Supreme Court E-Library

are hereby *REMANDED* to the appropriate Regional Trial Court of Quezon to which Criminal Cases Nos. 3485, 3486, 3487, 3488, 3489 and 3490 are assigned to proceed with the trial on the merits against private respondent.

SO ORDERED.

Narvasa, C.J., Cruz, Griño-Aquino, and *Bellosillo, JJ.,* concur.

SECOND DIVISION

[G.R. No. 62773. May 8, 1992]

OLIMPIO REYES, ANTONIO G. REYES, IRENE R. REYES, PETRONILA R. CARREON, NATIVIDAD R. GAHOL, FLORENCIO CARREON, and DIOSCORO GAHOL, *petitioners, vs.* **OSCAR R. ZUBIRI, EUFRACIA GABAY, and the COURT OF APPEALS,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; CESSION OR ASSIGNMENT OF LEASE RIGHTS ON REAL PROPERTY; EFFECTS; CASE AT BAR.— "In the case of cession or assignment of lease rights on real property, the lessee transmit absolutely his rights, his personality disappears; there only remains in the juridical relations two persons, the lessor and the assignee who is converted into a lessee." As of October 10, 1961, Rafael has ceased to be the lessee of the improvements as the assignee, the Republic Bank, had legally stepped into his shoes as the assignee-lessee thereof. Consequently, Rafael had nothing more to assign to private respondent Zubiri who appears to be his

Supreme Court E-Library

creditor. Nor can Zubiri claim lack of knowledge of the first assignment since the same was duly registered and served as constructive notice to all persons of the fact of such assignment.

2. ID.; DAMAGES; MORAL DAMAGES NOT AVAILABLE TO PETITIONER WHO CONTRIBUTED TO INJURIES HE SUFFERED; CASE AT BAR.— These two Exhibits definitely show that petitioner Olimpio Reyes knew what he was transacting with respondent Zubiri. It is for these reasons that the lower court's award of moral damages in favor of petitioners will have to be deleted as petitioner contributed to the injuries he suffered for which moral damages are not available.

3. ID.; ID.; ATTORNEY'S FEES; AWARD THEREOF PROPER IN CASE AT BAR.— However, attorney's fees may be awarded, there being a showing that private respondents acted in gross and evident bad faith in refusing petitioners just and demandable claim.

4. LEGAL ETHICS; COUNSEL BARRED FROM ACQUIRING OBJECT OF LITIGATION IN WHICH HE TAKES PART; CASE AT BAR.— Private respondent Zubiri, as counsel for Cecilio Rafael in Civil Case No. 69551, of the Court of First Instance of Manila is barred on grounds of public policy from acquiring Cecilio Rafael's rights over said improvements, as the latter's rights over the same may become the subject of a writ of execution in the event Cecilio Rafael loses his case in said court. Thus, paragraph 3 of the Deed of Assignment and Transfer between Rafael and Zubiri which transfers Rafael's rights over the improvements to Zubiri is null and void *ab initio*.

5. REMEDIAL LAW; APPEALS; IN CASE AT BAR, APPEAL NOT MERITORIOUS ON "EQUITABLE GROUNDS".— Nor can We consider private respondent Zubiri's appeal meritorious on "equitable grounds". As shown by the evidence on record and as found by the trial court, private respondent Zubiri is guilty not only of falsification of public documents but also of knowingly submitting in evidence such falsified documents, aside from having committed fraud, deceit and misrepresentation upon petitioners.

Supreme Court E-Library

APPEARANCES OF COUNSEL

De los Santos , De los Santos and De los Santos Law Offices for petitioners.

Propero A. Crescini for private respondent.

D E C I S I O N

NOCON, *J.*:

This is a petition for review on *certiorari* seeking the reversal of the decision of the respondent Court of Appeals, promulgated September 21, 1982 entitled "*Olimpio Reyes, et al. vs. Oscar Zubiri, et al.*", CA-G.R. No. 57620-R,[1] which reversed and set aside the decision of the Court of First Instance of Rizal, Pasig, Branch XXIV, dismissing the complaint of the petitioners therein and its resolution dated December 7, 1982, denying the motion for reconsideration.

The antecedent facts undisputed by both petitioners and private respondents are as follows:

Petitioners spouses Olimpio Reyes and Eulogia Gutierrez (plaintiffs in the lower court), registered owners of a 4,022 square meters parcel of land in Barrio Panghulo, Malabon, Rizal, covered by TCT No. 123579 of the Registry of Deeds for Rizal,[2] leased said land on August 31, 1959 to a partnership named "Capiz and Rafael", for a period of ten years. The lease agreement provided that all improvements which the lessee would make on the lot should be removed within sixty days from the expiration of the lease, otherwise said improvements shall automatically belong to the lessor without need of reimbursement. The contract was made binding not only upon the parties to the contract but also upon their respective heirs, assigns or successors-in-interest.[3]

---

[1] *Ponente*: J. Guillermo P. Villasor, with J. Crisolito Pascual and J. Onofre A. Villaluz, concurring.

[2] Exhibit D.

[3] Exhibit A.

Supreme Court E-Library

It was registered with the Register of Deeds for Rizal and annotated at the back of the title, TCT No. 123579, on September 2, 1959.[4]

Thus, "Capiz and Rafael" built an adobe stone fence, a garage, a factory with a two-storey residential building and a canteen on the land leased, which except for the garage, are still existing. All these improvements were annotated at the back of the title on March 21, 1960.

On October 10, 1961, Cecilio M. Rafael assigned all his rights, title and interest in said lease contract, including the improvements, to Republic Bank.[5] He likewise mortgaged the improvements with said bank[6] to secure a loan that he got from the bank, and had the same and the Deed of Assignment annotated at the back of the title.[7]

Six (6) years thereafter, or on July 31, 1967, Cecilio Rafael assigned and transferred all his rights, interests and participation over the same improvements to private respondent, Atty. Oscar S. Zubiri, as payment for the latter's professional services to him.[8] The deed of assignment, however, was never registered with the Register of Deeds.

Upon default by Cecilio Rafael in paying his obligation with Republic Bank when it became due and demandable, the bank scheduled the sale at public auction of the subject properties in October 1969 but did not go through with the sale as it opted to go after the other properties of Cecilio Rafael who filed a petition for voluntary insolvency with the former CFI of Manila docketed as Civil Case No. 79052.[9] The bank has a claim of ₱319,469.49.[10]

---

[4] Exhs. D and D-1.

[5] Exhibit B-1-A.

[6] Exhibit G.

[7] Exhibits D-1 and D-2.

[8] Exhibit 5.

[9] Exhibit "E".

[10] Exhibit "E-1"; TSN, June 24, 1971, p. 27; TSN, May 4, 1972, pp. 19-20.

Supreme Court E-Library

Eulogia Gutierrez, upon her death, was substituted by the other petitioners on March 12, 1969.[11]

What transpired after the second assignment is disputed by both parties. Petitioner Olimpio Reyes claims that he was sweet-talked by Atty. Zubiri into buying the improvements after he was shown documents by Atty. Zubiri attesting to his ownership over them;[12] that to pay for the improvements, Atty. Zubiri promised to secure a bank loan for petitioner upon the security of the latter's title to the land;[13] and that in the early morning of January 28, 1968, he was tricked by Atty. Zubiri into signing neatly folded pieces of paper[14] which turned out to be the "*Kasunduan*",[15] "*Sanglaan ng Lupa*",[16] "*Katibayan*",[17] Promissory Note[18] and Note.[19]

The "*Kasunduan*", dated January 30, 1968, provided, among other things, that of the agreed purchase price of ₱35,000.00 for the improvements, a ₱20,000.00 downpayment was to be paid by petitioners-spouses to Atty. Oscar S. Zubiri upon the signing of the contract while the ₱15,000.00 balance was also payable to him on or before September 1, 1969. The "*Sanglaan ng Lupa*" of even date embodied the mortgage agreement between petitioners-spouses and respondent Eufracia Gabay, aunt of respondent Zubiri, wherein respondent Gabay allegedly lent petitioners-spouses the needed downpayment upon the security of a real estate mortgaged on their property, the proceeds of which were paid directly to respondent Zubiri through a letter of authority signed by them.[20]

---

[11] Exhibit F.

[12] TSN, November 26, 1971, pp. 11-15.

[13] *Id.*, pp. 16-19.

[14] TSN, April 11, 1972, pp. 17-20.

[15] Exhibit B.

[16] Exhibit C.

[17] Exhibit 14.

[18] Exhibit 21.

[19] Exhibit 22.

[20] Exhibit 11.

Supreme Court E-Library

Private respondent Zubiri's version, on the other hand, is that petitioners-spouses prevailed upon him into selling the improvements to them after he had removed the garage[21] to which he agreed after a series of negotiations specially with regard to the manner of payment for said improvements.[22]

What is clear is that after Atty. Zubiri borrowed ₱1,000.00 from petitioner Olimpio Reyes and tried to borrow ₱2,000.00 more two weeks later, petitioner told Atty. Zubiri that it would be better for him to return the title, pay him the ₱1,000.00 and forget everything. Atty. Zubiri replied, "if that is so, a letter will come to you."

Petitioners received two demand letters from Atty. Acuña and Real, counsels for respondents Zubiri and Gabay, respectively. The first,[23] demanded that they pay private respondent Zubiri the ₱15,000.00 balance of the purchase price of the improvements, while the second [24] demanded that they pay respondent Eufracia Gabay the mortgage obligation of ₱19,000.00 plus interest of ₱4,750.00, as of February 2, 1970.

Denying the allegations in said letters, petitioners-spouses questioned the documents in a suit they filed against Atty. Zubiri in the court below, for annulment of contracts, recovery of ownership and damages,[25] which court, after trial on the merits, rendered a decision dated November 25, 1974, which states in its dispositive portion:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants as follows:

"1. Declaring the document entitled '*Kasunduan*' dated January 30, 1968, cancelled, annulled and null and void;

---

[21] TSN, March 25, 1974, pp. 9-10.

[22] TSN, March 25, 1974, pp. 14-20.

[23] Exhibit O.

[24] Exhibit P.

[25] Civil Case No. 13722, "*Olimpio Reyes, et al. vs. Oscar S. Zubiri, et al. — Ponente*: Judge Buenaventura J. Guerrero.

Supreme Court E-Library

"2. Declaring the plaintiffs the owners of the improvements consisting of (a) factory building with two-storey residential building of strong materials; (b) canteen building; and (c) 307 lineal meters of adobe stone fence, all constructed on plaintiff's land covered by Transfer Certificate of Title No. 123579 of the Register of Deeds of Rizal;

"3. Declaring Tax Declaration No. 17571, covering the said improvements in the name of defendant Oscar S. Zubiri cancelled and ordering said improvements to be declared in the name of the plaintiffs;

"4. Declaring the '*Sanglaan ng Lupa*' dated January 30, 1968 null and void and without any force and effect and ordering the annotation of the '*Sanglaan ng Lupa*' on Transfer Certificate of Title No. 123579 of the Register of Deeds of Rizal cancelled;

"5. Ordering the defendant Oscar S. Zubiri to return and deliver to the plaintiffs the Owner's copy of Transfer Certificate of Title No. 123579, Register of Deeds of Rizal;

"6. Ordering defendant Oscar S. Zubiri to pay the plaintiffs the sum of ₱1,000.00 with legal interest from the date of the filing of the case until fully paid;

"7. Ordering defendant Oscar S. Zubiri to pay the plaintiffs the sum of ₱20,000.00 as moral damages, ₱10,000.00 as attorney's fees and to pay the costs."[26]

On appeal to the Court of Appeals by private respondents, the decision of the trial court was reversed, and the petitioner's complaint dismissed, ordering the latter to pay private respondent ₱14,000.00 with legal interest from September 25, 1970 until full payment is made and Eufracia Gabay ₱20,000.00 with interest at 12% per annum from January 30, 1968 until the entire obligation is paid.

Hence, this present petition raising two assignments of error, which are as follows:

---

[26] Record on Appeal, pp. 154-156.

I

RESPONDENT COURT OF APPEALS, IN REVERSING THE DECISION OF THE LOWER COURT, HAS COMMITTED AN ERROR OF LAW.

II

RESPONDENT COURT OF APPEALS HAS ERRONEOUSLY HELD THAT, UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE, PRIVATE RESPONDENT, ATTY. OSCAR S. ZUBIRI, IS ENTITLED TO EQUITY.

We reverse and set aside the respondent Court's decision and resolution in question.

In connection with the first assignment of error, the Court of Appeals ruled in effect that private respondent Oscar S. Zubiri has rights to the improvements in question, which he could legally transfer and assign to the petitioners.

This is in error.

Be it remembered that on August 31, 1959, spouses Olimpio Reyes and Eulogia Gutierrez, registered owners of the property in question, leased said parcel of land in favor of lessees Capiz and Rafael for a period of 10 years (Exhibit "A"). The contract of lease was duly registered in the Office of the Register of Deeds of Rizal and inscribed at the back of the spouses' title, TCT No. 123579 (Exhibit "D") on September 2, 1959 (Exhibit "D-3").

Pursuant to the lease contract, lessee Rafael introduced improvements on the parcel of land of the lessor-spouses, consisting of an adobe fence, a garage, a factory building, a two-storey residential building, and a canteen. These improvements were annotated at the back of TCT No. 123579, on March 21, 1960 (Exhibit "D-4").

One year thereafter, or on October 10, 1961, lessee Rafael assigned his leasehold rights to defendant Republic Bank together with the improvements which was duly registered and annotated at the back of TCT No. 123579 on October 20, 1961 (Exhibit "D-1"). He had mortgaged said improvements to Republic Bank

Supreme Court E-Library

in order to secure a loan of ₱50,000.00 obtained by him from the bank (Exhibit "D-1-A").

Six years later, or on July 13, 1967, lessee Rafael again assigned his leasehold rights to the improvements to private respondent Atty. Oscar Zubiri in payment of attorney's fees for legal services rendered to him (Exhibit "M-1"). This second assignment was not registered.

Under the foregoing facts, private respondent Zubiri did not acquire any right to the improvements under the second assignment made by lessee Rafael, since the latter had already assigned his leasehold rights to the improvements to Republic Bank six years before and the same was duly registered.

"In the case of cession or assignment of lease rights on real property, the lessee transmit absolutely his rights, his personality disappears; there only remains in the juridical relations two persons, the lessor and the assignee who is converted into a lessee. (10 Manresa, Spanish Civil Code, 438 cited in *Nava v. Yaptinchay* 44 OG 3332)"[27]

As of October 10, 1961, Rafael has ceased to be the lessee of the improvements as the assignee, the Republic Bank, had legally stepped into his shoes as the assignee-lessee thereof. Consequently, Rafael had nothing more to assign to private respondent Zubiri who appears to be his creditor. Nor can Zubiri claim lack of knowledge of the first assignment since the same was duly registered and served as constructive notice to all persons of the fact of such assignment.

Since Zubiri acquired nothing from the second assignment, it follows that he likewise conveyed nothing to the herein petitioners. Consequently, he has no cause of action against the latter insofar as the improvements in question are concerned. The appellate court was, therefore, in error when it ordered petitioners to pay respondent Zubiri the sum of ₱14,000.00 and respondent Eufracia Gabay the sum of ₱20,000.00.

One more thing. Private respondent Zubiri, as counsel for Cecilio Rafael in Civil Case No. 69551, of the Court of First

[27] *Rollo*, p. 14.

Supreme Court E-Library

Instance of Manila[28] is barred on grounds of public policy[29] from acquiring Cecilio Rafael's rights over said improvements, as the latter's rights over the same may become the subject of a writ of execution in the event Cecilio Rafael loses his case in said court.[30] Thus, paragraph 3 of the Deed of Assignment and Transfer between Rafael and Zubiri[31] which transfers Rafael's rights over the improvements to Zubiri is null and void *ab initio*.

Nor can We consider private respondent Zubiri's appeal meritorious on "equitable grounds". As shown by the evidence on record and as found by the trial court, private respondent

---

[28] Exhibit 5, paragraphs 1 & 2.

[29] Article 1491(5), New Civil Code. "The following persons cannot acquire by purchase, even at a public or judicial auction:

xxx xxx xxx

(5) xxx this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may be part by virtue of their profession.

xxx xxx xxx

[30] *Valencia v. Cabantung*, 196 SCRA 302. [A] thing is said to be in litigation not only if there is some contest or litigation over it, but also *from the moment* that it becomes subject to the judicial action of the judge. (*Gan Tanjo vs. Pabinguit*, 35 Phil. 81) [italics supplied].

[31] Exhibit 5. 3. That considering the present finances of the ASSIGNOR and fearing that the latter may no longer be in a position to pay the ASSIGNEE in cash of the fee that may be lawfully due to the latter as per their agreement, anytime hereafter after the ASSIGNEE'S services may have been completed, neither or nor had there been any other security or guarantee given by the ASSIGNOR to the ASSIGNEE for its payment, the ASSIGNOR hereto by virtue of these presents do hereby irrevocably, ASSIGNS, CEDE, TRANSFER and CONVEY unto the ASSIGNEE, his heirs, successors and assigns, in settlement of the fee that may and will hereafter be due to the ASSIGNEE, all of his rights, interests, shares, participations (sic) and ownership in the house, factory building, and all the improvements now existing on this land which was the subject of a lease contract between the ASSIGNOR and the spouses Olimpio Reyes and Eulogia Gutierrez as contained in a public instrument dated August 31, 1959 of Notary Public Dioscorro L. Manrique of the City of Manila, free of liens and encumbrances, which improvements are declared for taxation purposes in the Municipality of Malabon, Rizal, and of which the herein ASSIGNOR is the lawful owner thereof in fee simple.

Supreme Court E-Library

Zubiri is guilty not only of falsification of public documents but also of knowingly submitting in evidence such falsified documents, aside from having committed fraud, deceit and misrepresentation upon petitioners.

The documents "*Kasunduan*" (Exhibit "B") and "*Sanglaan*" (Exhibit "C") the basis of private respondent's claim, against herein petitioners, are falsified and simulated. They were purportedly acknowledged by spouses Olimpio Reyes and Eulogia Gutierrez and by private respondent Eufracia Gabay before Notary Public Isidoro B. Real, Jr. of Manila on January 30, 1968 and allegedly entered in his notarial book as Doc. No. 425, Page No. 86, Book No. IV, Series of 1968 for the "*Kasunduan*" and Doc. No. 426, Page No. 87, Book No. IV, Series of 1968 for the "*Sanglaan*".

It appears, however, from the notarial report of Atty. Isidoro R. Real, Jr. as certified by the Clerk of Court of Manila,[32] the entry for Doc. No. 425, Page No. 86, Book No. IV, Series of 1968, is an Affidavit executed by one Jose Paco on February 10, 1968 and not the "*Kasunduan*" (Exhibit "B); while the entry for Doc. No. 426, Page No. 87, Book No. IV, Series of 1968, is another Affidavit executed by one Virginia Geronimo on February 13, 1968, instead of the "*Sanglaan*" (Exhibit "C").

As observed by the trial court:

"xxx The discrepancy casts serious doubt on the verity of defendant's assertion that plaintiffs spouses signed the instruments dated January 30, 1968 with full knowledge of their contents, it lends credence to the testimony of plaintiff Olimpio Reyes denying having agreed with Atty. Oscar Zubiri to the sale of the property under arrangements embodied in the several documents bearing the date January 30, 1968, including the '*Kasunduan*' (Exh. "B") and the '*Sanglaan*' (Exh- C). Olimpio Reyes swore he never appeared before a Notary Public, much less Atty. Isidoro Real, Jr."[33]

Private respondent Zubiri never presented Notary Public Isidoro E. Real, Jr. to explain these discrepancies in the documents

[32] Exhibit "I", pp. 42-46, Folder of Exhibits.

[33] *Rollo*, p. 20.

Supreme Court E-Library

in question and belie the firm and unwavering testimony of Olimpio Reyes that he had never appeared before said Notary Public; that he does not know him; that it was in Malabon, Rizal, where he and his wife signed the documents and that said documents were of a different import from what was agreed upon.

The trial court did not fail to notice this strange behavior of private respondent Zubiri. Said the court:

"From the procedural consideration, it is well to state that after the termination of the presentation of plaintiffs' evidence, the burden of evidence regarding the integrity of the documents bearing the date January 30, 1968, both as to their contents and due execution, had clearly shifted to defendant. Under oath, Olimpio Reyes positively declared that he and his deceased spouse, both of whom were in the middle seventies when they allegedly signed the documents at issue, were deceived of their contents by Atty. Oscar Zubiri by representing that said documents were needed by the bank for the loan that he would work for the spouses, contrary to their true provision. The same witness also categorically testified he never appeared before any Notary Public and that he and his spouse signed the '*Kasunduan*" (Exh. B) and '*Sanglaan ng Lupa*' (Exh. C) at their residence at Malabon, Rizal. Augmenting these oral declarations is (sic) the certification of the Clerk of Court of Manila (Exh. 1) to the effect that the document numbers referred to in the '*Kasunduan*' and '*Sanglaan ng Lupa*' do not pertain to said instruments but are carried by affidavits of a certain Jose Paco and Virginia Geronimo respectively. Despite these preponderant proofs, defendants did not summon Atty. Isidoro E. Real, Jr., the Notary Public, to substantiate Atty. Zubiri's allegation and to belie Olimpio Reyes' claim that it was in Malabon, Rizal where the spouses signed said documents. Atty. Isidoro E. Real, Jr. was not just a mere notary public, but a former lawyer of defendant Atty. Oscar Zubiri, as well as that of his auntie, Eufracia Gabay, through Atty. Zubiri's efforts. Moreover, there was the other witness, Arthur Maulion; not to say, Eufracia Gabay the other party-defendant in this suit. These two could have shed light on the controversy, the former being one of the instrumental witnesses of the '*Kasunduan*' and the '*Sanglaan ng Lupa*' and the latter being the mortgagee of the 'Sanglaan ng Lupa'. The cumulative declarations of these witnesses could have overcome the thesis of plaintiffs' evidence that Olimpio Reyes and Eulogia Gutierrez were tricked

Supreme Court E-Library

into signing the '*Kasunduan*' and *Sanglaan ng Lupa*' under false notion that they were necessary papers for the easy-term loan Atty. Oscar Zubiri promise them. Thus, without these proofs, the Court must rule that plaintiffs have adduced sufficient evidence to support their cause of action."[34]

Under the foregoing facts, We do not see how private respondent would be entitled to equity.

Moreover, under the terms of the Contract of Lease executed between petitioners and Cecilio Rafael on August 31, 1959 (Exhibit "A"), specifically paragraph 2, subparagraph 6 (Exhibit "A-2"), petitioner Olimpio Reyes shall become owner of the improvements built thereon by Cecilio Rafael if at the end of 60 days after the expiration of the lease, which is August 31, 1969, said improvements have not yet been removed and are still standing on petitioner's lot, which it is in the case at bar, then the improvements shall become petitioner Olimpio Reyes' property.

The Court would like to point out, however, that had the transaction (Exhibit 5) between petitioner Olimpio Reyes and private respondent Zubiri not been prohibited, petitioner Olimpio Reyes would not have been entirely innocent for the trouble he found himself in. After Zubiri agreed to turn over to petitioner the possession of the improvements (paragraph 3[d], Exh. B), petitioner immediately leased the same to Hypernette Industrial Corporation, together with the land, and secured insurance coverage for the improvements in his name with Metropolitan Insurance Company inspite of his commitment with Zubiri that he would secure insurance coverage over the same in Zubiri's favor.[35]

Moreover, no objection was interposed by petitioner Olimpio Reyes to the wordings of the receipt[36] signed by Zubiri for the ₱1,000.00 which indicated a balance of ₱15,000.00 for the purchase price of the improvements although petitioner can read

---

[34] *Rollo*. p. 22.

[35] TSN, March 25, 1974, pp. 36-37.

[36] Exhibit "18" — Zubiri, p. 60, Plaintiff's Exhibits.

Supreme Court E-Library

"*putol-putol*" English and the fact that his granddaughter, a nursing graduate, read the receipt and witnessed the same.[37]

These two Exhibits definitely show that petitioner Olimpio Reyes knew what he was transacting with respondent Zubiri. It is for these reasons that the lower court's award of moral damages in favor of petitioners will have to be deleted as petitioner contributed to the injuries he suffered for which moral damages are not available.[38] However, attorney's fees may be awarded, there being a showing that private respondents acted in gross and evident bad faith in refusing petitioners just and demandable claim.[39]

WHEREFORE, the appellate court's decision and resolution are hereby set aside. The trial court's decision is *REINSTATED* with the sole exception of the award of moral damages in favor of plaintiffs (now petitioners) which is hereby ordered deleted.

SO ORDERED.

Melencio-Herrera (Chairman), Paras, Padilla, and *Regalado, JJ.*, concur.

---

15 October '69

Received from Mr. Olimpio Reyes, the sum of exactly One Thousand Pesos (₱1,000.00) only as part payment of the Fifteen Thousand Pesos due and payable on September 30, 1969 by Olimpio Reyes and Eulogia Gutierrez in favor of the undersigned.

(SGD.) ATTY. OSCAR ZUBIRI

Witness: A. T. Tomagan 10/15/69.

[37] TSN, December 22, 1971, pp. 51-52; 56-57.

[38] *Simex International (Manila), Inc. vs. Court of Appeals*, 183 SCRA 360.

[39] Article 2208, par. 5, Civil Code of the Philippines.