as the unsold items, to Sinotrans. Likewise, he reassured Takahashi of their equal sharing of the profits earned from the sale.

The goods were subsequently transshipped to Zamboanga City with Jammang as consignee. Initially, he made a partial turnover of the proceeds of the sale in the amount of US$230,000. After that, however, no further remittance was made.

To address the situation, the parties executed a Supplemental Agreement (Exhibit "G") on July 27, 1994, stipulating the following:

This Agreement is entered into between ALMA SHIPPING LINES, INC. and SHANDONG CO., CHINA, on July 27, 1994 at Alba Mall, Tetuan, Zamboanga City.

Whereas, the amount of goods received by Alma Shipping Lines, Inc. from SINOTRANS SHANDONG CO. CHINA is 696,337 USD.

Whereas, Alma Shipping Lines, Inc. has remitted already the amount of 230,000 USD as partial payment to the Sinotrans Shandong, Co.

Whereas, Alma Shipping Lines , Inc. will remit by July 29, 1994 to SINOTRANS SHANDONG CO. through T/T in the amount of 15,000 USD.

Whereas, 266,000 USD is still collectible and the due date for collection will be on September 15, 1994, and the moment the Alma Shipping Lines, Inc. will receive the payments from the buyers,

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immediately the same amount must be remitted to Sinotrans Shandong, Co.

Whereas, the remaining stocks in the amount of 185,000 USD [will] be sold continuously and if possible, [Alma Shipping Lines, Inc. will] try to dispose them up to October 31, 1994....

Notwithstanding the agreement, Jammang was able to remit only the amount of US$15,000.

It was discovered later, upon Sinotrans' investigation, that Jammang had already sold all the goods subject of the agreement. Despite repeated oral and written demands, Jammang failed to account for and turn over the remaining balance of US$451,337 to Sinotrans. He likewise declined to talk to respondents. Moreover, he refused to give to Takahashi its share in the perceived profits.

Consequently, respondents filed with the RTC of Pasig City a complaint for a sum of money and damages with an application for a writ of preliminary attachment against Jammang.

Finding merit in the application for a writ of preliminary attachment, the RTC granted the same in an order dated January 26, 1996.

Respondents offered in evidence several documents to support the testimony of their lone witness, Lui Xiao Bo, a resident of China and the Import Export Manager of Sinotrans.

He declared that since only the amount of US$230,000 was remitted by Jammang as partial payment, he inspected the remaining inventory which the former showed to him. To his estimate, the value of the same was only US$180,000. Petitioner Jammang insisted, however, that he had collectibles amounting to US$246,000, and a US$100,000 worth of stocks left at BCC Warehouse.

Despite the supplemental agreement that was subsequently executed by the parties, petitioner Jammang was able to remit only US$15,000, leaving an unliquidated balance of US$451,337. A demand in writing made by respondents to said petitioner in April 1995 proved futile.

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On his part, petitioner Jammang insisted that as a barter trader, he neither bought nor sold the goods but merely facilitated the sale. Neither was he an agent of respondents. His signing of the supplemental agreement was only for record purposes, and the business development report was likewise signed by him in order to convince Sinotrans that it is profitable to send goods to the Philippines.[3]

As to the claim of Takahashi about his purported share in the profits, petitioner Jammang stated that no such profit was realized on account of the poor quality of the goods which cannot be sold at higher prices.

On the other hand, petitioner Alma Shipping Lines, Inc. denied liability arising out of the transaction because it enjoys a separate and distinct personality from its general manager. Petitioner Jammang acted on his own capacity and the former was never a party or privy to any document signed by the latter.[4]

On April 22, 1999, declaring that petitioner Jammang is bound by the provisions of the supplemental agreement, the RTC rendered its decision in favor of respondents, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff Sinotrans Shandong Company and against the defendant Hadji Mahmud I. Jammang, ordering the latter to pay the former, as follows:

a) The amount of US$266,000.00, as the principal obligation, plus legal interest thereon per annum until full payment, to be paid in Philippine Currency at the exchange rate fixed by the Bangko Sentral at the time of payment (*Pan American World Airways v. Intermediate Appellate Court*, G.R. No. 44445, 31 August 1987);

b) To pay 10% of the principal obligation, as and for reasonable attorney's fees;

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[3] *Rollo*, p. 209; Records, p. 556.

[4] *Rollo*, p. 209.

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c) To account for the remaining stocks valued at US$185,000.00 and, if sold, to remit the proceeds of the sale; and,

d) To pay the costs.

For lack of sufficient factual and legal basis, the counterclaim interposed by the defendants is DISMISSED.

SO ORDERED.[5]

Petitioners appealed the RTC decision to the CA. On May 16, 2001, the CA affirmed the assailed decision, thus:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED and the appealed Decision in Civil Case No. 65340 is hereby AFFIRMED in its entirety.

Double costs against the defendants-appellants.

SO ORDERED.[6]

Petitioners moved for a reconsideration of the CA decision but the same was denied in a resolution dated August 9, 2001.

Petitioners contend that:

I.

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH THE CORPORATION CODE AND SETTLED JURISPRUDENCE WHEN IT AFFIRMED THE RTC DECISION THAT JAMMANG WAS SOLIDARILY LIABLE WITH ALMA, CONSIDERING THAT:

A. A CORPORATION HAS A PERSONALITY SEPARATE AND DISTINCT FROM ITS STOCKHOLDERS;

B. THE DOCTRINE OF SEPARATE CORPORATE IDENTITY APPLIES TO OFFICERS OF CORPORATIONS; AND,

C. JAMMANG, WHO IS NOT A STOCKHOLDER OR EVEN AN OFFICER BUT A MERE GENERAL MANAGER, CANNOT

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[5] *Rollo*, p. 213.

[6] *Id.* at 88.

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BE HELD LIABLE FOR ANY OBLIGATION CONTRACTED BY ALMA AS A CORPORATE ENTITY.

II

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH THE LAW ON AGENCY AND SETTLED JURISPRUDENCE CONSIDERING THAT:

A. IT HELD THAT JAMMANG WAS AN AGENT OF SINOTRANS DESPITE THE LACK OF A SPECIAL POWER OF ATTORNEY AUTHORIZING HIM TO SELL THE GOODS OF THE LATTER; AND,

B. EVEN ASSUMING *ARGUENDO* THAT JAMMANG WAS AN AGENT OF SINOTRANS, THE COURT OF APPEALS SERIOUSLY ERRED IN ITS INTERPRETATION AND APPLICATION OF THE LAW ON AGENCY, IN THAT:

1. AN AGENT IS NEVER LIABLE TO REMIT TO HIS PRINCIPAL THE PROCEEDS OF THE GOODS DELIVERED TO HIM FOR SALE UNLESS HE RECEIVED THE SAME; AND,

2. SINCE THE RTC DECISION ITSELF WHICH WAS AFFIRMED BY THE COURT OF APPEALS STATED THAT NO EVIDENCE WAS ADDUCED THAT JAMMANG RECEIVED PAYMENTS FOR THE US$266,000 GOODS SOLD ON CREDIT, THERE WAS NO BASIS IN FACT AND LAW TO HOLD [THAT] JAMMANG IS LIABLE FOR THE AMOUNT OF US$266,000 PLUS INTERESTS UNTIL FULL PAYMENT.

III

THE COURT OF APPEALS SANCTIONED THE DEPARTURE BY THE LOWER COURT FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, THUS CALLING FOR THE EXERCISE OF THE POWER OF SUPERVISION:

A. THE LONE WITNESS FOR THE RESPONDENTS DID NOT TESTIFY BEFORE THE JUDGE HANDLING THE CASE BUT BEFORE A MERE RESEARCHER WHO IS NOT A MEMBER OF THE BAR;

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B. THE TRIAL COURT DID NOT ALLOW THE PETITIONERS TO CROSS-EXAMINE THE LONE WITNESS FOR THE RESPONDENTS. THUS, THE JUDGE DID NOT HAVE THE OPPORTUNITY TO EVALUATE THE TESTIMONY OF THE WITNESS TO DETERMINE HIS TRUTHFULNESS AND CREDIBILITY; AND,

C. THE ENTIRE RECORDS OF THE CASE, EVEN THE VERY DECISION OF THE TRIAL COURT, SHOWED THAT THE RESPONDENTS MISERABLY FAILED TO PROVE BY PREPONDERANT EVIDENCE THAT THEY WERE ENTITLED TO THEIR CLAIMS AND THE AMOUNT SO ADJUDGED.

IV

THE COURT OF APPEALS ERRED IN NOT HOLDING THE RESPONDENTS LIABLE TO THE PETITIONERS FOR ACTUAL, MORAL AND EXEMPLARY DAMAGES, AS WELL AS FOR ATTORNEY'S FEES AND FOR EXPENSES OF LITIGATION.

Petitioners argue as follows:

It is clear from the wording of the supplemental agreement that it was Alma Shipping Lines, Inc. which entered thereto and not petitioner Jammang. The former, being a juridical person, has a personality separate and distinct from the stockholders or members who compose it. Therefore, as it was the company that transacted with Sinotrans in the agreement, there is no basis for petitioner Jammang to be bound solidarily with the company. In addition, petitioner Jammang was neither a stockholder nor an officer of the company. As a general manager, he was only a mere employee.

Petitioner Jammang was not an agent of respondents. The supplemental agreement was not a special power of attorney necessary to designate him to perform acts of dominion over the subject goods in accordance with Article 1878 of the Civil Code. Likewise, nothing in the Report of Business Development indicated that petitioner was acting as the agent of Sinotrans. He was merely reporting about the business conditions in Zamboanga. As a matter of fact, it was Pablo Palis who, on direct testimony, categorically declared that he was Sinotrans'

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agent. Palis' judicial admission of the agency existing between him and the respondents was never contradicted.

Moreover, even assuming that petitioner was Sinotrans' agent, he cannot be held liable for the amount of US$266,000 when the evidence on record is bereft of any showing that he received the proceeds of the sale. Under Article 1897 of the Civil Code, the agent is not obliged to pay the price but is merely obliged to deliver the price which he received from the buyer. Furthermore, the supplemental agreement clearly shows that the obligation of petitioner to remit the amount of US$266,000 was conditioned upon receipt of payment from the collectibles. If agency existed, the obligation to remit the money arises only after the same had been received by the agent.

The RTC judge was not able to observe the demeanor of respondent's witness, Liu Xiao Bo, because it was only the legal researcher, Petronilo Jalandoni, who was not a member of the Bar, who presided in the proceedings and received the testimony of the witness.

No evidence was presented to prove that US$266,000 was due and owing from petitioner.

Respondents should reimburse petitioner for actual, moral and exemplary damages, as well as for attorney's fees and litigation expenses.

The petition fails to show any reversible error of law by the Court of Appeals.

The dispute really turns on factual questions.

As the Court of Appeals stated in its decision:

> The plain and clear language of the Agreement dated July 27, 1994 (Exhibit "G") undoubtedly shows that appellants Jammang committed himself to act as a selling agent of plaintiff-appellee Sinotrans by his acknowledgment of the actual receipt of goods worth US$696,337 shipped by the latter, his first remittance of the amount of US$230,000 as partial payment thereof, his undertaking to remit the sum of US$266,000 still due and collectible and to remit US$15,000 on July 29, 1994, and his acknowledgment of the remaining unsold

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goods worth US$185,000 which he will try to dispose of by October 31, 1994. Aside from said Agreement, appellant Jammang had earlier submitted a Business Development Report confirming receipt of the goods sent to him by plaintiff-appellee Sinotrans, in which We do not find any indication that he was accepting said goods merely as facilitator or warehouseman. In fact, We could not make out of the evidence presented as to the receipt of the subject goods by BCC Warehouse as these are mere photocopies and the owner of said warehouse not presented in court to shed on the particular transaction and arrangement with plaintiffs-appellees. Such evidence would be crucial especially were it true as claimed by appellant Jammang that plaintiff-appellees' goods were not duly covered by customs documents. Actually, the claim of alleged seizure by the authorities of plaintiffs-appellees' goods was not substantiated by competent evidence such as documents or official report from the Philippine Navy, Philippine Coast Guard or the Bureau of Customs. AS to Rev. Palis whom appellant Jammang claims was the appointed selling agent of plaintiff-appellees, the same does not hold water. As manifest in an Affidavit executed by Rev. Pablo Palis, he was actually employed by appellant Jammang and worked as his Executive Assistant in Jammang's SAKATA Office in Alta Mall Complex from 1993 up to December 1995, when the subject transaction with plaintiffs-appellees took place. Appellant Jammang did not deny the statements in said affidavit but maintained that he had clearly spelled out his limited role in the transaction with plaintiffs-appellees. Nevertheless, said affidavit only served to prove that Palis' involvement in the subject transaction was in his capacity as agent or employee of appellant Jammang and not of plaintiffs-appellees. Thus, even if appellants presented documentary evidence showing that Palis actually withdrew some of the goods at the warehouse, the same does not sufficiently prove the existence of agent-principal relationship between him and plaintiffs-appellees, as in fact it only goes to show that he did so to assist appellant Jammang in disposing of the goods. This conclusion is buttressed by the fact that the buyers had issued promissory notes for the payment of the goods bought by them in the name of appellant Jammang and not of Palis.

Appellants then assailed the trial court in holding that the Agreement (Exhibit "G") embodied the entire transaction which transpired between the parties and thus failed to properly appreciate the circumstances surrounding its execution and subsequent events. Appellant Jammang maintained that he only acquiesced into signing the Agreement (Exhibit "G") as he was afraid that the "conventional

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trading" being firmed up with plaintiffs-appellees may not materialize if he would not accommodate the execution of said document as requested by plaintiffs-appellees. Aside from failing to establish such alleged future business deal with plaintiffs-apapellees wherein appellant Jammang claimed to expect lucrative earnings from shipping contracts, appellants' efforts to vary the clear and unequivocal terms of the Agreement certainly raise more questions than provide a more plausible and truthful version of the case. The difficulty, however, with appellants' version is that it tried to present an elaborately contrived picture of the entire dealings between the parties that is inconsistent not only with the totality of evidence on record but also contrary to human experience and the ordinary course of things. The trial court aptly remarked that appellant Jammang's attempt to vary the terms of the Agreement is "a clear illustration of evading a legally contracted obligation" after benefiting from the sale of the goods, he is now reneging on his commitment to remit the proceeds of the sale.

x x x. No such reversible error appears in this case as to the matter of evaluation of testimonial evidence by the trial court, the tests applied by it [being] no more than whether such testimony is in conformity with knowledge and consistent with experience of mankind; a testimony that is credible in itself such as the common experience of mankind can approve as probable under the circumstances. Thus, the trial court could not help but declare that appellant Jammang being a long time and experienced businessman himself, it is simply incredible that he will admit and acknowledge an obligation involving payment of money reaching to thousands of dollars under Exhibits "D" and "G", knowing its serious legal and financial consequences. With his extensive experience in shipping and barter trading, it is indeed simply unbelievable that he will assume the alleged liability of Rev. Pablo Palis and agree to act as a dummy for the latter, or to simply sign the Agreement (Exhibit "G") purely to accommodate the plaintiffs-appellees on the mere promise of a so-called "conventional trading" from which he expects to earn huge shipping earnings. The clear and unmistakable terms of Exhibits "G" and "D" indeed leave no room for doubt as to the intention of the herein contracting parties. It is but proper that appellant Jammang be now made to fulfill his contractual undertaking by paying the amounts still due and owing to plaintiffs-appellees as per the Agreement dated July 27, 1994, to account for the remaining stocks valued at US$185,000 and to pay 10% of the principal obligation of US$266,000 as reasonable attorney's fees, pursuant to Art. 2208 (2) of the Civil Code.

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It is axiomatic that this Court will not review, much less reverse, the factual findings of the Court of Appeals, especially where, as in this case, such findings coincide with those of the trial court, since this Court is not a trier of facts.

All told, therefore, the Court finds no reason or basis to grant the petition.

WHEREFORE, the petition is *DENIED*. No costs.

SO ORDERED.

Puno (Chairperson), Sandoval-Gutierrez, Corona, and *Garcia, JJ.,* concur.

SECOND DIVISION

[G.R. No. 152921. October 9, 2006]

RUBEN S. SIA, *petitioner, vs.* **ERLINDA M. VILLANUEVA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MAYBE AVAILED ONLY IF THERE IS NO APPEAL OR ANY OTHER PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF THE LAW.**— The Court of Appeals correctly declared that petitioner pursued the wrong remedy. A special civil action for *certiorari* may be availed of only if the lower court or tribunal acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.

2. **ID.; ID.; ID.; TRIAL COURT IS MERELY PERFORMING ITS MINISTERIAL ACT OF CARRYING OUT THE FINAL AND EXECUTORY DECISION OF THE APPELLATE COURT IN ISSUING A WRIT OF EXECUTION.**— In the