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SO ORDERED.

Ynares-Santiago (Chairperson), Callejo, Sr., Chico-Nazario, and *Nachura, JJ.,* concur.

THIRD DIVISION

[G.R. No. 155208. March 27, 2007]

NENA LAZALITA[*] TATING, *petitioner, vs.* **FELICIDAD TATING MARCELLA, represented by SALVADOR MARCELLA, CARLOS TATING, and the COURT OF APPEALS,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; SIMULATED CONTRACT; DEFINED.— A contract is simulated if the parties do not intend to be bound at all (absolutely simulated) or if the parties conceal their true agreement (relatively simulated). The primary consideration in determining the true nature of a contract is the intention of the parties. Such intention is determined from the express terms of their agreement as well as from their contemporaneous and subsequent acts.

2. REMEDIAL LAW; EVIDENCE; WEIGHT AND ADMISSIBILITY, DISTINGUISHED.— The admissibility of evidence depends on its relevance and competence while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.

3. ID.; ID.; TESTIMONIAL EVIDENCE; AFFIDAVITS ARE CLASSIFIED AS HEARSAY EVIDENCE; RATIONALE.—

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[*] Also spelled as Lasalita in other parts of the *rollo*.

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It is settled that affidavits are classified as hearsay evidence since they are not generally prepared by the affiant but by another who uses his own language in writing the affiant's statements, which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiant. For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon.

4. **ID.; ID.; IN ALL CIVIL CASES, THE BURDEN TO PROVE THE ALLEGATIONS IN THE COMPLAINT LIES UPON THE PLAINTIFF.—** As in all civil cases, the burden is on the plaintiff to prove the material allegations of his complaint and he must rely on the strength of his evidence and not on the weakness of the evidence of the defendant.

5. **ID.; ID.; WHILE TAX RECEIPTS AND DECLARATION OF OWNERSHIP FOR TAX PURPOSES ARE NOT IN THEMSELVES INCONTROVERTIBLE EVIDENCE OF OWNERSHIP, THEY CONSTITUTE AT LEAST PROOF THAT THE HOLDER HAS A CLAIM OVER THE PROPERTY; CASE AT BAR.—** In *Suntay v. Court of Appeals*, the Court ruled that the most protuberant index of simulation is the complete absence, on the part of the vendee, of any attempt in any manner to assert his rights of ownership over the disputed property. In the present case, however, the evidence clearly shows that petitioner declared the property for taxation and paid realty taxes on it in her name. Petitioner has shown that from 1972 to 1988 she religiously paid the real estate taxes due on the said lot and that it was only in 1974 and 1987 that she failed to pay the taxes thereon. While tax receipts and declarations and receipts and declarations of ownership for taxation purposes are not, in themselves, incontrovertible evidence of ownership, they constitute at least proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's bona fide claim of acquisition of ownership.

Supreme Court E-Library

6. CIVIL LAW; PROPERTY; OWNERSHIP AND POSSESSION, DISTINGUISHED.— It is well-established that ownership and possession are two entirely different legal concepts. Just as possession is not a definite proof of ownership, neither is non-possession inconsistent with ownership. The first paragraph of Article 1498 of the Civil Code states that when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred. Possession, along with ownership, is transferred to the vendee by virtue of the notarized deed of conveyance. Thus, in light of the circumstances of the present case, it is of no legal consequence that petitioner did not take actual possession or occupation of the disputed property after the execution of the deed of sale in her favor because she was already able to perfect and complete her ownership of and title over the subject property.

7. ID.; CONTRACTS; SIMULATED CONTRACT; THE PARTY WHO IMPUGNS THE VALIDITY OF THE CONTRACT HAS THE BURDEN OF PROVING THEIR ALLEGATION; NOT SATISFIED IN CASE AT BAR.— Private respondents failed to prove by clear, strong and convincing evidence beyond mere preponderance of evidence that the contract of sale between Daniela and petitioner was simulated. The legal presumption is in favor of the validity of contracts and the party who impugns its regularity has the burden of proving its simulation. Since private respondents failed to discharge the burden of proving their allegation that the contract of sale between petitioner and Daniela was simulated, the presumption of regularity and validity of the October 14, 1969 Deed of Absolute Sale stands.

APPEARANCES OF COUNSEL

Pamplona Genito and Valdezco for petitioner.
Guanzon and Guanzon Law Firm for private respondents.

Supreme Court E-Library

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Assailed in the Special Civil Action for *Certiorari* before the Court are the Decision[1] dated February 22, 2002 and the Resolution dated August 22, 2002 of the Court of Appeals (CA) in CA-G.R. CV No. 64122, which affirmed the Decision[2] of the Regional Trial Court (RTC) of Cadiz City, Negros Occidental, Branch 60.

The present case arose from a controversy involving a parcel of land denominated as Lot 56 of Subdivision plan Psd-31182, located at Abelarde St., Cadiz City, Negros Occidental. The subject lot, containing an area of 200 square meters, was owned by Daniela Solano *Vda. de* Tating (Daniela) as evidenced by Transfer Certificate of Title (TCT) No. T-4393 issued by the Registry of Deeds of the City of Cadiz.[3]

On October 14, 1969, Daniela sold the subject property to her granddaughter, herein petitioner Nena Lazalita Tating (Nena). The contract of sale was embodied in a duly notarized Deed of Absolute Sale executed by Daniela in favor of Nena.[4] Subsequently, title over the subject property was transferred in the name of Nena.[5] She declared the property in her name for tax purposes and paid the real estate taxes due thereon for the years 1972, 1973, 1975 to 1986 and 1988.[6] However, the land remained in possession of Daniela.

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[1] Penned by Justice Martin S. Villarama, Jr. and concurred in by Justices Conchita Carpio Morales (now a member of this Court) and Sergio L. Pestaño; *rollo*, p. 53.

[2] Original Records, pp. 318-342.

[3] Exhibit "A", *id*. at 138.

[4] Exhibit "Q"/"1", *id*. at 177.

[5] Exhibit "3", *id*. at 179.

[6] Exhibits "8-A" to "8-AA", *id*. at 183-212.

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On December 28, 1977, Daniela executed a sworn statement claiming that she had actually no intention of selling the property; the true agreement between her and Nena was simply to transfer title over the subject property in favor of the latter to enable her to obtain a loan by mortgaging the subject property for the purpose of helping her defray her business expenses; she later discovered that Nena did not secure any loan nor mortgage the property; she wants the title in the name of Nena cancelled and the subject property reconveyed to her.[7]

Daniela died on July 29, 1988[8] leaving her children as her heirs, namely: Ricardo, Felicidad, Julio, Carlos and Cirilo who predeceased Daniela and was represented by herein petitioner.

In a letter dated March 1, 1989, Carlos informed Nena that when Daniela died they discovered the sworn statement she executed on December 28, 1977 and, as a consequence, they are demanding from Nena the return of their rightful shares over the subject property as heirs of Daniela.[9] Nena did not reply. Efforts to settle the case amicably proved futile.

Hence, on September 6, 1989, Carlos and Felicidad, represented by her son Salvador, filed a complaint with the RTC of Cadiz City, Negros Occidental against Nena praying for the nullification of the Deed of Absolute Sale executed by Daniela in her favor, cancellation of the TCT issued in the name of Nena, and issuance of a new title and tax declaration in favor of the heirs of Daniela.[10] The complaint also prayed for the award of moral and exemplary damages as well as attorney's fees and litigation expenses. On March 19, 1993, the plaintiffs filed an amended complaint with leave of court for the purpose of excluding Ricardo as a party plaintiff, he

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[7] Exhibit "D", *id*. at 142.

[8] Exhibit "I", *id*. at 149.

[9] Exhibit "E", *id*. at 143.

[10] *Id*. at 1.

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having died intestate and without issue in March 1991.[11] He left Carlos, Felicidad, Julio, and Nena as his sole heirs.

In her Answer, Nena denied that any fraud or misrepresentation attended the execution of the subject Deed of Absolute Sale. She also denied having received the letter of her uncle, Carlos. She prayed for the dismissal of the complaint, and in her counterclaim, she asked the trial court for the award of actual, exemplary and moral damages as well as attorney's fees and litigation expenses.[12]

Trial ensued. On November 4, 1998, the RTC rendered judgment with the following dispositive portion:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendant, and hereby declaring the document of sale dated October 14, 1969 (Exh. "Q") executed between Daniela Solano *Vda. de* Tating and Nena Lazalita Tating as NULL and VOID and further ordering:
>
> 1. The Register of Deeds of Cadiz City to cancel TCT No. 5975 and in lieu thereof to issue a new title in the names of Carlos Tating, Pro-indiviso owner of one-fourth (¼) portion of the property; Felicidad Tating Marcella, Pro-indiviso owner of one-fourth (¼) portion; Julio Tating, Pro-indiviso owner of one-fourth (¼) portion and Nena Lazalita Tating, Pro-indiviso owner of one-fourth (¼) portion, all of lot 56 after payment of the prescribed fees;
>
> 2. The City Assessor of the City of Cadiz to cancel Tax Declaration No. 143-00672 and in lieu thereof issue a new Tax Declaration in the names of Carlos Tating, ¼ Pro-indiviso portion; Felicidad Tating Marcella, ¼ Pro-indiviso portion; Julio Tating, ¼ Pro-indiviso portion; and Nena Lazalita Tating, ¼ Pro-indiviso portion, all of lot 56 as well as the house standing thereon be likewise declared in the names of the persons mentioned in the same proportions as above-stated after payment of the prescribed fees;

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[11] *Id*. at 55.

[12] *Id*. at 23-25.

Supreme Court E-Library

3. The defendant is furthermore ordered to pay plaintiffs the sum of ₱20,000.00 by way of moral damages, ₱10,000.00 by way of exemplary damages, ₱5,000.00 by way of attorney's fees and ₱3,000.00 by way of litigation expenses; and to

4. Pay the costs of suit.

SO ORDERED.[13]

Nena filed an appeal with the CA. On February 22, 2002, the CA rendered its Decision affirming the judgment of the RTC.[14]

Nena's Motion for Reconsideration was denied by the CA in its Resolution dated August 22, 2002.[15]

Hence, herein petition for *certiorari* anchored on the ground that the CA "has decided the instant case without due regard to and in violation of the applicable laws and Decisions of this Honorable Court and also because the Decision of the Regional Trial Court, which it has affirmed, is not supported by and is even against the evidence on record."[16]

At the outset, it must be stated that the filing of the instant petition for *certiorari* under Rule 65 of the Rules of Court is inappropriate. Considering that the assailed Decision and Resolution of the CA finally disposed of the case, the proper remedy is a petition for review under Rule 45 of the Rules of Court.

The Court notes that while the instant petition is denominated as a Petition for *Certiorari* under Rule 65 of the Rules of Court, there is no allegation that the CA committed grave abuse of discretion. On the other hand, the petition actually avers errors of judgment, rather than of jurisdiction, which are the proper subjects of a petition for review on *certiorari*. Hence, in

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[13] *Id*. at 342.

[14] CA *rollo*, p. 86.

[15] *Id*. at 103.

[16] *Rollo*, p. 5.

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accordance with the liberal spirit pervading the Rules of Court and in the interest of justice, the Court decided to treat the present petition for *certiorari* as having been filed under Rule 45, especially considering that it was filed within the reglementary period for filing the same.[17]

As to the merits of the case, petitioner contends that the case for the private respondents rests on the proposition that the Deed of Absolute Sale dated October 14, 1969 is simulated because Daniela's actual intention was not to dispose of her property but simply to help petitioner by providing her with a collateral. Petitioner asserts that the sole evidence which persuaded both the RTC and the CA in holding that the subject deed was simulated was the Sworn Statement of Daniela dated December 28, 1977. However, petitioner argues that said Sworn Statement should have been rejected outright by the lower courts considering that Daniela has long been dead when the document was offered in evidence, thereby denying petitioner the right to cross-examine her.

Petitioner also contends that while the subject deed was executed on October 14, 1969, the Sworn Statement was purportedly executed only on December 28, 1977 and was discovered only after the death of Daniela in 1994.[18] Petitioner argues that if the deed of sale is indeed simulated, Daniela would have taken action against the petitioner during her lifetime. However, the fact remains that up to the time of her death or almost 20 years after the Deed of Absolute Sale was executed, she never uttered a word of complaint against petitioner.

Petitioner further asserts that the RTC and the CA erred in departing from the doctrine held time and again by the Supreme Court that clear, strong and convincing evidence beyond mere preponderance is required to show the falsity or nullity of a

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[17] *Delsan Transport Lines, Inc. v. Court of Appeals*, 335 Phil. 1066, 1075 (1997).

[18] Based on the certification issued by the Civil Registry of Cadiz City, Daniela S. Tating died on July 29, 1988.

Supreme Court E-Library

notarial document. Petitioner also argues that the RTC and the CA erred in its pronouncement that the transaction between Daniela and petitioner created a trust relationship between them because of the settled rule that where the terms of a contract are clear, it should be given full effect.

In their Comment and Memorandum, private respondents contend that petitioner failed to show that the CA or the RTC committed grave abuse of discretion in arriving at their assailed judgments; that Daniela's Sworn Statement is sufficient evidence to prove that the contract of sale by and between her and petitioner was merely simulated; and that, in effect, the agreement between petitioner and Daniela created a trust relationship between them.

The Court finds for the petitioner.

The CA and the trial court ruled that the contract of sale between petitioner and Daniela is simulated. A contract is simulated if the parties do not intend to be bound at all (absolutely simulated) or if the parties conceal their true agreement (relatively simulated).[19] The primary consideration in determining the true nature of a contract is the intention of the parties.[20] Such intention is determined from the express terms of their agreement as well as from their contemporaneous and subsequent acts.[21]

In the present case, the main evidence presented by private respondents in proving their allegation that the subject deed of sale did not reflect the true intention of the parties thereto is the sworn statement of Daniela dated December 28, 1977. The trial court admitted the said sworn statement as part of private respondents' evidence and gave credence to it. The CA also accorded great probative weight to this document.

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[19] *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, 357 Phil. 850, 869-870 (1998).

[20] *Ramos v. Heirs of Honorio Ramos, Sr.*, 431 Phil. 337, 345 (2002).

[21] *Id*. at 345.

Supreme Court E-Library

There is no issue in the admissibility of the subject sworn statement. However, the admissibility of evidence should not be equated with weight of evidence.[22] The admissibility of evidence depends on its relevance and competence while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade.[23] Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.[24] It is settled that affidavits are classified as hearsay evidence since they are not generally prepared by the affiant but by another who uses his own language in writing the affiant's statements, which may thus be either omitted or misunderstood by the one writing them.[25] Moreover, the adverse party is deprived of the opportunity to cross-examine the affiant.[26] For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon.[27] The Court finds that both the trial court and the CA committed error in giving the sworn statement probative weight. Since Daniela is no longer available to take the witness stand as she is already dead, the RTC and the CA should not have given probative value on Daniela's sworn statement for purposes of proving that the contract of sale between her and petitioner was simulated and that, as a consequence, a trust relationship was created between them.

Private respondents should have presented other evidence to sufficiently prove their allegation that Daniela, in fact, had

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[22] *Ayala Land, Inc. v. Tagle*, G.R. No. 153667, August 11, 2005, 466 SCRA 521, 532.

[23] *Id*. at 532.

[24] *Heirs of Lourdes Sabanpan v. Comorposa*, 456 Phil. 161, 172 (2003).

[25] *Lim v. Court of Appeals*, 380 Phil. 60, 78 (2000) citing *People's Bank and Trust Company v. Leonidas*, G.R. No. L-47815, March 11, 1992, 207 SCRA 164; *D.M. Consunji, Inc. v. Court of Appeals*, G.R. No. 137873, April 20, 2001, 357 SCRA 249, 260-261.

[26] *D.M. Consunji, Inc. v. Court of Appeals*, *id*. at 260-261.

[27] *Id*. at 260-261.

no intention of disposing of her property when she executed the subject deed of sale in favor of petitioner. As in all civil cases, the burden is on the plaintiff to prove the material allegations of his complaint and he must rely on the strength of his evidence and not on the weakness of the evidence of the defendant.[28] Aside from Daniela's sworn statement, private respondents failed to present any other documentary evidence to prove their claim. Even the testimonies of their witnesses failed to establish that Daniela had a different intention when she entered into a contract of sale with petitioner.

In *Suntay v. Court of Appeals*,[29] the Court ruled that the most protuberant index of simulation is the complete absence, on the part of the vendee, of any attempt in any manner to assert his rights of ownership over the disputed property.[30] In the present case, however, the evidence clearly shows that petitioner declared the property for taxation and paid realty taxes on it in her name. Petitioner has shown that from 1972 to 1988 she religiously paid the real estate taxes due on the said lot and that it was only in 1974 and 1987 that she failed to pay the taxes thereon. While tax receipts and declarations and receipts and declarations of ownership for taxation purposes are not, in themselves, incontrovertible evidence of ownership, they constitute at least proof that the holder has a claim of title over the property.[31] The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government.[32] Such an act strengthens one's bona fide claim

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[28] *Dungaran v. Koshnicke*, G.R. No. 161048, August 31, 2005, 468 SCRA 676, 685.

[29] 321 Phil. 809, 831-832 (1995).

[30] *Ramos v. Heirs of Honorio Ramos, Sr.*, *supra* note 20, at 348-349.

[31] *Heirs of Miguel Franco v. Court of Appeals*, 463 Phil. 417, 433 (2003).

[32] *Calicdan v. Cendaña*, G.R. No. 155080, February 5, 2004, 422 SCRA 272, 280.

Supreme Court E-Library

of acquisition of ownership.[33] On the other hand, private respondents failed to present even a single tax receipt or declaration showing that Daniela paid taxes due on the disputed lot as proof that she claims ownership thereof. The only Tax Declaration in the name of Daniela, which private respondents presented in evidence, refers only to the house standing on the lot in controversy.[34] Even the said Tax Declaration contains a notation that herein petitioner owns the lot (Lot 56) upon which said house was built.

Moreover, the Court agrees with petitioner that if the subject Deed of Absolute Sale did not really reflect the real intention of Daniela, why is it that she remained silent until her death; she never told any of her relatives regarding her actual purpose in executing the subject deed; she simply chose to make known her true intentions through the sworn statement she executed on December 28, 1977, the existence of which she kept secret from her relatives; and despite her declaration therein that she is appealing for help in order to get back the subject lot, she never took any concrete step to recover the subject property from petitioner until her death more than ten years later.

It is true that Daniela retained physical possession of the property even after she executed the subject Absolute Deed of Sale and even after title to the property was transferred in petitioner's favor. In fact, Daniela continued to occupy the property in dispute until her death in 1988 while, in the meantime, petitioner continued to reside in Manila. However, it is well-established that ownership and possession are two entirely different legal concepts.[35] Just as possession is not a definite proof of ownership, neither is non-possession inconsistent with ownership. The first paragraph of Article 1498 of the Civil Code states that when the sale is made through a public instrument, the execution thereof shall be equivalent to the

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[33] *Id*. at 280.

[34] Exhibit "B"; OR, 139.

[35] *Spouses Sabio v. The International Corporate Bank, Inc.*, 416 Phil. 785, 820 (2001).

delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred. Possession, along with ownership, is transferred to the vendee by virtue of the notarized deed of conveyance.[36] Thus, in light of the circumstances of the present case, it is of no legal consequence that petitioner did not take actual possession or occupation of the disputed property after the execution of the deed of sale in her favor because she was already able to perfect and complete her ownership of and title over the subject property.

As to Daniela's affidavit dated June 9, 1983, submitted by petitioner, which confirmed the validity of the sale of the disputed lot in her favor, the same has no probative value, as the sworn statement earlier adverted to, for being hearsay. Naturally, private respondents were not able to cross-examine the deceased-affiant on her declarations contained in the said affidavit.

However, even if Daniela's affidavit of June 9, 1983 is disregarded, the fact remains that private respondents failed to prove by clear, strong and convincing evidence beyond mere preponderance of evidence[37] that the contract of sale between Daniela and petitioner was simulated. The legal presumption is in favor of the validity of contracts and the party who impugns its regularity has the burden of proving its simulation.[38] Since private respondents failed to discharge the burden of proving their allegation that the contract of sale between petitioner and Daniela was simulated, the presumption of regularity and validity of the October 14, 1969 Deed of Absolute Sale stands.

Considering that the Court finds the subject contract of sale between petitioner and Daniela to be valid and not fictitious

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[36] *Id*. at 820; *Ong Ching Po v. Court of Appeals*, G.R. Nos. 113472-73, December 20, 1994, 239 SCRA 341, 347.

[37] *Mendezona v. Ozamiz*, 426 Phil. 888, 904 (2002).

[38] *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, *supra* note 19, at 870; *Ramos v. Heirs of Honorio Ramos, Sr.*, *supra* note 20, at 346.

Supreme Court E-Library

or simulated, there is no more necessity to discuss the issue as to whether or not a trust relationship was created between them.

WHEREFORE, the petition is *GRANTED*. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 64122, affirming the Decision of the Regional Trial Court of Cadiz City, Negros Occidental, Branch 60, in Civil Case No. 278-C, are *REVERSED AND SET ASIDE*. The complaint of the private respondents is *DISMISSED*.

No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Callejo, Sr., Chico-Nazario, and *Nachura, JJ.,* concur.

THIRD DIVISION

[G.R. No. 155682. March 27, 2007]

BANCO FILIPINO SAVINGS and MORTGAGE BANK, *petitioner, vs.* **COURT OF APPEALS, COURT OF TAX APPEALS and COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

SYLLABUS

1. TAXATION; INCOME TAX; CREDITABLE WITHHOLDING TAX; THREE CONDITIONS FOR THE GRANT OF CLAIM FOR REFUND.— There are three conditions for the grant of a claim for refund of creditable withholding tax: 1) the claim is filed with the CIR within the two-year period from the date of payment of the tax; 2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income; and, 3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee