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badges of fraud under Article 1387 of the Civil Code on rescissible contracts. But there is nothing else in the appealed decision to indicate that rescission was contemplated under the said provision of the Civil Code. The aforementioned badges must have been considered merely as grounds for holding that the sale is fictitious. Consequently, we find that the CA properly applied the governing law over the matter under consideration which is Article 1409 of the Civil Code on void or inexistent contracts.

WHEREFORE, the petition is *DENIED*. Costs against petitioners.

SO ORDERED.

Carpio (Chairperson),[**] *Leonardo-de Castro,*[***] *Brion,* and *Abad, JJ.,* concur.

SECOND DIVISION

[G.R. No. 177384. December 8, 2009]

JOSEPHINE WEE, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; APPLICANT FOR REGISTRATION OF LAND TITLE MUST PROVE BY CLEAR, POSITIVE AND CONVINCING EVIDENCE THAT HER POSSESSION OR THAT OF HER PARENTS, WAS OF THE NATURE AND DURATION REQUIRED BY LAW; CASE AT BAR NOT A CASE OF. — In *Director, Land*

[**] Per Special Order No. 775 dated November 3, 2009.

[***] Additional member per Special Order No. 776 dated November 3, 2009.

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Management Bureau v. Court of Appeals, we explained that — x x x The phrase "adverse, continuous, open, public, peaceful and in concept of owner," by which characteristics private respondent describes his possession and that of his parents, are mere conclusions of law requiring evidentiary support and substantiation. The burden of proof is on the private respondent, as applicant, to prove by clear, positive and convincing evidence that the alleged possession of his parents was of the nature and duration required by law. His bare allegations without more, do not amount to preponderant evidence that would shift the burden of proof to the oppositor. Here, we find that petitioner's possession of the lot has not been of the character and length of time required by law.

2. ID.; ID.; ID.; INTERMITTENT AND SPORADIC ASSERTION OF OWNERSHIP DOES NOT PROVE OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION AND OCCUPATION; ABSENT OTHER COMPETENT EVIDENCE, TAX DECLARATIONS DO NOT CONCLUSIVELY ESTABLISH EITHER POSSESSION OR DECLARANT'S RIGHT TO REGISTRATION OF TITLE. — Unfortunately, petitioner failed to prove that she and her predecessor-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the subject property under a *bona fide* claim of ownership since June 12, 1945. First, there is nothing in the records which would substantiate her claim that Julian Gonzales was in possession of Lot No. 8349 since 1945, other than the bare allegations of Juana Gonzales. Certainly, these unsubstantiated statements do not meet the required quantum of evidence in land registration cases. In fact, contrary to her testimony that her late husband inherited the property from his parents "a long time ago," or even prior to 1945, the earliest tax declaration that was presented in this case is one declared by Julian Gonzales only in 1957 — long after June 1945. It bears stressing that petitioner presented only five tax declarations (for the years 1957, 1961, 1967, 1980 and 1985) for a claimed possession and occupation of more than 45 years (1945-1993). This type of intermittent and sporadic assertion of alleged ownership does not prove open, continuous, exclusive and notorious possession and occupation. In any event, in the absence of other competent evidence, tax declarations do not conclusively establish either possession or declarant's right to registration of title.

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3. ID.; ID.; ID.; THE APPLICANT FOR REGISTRATION OF LAND TITLE MUST DEMONSTRATE THAT HER POSSESSION OF THE PROPERTY WAS IN THE CONCEPT OF AN OWNER. — [W]e agree with the CA that petitioner was unable to demonstrate that the alleged possession was in the concept of an owner, since she could not point to any acts of occupation, development, cultivation or maintenance over the property. Petitioner claims that because the property is planted with coffee, a fruit-bearing tree, it automatically follows that the lot is cultivated, showing actual possession and occupation. However, petitioner failed to explain who planted the coffee, whether these plants are maintained or harvested or if any other acts were undertaken by petitioner or her predecessor-in-interest to cultivate the property.

4. ID.; ID.; ID.; ID.; MERE CASUAL CULTIVATION OF THE LAND DOES NOT AMOUNT TO EXCLUSIVE AND NOTORIOUS POSSESSION THAT WOULD GIVE RISE TO OWNERSHIP. — Even if we were to assume that the coffee was planted by petitioner's predecessor-in-interest, "mere casual cultivation" of the land does not amount to exclusive and notorious possession that would give rise to ownership. The presence of an unspecified number of coffee plants, without proof that petitioner or her predecessor-in-interest actually and deliberately cultivated them is not sufficient to support a claim of title. In fact, the five tax declarations in the name of Julian Gonzales described the lot as "unirrigated riceland." No improvements or plantings were declared or noted in any of these tax declarations. It was only in petitioner's 1993 tax declaration that the land was described as planted with coffee. We are, therefore, constrained to conclude that the mere existence of an unspecified number of coffee plants, *sans* any evidence as to who planted them, when they were planted, whether cultivation or harvesting was made or what other acts of occupation and ownership were undertaken, is not sufficient to demonstrate petitioner's right to the registration of title in her favor.

APPEARANCES OF COUNSEL

Agabin Verzola & Layaoen Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

In land registration cases, the applicant has the burden to show that he or she is the real and absolute owner in fee simple of the land sought to be registered.[1] It is also important to bear in mind that one who seeks registration of title must prove his or her claim with "well-nigh incontrovertible" evidence.[2] In this case, petitioner miserably failed to show that she is the real and absolute owner in fee simple of the land sought to be registered.

Assailed in this Petition for Review on *Certiorari*[3] under Rule 45 of the Rules of Court are the April 28, 2006 Decision[4] of the Court of Appeals (CA) and its subsequent Resolution[5] dated April 3, 2007 in CA-G.R. CV No. 76519. Said Decision and Resolution reversed and set aside the April 2, 2002 Judgment[6] of the Regional Trial Court (RTC) of Tagaytay City, Branch 18 and held that petitioner was not entitled to the requested registration of title.

Proceedings before the Regional Trial Court

On December 22, 1994, petitioner filed an Application for Registration of Title[7] over a 4,870-square meter parcel of land situated in Barangay Puting Kahoy, Silang, Cavite, designated as Lot No. 8349 (Cadastral Lot. No. 452-D).

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[1] *Diaz-Enriquez v. Republic of the Phils.*, 480 Phil. 787, 800 (2004).

[2] *Turquesa v. Valera,* 379 Phil. 618, 631 (2000).

[3] *Rollo*, pp. 9-33.

[4] CA *rollo,* pp. 94-101; penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Aurora Santiago-Lagman and Arcangelita Romilla-Lontok.

[5] *Id.* at 135-137.

[6] Records, pp. 241-242, penned by Presiding Judge Alfonso S. Garcia.

[7] *Id.* at 1-12. Petitioner attached the following documents to her Application: Plan Ap. 04-006774 in tracing cloth and blueprint, technical descriptions, tax declaration no. 32282-A, receipts of payments of real estate taxes and the Deed of Absolute Sale between Julian Gonzales and Josephine Wee.

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In brief, petitioner alleged in her application that she is the owner in fee simple of the subject property by virtue of a Deed of Absolute Sale[8] dated February 1, 1993 executed by Julian Gonzales in her favor. Petitioner claimed the benefits of the Property Registration Decree[9] or, should said Decree be inapplicable, the benefits of Chapter VIII of Commonwealth Act No. 141 (1936),[10] because she and her predecessor-in-interest have been in open, continuous, public, peaceful and adverse possession of the land since time immemorial.

On March 15, 1995, the Republic of the Philippines, through the Office of the Solicitor General (OSG), filed its Opposition[11] alleging that neither the petitioner nor her predecessor-in-interest has been in open, continuous, exclusive and notorious possession and occupation of Lot No. 8349 since June 12, 1945 or prior thereto. The OSG likewise averred that the muniments of title and tax payment receipts submitted by the petitioner do not constitute competent or sufficient evidence of a *bona fide* acquisition of the subject lot, or of the petitioner's open, continuous, exclusive and notorious possession and occupation thereof in the concept of owner since June 12, 1945 or prior thereto. It asserted that Lot No. 8349 is part of the public domain and consequently prayed for the dismissal of the application for registration.

Petitioner presented the following pieces of documentary evidence before the trial court:

1) Deed of Absolute Sale between Josephine Wee and Julian Gonzales dated February 1, 1993;[12]

2) Tax Declarations in the name of Julian Gonzales for the years 1957, 1961, 1967, 1980, and 1985;[13]

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[8] *Id.* at 7-9.

[9] Presidential Decree No. 1529 (1978).

[10] The Public Land Act.

[11] Records, pp. 17-19.

[12] *Id.* at 7-9.

[13] *Id.* at 103-109.

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3) Tax Declarations in the name of Josephine Wee from 1993 onwards;[14]

4) Receipts for tax payments made by Josephine Wee from 1993-1999;[15]

5) Affidavit of Seller-Transferor executed by Julian Gonzales on February 10, 1993;[16]

6) Affidavit of Ownership, Aggregate Land Holding and Non-Tenancy executed by Julian Gonzales on February 10, 1993;[17]

7) Affidavit of Non-Tenancy executed by Julian Gonzales on February 10, 1993;[18]

8) *Salaysay* executed by Juana Macatangay Gonzales, Erlinda Gonzales Batingal and Remedios Gonzales Bayan;[19]

9) Certification dated March 2, 2000 by the Department of Environment and Natural Resources (DENR) stating that Lot No. 8349 was shown to be within the Alienable or Disposable Land per Land Classification Map No. 3013 established under FAO-4-1656 on March 15, 1982;[20]

10) Survey Plan of Lot No. 8349;[21] and

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[14] *Id.* at 110-113.

[15] *Id.* at 114-121.

[16] *Id.* at 130, stating that the land sold to Josephine Wee is his only land owned, in compliance with Department of Agrarian Reform Administrative Order No. 1 (series 1989).

[17] *Id.* at 131, indicating the technical description of Lot No. 8349.

[18] *Id.* at 132, stating that Julian Gonzales is the "absolute and register[ed] owner of a certain parcel of land situated at Puting Kahoy, Silang Cavite covered by Tax Declaration 15196 of the Assessor's Office of Silang x x x."

[19] *Id.* at 125-126, affirming the due execution and authenticity of the documents signed by Julian Gonzales.

[20] *Id.* at 202.

[21] *Id.*

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11) Surveyor's Certificate, Technical Description and Tracing Cloth.[22]

She also presented the testimonies of the following witnesses who were all cross-examined by the Republic through the public prosecutor:

1) Josephine Wee, who testified that she purchased Lot No. 8349 from Julian Gonzales through a Deed of Absolute Sale dated February 1, 1993 and immediately took possession thereof after the sale; that she did not cultivate it because it is planted with coffee; that she paid for all the real property taxes subsequent to the sale; that she caused the preparation of a survey plan; that the property is not part of the public domain or any river or military reservation; that there are no adverse claimants and no cases were filed against her after the sale involving said lot and that she is not doing anything with the property because it is not "productive."[23]

2) Juana Gonzales, the 75-year old widow of Julian Gonzales, who declared that she and her husband sold Lot No. 8349 to the petitioner and identified her husband's signature and her own thumbmark. She testified that she and her late husband had been in possession of Lot No. 8349 prior to the sale to Josephine Wee; that her husband inherited the property from his parents "a long time ago"; that her husband already had the property when they got married and that she and Julian Gonzales began living together in 1946. She also identified and affirmed the due execution and authenticity of her *Salaysay*, as well as the documents signed by her husband.[24]

3) Remedios Gonzales Bayan, the 39-year old daughter of Julian and Juana Gonzales, who testified that she

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[22] *Id.* at 211-213.

[23] TSN, February 24, 2000, pp. 1-25.

[24] TSN, March 9, 2000, pp. 1-16.

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witnessed the execution of the Deed of Absolute Sale between her father whose signature she identified and the applicant in February 1993. She also identified and affirmed the due execution and authenticity of her *Salaysay*.[25]

Ruling of the Regional Trial Court

On April 2, 2002, the RTC promulgated in favor of the petitioner a Judgment,[26] pertinent portions of which read:

Culled from the evidence on record, both testimonial and documentary, are facts which satisfactorily establish applicant's ownership in fee simple of the parcel of land, subject matter of the instant proceedings, to wit: that by means of an appropriate deed of sale, the applicant has acquired said property by purchase from Julian Gonzales on February 1, 1993; that the same parcel was declared for taxation purposes; that all the realty taxes due thereon have been duly paid. Likewise, this Court could well-discern from the survey plan covering the same property and other documents presented, more particularly the tracing cloth plan which was presented as additional evidence in support of the application, that the land sought to be registered is agricultural and not within any forest zone or the public domain; that the land is not covered by any public land application/patent, and that there is no other adverse claimant thereof; and further, that tacking her predecessors-in-interest's possession to applicant's, the latter appears to be in continuous and public possession thereof for more than thirty (30) years.

On the basis of the foregoing facts and considering that applicant is a Filipino citizen not otherwise disqualified from owning real property, this Court finds that she has satisfied all the conditions essential to the grant of her application pursuant to the provisions of the Land Registration Law, as amended.

WHEREFORE, this Court hereby approves this application for registration and thus places under the operation of Act 141, Act 496 and/or P.D. 1529, otherwise known as Property Registration Law, the lands described in Plan Ap-04-010262, Lot 8349 and containing an area of Four Thousand Eight Hundred Seventy (4,870)

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[25] TSN, May 18, 2000, pp. 1-8.

[26] Records, pp. 241-242; reference as to exhibits were omitted.

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Square Meters as supported by its technical description now forming part of the record of this case, in addition to other proofs adduced in the name of JOSEPHINE WEE, who is of legal age, single and with residence at 1345 Claro M. Recto Avenue, Sta, Cruz, Manila.

Once this Decision becomes final and executory, the corresponding decree of registration shall forthwith issue.

SO ORDERED.

Proceedings before the Court of Appeals

Unsatisfied, the Republic, through the OSG, filed its Notice of Appeal on April 26, 2002, alleging that the RTC erred in granting the application for registration considering that petitioner failed to comply with all the legal requirements for judicial confirmation of her alleged title. In particular, the OSG claimed that Lot No. 8349 was classified as alienable and disposable land only on March 15, 1982, as per Certification issued by the DENR. Thus, petitioner and her predecessor-in-interest could not have been in possession of the property since June 12, 1945, or earlier. The OSG also pointed out that the tax declarations presented by petitioner are fairly recent and do not show petitioner and her predecessor-in-interest's nature of possession. Furthermore, the original tracing cloth plan was not presented in evidence.

Ruling of the Court of Appeals

The CA reversed the RTC Judgment. It held that petitioner failed to prove that she and her predecessor-in-interest have been in possession and occupation of the subject lot under a *bona fide* claim of ownership since June 12, 1945. Thus:

In granting the application for registration of title, the court *a quo* merely relied on the deed of sale executed by Julian Gonzales, in favor of applicant-appellee on February 1, 1993, the tax declarations and tax receipts. It is interesting to note that Juana Gonzales, widow of Julian Gonzales, after identifying the deed of sale executed by her deceased husband in favor of applicant-appellee, merely stated that the lot subject thereof was inherited by Julian from his parents a long time ago and that Julian was in possession of the lot since 1946 when they started living together. For her part, applicant-appellee

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testified that she immediately took possession of the subject lot, which was planted with coffee, after acquiring the same and that she is not doing anything on the lot because it is not productive. As pointed out by the Republic, applicant-appellee and Juana Gonzales failed to specify what acts of development, cultivation, and maintenance were done by them on the subject lot. x x x

x x x x x x x x x

In the case at bar, applicant-appellee merely claimed that the subject lot is planted with coffee. However, no evidence was presented by her as to who planted the coffee trees thereon. In fact, applicant-appellee admitted that she is not doing anything on the subject lot because it is not productive, thereby implying that she is not taking care of the coffee trees thereon. Moreover, tax declarations and tax receipts are not conclusive evidence of ownership but are merely indicia of a claim of ownership, aside from the fact that the same are of recent vintage.[27]

Hence, this petition.

Issues

Petitioner's arguments

1) The testimony of Juana Gonzales proves that petitioner's predecessor-in-interest, Julian Gonzales, occupied Lot No. 8349 even prior to 1946;

2) The fact that the property is planted with coffee, a fruit bearing tree, reveals that the lot is planted, cultivated and cared for. Thus, there was not only effective and active possession and occupation but actual cultivation and tending of the coffee plantation; and

3) The fact that the land was declared for tax purposes as early as 1957 shows that the land was actively possessed and occupied by petitioner and her predecessor-in-interest.

Respondent's arguments:

1) Since Lot No. 8349 became part of the alienable and disposable land only on March 15, 1982, petitioner could

[27] CA *rollo*, pp. 99-101.

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not have been considered as having been in open, continuous, exclusive and notorious possession and occupation of subject property under a *bona fide* claim of ownership; and

2) There is no proof that petitioner or Julian Gonzales undertook any clear act of dominion or ownership over Lot No. 8349, since there are no structures, improvements, or plantings on the property.

Our Ruling

The petition lacks merit.

Petitioner failed to prove open, continuous, exclusive and notorious possession of the subject property.

In *Director, Land Management Bureau v. Court of Appeals*,[28] we explained that —

> x x x The phrase "adverse, continuous, open, public, peaceful and in concept of owner," by which characteristics private respondent describes his possession and that of his parents, are mere conclusions of law requiring evidentiary support and substantiation. The burden of proof is on the private respondent, as applicant, to prove by clear, positive and convincing evidence that the alleged possession of his parents was of the nature and duration required by law. His bare allegations without more, do not amount to preponderant evidence that would shift the burden of proof to the oppositor.

Here, we find that petitioner's possession of the lot has not been of the character and length of time required by law. The relevant provision of the Property Registration Decree relied upon by petitioner reads —

> SEC. 14. *Who may apply*. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

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[28] 381 Phil. 761, 772 (2000).

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(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

(2) Those who have acquired ownership of private lands by prescription under the provisions of existing laws. x x x

Unfortunately, petitioner failed to prove that she and her predecessor-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the subject property under a *bona fide* claim of ownership since June 12, 1945.

First, there is nothing in the records which would substantiate her claim that Julian Gonzales was in possession of Lot No. 8349 since 1945, other than the bare allegations of Juana Gonzales.[29] Certainly, these unsubstantiated statements do not meet the required quantum of evidence in land registration cases. In fact, contrary to her testimony that her late husband inherited the property from his parents "a long time ago," or even prior to 1945, the earliest tax declaration that was presented in this

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[29] In the hearing on March 9, 2000 (TSN, pp. 14-15), Juana Gonzales testified as follows:

Q.	How did you and your husband, Mr. Julian Gonzales, acquire the property?
A.	My husband inherited it from his parents, sir.
Q.	Can you recall, more or less, when your husband inherited this property?
A.	Long time ago, sir.
COURT	When you were already married to him or before your marriage?
A.	When we got married, it was already with him, sir.
FISCAL VELAZCO:	And do you still recall when you got married with Mr. Julian Gonzales?
WITNESS	Since the year 1946, we started living together, sir.
FISCAL VELAZCO:	And you continuously owned and possessed this property up to the time you sold the same?
A.	Yes, sir.

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case is one declared by Julian Gonzales only in 1957 — long after June 1945.

It bears stressing that petitioner presented only five tax declarations (for the years 1957, 1961, 1967, 1980 and 1985) for a claimed possession and occupation of more than 45 years (1945-1993). This type of intermittent and sporadic assertion of alleged ownership does not prove open, continuous, exclusive and notorious possession and occupation. In any event, in the absence of other competent evidence, tax declarations do not conclusively establish either possession or declarant's right to registration of title.[30]

Petitioner failed to prove possession in the concept of an owner.

Second, and more importantly, we agree with the CA that petitioner was unable to demonstrate that the alleged possession was in the concept of an owner, since she could not point to any acts of occupation, development, cultivation or maintenance over the property. Petitioner claims that because the property is planted with coffee, a fruit-bearing tree, it automatically follows that the lot is cultivated, showing actual possession and occupation. However, petitioner failed to explain who planted the coffee, whether these plants are maintained or harvested or if any other acts were undertaken by petitioner or her predecessor-in-interest to cultivate the property.

Even if we were to assume that the coffee was planted by petitioner's predecessor-in-interest, "mere casual cultivation" of the land does not amount to exclusive and notorious possession that would give rise to ownership.[31] The presence of an unspecified number of coffee plants, without proof that petitioner or her

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[30] *Director of Forestry v. Villareal*, 252 Phil. 622, 635 (1989); *Government of the Philippine Islands v. Adriano*, 41 Phil. 112 (1920); *Cruado v. Bustos and Escaler*, 34 Phil. 17 (1916); *Evangelista v. Tabayuyong*, 7 Phil 607 (1907).

[31] *Director of Lands v. Judge Reyes*, 160-A Phil. 832, 851 (1975); *Ramirez v. Director of Lands*, 60 Phil. 114 (1934).

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predecessor-in-interest actually and deliberately cultivated them is not sufficient to support a claim of title. In fact, the five tax declarations in the name of Julian Gonzales described the lot as "unirrigated riceland." No improvements or plantings were declared or noted in any of these tax declarations. It was only in petitioner's 1993 tax declaration that the land was described as planted with coffee. We are, therefore, constrained to conclude that the mere existence of an unspecified number of coffee plants, *sans* any evidence as to who planted them, when they were planted, whether cultivation or harvesting was made or what other acts of occupation and ownership were undertaken, is not sufficient to demonstrate petitioner's right to the registration of title in her favor.

WHEREFORE, the petition is *DENIED*. The Court of Appeals' April 28, 2006 Decision in CA-G.R. CV No. 76519 and its Resolution dated April 3, 2007 denying petitioner's Motion for Reconsideration are both *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson),[*] *Leonardo-de Castro,*[**] *Brion,* and *Abad, JJ.,* concur.

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[*] Per Special Order No. 775 dated November 3, 2009.

[**] Additional member per Special Order No. 776 dated November 3, 2009.