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SECOND DIVISION

[G.R. No. 144476. February 1, 2002]

ONG YONG, JUANITA TAN ONG, WILSON T. ONG, ANNA L. ONG, WILLIAM T. ONG, WILLIE T. ONG, And JULIE ONG ALONZO, *petitioners, vs.* **DAVID S. TIU, CELY Y. TIU, MOLY YU GAW, BELEN SEE YU, D. TERENCE Y. TIU, JOHN YU, LOURDES C. TIU, INTRALAND RESOURCES DEVELOPMENT CORP., MASAGANA TELAMART, INC., REGISTER OF DEEDS OF PASAY CITY, And the SECURITIES AND EXCHANGE COMMISSION,** *respondents.*

[G.R. No. 144629. February 1, 2002]

DAVID S. TIU, CELY Y. TIU, MOLY YU GAW, BELEN SEE YU, D. TERENCE Y. TIU, JOHN YU, LOURDES C. TIU, And INTRALAND RESOURCES DEVELOPMENT CORP., *petitioners, vs.* **ONG YONG, JUANITA TAN ONG, WILSON T. ONG, ANNA L. ONG, WILLIAM T. ONG, WILLIE T. ONG And JULIA ONG ALONZO,** *respondents.*

SYNOPSIS

The First Landlink Asia Development Corporation (FLADC) was fully owned by the Tius. The Ongs were invited by the Tius to invest in FLADC and the corresponding Pre-Subscription Agreement was executed whereby both parties agreed to maintain equal shareholdings in FLADC with the Ongs investing cash while the Tius contributing property, which included a parcel of land in the name of Masagana Telemart, Inc.

The controversy between the two parties arose when the Ongs violated the provisions of the Pre-Subscription Agreement which became the basis of the Tius' unilateral rescission of the same. The Securities and Exchange Commission (SEC) confirmed the rescission. On appeal, the Court of Appeals affirmed the decision of the SEC and ruled that both parties violated the provisions of the Pre-Subscription Agreement.

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The Supreme Court held that the Court of Appeals correctly confirmed the rescission of the Pre-Subscription Agreement on the basis of Article 1191 of the Civil Code. In the case at bar, the correlative obligation of the Tius to let the Ongs have and exercise the functions of the positions of President and Secretary is the obligation of the Ongs to let the Tius have and exercise the functions of Vice-President and Treasurer, thus reciprocal obligations exist, making the remedy of rescission available.

The Supreme Court, likewise ruled that as a legal consequence of rescission, the order of the Court of Appeals to return the cash and property contribution of the parties is based on law, hence, it cannot be considered an act of misappropriation.

SYLLABUS

1. **CIVIL LAW; CONTRACTS; STIPULATIONS *POUR AUTRIE;* PRESENT IN CASE AT BAR.**— We agree with the Tius that the things which are the object of the Pre-Subscription Agreement – one million shares of stock subscribed to by the Ong Group, the additional 549,800 shares subscribed to by the Tius, and the corporate positions mentioned above – are not in the possession of third persons, but are in the possession of the parties to the Pre-Subscription Agreement. In any case, FLADC is not a third person in relation to the Pre-Subscription Agreement though not named as a party. FLADC is deemed a party to the agreement by virtue of stipulations *pour autrie* clearly and deliberately conferring on it a favor or benefit which it subsequently accepted. (Art. 1311, Civil Code) Such benefit was in the form of the payments made by the parties for their subscription to shares of stock in FLADC, which FLADC accepted.

2. **ID.; ID.; INTERPRETATION; WHEN TERMS OF A CONTRACT ARE CLEAR, THE LIBERAL MEANING OF ITS STIPULATION PREVAILS; CASE AT BAR.**— The Deed stipulates in simple language "all the obligations of performing all the terms and conditions *including,* but not limited to, the transfer of the said parcel of land in the name of (FLADC)." It imposes no obligation at all on the part of the assignor for purposes of transferring the parcel of land in the

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name of FLADC. In the interpretation of contracts, "if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the liberal meaning of its stipulation shall control." (Art. 1370, Civil Code). Thus, the FLADC should shoulder all obligations, such as taxes, legal fees, notarial fees and expenses of registration, for the conveyance to be registered and the title to the property placed in the name of FLADC.

3. **ID.; ID.; RESCISSION; LEGAL CONSEQUENCE OF; RESTORATION OF THE PARTIES TO *STATUS QUO ANTE*; CASE AT BAR.**— As a legal consequence of rescission, the order of the Court of Appeals to return the cash and property contribution of the parties is based on law, hence, cannot be considered an act of misappropriation. For how can the rescission of the Pre-Subscription Agreement be implemented without returning to the two groups whatever they delivered to the corporation in accordance with the Agreement? With regard to the order of the Court of Appeals transferring to the Tiu Group whatever remains of the assets of FLADC and the management thereof, the same is but an inevitable consequence of the rescission of the Pre-Subscription Agreement. Restoration of the parties to *status quo ante* dictates that the building constructed on the two (2) existing lots of FLADC, the remaining asset of FLADC, be transferred to the Tiu Group. The *status quo ante* immediately prior to the execution of the Pre-Subscription Agreement was that the Tius, then wholly owning FLADC, had control and custody over this remaining asset.

APPEARANCES OF COUNSEL

Estelito P. Mendoza and *Feria Feria Lugtu O'Noche* for petitioners in G.R. No. 144476.

Gonzalez Betiller Bilog & Associates for W. Ong.

Aquilino L. Pimentel, III for First Landlink Asia Dev't Corp.

Arturo Santos for Masagana.

Tan Acut & Madrid for respondents in G.R. No. 144476.

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DECISION

BUENA, *J.*:

Consolidated Petitions for Review of 1.) the Decision of the Court of Appeals[1] in CA-G.R. SP No. 49056 dated October 5, 1999, which affirmed with modifications the Order dated September 11, 1998, issued by the SEC *En Banc* in SEC Case No. 598 and 601, confirming the rescission of the Pre-Subscription Agreement; and 2.) the Resolution of the Court of Appeals dated August 17, 2000 which denied the motions for reconsideration filed by the private parties herein, except Masagana Telamart, Inc.

The antecedent facts of the case, as summarized by the Court of Appeals are as follows:

"As one traverses Taft Avenue in Pasay City, one will see the Masagana Citimall, a commercial complex owned and managed by the First Landlink Asia Development Corporation (FLADC) (p. 127, 520 and 211, *Rollo*). It was not long ago when this commercial complex, then unfinished, was threatened with incompletion when its owner found it in financial distress in the amount of ₱190,000,000.00 for being indebted to the Philippine National Bank (PNB), (pp. 520 and 212, *Rollo*). That was in 1994 (*Ibid.*)

"FLADC was then fully owned by the Tiu Group composed of David S. Tiu, Cely Y. Tiu, Moly Yu Gaw, Belen See Yu, D. Terence Y. Tiu, John Yu and Lourdes C. Tiu (p. 211, *Rollo*). In order to recover from its floundering finances, the Ong Group composed of Ong Yong, Juanita Tan Ong, Wilson T. Ong, Anna L. Ong, William T. Ong and Julie Ong Alonzo, were invited by the Tius to invest in FLADC (pp. 211 and 520, *Rollo*). Hence, the execution of a Pre-Subscription Agreement by and between the Tiu and Ong Groups on August 15, 1994 (pp. 211-216, *Rollo*).

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[1] Special Division of Five: Justice Ramon A. Barcelona, *ponente*, Justices Mariano M. Umali and Edgardo P. Cruz, *concurring*, Justice Conchita Carpio-Morales, with separate *concurring and dissenting* opinion, and Justice Demetrio G. Demetria, *dissenting*.

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"By the Pre-Subscription Agreement, both parties agreed to maintain equal shareholdings in FLADC with the Ongs investing cash while the Tius contributing property (pp. 213-214, *Rollo*). Specifically, the Ongs were to subscribe to 1 million shares of FLADC at a par value of ₱100.00 per share while the Tius were to subscribe to 549,800 shares more of FLADC at a par value of ₱100.00 per share over and above their previous subscription of 450,200 shares in order to complete a subscription of 1 million shares (*Ibid.*). Commensurate to their proposed subscriptions, the Ongs were to pay ₱100,000,000.00 in cash (p. 213, *Rollo*), while the Tius were to contribute the following properties by way of separate Deeds of Assignments:

"1. A four-storey building described in Transfer Certificate of Title No. 15587 registered in the name of Intraland Resources and Development Corporation (a corporation wholly owned by the Tius) and valued at ₱20,000,000.00;

"2. A 1,902.30 square meter parcel of land covered by Transfer Certificate of Title No. 15587 in the name of Masagana Telamart, Inc. (also a corporation owned by the Tius) and valued at ₱30,000,000.00; and

"3. A 151 square meter parcel of land adjacent to the properties covered by Transfer Certificate of Title Nos. 132493 and 132494 and valued at ₱4,980,000.00 (pp. 212 and 214, *Rollo*).

"Also for purposes of equality, the parties agreed that 6 directors of FLADC were to be nominated from the Ong Group, while 5 directors thereof were to be nominated from the Tiu Group (p. 213, *Rollo*). It was also agreed that the positions of President and Secretary of FLADC shall be held by the Ongs, while the positions of Vice-President and Treasurer thereof shall be held by the Tius (*Ibid.*).

"In order to liquidate FLADC's outstanding ₱190,000,000.00 loan from the PNB, the parties to the Pre-Subscription Agreement proposed payment thereof with the ₱100,000,000.00 cash to be invested by the Ongs to FLADC and with the available funds of FLADC derived from:

"1. Reimbursement of costs of improvements received from tenants on the spaces leased to them;

"2. Receipts from reservations to lease; and

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"3. Receipts for deposit or advance rentals from tenants (pp. 213-214, *Rollo*).

"In order to comply with the Pre-Subscription Agreement, the necessary increase in capital stock of FLADC was applied for and duly approved (pp. 184-187, *Rollo*). The Ongs subscribed to 1 million shares thereof at a par value of ₱100.00 per share, or ₱100,000,000.00 (p. 185, *Rollo*). Intraland Resources and Development Corporation executed the requisite Deed of Assignment over a 4-storey building it owned in favor of FLADC and was duly credited with 200,000 shares therefor in FLADC (*Ibid*; pp. 837-838, *Rollo*).

"Masagana Telamart, Inc. executed a Deed of Assignment over the 1,902.30 square meter property in favor of FLADC and delivered the owner's copy of the transfer certificate of title of the same as well as the possession thereof to the latter (pp. 221-226, *Rollo*). Title over the 151 square meter property was also transferred in the name of FLADC (pp. 1062-1063, *Rollo*).

"FLADC's articles of incorporation were also duly amended increasing the number of its directors from seven (7) to eleven (11), six (6) of which were nominated by the Ong Group, while the rest were nominated by the Tiu Group (pp. 188-189, *Rollo*). Later, Wilson T. Ong and Juanita Tan Ong were elected President and Secretary, respectively, while David S. Tiu and Cely Yao Tiu were elected Vice-President and Treasurer, respectively (pp. 191-192, *Rollo*)

"The ₱190,000,000.00 loan from the PNB was also settled, but not quite in accord with the provisions of the Pre-Subscription Agreement (pp. 437-441, *Rollo*). In lieu of the FLADC funds which were supposed to be used as partial payment for said loan per Pre-Subscription Agreement, the Ongs had to pay ₱70,000,000.00 more aside from their ₱100,000,000.00 subscription payment, and the Tius had to advance ₱20,000,000.00 in cash, which amount was loaned to them by the former (*Ibid.*).

"The controversy between the two parties arose when the Ongs refused to credit the number of FLADC shares in the name of Masagana Telamart, Inc. commensurate to its 1,902.30 square meter property contribution; also when they refused to credit the number of FLADC shares in favor of the Tius commensurate to their 151 square meter property contribution; and when David S. Tiu and Cely Y. Tiu were proscribed from assuming and performing their duties as Vice-President and Treasurer, respectively of FLADC (pp. 132-136, *Rollo*).

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These became the basis of the Tius' unilateral rescission of the Pre-Subscription Agreement on February 23, 1996 (p. 867, *rollo*)."[2]

On February 27, 1996, the Tius sought the Securities and Exchange Commission (SEC) confirmation of their rescission of the Pre-Subscription Agreement. Their complaint was docketed as SEC Case No. 02-96-5269.

On May 19, 1997, after the Tiu Group, Masagana Telamart, Inc., Intraland Resources and Development Corporation, the Ong Group and FLADC were heard on their respective claims regarding the propriety of the Pre-Subscription Agreement's rescission, SEC Hearing Officer Rolando G. Andaya, Jr., rendered a decision thereon confirming the rescission as follows:

"WHEREFORE, judgment is hereby rendered confirming the rescission of the Pre-Subscription Agreement, and consequently ordering:

"(a) The cancellation of the 1,000,000 shares subscription of the individual defendants in FLADC;

"(b) FLADC to pay the amount of ₱170,000,000.00 to the individual defendants representing the return of their contribution for 1,000,000 shares of FLADC;

"(c) The plaintiffs to submit with the Securities and Exchange Commission amended articles of incorporation of FLADC to conform with this decision;

"(d) The defendants to surrender to the plaintiffs TCT Nos. 132493, 132494, 134066 (formerly 15587), 135325 and 134204 and any other title or deed in the name of FLADC, failing in which said titles are declared void;

"(e) The Register of Deeds to issue new certificates of titles in favor of the plaintiffs and to cancel the annotation of the Pre-Subscription Agreement dated 15 August 1994 on TCT No. 134066 (formerly 15587).

"(f) The individual defendants, individually and collectively, their agents and representatives, to desist from exercising or

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[2] Court of Appeals Decision, pp. 1-4, *Rollo* of G.R. No. 144476, pp. 111-114.

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performing any and all acts pertaining to stockholder, director or officer of FLADC or in any manner intervene in the management and affairs of FLADC;

"(g) The individual defendants, jointly and severally, to return to FLADC interest payment in the amount of ₱8,866,669.00 and all interest payments as well as any payments on principal received from the ₱70,000,000.00 inexistent loan, plus the legal rate of interest thereon from the date of their receipt of such payment, until fully paid;

"(h) The plaintiff David Tiu to pay individual defendants the sum of ₱20,000,000.00 representing his loan from said defendants plus legal interest from the date of receipt of such amount.

"SO ORDERED."[3]

On motion of the Ong Group, the aforequoted decision was later partially reconsidered in an omnibus order issued by SEC Hearing Officer Manolito S. Soller on November 24, 1997, the decretal portion of which in part reads:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

"1. The Decision of this Commission dated May 19, 1997 is partially reconsidered only insofar as the investment amounting to ₱70 million which is hereby declared not as premium on capital stock but a liability of FLADC or advances of the defendants made in favor of FLADC, and that the interest paid on account thereof is hereby declared legal and valid;

"x x x x x x x x x

"SO ORDERED."[4]

Both the Ong and Tiu Groups appealed the aforequoted Omnibus Order to the SEC *en banc*. Their respective appeals were docketed as SEC Case Nos. 598 and 601. On September 11, 1998, the SEC *en banc* issued an order, the decretal portion of which reads:

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[3] *Ibid.*, pp. 114-116.

[4] *Ibid.*, pp. 116-117.

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"WHEREFORE, judgment is hereby rendered CONFIRMING the omnibus Order dated 24 November 1997 insofar as it confirms the rescission of the Pre-Subscription Agreement and REVERSING the same insofar as it held that the seventy million (₱70 M) paid by the Ong Group over and above the par value of the one million (1,000,000) shares of stocks of FLADC which they had subscribed as loan and not p remium.

"Accordingly,

"1. The subscription contract entered into by the Ong group and the corporation is hereby declared rescinded, the latter is ordered to cancel the one million (1,000,000) shares subscription of the Ong Group in FLADC, and FLADC shall return the amount of one hundred and seventy million pesos (₱170 M) to the Ong Group;

"2. The Tiu Group shall pay the twenty million pesos (₱20 M) to the Ong group which was loaned to them by the latter;

"3. The Ong Group, individually and collectively, their agents and representatives, are hereby ordered to desist from exercising or performing any and all acts pertaining to stockholders, directors or officers of FLADC or in any manner intervening in the management and affairs of FLADC;

"4. The Ong Group, jointly and severally, are hereby ordered to return to FLADC the interest payment on the seventy million pesos (₱70 M) in the amount of eight million and eight hundred sixty-six thousand, and six hundred sixty-nine pesos (₱8,866,669.00) and all additional interest payments thereafter, as well as any payments on the principal received for the seventy million pesos (₱70M) inexistent loan.

"No pronouncement as to cost and damages.

"SO ORDERED."[5]

From the said Order of the SEC *En Banc*, the Ongs appealed to the Court of Appeals, by way of a petition for review under Rule 43 of the 1997 Rules of Civil Procedure.

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[5] *Ibid.*, 117-118.

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On October 5, 1999, the Court of Appeals issued the Decision subject of these petitions for review, the decretal portion of which reads:

"WHEREFORE, the Order dated September 11, 1998 issued by the Securities and Exchange Commission *En Banc* in SEC AC CASE NOS. 598 and 601 confirming the rescission of the Pre-Subscription Agreement dated August 15, 1994 is hereby AFFIRMED, subject to the following MODIFICATIONS:

"1. The Ong and Tiu Groups are ordered to liquidate First Landlink Asia Development Corporation in accordance with the following cash and property contributions of the parties therein.

   a. Ong Group - ₱100,000,000.00 cash contribution for one (1) million shares in First Landlink Asia Development Corporation at a par value of ₱100.00 per share;

   b. Tiu Group:

      1.) ₱45,020,000.00 original cash contribution for 450,200 shares in First Landlink Asia Development Corporation at a par value of ₱100.00 per share;

      2.) A four-storey building described in Transfer Certificate of Title No. 15587 in the name of Intraland Resources and Development Corporation valued at ₱20,000,000.00 for 200,000 shares in First Landlink Asia Development Corporation at a par value of ₱100.00 per share.

      3.) A 1,902.30 square meter parcel of land covered by Transfer Certificate of Title No. 15587 in the name of Masagana Telamart, Inc. valued at ₱30,000,000.00 for 300,000 shares in First Landlink Asia Development Corporation at a par value of ₱100.00 per share.

"2. Whatever remains of the assets of the First Landlink Asia Development Corporation and the management thereof is hereby ordered transferred to the Tiu Group.

"3. First Landlink Asia Development Corporation is hereby ordered to pay the amount of ₱70,000,000.00 that was advanced to it by the Ong Group upon the finality of this decision. Should the former incur in delay in the payment thereof, it shall pay the legal interest thereon pursuant to Article 2209 of the New Civil Code.

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"4. The Tius are hereby ordered to pay the amount of ₱20,000,000.00 loaned them by the Ongs upon the finality of this decision. Should the former incur in delay in the payment thereof, it shall pay the legal interest thereon pursuant to Article 2209 of the New Civil Code.

"SO ORDERED."[6]

The Court of Appeals arrived at the said decision after finding that rescission and specific performance as provided in Art. 1191 of the New Civil Code, may alternatively be availed of in this case. The question is who between the contending parties may avail of the alternative remedies when both of them violated the provisions of the contract, their Pre-Subscription Agreement. The Court of Appeals also found that the Ongs were indeed preventing the Tius from assuming the duties and responsibilities of the position of Vice-President and Treasurer of FLADC. The Ongs also violated the Pre-subscription agreement when they did not credit to Masagana Telamart, Inc. the number of shares in FLADC commensurate to its property contribution (1,902.30 sq. m.), despite the execution by the Tius of the Deed of Assignment over said property. The Court of Appeals also stated that the records also reveal the following violations on the Tius' part: 1.) While there is, on record, a Deed of Assignment over the 151 sq. m. parcel of land in favor of FLADC, said Deed was not executed by the Tius in favor of FLADC but by the Lichaucos; and 2.) the Tius did not turn over to the Ong Group the entire amount of FLADC's funds in violation of the Pre-Subscription Agreement which stipulated that the former grants to the latter, the management and administration of the regular business of FLADC upon the agreement's execution. The Court of Appeals also found that the Tius were diverting rentals due to FLADC into their own MATTERCO account which rentals appear to have not been remitted to FLADC up to now. Considering the foregoing, the Court of Appeals concluded that the two groups can no longer work harmoniously together and deemed it proper to confirm the rescission and for the Ongs and the Tius to liquidate FLADC in accordance

[6] *Ibid.*, pp. 133-135.

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with their respective cash and property contribution. The Court of Appeals also resolved the question of the nature of the ₱70M paid by the Ongs in excess of 1 million shares they acquired from FLADC, ruling that the same is an advance made by the Ongs in favor of FLADC, and not a premium or paid-in surplus on the actual value of 1 million shares, and that no interest thereon may be awarded as there is no evidence on record which shows that at the time the ₱70M was advanced to FLADC, the parties agreed that the same shall earn interest.

On August 17, 2000, the Court of Appeals issued a Resolution which denied the private parties' motions for reconsideration.

The Ong Group and the Tiu Group both filed their respective petitions for review subject of these consolidated cases.

Except for the fourth assigned error in the Ongs' petition (G.R. No. 144476) and sub-paragraphs (vi) and (vii) of the second assigned error in the Tius' petition (G.R. No. 144629), which are well taken, We find both petitions to be without merit.

In their Petition, docketed as G.R. No. 144476, the Ongs raise the following assignment of errors:

"I

"The Court of Appeals erred in ruling that the 'Pre-Subscription Agreement' of the parties dated August 15, 1994 may be rescinded under Article 1191 of the New Civil Code.

"a. Rescission is applicable only to reciprocal obligations and the 'Pre-Subscription Agreement' does not provide for reciprocity; hence, the remedy of rescission is not available.

"b. Rescission is not applicable when 'rights' over the subject matter of the rescission have been acquired by third persons.

"c. Rescission is only applicable in case of substantial and fundamental breach.

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"II

"The Court of Appeals erred in finding that the Ongs violated the 'Pre-Subscription Agreement' in the following manner:

"a. The Ongs prevented the Tius from assuming the duties and responsibilities of the Vice-President and Treasurer of FLADC by not providing them with adequate offices.

"b. By not crediting Masagana Telamart, Inc. with 300,000 shares corresponding to the value of the 1,902.30 square meters property covered by TCT No. 15587.

"III

"The Court of Appeals erred in confirming rescission of the 'Pre-Subscription Agreement' dated August 15, 1994 and the 'liquidation' of FLADC 'for practical reasons,' and to prevent 'further squabbles and numerous litigations,' reasons unknown in law.

"IV

"The Court of Appeals erred in not awarding interest on the loan of respondent David S. Tiu from petitioner Ong Yong in the amount of ₱20 million and the ₱70 million advanced by the Ongs to FLADC.

"V

"The Court of Appeals erred in not awarding costs and damages to the Ongs."

On the first issue, the Court of Appeals did not err in ruling that the "Pre-Subscription Agreement" of the parties dated August 15, 1994 may be rescinded under Article 1191 of the New Civil Code.

In paragraph (a) of the first assigned error, the Ongs allege that rescission is applicable only to reciprocal obligations and the "Pre-Subscription Agreement" does not provide for reciprocity, hence, the remedy of rescission is not available. The Ongs cited the case of *Songcuan vs. IAC*, (191 SCRA 28) to illustrate their point that "As in the Songcuan case, there are here two (2) separate and distinct obligations each independent of the other – i.) the obligation to subscribe to, and to pay, 50% of the increased capital stock of FLADC; and ii.) the obligation to install the Ongs and the Tius as members of the

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Board of Directors and to certain corporate positions, but only after the Ongs and the Tius have subscribed each to 50% of the increased capital stock of FLADC."

In this petition, in lieu of Art. 1191,[7] the Ongs invoke Articles 1156 and 1159 of the New Civil Code which state –

"Art. 1156. An obligation is a juridical necessity to give, to do or not to do.

"Art. 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith."

and that should there be any violation, those who failed to fulfill their obligations should be required to perform their obligations under the agreement.

Contrary to the Ongs' assertion, the Songcuan case does not apply squarely to this case. In the Songcuan case, this Court ruled that Art. 1191 to rescind the right of the Alviars to repurchase does not apply because their corresponding obligations can hardly be called reciprocal because the obligation of the Alviars to lease to Songcuan the subject premise arises only after the latter had reconveyed the realties to them. On the other hand, in the instant case, the obligations of the two (2) groups to pay 50% of the increased capital stock of FLADC and to install them as members of the Board of Directors and

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[7] Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

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to certain corporate positions are simultaneous and arise upon the execution of the pre-subscription agreement.

The Ongs illustrate reciprocity in the following manner: In a contract of sale, the correlative duty of the obligation of the seller to deliver the property is the obligation of the buyer to pay the agreed price.[8]

In the case at bar, the correlative obligation of the Tius to let the Ongs have and exercise the functions of the positions of President and Secretary is the obligation of the Ongs to let the Tius have and exercise the functions of Vice-President and Treasurer. In this regard, the Court of Appeals aptly stated, and we quote:

"It cannot be denied that the Pre-Subscription Agreement contains reciprocal obligations owing to the fact that the parties thereto agreed to maintain parity not only in their shareholdings in FLADC but also with regard to their standing in FLADC (pp. 214, 662, 708-710, 715-716, 1914, *Rollo*). In fine, each party has the obligation to remain equal with the other on every matter pertaining to FLADC. Herein lies the reciprocity in the Pre-Subscription Agreement."[9]

Moreover, the Ongs are now estopped from denying the applicability of Art. 1191 to the present controversy. As correctly observed by the Court of Appeals in its Resolution dated August 17, 2000, which denied the Ongs' motion for reconsideration:

"Petitioners keep on harping for the Pre-Subscription Agreement's specific performance yet they also actually failed to give a legal basis therefor. Why then must they deny that the Tiu Group has a right to ask for rescission of their agreement per Article 1191 of the Civil Code (pp. 1141-1145, *Rollo*) when they themselves invoke the same law as basis for asking the specific performance of the same agreement (pp. 1156-1159, *Rollo*)."[10]

In paragraph (b) of the first assigned error, the Ongs allege that rescission is not applicable when "rights" over the subject

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[8] Petition, G.R. No. 144476, p. 35, *Rollo*, p. 52.

[9] *Rollo*, G.R. No. 144476, p. 123.

[10] Court of Appeals Resolution, p. 14, *Rollo*, G.R. 144476, p. 181.

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matter of the rescission have been acquired by third persons. The Ongs refer to Arts. 1191 and 1385.[11]

The Ongs argue that the payment on subscription of ₱100 million by the Ongs is not to the Tius and the payment of ₱54.98 million by the Tius is not to the Ongs, but to FLADC, the corporation, which is distinct and separate from the Ongs and the Tius notwithstanding the fact that they may be the only stockholders. Pursuant to Arts. 1191 and 1385, continue the Ongs, the payment made by the two (2) groups have come to be legally owned and possessed by FLADC, the corporation, a third person, who did not act in bad faith. So that any alleged violation of the Pre-Subscription Agreement would have no consequence on the respective amounts paid by the two (2) groups on their subscription to FLADC, a third party.

We are not convinced.

The reliance of the Ongs on Article 1385 is misplaced. We agree with the Tius that the things which are the object of the Pre-Subscription Agreement – one million shares of stock subscribed to by the Ong Group, the additional 549,800 shares subscribed to by the Tius, and the corporate positions mentioned above – are not in the possession of third persons, but are in the possession of the parties to the Pre-Subscription Agreement. In any case, FLADC is not a third person in relation to the Pre-Subscription Agreement though not named as a party. FLADC is deemed a party to the agreement by virtue of stipulations *pour autrie* clearly and deliberately conferring on it a favor or

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

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

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

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benefit which it subsequently accepted. (Art. 1311, Civil Code)[12] Such benefit was in the form of the payments made by the parties for their subscription to shares of stock in FLADC, which FLADC accepted.

In paragraph (c) of the first assigned error, the Ongs allege that rescission is only applicable in case of substantial and fundamental breach. The Ongs contend that the substantial and fundamental aspects of the Pre-Subscription Agreement between the two (2) groups are their commitment to subscribe to their respective numbers of shares and to pay corresponding amount thereof. The Ongs say that they have accomplished their part but not the Tius; and that their alleged breach of the agreement in their alleged failure to provide adequate offices to David Tiu as Vice-President and Cely Yao Tiu, as Treasurer, is hardly substantial and fundamental because stockholders become Vice-President or Treasurer of a corporation by election, not by virtue of office facilities he/she may have been provided.

The Ongs' contention is without merit. Suffice it to state that what makes a stockholder an officer of a corporation is not simply the fact of his election but, more important, his ability to perform the powers and functions of that office. As will be discussed in the next assigned error, the Ongs indeed prevented the Tius from exercising the powers and functions of their office. We rule, therefore, that such breach of the agreement on the part of the Ongs is substantial and fundamental.

On the second assigned error, the Court of Appeals did not err in finding that the Ongs violated the "Pre-Subscription

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[12] Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in cases where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

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Agreement" (a.) when it prevented the Tius from assuming the duties and responsibilities of the Vice-President and Treasurer of FLADC by not providing them with adequate offices, and (b.) when it did not credit Masagana with 300,000 shares corresponding to the value of its 1,902.30 sq. m. property contribution.

On paragraph (a), this Court takes exception to the phrase "by not providing them with adequate offices." This is not the only reason but only one of the reasons cited by the Court of Appeals in concluding that the Ongs violated the pre-subscription agreement when they prevented the Tius from assuming the duties and responsibilities of the Vice-President and Treasurer of FLADC. The discussion made by the Court of Appeals on this point is correct, very clear and enlightening, and we quote:

"A reading of the records, which to date comprises more than 2,100 pages, reveal that the Ongs were indeed preventing the Tius from assuming the duties and responsibilities of the position of Vice-President and Treasurer of FLADC. This is highlighted by the fact that the Ongs' attempt to provide David S. Tiu and Cely Y. Tiu with executive offices before the filing of the complaint *a quo*, was merely half-hearted as evidenced by the delay in providing for said offices despite repeated demands therefor (pp. 844-845, 862-868, 877-878, 895-896, 999-1000, *Rollo*), and by the need to pass a board resolution when none is necessary in order to provide executive offices for the FLADC President and his staff (pp. 936-937, *Rollo*). Another fact which shows that the Tius were being prevented from assuming their responsibilities is the criminal case for theft filed by the Ongs against David S. Tiu (pp. 856-859, *Rollo*). Why must there be a need for the Tius to act surreptitiously in order to have a copy of FLADC's records made if they were not actively being prevented from inspecting the same? Anyway, for all intents and purposes, the Ongs admit that they were preventing the Tius from assuming the responsibilities of Vice-President and Treasurer of FLADC. This was made *via* their reply to the Tiu's letter rescinding the Pre-Subscription Agreement, which in part reads:

> 'As to your contention that the ONG GROUP has failed to accord you, the elected Vice-President of FLADC, and your wife, the elected treasurer of FLADC, the powers vested in you by the by-laws, allow me to remind you that in accordance

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> with the Pre-Subscription Agreement, 'the First Party (TIU GROUP) hereby grants to the Second Part (ONG GROUP) the management and administration of the regular business of the corporation upon the execution of this documents (sic).' Notwithstanding this fact, the ONG GROUP has always made you a co-signatory to the bank accounts of the corporation; however, to the great prejudice and damage of the corporation you have, more often than not, either purposely delayed or refused to affix your signature to checks in payment for the valid obligations of the corporation. Moreover, from the start, the corporation has given your wife, who is the Treasurer of FLADC, a space in our office but she has seldom come to hold office there. Despite this, we have already acceded to your demand that your wife be given **a room in lieu of the space provided for her**. Furthermore, pursuant to the by-laws, both the Vice-President and the Treasurer are to perform duties which may be assigned to them by the Board of Directors and/or the President. (p. 2049, *Rollo*; underscoring supplied)'

"The Pre-Subscription Agreement provides that the position of Vice-President and Treasurer of FLADC shall be nominated from the Tiu Group (p. 213, *Rollo*). Despite the provision in the agreement turning over the management and administration of FLADC to the Ong Group (p. 215, *Rollo*), there is nothing in the agreement which states that the elected Vice-President and Treasurer of FLADC cannot or must not be allowed to assume the responsibilities of their respective office. From the tenor of the aforequoted reply to the Tius' letter of rescission, it is evident that the Ongs have reduced the positions of Vice-President and Treasurer of FLADC to mere figure heads."[13]

The Court of Appeals did not err in arriving at the same conclusion like the three (3) tribunals below (Hearing Officer Andaya, Hearing Officer Soller and the SEC *En Banc*), that the Ongs excluded the Tius from the corporation by preventing them from participating in its operation and financial affairs.

In paragraph (b) of the second assigned error, the Ongs maintain that their group cannot be faulted for not crediting Masagana

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[13] Court of Appeals Decision, pp. 14-15, *Rollo* of G.R. No. 144476, pp. 124-125.

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with 300,000 shares corresponding to the value of its 1,902.30 sq. m. property contribution, because the Deed of Assignment over the said property executed by Masagana in favor of FLADC was patently incomplete (not dated, no instrumental witness signed the Deed and the Acknowledgement was not executed, because the Tius asked that the execution of the document be not completed) and that the necessary documentary stamp taxes, and capital gains and transfer taxes had not been paid, such that FLADC could not process with the SEC the application regarding the exchange of the said property for shares of stock in the corporation.

The issue boils down to the question of "Who has the obligation to pay the taxes incident to the assignment?"

We rule that FLADC, the assignee, has the obligation to pay the taxes incident to the assignment. The Court of Appeals did not err in holding that:

"xxx The provisions on this matter in the Pre-Subscription Agreement is clear that upon the execution of the Deed of Assignment thereon in favor of FLADC, Masagana Telamart, Inc. shall be credited with the number of shares in FLADC commensurate to the value thereof of ₱30,000,000.00 (see paragraphs 14-15, 17 of the Pre-Subscription Agreement, p. 214, *Rollo*). Since the Deed of Assignment over this property has already been executed in favor of FLADC, and the owner's duplicate of the title and possession thereof have already been delivered to FLADC (pp. 221-226, 563, *Rollo*), the Ongs should have credited 300,000 shares of FLADC at a par value of ₱100.00 per share in the name of Masagana Telamart, Inc. The transfer of the title to said property in FLADC's name is another matter which is governed by the Deed of Assignment itself and not the Pre-Subscription Agreement (pp. 221-222, *Rollo*)."[14]

The Deed of Assignment stipulates:

"The ASSIGNEE (FLADC) hereby accepts said assignment and assumes **all** the obligations of performing **all** the terms and conditions including but not limited to, the transfer of the said parcel of land

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[14] Court of Appeals Decision, pp. 15-16, *Rollo* of G.R. No. 144476, pp. 125-126.

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in the name of First Landlink Asia Development Corporation within a reasonable time." (Emphasis supplied)

Said stipulation does not enumerate nor exclude any obligation on the part of the assignee for purposes of transferring the property in its name. Instead, the Deed stipulates in simple language "all the obligations of performing all the terms and conditions *including*, but not limited to, the transfer of the said parcel of land in the name of (FLADC)." It imposes no obligation at all on the part of the assignor for purposes of transferring the parcel of land in the name of FLADC.

In the interpretation of contracts, "if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the liberal meaning of its stipulation shall control." (Art. 1370, Civil Code). Thus, the FLADC should shoulder all obligations, such as taxes, legal fees, notarial fees and expenses of registration, for the conveyance to be registered and the title to the property placed in the name of FLADC.

If the Ongs find ambiguity in the said stipulation in that the same allegedly does not provide that FLADC would pay for the taxes arising from the assignment, and that it should have been expressly provided in the deed of assignment, such alleged ambiguity can only be resolved against the Ongs for it was their lawyer, the late Atty. John Uy, who prepared the Deed of Assignment.[15] Where the provisions of a contract are ambiguous, such ambiguity must be construed against the party who drafted the same.[16]

At any rate, the intention of the parties could not have been to impose on Masagana the obligation to pay said taxes. As explained by the Tius in their Comment –

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[15] TSN, dated 7 Jan., 1997, p. 30, Comment filed by the Tius in 144476, p. 87, *Rollo*, p. 294.

[16] *De Leon vs. Court of Appeals*, 205 SCRA 612 [1992]; *Magellan Capital Management Corporation vs. Zosa, et al.*, March 26, 2001, G.R. No. 129916.

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"xxx for such imposition is not consistent with the fundamental concept of 'equality' on which the Pre-Subscription Agreement is based. If Masagana were to pay the taxes and other expenses for the transfer of its 1,902.30 sq. m. property contribution to FLADC, Masagana would, in effect, be paying more than ₱30 million, the agreed valuation of the said property contribution, for 300,000 shares of stock in FLADC. Thus, assuming the Ong Group's computation of Masagana's net gain on the assignment is correct, *i.e.*, ₱14 million, and Masagana were to pay 35% of ₱14 million (₱4.9 million) in taxes for such assignment, in addition to the amount of ₱570,690.00 in documentary stamp taxes, Masagana would be paying ₱35,470,690.00 for 300,000 shares of stock in FLADC, instead of only ₱30 million. This could not have been the intention of the parties."[17]

The Ongs presented as proof that the Tius acknowledged their liability for the payment of the taxes, the following letter-reply dated April 27, 1995 of Mr. David Tiu to Mr. Wilson T. Ong's request for him to remit payment for documentary stamp tax:

"With respect to your request for the remittance of ₱570,690.00 representing 1-1/2% of documentary stamps on the assignment of the land with an area of 1,902.30 sq. m. described in TCT No. 134066, we are willing to remit the same after our proposed meeting, together with Atty. John Uy and Atty. A. Santos regarding the possible tax liability which we have earlier discussed with you."[18]

The contents of the said letter were satisfactorily explained by Mr. Tiu as simply a diplomatic way of denying any tax liability on the transfer, precisely the reason behind the need for a meeting between the lawyers of the two (2) groups:

"Hearing Officer:

"Okay, you may explain that.

"A In this letter that I mentioned, April 27, this is only my diplomatic way of denying or telling the Ong Group that it is not part of

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[17] Tiu's Comment, pp. 88-89; *Rollo*, G.R. No. 144476, pp. 295-296.

[18] Annex "F," Petition for Review, G.R. No. 144476, *Rollo*, p. 194.

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> our agreement that I will pay this amount. Because it's clearly written in the Deed of Assignment that it is the assignee (that) who will pay the documentary stamps and other taxes to be able to transfer the parcel of land in the name of FLADC. That is why it is a meeting with both our lawyers." (TSN, 15 April 1996, p. 34)

"Atty. Santos:

"Q In that letter, you made mention of a meeting to be held between Atty. Santos and Atty. Uy. The Atty. Santos being referred there, is this Atty. Santos, this representation?

"A Yes, Sir, you are the lawyer I'm referring. (TSN, 15 April 1996, pp. 43-44)[19]

Sub-paragraph (c) of the second assigned error, that the Tius, not the Ongs, violated the Pre-Subscription Agreement, shall be discussed together with the Tius' Assignment of Errors in G.R. No. 144629.

On the third assigned error, the Ongs allege that "the Court of Appeals erred in confirming rescission of the Pre-Subscription Agreement and the liquidation of FLADC 'for practical reasons,' and to prevent 'further squabbles and numerous litigations,' reasons unknown in law." Allegedly, it is an error for the Court of Appeals to order the transfer to the Tiu Group whatever remains of the assets of the FLADC and the management thereof, upon the return to each group of their respective cash and property contribution. The Ongs maintain that the two (2) groups' payment for the shares of stocks belong to the corporation, no longer to the Ongs or Tius; and even if the Ongs and Tius were the only stockholders, they do not have the authority to transfer cash or properties of FLADC to themselves, for that would be misappropriation. The Ongs further cite Sec. 122 of the Corporation Code to support their claim that the order of the Court of Appeals for the return of the parties' contribution (distribution of FLADC assets, in the words of the Ongs) is prohibited, thus:

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[19] Comment, pp. 90-91; *Rollo*, G.R. No. 144476, pp. 297-298.

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"Sec. 122. Corporate Liquidation. - xxx

"Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities."

The Ongs also question the order of the Court of Appeals to transfer to the Tius the Masagana Citimall (the asset which would remain after moving out cash and property to the Ongs and Tius), "the corporation's priceless jewel," when it was they who caused the venture to flourish because of their ₱190 million contribution and their management thereof.

We find the Ongs' contentions to be without merit.

The Tius counter, among others, that: "When the Ong Group invested their ₱170 million for 50% of the shares of FLADC, and loaned Mr. Tiu ₱20 million to enable FLADC to pay the ₱190 million PNB loan, the mall leasing business was already in place, and all the Ong Group had to do was continue the administration of the mall already started by the Tiu Group, and oversee the collection of rentals which were supposed to be remitted to the Treasurer, but which the Ong Group refused to do. For the Ong Group to disregard the valuable contributions of the Tiu Group and monopolize the credit for FLADC's success is plain arrogance."

As discussed in the first assigned error, the Court of Appeals correctly confirmed the rescission of the Pre-Subscription Agreement on the basis of Art. 1191 of the Civil Code. It could have relied on the said provision and nonetheless stood on valid ground. It, however, judiciously took into account the special circumstances of the case and further justified its decision confirming the rescission of the Pre-Subscription Agreement on the basis of its perception that the two groups "can no longer work harmoniously together" and that "to pit them together in the management of FLADC will only result to further squabbles and numerous litigation."

Moreover, what the Court of Appeals ordered was not corporate liquidation upon lawful dissolution under Sec. 122 of the

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Corporation Code, as cited by the Ong Group. The Court of Appeals clarified in its Resolution promulgated on August 17, 2000 that "in ordering liquidation, the Court does not mean its dissolution as provided in the Corporation Code."[20] The prohibition, therefore, under Section 122 against distribution of assets or properties of the corporation does not apply.

As a legal consequence of rescission, the order of the Court of Appeals to return the cash and property contribution of the parties is based on law, hence, cannot be considered an act of misappropriation. For how can the rescission of the Pre-Subscription Agreement be implemented without returning to the two groups whatever they delivered to the corporation in accordance with the Agreement?

With regard to the order of the Court of Appeals transferring to the Tiu Group whatever remains of the assets of FLADC and the management thereof, the same is but an inevitable consequence of the rescission of the Pre-Subscription Agreement. Restoration of the parties to *status quo ante* dictates that the building constructed on the two (2) existing lots of FLADC, the remaining asset of FLADC, be transferred to the Tiu Group. The *status quo ante* immediately prior to the execution of the Pre-Subscription Agreement was that the Tius, then wholly owning FLADC, had control and custody over this remaining asset.

On the fourth assignment of error, we find the same to be well taken. Indeed, the Court of Appeals erred in ruling that: "Since no period was stipulated for the return thereof (the ₱20 million loan extended to the Tius and the ₱70 million the Ongs advanced to FLADC), the Court resolves to fix the same upon the finality of this Decision (See Article 1197, Civil Code[21]). Failure of the Tius to pay the same upon the finality of this

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[20] Court of Appeals Resolution dated August 17, 2000, p. 9.

[21] Art. 1197. If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.

The courts shall also fix the duration of the period when it depends upon the will of the debtor.

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decision shall make them liable for legal interests thereon pursuant to Article 2209 of the New Civil Code."

We agree with the Ongs that since no period was stipulated for the return of the ₱20 million loan they extended to the Tius, the same should earn 12% interest per annum and the period of payment of interest thereon should reckon from the time of judicial (or extrajudicial) demand, which was, from April 23, 1996, when the Ongs filed their Answer, and not upon the finality of this Decision.

In ***Eastern Shipping Lines, Inc. vs. Court of Appeals***[22] and affirmed in ***Gomez vs. Court of Appeals*** (Sept. 21, 2000, G.R. No. 120747) and ***Catungal vs. Hao***, (March 22, 2001, G.R. No. 134972), among other cases, this Court discussed at length the rate of interest, as well as the accrual thereof in awarding interest in the concept of actual and compensatory damages and held that:

"1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing.[23] Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169[24] of the Civil Code."

However, we do not deem it fit that the ruling in Eastern Shipping Lines, Inc. should also apply to the ₱70 million that the Ongs advanced to FLADC. This is because the Ongs

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In every case the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period cannot be changed by them.

[22] 234 SCRA 78, 95 [1994].

[23] Art. 1956. No interest shall be due unless it has been expressly stipulated in writing.

[24] Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

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themselves, in the Board Resolution (Exhibit "16") that was approved in the meeting of the Board of Directors of FLADC held on June 19, 1996 (during which the Tiu group was absent), authorized payment of 10% interest per annum on the said ₱70 million. Thus, as to the ₱70 million, the FLADC should be made to pay only 10% interest per annum and not 12%, the period to be reckoned from June 19, 1996.

The matter of why the ₱70 million paid by the Ongs should be adjudged as an advance and not a premium or paid-in surplus shall be taken up in G.R. No. 144629, the petition filed by the Tius.

On the fifth assigned error, the Ongs allege that the Court of Appeals erred in not ordering the Tius to pay costs and damages to the Ongs for the filing of this baseless and unwarranted suit. Considering all the foregoing which shows that the case filed by the Tius for confirmation of the rescission of the pre-subscription agreement, is meritorious, it is obviously no longer necessary to discuss this issue.

In their Petition, docketed as G.R. No. 144629, the Tius raise the following Assignment of Errors:

"I

"The Court of Appeals erred in ordering the liquidation of FLADC instead of merely ordering the restitution of the parties' respective investments.

"II

"The Court of Appeals erred in relaxing the application of the laws and jurisprudence on rescission of reciprocal obligations and in ordering the liquidation of FLADC obviously on the basis of its mistaken perception:

"i) That in 1994, prior to the entry of the Ong Group in FLADC, the Masagana Citimall was threatened with incompletion;

"ii) That at that time, FLADC was in financial distress in the amount of ₱190 million for being indebted to PNB;

"iii) That the Tiu Group invited the Ong Group to come in as stockholders for FLADC to recover from its floundering finances;

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"iv) That the Pre-Subscription Agreement was entered into by the parties in order to rescue FLADC from financial distress, *i.e.*, for the purpose of settling its ₱190 million indebtedness to PNB;

"v) That under the circumstances, Masagana Citimall will not be what it is today were it not for the money that the Ong Group invested;

"vi) That the Tiu Group violated the Pre-Subscription Agreement since the deed of assignment over the 151 sq. m. lot was not executed by the Tiu Group but by the Lichaucos in favor of FLADC, hence, the Tiu Group cannot be credited with the number of shares commensurate to the value of said lot and will not, therefore, be able to equal the Ong Group's one million subscription in FLADC;

"vii) That the Tiu Group were pulling a fast one on the Ong Group by their 'alleged' 151 sq. m. property contribution in exchange for 49,800 shares in FLADC;

"viii) That the Tiu Group did not turn over to the Ong Group the entire amount of FLADC funds;

"ix) That the Tiu Group, by unilaterally rescinding the Pre-Subscription Agreement, are now trying to oust the Ong Group from enjoying the fruits of their ₱190 million investment in FLADC, and that this is ingratitude at its height;

"x) That the Tiu Group were diverting rentals due to FLADC into their own MATERRCO account which rentals appear to have not been remitted to FLADC up to now; and

"xi) That the ₱70 million paid by the Ong Group was an advance and not a premium on capital."

On their first assigned error, the Tius allege that the Court of Appeals erred in ordering the liquidation of FLADC instead of merely ordering the restitution of the parties' respective investments. The Tius continue: "To rescind is 'to declare a contract as though it never were.' It is not merely to terminate it and release the parties from further obligations to each other but to abrogate it from the beginning and restore parties to their relative position which they would have occupied had no contract ever been made (***Ocampo vs. Court of Appeals***, 233 SCRA

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551)."[25] The Tius also contend that the liquidation of the profits of FLADC and the distribution thereof to the parties offend the very essence of rescission which merely requires mutual restoration in consonance with the basic principle that when an obligation has been extinguished, it is the duty of the court to require the parties to surrender whatever they may have received from the other so that they may be restored, as far as practicable, to their original situation. In support thereof, the Tius cite the following cases: ***Floro Enterprises, Inc. vs. Court of Appeals***, 249 SCRA 354 [1995], citing ***Agustin vs. Court of Appeals***, 186 SCRA 375 [1990]; ***Magdalena Estate, Inc. vs. Myrich***, 71 Phil. 344 [1941]; ***Po Pauco vs. Siguenza, et al.***, 49 Phil. 404 [1926].

On the other hand, the Ongs, in their Comment also question the order of the Court of Appeals in its Decision for the rescission and liquidation of FLADC and for the return to the Ongs of their ₱190 million, and nothing more. The Ongs ask what became of the profits earned and the additional assets acquired by FLADC through the efforts of the Ongs, and the ₱190 million they invested in FLADC.

To the above queries of the Ongs, it is precisely for those reasons that the Court of Appeals in its Resolution of August 17, 2000, clarified thus:

"xxx. While the Court in the case at bench ordered the rescission of the Pre-Subscription Agreement, it did not, however, order restitution of what the parties contributed pursuant thereto. What the Court ordered was the liquidation of FLADC in accordance with the actual amount of investment each party made in FLADC (pp. 18-19 and 24 of Decision; pp. 1045-1046 and 1050, *Rollo*). Restitution and liquidation are two different things. Liquidation includes both the profits and losses each party derived within the duration of their respective investment (see Sibal, Philippine Legal Encyclopedia, p. 531; Black's Law Dictionary, p. 839; De Leon, *The Corporation Code of the Philippines Annotated*, 1997 ed., p. 705, citing 16 Fletcher, p. 658). Contrary therefore to Willie Ong's contention that the Ongs will simply receive a return of their

[25] Petition,. p. 48, *Rollo* of G.R. 144629, p. 145.

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money without any fruits or interest, the decision assures them that they (the Ong and Tiu Groups) will have a bountiful return of their respective investments derived from the profits of the corporation."[26]

With regard to the Tius' allegations, the same are without merit. As cited by the Tius themselves, "it is the duty of the court to require the parties to surrender whatever they may have received from the other so that they may be restored, *as far as practicable*, to their original situation." Restoration of the parties to their relative position which they would have occupied had no contract ever been made is not practicable nor possible because we cannot turn back the hands of time when the mall was only "nearing completion" in 1994, when the mall was not fully tenanted yet and they had an existing loan of ₱190 million with PNB with an interest of 19% per annum. But the Masagana Citimall is now completely constructed/finished, the ₱190 million loan fully paid without their having to pay enormous interest, and the Tius cannot deny that the Ongs are partly to be credited for the success of the venture. What the Tius want the Court to order would have been fair and just had there been no fault on their part as would be discussed in the second assigned error, and had they come to Court with clean hands because he who comes to Court must come with clean hands.[27] If, as the Tius espouse, the Court would simply order the return of the ₱190 million of the Ongs, then, the Tius would be unjustly enriched at the expense of the Ongs. Under the law, no one shall unjustly enrich himself at the expense of another. "*Niguno non deue enriquecerse tortizamente condaño de otro.*"

On their second assigned error, the Tius allege that the Court of Appeals erred in relaxing the application of the laws and jurisprudence on rescission of reciprocal obligations and ordering the liquidation of FLADC on the basis of its mistaken perception.

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[26] Court of Appeals Resolution dated August 17, 2000, *Rollo*, G.R. 144476 pp. 173-174.

[27] *Camporedondo vs. NLRC*, 312 SCRA 47 [1999].

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Subparagraphs i-iv, and ix, being interrelated, shall be discussed jointly. The Tius allege that contrary to the Court of Appeals' findings:

i.) In 1994, prior to the entry of the Ong Group in FLADC, the Masagana Citimall was never threatened with incompletion;

ii.) Prior to the execution of the Pre-Subscription Agreement, FLADC was not in financial distress;

iii.) The Tiu Group invited the Ong Group to come in as stockholders of FLADC to expand the company's leasing business;

iv.) It is not true that the Pre-Subscription Agreement was entered into by the parties in order to rescue FLADC from financial distress, *i.e.*, for the purpose of settling its ₱190 million indebtedness to PNB;

ix.) It is the Tiu Group, not the Ong Group, who were ousted from enjoying the fruits of their investment in FLADC, hence, it is the Tiu Group who are the victims of ingratitude;

We are not persuaded. The Court of Appeals did not have any mistaken perception.

Granting that the Masagana Citimall was not threatened with incompletion in 1994, it would have gone off to a bad start had not the Ongs come in with ₱190 million which was used to pay the Tius' loan with the PNB. The said loan would have meant payment of 19% interest per annum. As presented by the Ongs in their Comment:[28]

"d. As of July 18, 1994, FLADC had already drawn a total amount of ₱188,254,599.77 from the credit line and was paying interest thereon at the rate of 19.00% per annum or close to ₱3 Million every month.

"From the above-mentioned facts, assuming that FLADC would no longer draw on its remaining credit line to complete the building, the following indisputable conclusions may be reached:

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[28] Comment, pp. 20-22; *Rollo*, G.R. No. 144629, pp. 1470-1472.

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"a. At 19% interest per annum, the interest payments alone for the ₱188,254,599.77 existing loan of FLADC with the PNB would be equivalent to the following amount:

₱35,768,373.96 on an annual basis;

₱ 8,942,093.49 on a quarterly basis; and

₱ 2 ,980,697.03 on a monthly basis.

"x x x x x x x x x

"c. For the same ₱190 Million loan, and in addition to the above-mentioned interest payments, the semi-annual amortization for the PNB loan would have been ₱18,825,459.97 per payment and should have been payable as follows:

April 29, 1996 - initial payment

October 29, 1996 - 2nd payment

April 29, 1997 - 3rd payment

October 29, 1997 - 4th payment

April 29, 1998 - 5th payment

October 29, 1998 - 6th payment

April 29, 1999 - 7th payment

October 29, 1999 - 8th payment

April 29, 2000 - 9th payment

October 29, 2000 - final payment

"d. Again, had the Ongs not invested in FLADC in August 1994, then by the time FLADC would have made its initial amortization payment of ₱18,825,459.97 on April 29, 1996, it would have been paying interest in the total amount of ₱59,613,940.60 (₱2,980,697.03/month x 20 months).

"Again, even assuming that the mall which FLADC was building was already completed, it was impossible to generate these amounts from the mall operation for that short period of time.

"e. Clearly, the Tius were constrained to invite a partner to rescue FLADC from its inevitable bankruptcy."

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With the above illustration of the Ongs, it became incumbent upon the Tius to counter it by showing how it would have been able to generate such income as would enable FLADC to pay interest and loan amortization without ₱190 million infused by another group. This the Tius failed to do. All the Tius made was their bare allegation that the Mall was already more than 50% tenanted at that time, and was capable of paying the interests and amortization.

The Tius' claim – that they invited the Ongs to come in as stockholders of FLADC to expand the company's leasing business – does not also appear to be true. Were this the case, they should have used the new capital infusion of the Ongs to purchase adjoining properties and/or erect a new building that could be connected with the existing structure of FLADC. The Ongs put it in the following manner: "A close reading of the Pre-Subscription Agreement belies the claims of the Tius. The reality, as clearly appearing in the said agreement, is that the parties intended to fully liquidate[29] the ₱190 million loan of FLADC with PNB so that the company could continue to operate on a clean slate without the need of paying enormous interests. The reason is simple. Since the Tius were not able to attract enough lessees to occupy the Citimall, they knew that they would not be able to raise enough funds to pay its loan with PNB. Thus, the Tius invited the Ongs primarily for two reasons: [1] to pay off FLADC's obligation with PNB, and [2] to help the Tius fill up the Citimall with new lessees."

The Court also notes that while it was the Tius who started the corporation, they acquiesced to the arrangement that the President should come from the Ong Group and the Board of Directors shall comprise of six (6) members from the Ongs, and only five (5) from the Tius. If the Tius were not desperate

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[29] "12. That the parties herein agree that the outstanding loan of ₱190,000,000.00 as of August 16, 1994, with Philippine National Bank shall be liquidated and paid in full sourcing such payment from the new capital generated from the subscription of the Second Party and partly from the available funds of the corporation as mentioned in paragraph 5, sub. pars. a, b and c"; (Exhibit "19", Annex "C" of Petition in G.R. No. 144476).

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or in financial distress why should they agree to such an arrangement when, as claimed by the Tius, (Petition, p. 74, *Rollo*, G.R. No. 144629, p. 171), the appraised value of the entire property of FLADC as of 1994 was ₱420.3 million? If the FLADC had enough funds, why did it have to borrow ₱70 million from the Ongs to be used in paying the ₱190 million loan with PNB? Therefore, we also agree with the Court of Appeals when it held that:

"The Tius, in unilaterally rescinding the Pre-subscription Agreement, are now trying to oust the Ongs from enjoying the fruits of their ₱190 million investment in FLADC. This is ingratitude at its height, xxx."[30]

As to sub-paragraph (v.) suffice it to say that none of the two groups may claim that their group's business acumen, hard work, and dedication account for what Masagana Citimall is today because both of the groups contributed money/property and labor thereto.

As to sub-paragraphs (vi) and (vii), the Court of Appeals indeed erred in finding that the Tiu Group violated the Pre-Subscription Agreement since the deed of assignment over the 151 sq. m. lot was not executed by the Tiu Group but by the Lichaucos in favor of FLADC. Hence, the Tiu Group cannot be credited with the number of shares commensurate to the value of said lot and will not, therefore, be able to equal the Ong Group's one million subscription in FLADC.

We do not agree with the following discussion of the Court of Appeals on this point:

"Under the Pre-Subscription Agreement, the Tius were obliged to execute a Deed of Assignment over a 151 square meter parcel of land in favor of FLADC as payment of 49,800 shares thereof at a par value of ₱100.00 per share (see paragraphs 14, 15 and 17 of the Pre-Subscription Agreement, p. 214, *Rollo*). While there is on record a Deed of Assignment thereon in favor of FLADC (pp. 308-312, *Rollo*), said Deed of Assignment was not executed by the Tius in

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[30] Court of Appeals Decision, *Rollo*, G.R. No. 144629, p. 30.

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favor of FLADC. The Deed of Assignment was executed by the Lichaucos in favor of FLADC (*Ibid.*). If ever somebody has to be credited with the number of shares commensurate to the value of the 151 square meter property, it will not be the Tius but the Lichaucos.

"Per the Pre-Subscription Agreement, the 151 square meter property shall be used by the Tius to acquire a number of shares in FLADC in order to equal the 1 million subscription of the Ongs in FLADC (*supra*). It turned out, however, that the 151 square meter property was acquired by FLADC for a consideration of ₱900,000.00 (see paragraph 5 of Deed of Assignment, p. 309, *Rollo*). It will therefore be iniquitous were the Ongs to credit the Tius the number of shares in FLADC commensurate to the value of the 151 square meter property when the Tius did not contribute the same for the purpose of acquiring shares in FLADC. The deed assigning this property to FLADC was executed by the Lichaucos for a consideration which FLADC itself paid. Said deed was executed even before the Pre-Subscription Agreement was entered into between the parties. Consequently, the Tius cannot be credited with the number of shares commensurate to the value of the 151 square meter property and will not therefore be able to equal the Ongs' 1 million subscription in FLADC in accordance with their undertaking in the Pre-Subscription Agreement (see paragraph 14 of Pre-Subscription Agreement, p. 214, *Rollo*)."[31]

The Tius aver that the direct transfer of the property from the Lichaucos to FLADC did not prejudice the Ongs or FLADC. According to the Tius, what is important is that they obtained title to the 151 sq. m. property in the name of FLADC after the execution of the Pre-Subscription Agreement, and possession thereof has already been turned over to the corporation. Per the Tius, they cannot be denied full credit for such property contribution, without unjustly enriching the Ongs and FLADC which are now exercising control over the said property.

The Tius make the following explanations:

"During the brief negotiations that culminated in the execution of the Pre-Subscription Agreement, the Tiu Group informed the Ong Group that as early as March 1994 they had acquired from the Lichauco family another adjoining property consisting of 151

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[31] Court of Appeals Decision, pp. 16-17.

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sq. m. which was actually intended for the expansion of the mall. They disclosed to the Ong Group that the Deed of Assignment over the said property was placed in the name of FLADC and was to be directly transferred from the Lichauco family to the corporation. This is precisely the reason why the property was described in the Pre-Subscription Agreement as '[t]he lot under Transfer Certificate No. _____ with an area of 150 sq. m., more or less xxx,' clearly indicating that all that the parties were waiting for, at the time they were discussing the terms of the Pre-Subscription Agreement, was the issuance of the title to the said lot.

"The Ong Group were (sic) fully aware of the real status of the 151 sq. m. property when they agreed to consider it as one of the property contributions of the Tiu Group in payment for their additional subscription in FLADC."[32]

The Tius' contentions on this issue are well taken. We do not see why the Lichaucos, and not the Tius, should be credited with the number of shares commensurate to the value of the 151 sq. m. property. The Lichaucos are not parties to the Pre-Subscription Agreement and are not even demanding that they be credited with such shares in exchange for the said property. Just like this property, the 1,902.30 sq. m. parcel of land in the name of Masagana Telamart, Inc. (also a corporation owned by the Tius), was also acquired by the Tius before the execution of the Pre-Subscription Agreement. The fact that the 1,902.30 sq. m. property was acquired by the Tius beforehand does not prejudice the Ongs, as shown by the Ongs' non-objection to crediting the Masagana Telamart, Inc. with the commensurate number of shares, subject only to the Tius' payment of the expenses for the transfer of the title in the name of FLADC. So, too, in the case of the 151 sq. m. property, the fact that the Deed of Assignment between the Lichaucos and the FLADC was executed prior to the execution of the Pre-Subscription Agreement does not prejudice the Ongs. Therefore, the Tius should be credited with 49,800 shares in FLADC for this property contribution, pursuant to the Pre-Subscription Agreement.

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[32] Pre-Subscription Agreement, Annex "C", Petition, G.R. No. 144476, *Rollo*, pp. 184-188; Petition, p. 67. G.R. No. 144629, *Rollo*, p. 164.

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Sub-paragraph (viii) of the second assigned error states that the Tius turned over to the Ong Group the entire amount of FLADC funds mentioned in paragraph 5 of the Pre-Subscription Agreement.[33] The Tius have the following explanation: "xxx sometime in August 1994, the total amount of these available funds had not yet been determined. Consequently, in lieu of these funds, which amounted to ₱5,840,089.12, ₱1,.30,002.63(sic) of which had been earlier remitted to FLADC, Mr. Tiu paid the same using the ₱20 million he borrowed from Mr. Ong Yong. Such payment dispensed with the need to remit the said funds to FLADC."[34] Why should Mr. Tiu pay ₱20 million if he only needs to remit ₱5.8 million?

At any rate, assuming that the Tius' claim on this point, is true, the same is not reason enough to alter the order of the Court of Appeals for the liquidation of FLADC.

On sub-paragraph (x), the Tius maintain that they never siphoned any rentals due to FLADC to their MATERRCO account. In fact, the Tius continue, the trumped-up criminal charges filed by the Ongs against Mr. and Mrs. Tiu regarding the aforesaid act of siphoning FLADC funds, filed during the pendency of the rescission case with the SEC to harass the Tius, were dismissed by the DOJ in its Resolution dated 15 Feb. 1999.

The argument fails to persuade. The dismissal of the said criminal case does not necessarily mean that no act of siphoning FLADC funds was committed by the Tius. The following excerpts from the testimony of Mr. David Tiu on cross-examination shows otherwise:

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[33] "5. That as of the signing of this Pre-Subscription Agreement, there is held by the corporation and/or the First Party the following accounts:

"(a) Reimbursement of costs of improvements received from tenants on the spaces leased to them;

"(b) Receipts for reservations to lease;

"(c) Receipts for deposit or advance rentals from tenants"; (Pre-Subscription Agreement, Annex "C", Petition in G.R. No. 144476).

[34] Petition, p. 77, *Rollo*, G.R. No. 144629, p. 174.

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"Q Mr. Tiu, of course, you will admit that during the transition period, you were already operating Masagana Superstore, is that not correct?
"A Yes, partly we are occupying a portion of the building.

"Q Of course, Masagana Superstore was operated by Matterco, Inc. of which you were the president?
"A Yes, Ma'am.

"Q And I understand also that Matterco, Inc. is wholly owned or majority owned by the Tius?
"A Yes, Ma'am.

"Q Is it wholly owned by the Tius?
"A Majority owned.

"Q Mr. Tiu, I am showing to you a rental receipt no. 067 of Mercury Drug Corporation which is a tenant of FLADC. This rental receipt is a receipt of Masagana Superstore operated by Matterco., Inc. Do you affirm that this receipt was issued by Masagana Superstore operated by Matterco, Inc. and that the rental here pertains to a rental due from Mercury Drugstore which is a tenant of FLADC?
"A *This was mistakenly deposited at Masagana account.*

"x x x x x x x x x

"Q May I show you another receipt likewise issued by Masagana Superstore operated by Matterco, Inc. dated October 5, 1994. Will you please tell me if this another account, another payment that was mistakenly deposited to the account of Masagana?
"A This is also one of these . . . Because during the time . . . (TSN, March 5, 1997, pp. 88-91, a certified true copy of which forms part of Annex "N" and marked as Annex "N-3")[35]

Finally, the Tius disagree with the Court of Appeals' characterization of the ₱70 million paid by the Ongs to FLADC. The Tius allege that the ₱70 million paid by the Ongs in excess of the actual par value of one million shares they acquired from FLADC was a premium on capital and not an advance. The Tius contend that the receipt, Exh. "4", the Ongs' own exhibit,

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[35] Pp. 30-31, Comment filed by the Ongs in G.R. No. 144629, *Rollo*, pp. 1480-1481.

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is quite clear that the amount of ₱170 million was the agreed price for the Ong Group's subscription to one million shares in FLADC representing 50% of the capital stock of the corporation. Exh. "4", reads:

"Received from Mr. Ong Yong the amount of TWENTY MILLION PESOS (₱20,000,000.00) in full payment of the agreed price of ONE HUNDRED SEVENTY MILLION PESOS (₱170,000,000.00) representing his group's FIFTY PERCENT (50%) share in First Landlink Asia Development Corporation."

The Tius explain that the excess payment of ₱70 million, considering that the par value of the one million shares subscribed by the Ongs was only ₱100 million, at ₱100 per share, in corporation law, is called "paid-in surplus" or premium.

We are not convinced. This issue was very well discussed by the Court of Appeals, and we agree and quote:

"But the available funds of FLADC were not enough to cover the ₱90,000,000.00 more needed to pay the PNB loan because all there was of FLADC's funds at the time was ₱5,840,089.12 (pp. 734-735, *Rollo*). It was then, therefore, that the Ongs advanced ₱70,000,000.00 in cash to FLADC while the Tius advanced ₱20,000,000.00 in cash, an amount they also had to borrow from the Ongs (pp. 437-441, *Rollo*).

"The Pre-Subscription Agreement is explicit in its terms — that the Ongs agreed to pay ₱100,000,000.00 only for 1 million shares in FLADC at a par value of ₱100.00 per share (p. 211, *Rollo*). FLADC's application for an increase in capital stock shows that the par value of each of its shares is ₱100.00 only (pp. 185-186, *Rollo*). The same application also shows that the Ongs subscribed to 1 million shares of FLADC at a par value of ₱100.00 per share (*Ibid.*). There is nothing in the application which shows that FLADC's shares are to be sold at a premium or at an amount higher than the stated par value per share (*Ibid.*).

"The receipt which states that the Ongs paid ₱170,000,000.00 for a 50% share in FLADC must not be construed to mean that the Ongs paid ₱170,000,000.00 for one million shares in FLADC, thereby making the ₱70,000,000.00 thereof a premium or paid-in-surplus on the actual par value of 1 million shares (p. 182, *Rollo*). To treat

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the ₱70,000,000.00 as premium would not only have the effect of modifying the Pre-Subscription Agreement, but would actually novate it (see Article 1291 (1), New Civil Code).

"To allow a novation of the Pre-Subscription Agreement in this manner would negate or contravene the very intention of the parties in entering into the Pre-Subscription Agreement which is to maintain EQUALITY between them.

"The Tius, in filing the complaint for rescission *a quo*, rely heavily on the Pre-Subscription Agreement and even emphasized that it was entered into with the intention of maintaining EQUALITY as regards the parties standing in FLADC (pp. 127-136, *Rollo*). If the Court were to allow the ₱70,000,000.00 to be classified as premium or paid-in-surplus, then the Tius' theory will altogether crumble. The respective valuation of the properties to be used as payment of the Tius' 1 million share in FLADC which were presented in evidence to prove that said properties are worth more than the agreed value thereof in the Pre-Subscription Agreement, and therefore when added to the ₱45,020,000.00 paid up capital, are worth more than 1 million shares in FLADC, is of no consequence (pp. 1023-1047-A, *Rollo*). The same valuations have been made AFTER the Pre-Subscription Agreement was entered into and does not therefore reflect the actual value of the properties at the time the Pre-Subscription Agreement was entered into (p. 1046, *Rollo*).

"The Tius also claim that the ₱70,000,000.00 cannot be treated as an advance because there was no board resolution authorizing FLADC to incur such an obligation (pp. 764-767, *Rollo*). As pointed out by SEC Hearing Official Soller, the fact that no board resolution was passed allowing FLADC to incur such an obligation is immaterial, it appearing that there was also no board resolution authorizing FLADC to secure a ₱20,000,000.00 advance from the Tius (p. 367, *Rollo*). What matters then and now is that the ₱190,000,000.00 loan from PNB was finally settled in order for FLADC to resume its business without fear of foreclosure of its properties.

"Besides, at the time the Ongs invested in FLADC, they knew that the same was in financial distress. Why would the Ongs buy the shares of FLADC for 70% more than their actual par value of ₱100.00 per share, when to do so would not be in consonance with what a prudent man would do under the same circumstances?"[36]

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[36] Court of Appeals Decision, *Rollo*, G.R. No. 144476, pp. 131-133.

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Except for the issue regarding the rate of interest and reckoning period for the payment thereof, and that the Tius should be credited with 49,800 shares of FLADC for their 151 sq. m. lot property contribution, we find no other error in the assailed Decision which was judiciously rendered by the Court of Appeals.

WHEREFORE, the decision appealed from is hereby *AFFIRMED* with the following *MODIFICATIONS*:

1. the ₱20 million loan extended by the Ongs to the Tius shall earn interest at twelve percent (12%) per annum to be computed from the time of judicial demand which is from April 23, 1996;

2. the ₱70 million advanced by the Ongs to the FLADC shall earn interest at ten percent (10%) per annum to be computed from the date of the FLADC Board Resolution which is June 19, 1996; and

3. The Tius shall be credited with 49,800 shares in FLADC for their property contribution, specifically, the 151 sq. m. parcel of land.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and *De Leon, Jr., JJ.*, concur.

FIRST DIVISION

[A.M. No. MTJ-00-1264. February 4, 2002]

RAMIR MINA, *complainant, vs.* **JUDGE RODOLFO GATDULA,** *respondent.*