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THIRD DIVISION

[G.R. No. 117228. June 19, 1997]

RODOLFO MORALES, represented by his heirs, and **PRISCILA MORALES**, *petitioners, vs.* **COURT OF APPEALS** (Former Seventeenth Division), **RANULFO ORTIZ, JR.**, and **ERLINDA ORTIZ**, *respondents.*

SYLLABUS

1. **CIVIL LAW; TRUST; DEFINED.**— A trust is the legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter. The characteristics of a trust are 1. It is a relationship; 2. it is a relationship of fiduciary character; 3. it is a relationship with respect to property, not one involving merely personal duties; 4. it involves the existence of equitable duties imposed upon the holder of the title to the property to deal with it for the benefit of another; and 5. it arises as a result of a manifestation of intention to create the relationship.

2. **ID.; ID.; KINDS OF; DISTINGUISHED.** — Trusts are either express or implied. Express trusts are created by the intention of the trustor or of the parties, while implied trusts come into being by operation of law, either through implication of an intention to create a trust as a matter of law or through the imposition of the trust irrespective of, and even contrary to, any such intention.

3. **ID.; ID.; IMPLIED TRUST; RESULTING TRUST DISTINGUISHED FROM CONSTRUCTIVE TRUST.** — In turn, implied trusts are either resulting or constructive trusts. Resulting trusts are based on the equitable doctrine that valuable consideration and not legal title determines the equitable title or interest and are presumed always to have been contemplated by the parties. They arise from the nature or circumstances of the consideration involved in a transaction whereby one person thereby becomes invested with legal title but is obligated in equity to hold his legal title for the benefit of another. On the other hand, constructive trusts are created by the construction of equity in

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order to satisfy the demands of justice and prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold.

4. **ID.; ID.; ID.; PURCHASE MONEY RESULTING TRUST, CONSTRUED.** — The trust created under the first sentence of Article 1448 is sometimes referred to as a *purchase money resulting trust.* The trust is created in order to effectuate what the law presumes to have been the intention of the parties in the circumstances that the person to whom the land was conveyed holds it as trustee for the person who supplied the purchase money. To give rise to a purchase money resulting trust, it is essential that there be: 1. an actual payment of money, property or services, or an equivalent, constituting valuable consideration; 2. and such consideration must be furnished by the alleged beneficiary of a resulting trust. There are recognized exceptions to the establishment of an implied resulting trust. The first is stated in the last part of Article 1448 itself. Thus, where A pays the purchase money and title is conveyed by absolute deed to A's child or to a person to whom A stands *in loco parentis* and who makes no express promise, a trust does not result, the presumption being that a gift was intended. Another exception is, of course, that in which an actual contrary intention is proved. Also where the purchase is made in violation of an existing statute and in evasion of its express provision, no trust can result in favor of the party who is guilty of the fraud.

5. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; LIES UPON THE PARTY ASSERTING THE EXISTENCE OF TRUST; RATIONALE.** — As a rule, the burden of proving the existence of a trust is on the party asserting its existence, and such proof must be clear and satisfactorily show the existence of the trust and its elements. While implied trusts may be proved by oral evidence, the evidence must be trustworthy and received by the courts with extreme caution and should not be made to rest on loose, equivocal or indefinite declarations. Trustworthy evidence is required because oral evidence can easily be fabricated.

APPEARANCES OF COUNSEL

Sycip, Salazar, Hernandez & Gatmaitan for petitioners.
Esteban D. Francisco, Jr. for private respondents.

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DECISION

DAVIDE, JR., *J.*:

In this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioners urge this Court to reverse the 20 April 1994 decision of the Court of Appeals (Seventeenth Division) in CA-G.R. CV No. 34936,[1] which affirmed *in toto* the 26 August 1991 decision of the Regional Trial Court of Calbayog City in Civil Case No. 265.

Civil Case No. 265 was an action for recovery of possession of land and damages with a prayer for a writ of preliminary mandatory injunction filed by private respondents herein, spouses Ranulfo Ortiz, Jr. and Erlinda Ortiz, against Rodolfo Morales. The complaint prayed that private respondents be declared the lawful owners of a parcel of land and the two-storey residential building standing thereon, and that Morales be ordered to remove whatever improvements he constructed thereon, vacate the premises, and pay actual and moral damages, litigation expenses, attorney's fees and costs of the suit.

On 2 February 1988, Priscila Morales, one of the daughters of late Rosendo Avelino and Juana Ricaforte, filed a motion to intervene in Case No. 265. No opposition thereto having been filed, the motion was granted on 4 March 1988.[2]

On 30 November 1988 Rodolfo Morales passed away. In its order of 9 February 1989[3] the trial court allowed his substitution by his heirs, Roda, Rosalia, Cesar and Priscila, all surnamed *Morales*. Thereafter, pre-trial and trial on the merits were had and the case was submitted for decision on 16 November 1990.

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[1] Annex "A" of Petition; *Rollo*, 9-20. Per Tayao-Jaguros, L., *J.*, with Elbinias, J. and Salas, B., *JJ.*, concurring.

[2] Original Record (OR), Civil Case No. 265, 51.

[3] OR, 176.

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On 26 August 1991 the Trial Court rendered its decision[4] in favor of plaintiffs, private respondents herein, the dispositive portion of which reads as follows:

WHEREFORE, judgment is hereby rendered in favor of the Plaintiffs and against Defendants-Intervenor:

1. Declaring the Plaintiffs the absolute and rightful owners of the premises in question;
2. Ordering the Defendants-Intervenor to:
   a. vacate from the premises in question;
   b. remove the beauty shop thereat;
   c. jointly and severally, pay the Plaintiffs, a monthly rental of P1,500.00 of the premises starting from March 1987, and the amounts of P75,000.00 for moral damages, P5,000.00 for litigation expenses, and P10,000.00 for Attorney's fees; and
   d. to pay the costs.

The injunction issued in this case is hereby made permanent.

SO ORDERED.[5]

The following is trial court's summary of the evidence for the plaintiffs:

The evidence adduced by the Plaintiffs discloses that the Plaintiffs are the absolute and exclusive owners of the premises in question having purchased the same from Celso Avelino, evidenced by a Deed of Absolute Sale (Exh. "C"), a public instrument. They later caused the transfer of its tax declaration in the name of the female plaintiff (Exh. "I") and paid the realty taxes thereon (Exh. "K" & series).

Celso Avelino (Plaintiffs' predecessor in interest) purchased the land in question consisting of two adjoining parcels while he was still a bachelor and the City Fiscal of Calbayog City from Alejandra Mendiola and Celita Bartolome, through a *'Escritura de Venta'* (Exh. "B"). After the purchase, he caused the transfer of the tax declarations of the two

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[4] Annex "E" of Petition, OR Civil Case No. 265, 459-482; *Rollo*, 179-202. Per Judge Roberto A. Navidad.

[5] *Id.*, 482; *id.*, 202.

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parcels in his name (Exhs. "D" & "E" to "G" & "H") as well as consolidated into one the two tax declarations in his name (Exh. "F"). With the knowledge of the Intervenor and the defendant, (Cross-examination of Morales, t.s.n. pp. 13-14) Celso Avelino caused the survey of the premises in question, in his name, by the Bureau of Lands (Exh. "J"). He also built his residential house therein with Marcial Aragon (now dead) as his master carpenter who was even scolded by him for constructing the ceiling too low.

When the two-storey residential house was finished, he took his parents, Rosendo Avelino and Juana Ricaforte, and his sister, Aurea, who took care of the couple, to live there until their deaths. He also declared this residential house in his tax declaration to the premises in question (Exh. "F") and paid the corresponding realty taxes, keeping intact the receipts which he comes to get or Aurea would go to Cebu to give it to him (t.s.n. Morales, pp. 4-6).

After being the City Fiscal of Calbayog, Celso Avelino became an Immigration Officer and later as Judge of the Court of First Instance in Cebu with his sister, Aurea, taking care of the premises in question. While he was already in Cebu, the defendant, without the knowledge and consent of the former, constructed a small beauty shop in the premises in question.

Inasmuch as the Plaintiffs are the purchasers of the other real properties of Celso Avelino, one of which is at Acedillo (now Sen. J.D. Avelino) street, after they were offered by Celso Avelino to buy the premises in question, they examined the premises in question and talked with the defendant about that fact, the latter encouraged them to purchase the premises in question rather than the property going to somebody else they do not know and that he will vacate the premises as soon as his uncle will notify him to do so. Thus, they paid the purchase price and Exh. "C" was executed in their favor.

However, despite due notice from his uncle to vacate the premises in question (Exh. "N"), the defendant refused to vacate or demolish the beauty shop unless he is reimbursed P35,000.00 for it although it was valued at less than P5,000.00. So, the Plaintiffs demanded, orally and in writing (Exhs. "L" & "M") to vacate the premises. The defendant refused.

As the plaintiffs were about to undertake urgent repairs on the dilapidated residential building, the defendant had already occupied the same, taking in paying boarders and claiming already ownership of the premises in question, thus they filed this case.

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Plaintiffs, being the neighbors of Celso Avelino, of their own knowledge are certain that the premises in question is indeed owned by their predecessor-in-interest because the male plaintiff used to play in the premises when he was still in his teens while the female plaintiff resided with the late Judge Avelino. Besides, their inquiries and documentary evidence shown to them by Celso Avelino confirm this fact. Likewise, the defendant and Intervenor did not reside in the premises in question because they reside respectively in Brgy. Tarobucan and Brgy. Trinidad (Sabang), both of Calbayog City with their own residential houses there.

Due to the damages they sustained as a result of the filing of this case, the plaintiffs are claiming P50,000.00 for mental anguish; monthly rental of the premises in question of P1,500.00 starting from March 1987; litigation expenses of P5,000.00 and P10,000.00 for Attorney's fees.[6]

The trial court's summary of the evidence for the defendants and intervenor is as follows:

Defendants'-Intervenor's testimonial evidence tend to show that the premises in question (land and two-storey building) is originally owned by the spouses, Rosendo Avelino and Juana Ricaforte, who, through their son, Celso Avelino, through an Escritura de Venta (Exh. "2") bought it from the Mendiolas on July 8, 1948. After the purchase the couple occupied it as owners until they died. Juana died on May 31, 1965 while Rosendo died on June 4, 1980. Upon their demise, their children: Trinidad A. Cruz, Concepcion A. Peralta, Priscila A. Morales and Aurea Avelino (who died single) succeeded as owners thereof, except Celso Avelino who did not reside in the premises because he was out of Calbayog for more than 30 years until his death in Cebu City.

The premises in question was acquired by Celso Avelino who was entrusted by Rosendo with the money to buy it. Rosendo let Celso buy it being the only son. The property is in the name of Celso Avelino and Rosendo told his children about it (TSN, Morales, p. 21). In 1950 Rosendo secured gratuitous license (Exh. "1") and constructed the two-storey house, having retired as Operator of the Bureau of Telecommunications, buying lumber from the father of Simplicia Darotel and paying the wages of Antonio Nartea as a laborer.

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[6] OR, 466-469; *Rollo*, 186-189.

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In 1979, defendant Rodolfo Morales constructed beside the two-storey house and beauty shop for his wife with the consent of Celso and the latter's sisters.

Priscila Morales was aware that the premises in question was surveyed in the name of Celso but she did not make any attempt, not even her father, to change the muniment of title to Rosendo Avelino. Despite the fact that Intervenor has two sons who are lawyers, no extra-judicial settlement was filed over the premises in question since the death of Rosendo Avelino up to the present.

Celso Avelino kept the receipts for the realty tax payments of the premises. Sometimes Aurea would go to Cebu to deliver these receipts to Celso or the latter will come to get them. Rodolfo also gave some of the receipts to Celso.

The sale of the subject premises to the Plaintiffs is fraudulent because it included her (Intervenor's) share and the beauty shop of her son, the defendant.

As a result of this case she is worried and suffered moral damages, lost her health, lacks sleep and appetite and should be compensated for P80,000.00 and the expenses for litigation in the amount of P30,000.00 until the case is finished.

The Intervenor would not claim ownership of the premises if her son, the defendant is not being made to vacate therefrom by the Plaintiffs.[7]

The trial court reached the aforementioned disposition on the basis of its findings of facts and conclusions, which we quote:

During the ocular inspection of the premises in question on April 4, 1988, conducted by the Court upon motion of the parties, the Court found that the two-storey residential building urgently needed major general repairs and although the bedrooms seemed occupied by lodgers, neither the defendant nor the Intervenor informed the Court where or in which of the rooms they occupied.

Observing the questioned premises from the outside, it is easily deducible that it has not been inhabited by a true or genuine owner for a long time because the two-story building itself has been left to deteriorate or ruin steadily, the paint peeling off, the window shutters

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[7] OR, 474-476; *Rollo*, 194-196.

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to be replaced, the lumber of the eaves about to fall and the hollow-block fence to be straightened out, a portion along Umbria street (West) cut in the middle with the other half to the south is tilting while the premises inside the fence farther from the beauty shop to be cleaned.

From the evidence adduced by the parties, the following facts are undisputed:

1. The identity of the premises in question which is a parcel of land together with the two residential building standing thereon, located at corner Umbria St. (on the West) and Rosales Blvd. (on the North), Brgy. Central, Calbayog City, with an area of 318 sq. meters, presently covered by Tax Declaration No. 47606 in the name of the female Plaintiff and also bounded on the East by lot 03-002 (1946) and on the South by lot 03-006 (1950);
2. The Deeds of Conveyance of the questioned premises — the Escritura de Venta (Exh. "B") from the Mendiolas to Celso Avelino and the Deed of Sale (Exh. "C") from Celso Avelino to the Plaintiffs, are both public instruments;
3. The couple, Rosendo and Juana Avelino as well as their daughter, Aurea, resided and even died in the disputed premises;
4. The defendant, Rodolfo Morales, constructed the beauty parlor in the said premises and later occupied the two-storey residential house;
5. Not one of the children or grandchildren of Rosendo Avelino ever contested the ownership of Celso Avelino of the disputed premises;
6. There has no extra-judicial partition effected on the subject property since the death of Rosendo Avelino although two of the Intervenor's children are full-pledged lawyers;
7. Since the premises in question had been acquired by Celso Avelino, it has been declared in his name for taxation purposes and the receipts of the realty taxes thereon were kept by him, some were either delivered to him by Aurea or by defendant; and
8. Ever since the Plaintiffs acquired the disputed premises, its tax declaration is now in the name of the female Plaintiff with the current realty taxes thereon paid by her.

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A very careful study and meticulous appraisal of the evidence adduced by both parties and the applicable laws and jurisprudence show a preponderance of evidence conclusively in favor of the Plaintiffs, due to the following facts and circumstances, all borne of the record.

One. While Plaintiff's claim of ownership over the premises in question is duly supported by documentary evidences, such as the Deed of Conveyance (Exhs. "B" and "C"), Tax declarations and payments of the realty taxes on the disputed property, both as to the land and the two-storey building (Exhs. "D", "E", "F", "G", "H", and "I" and "K" and series) and the survey plan of the land (Exh. "J"), Defendants-Intervenor's claim of ownership is based merely on testimonial evidence which is self-serving and cannot prevail over documentary evidence because it is a settled rule in this jurisdiction that testimonial evidence cannot prevail over documentary evidence.

Two. While Plaintiffs' evidence of ownership of the disputed premises is clear, positive, categorical and credible, Intervenor's testimony that the disputed premises was acquired by his brother (p. 16); that the document of conveyance of the land and the building (p. 14) is in the name of her brother; that it was surveyed in her brother's name with her knowledge (pp. 13-14); that during the lifetime of her father the muniments of title of the premises was never transferred in her father's name (pp. 10-11 & 20); that not one of the heirs of Rosendo Avelino ever contested Celso Avelino's ownership thereof, despite their knowledge (p. 21); that no extra-judicial partition or settlement was instituted by all the female children of Rosendo Avelino, especially by the Intervenor herself even though two of her children are full-pledge lawyers (p. 15); and the fact that the Intervenor is not even interested to see the document of the disputed premises (19), very clearly show that her claim is neither positive nor categorical but is rather unconvincing.

Three. The foregoing testimony of the Intervenor also show that she is already in laches.

Four. The present condition of the premises, especially the two-storey building which has been left to deteriorate or ruin steadily clearly betrays or belies Intervenor's pretense of ownership of the disputed premises.

Five. If the premises in question is really owned in common by the children of Rosendo and Juana Avelino, why is it that the surviving sisters of the Intervenor did not join her in this case and intervene to protect their respective interests?

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Six. On the witness chair, Intervenor's demeanor and manner of testifying show that she was evasive and shifty and not direct in her answers to simple questions that she was admonished by the Court not be evasive and be direct or categorical in her answers; and which rendered her testimony unworthy of full faith and credit.

Seven. That Plaintiff's predecessor-in-interest is the true and absolute owner of the disputed premises having purchased it from the Mendiolas while he was the City Fiscal of Calbayog and still a bachelor and later became an Immigration Officer and later became a CFI (now RTC) Judge when the two-storey building was constructed by Marcial Aragon, thus he declared both the land and the residential building in his name, had it surveyed in his name and continuously paid the realty taxes thereon, is more in conformity with common knowledge, experience and belief because it would be unnatural for a man to continuously pay realty taxes for a property that does not belong to him. Thus, our Supreme Court, ruled: "Tax receipts are not true evidence of ownership, but no person in his right mind would continue paying taxes for land which he thinks does not belong to him." (Ramos *vs.* Court of Appeals, 112 SCRA 543).

Eight. Intervenor's claim of implied trust is untenable because even from the different cases mentioned in her Memorandum, it is very apparent that in order for implied trust to exist there must be evidence of an equitable obligation of the trustee to convey, which circumstance or requisite is absent in this case. What is instead clear from the evidence is Celso Avelino's absolute ownership of the disputed property, both as to the land and the residential house (Exh. "F") which was sold to the Plaintiffs (Exh. "C") while Intervenors self-serving and unconvincing testimony of co-ownership is not supported by any piece of credible documentary evidence.

On the contrary, the last part of Art. 1448 of Our New Civil Code bolsters Plaintiff's ownership over the disputed premises. It expressly provides: "x x x However, if the person to whom the title is conveyed is a *child*, legitimate or illegitimate, of the one paying the price of the sale, *no trust is implied by law*, it being disputably presumed that there is a gift in favor of the child." (italics supplied)

Finally, from the testimony of the Intervenor (p. 22) the truth is out in that the Intervenor is putting up her pretense of ownership over the disputed premises only when the defendant was being advised to vacate and only to shield him from vacating therefrom. Thus, on question of the Court, she declared:

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"Q When your father died, as a co-owner were you not interested to look at the document so that you can lawfully claim, act as owner of that land?

A We just claim only when my son, Rodolfo was driven by the Plaintiff.

Q In other words what you are saying is that if your son was not dispossessed of the property in question, you would not claim ownership?

A No, sir."

In her Memorandum, Intervenor raises the issue whether or not the plaintiffs are entitled to the damages being claimed which were duly supported or proven by direct evidence.

On this particular issue, the Plaintiffs' evidence has established that before the Plaintiffs paid the purchase price of the premises in question, they talked with the defendant about the intended sale and the latter even encouraged them to purchase it and that he will vacate the premises as soon as the payment is made therefore (TSN, Ortiz, Jr., p. 20, April 4, 1988). Hence, they paid the purchase price and Exh. "C" was duly executed by the owner in their favor. The defendant, however, despite his encouragement and notice from his uncle to vacate the subject premises (Exh. "N") reneged on his words and refused to vacate or demolish his beauty shop inside the premises in question unless he is paid P35,000.00 for it although it is valued at less than P5,000.00.

With that unreasonable demand of the defendant, the plaintiffs demanded, orally and in writing (Exhs. "L" and "M") to vacate the premises. The defendant refused.

Later, as the plaintiffs were about to undertake urgent repairs on the dilapidated residential building and make it as their residence, they found out that the defendant rather than vacate the premises, had already occupied the said residential building and admitted lodgers to it (*id.*, p. 24) and claimed ownership thereof, to the damage, prejudice and injury and mental anguish of the plaintiffs. So, the plaintiffs, as the true and lawful owners of the premises in question, filed the instant case incurring expenses in the process as they hired the services of a lawyer to protect their interests from the willful and wrongful acts or omissions of the defendant.[8]

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[8] OR, 476-481; *Rollo*, 196-201.

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Dissatisfied with the trial court's decision, defendants heirs of Rodolfo Morales and intervenor Priscila Morales, petitioners herein, appealed to the Court of Appeals, which docketed the appeal as CA-G.R. CV No. 34936, and in their Appellant's Brief they assigned the following errors:

1. The RTC erred in ruling that Celso Avelino, appellee's predecessor-in-interest, was the true and lawful owner of the house and lot in question.
2. x x x in not ruling that Celso Avelino purchased the house and lot in question as a mere trustee, under an implied trust, for the benefit of the trustor, his father, Rosendo Avelino, and the latter's heirs.
3. x x x in ruling that the Intervenor is barred by laches from asserting her status as a beneficiary of the aforesaid implied trust.
4. x x x in ruling that Celso Avelino validly sold the house and lot in question to appellees without the consent of the other heirs of Rosendo Avelino and Juana Ricaforte Avelino.
5. x x x in declaring appellees the absolute and rightful owners of the house and lot in question by virtue of the sale of those properties to them by Celso Avelino.
6. x x x in not ruling that appellants are rightful co-owners and possessors of the house and lot in question in their capacities as heirs of Rosendo Avelino and Juana Ricaforte Avelino, the true owners of those properties.
7. x x x in ordering defendants to remove the beauty shop on the disputed land instead of declaring Rodolfo Morales a builder in good faith and providing for the protection of his rights as such.
8. x x x in ordering appellants to vacate the disputed premises and to pay appellees a monthly rental, moral damages, litigation expenses, and attorney's fees.
9. x x x in not awarding appellants the damages and costs prayed for in "answer with counterclaim" and "answer in intervention," considering that the action to dispossess them of the house and land in question is clearly without legal foundation.[9]

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[9] OR CA-G.R. No. 34936, 35-36.

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In its decision of 20 April 1994[10] the Court of Appeals affirmed the decision of the trial court.

Their motion to reconsider the decision having been denied in the resolution[11] of 14 September 1994 for lack of merit, petitioners filed the instant petition wherein they claim that:

1. Respondent CA erred in adopting the trial court's reasoning that "it would be unnatural for a man to continuously pay realty taxes for a property that does not belong to him" on the basis of a misreading and misapplication of Ramos *v.* Court of Appeals, 112 SCRA 543 (1982). Respondent CA also erred in concluding that the payment of realty taxes is conclusive evidence of ownership, which conclusion ignores this Honorable Court's rulings in Ferrer-Lopez *v.* Court of Appeals, 150 SCRA 393 (1987), De Guzman *v.* Court of Appeals, 148 SCRA 75 (1987), and heirs of Celso Amarante *v.* Court of Appeals, 185 SCRA 585 (1990).

2. x x x in relying on Conception Peralta's alleged "Confirmation" (Exhibit O) in ruling that Celso Avelino (and later the respondents) had exclusive and absolute ownership of the disputed property. Exhibit O was not identified by the purported affiant at the trial, and was therefore plainly hearsay. Respondent CA erred in admitting Exhibit O in evidence over the objection of the petitioner's counsel.

3. x x x in inferring and surmising that Celso Avelino's alleged exclusive ownership of the disputed property was affirmed by the inaction of his four sisters.

4. x x x in ruling that the petitioners' testimonial evidence could not prevail over the respondent's evidence for the purpose of establishing the existence of an implied trust. This ruling ignores this Honorable Court's decision in De Los Santos *v.* Reyes, 205 SCRA 437 (1992).

5. x x x in ignoring unrebutted evidence on record that Celso Avelino held title to the disputed property merely as a trustee for his father, mother, and siblings. In so doing, respondent CA:

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[10] *Supra.* note 1.

[11] *Rollo*, 22.

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(i) ignored decided cases where this Honorable Court found the existence of trusts on the bases of similar evidence, including the cases of Valdez *v.* Olorga, 51 SCRA 71 (1973), De Buencamino, et al. *v.* De Matias, 16 SCRA 849 (1966), Gayos *v.* Gayos, 67 SCRA 146 (1975), and Custodio *v.* Casiano, 9 SCRA 841 (1963); and (ii) refused to apply the clear language of Article 1448 of the Civil Code.

6. x x x in not ruling that Rodolfo Morales should have at least been regarded as a builder in good faith who could not be compelled to vacate the disputed property or to pay a monthly rental unless he was first indemnified for the cost of what he had built. In so doing, respondent CA: (i) refused to apply the clear language of Articles 448 and 453 of the Civil Code; and (ii) ignored this Honorable Court's rulings in Municipality of Oas *v.* Roa, 7 Phil. 20 (1906) Merchant *v.* City of Manila, 11 Phil. 116 (1908), Martinez *v.* Baganus, 28 Phil. 500 (1914), Grana *v.* Court of Appeals, 109 Phil. 260 (1960), and Miranda *v.* Fadullon, 97 Phil. 810 (1955).

7. x x x in affirming the Trial Court's award of damages in favor of the respondents. In so doing, respondent CA: (i) misapplied Articles 2199, 2208, 2219, and 2220 of the Civil Code; and (ii) ignored this Honorable Court's ruling in San Miguel Brewery, Inc. *v.* Magno, 21 SCRA 292 (1967).

8. x x x in refusing to rule that the respondents are liable to petitioners for moral damages, and attorney's fees and costs of litigation. In so doing, respondent CA ignored unrebutted evidence on record and Articles 2208, 2217, and 2219 of the Civil Code.

On 13 September 1995, after the filing of private respondent's comment on the petition and petitioner's reply thereto, we resolved to deny the petition for failure of petitioners to sufficiently show that the respondent Court of Appeals committed reversible error.

Undaunted, petitioners on 17 October 1995 filed a motion for reconsideration of our resolution of 13 September 1995 based on the following grounds:

1. The Honorable Court erred in not ruling that at the very least, Rodolfo Morales should have been considered a builder in good faith who could not be compelled to vacate the disputed property

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or to pay monthly rental unless he was first indemnified for the cost of what he had built.

2. x x x in not ruling that the Court of Appeals and the Trial Court gravely misapplied the law in ruling that there was no implied trust over the premises.

3. x x x in not ruling that the Court of Appeals and the Trial Court gravely misapplied the law in awarding damages to the respondents.

We required respondents to comment on the motion for reconsideration; however it was not until 1 July 1996 and after we required their counsel to show cause why he should not be disciplinarily dealt with for failure to file comment when said counsel filed the comment by mail. Upon prior leave of court, petitioners filed a reply to the comment.

On 19 August 1996 we granted petitioners' motion for reconsideration and required the parties to submit their respective memoranda. Petitioners and private respondents submitted their memoranda on 4 and 28 October 1996, respectively.

The grant of the motion for reconsideration necessarily limits the issues to the three grounds postulated in the motion for reconsideration, which we restate as follows:

1. Did Celso Avelino purchase the land in question from the Mendiolas on 8 July 1948 as a mere trustee for his parents and siblings or, simply put, is the property the former acquired a trust property?

2. Was Rodolfo Morales a builder in good faith?

3. Was there basis for the award of damages, attorney's fees and litigation expenses to the private respondents?

We shall discuss these issues *in seriatim*.

I

A trust is the legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise

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of certain powers by the latter.[12] The characteristics of a trust are:

1. It is a relationship;
2. it is a relationship of fiduciary character;
3. it is a relationship with respect to property, not one involving merely personal duties;
4. it involves the existence of equitable duties imposed upon the holder of the title to the property to deal with it for the benefit of another; and
5. it arises as a result of a manifestation of intention to create the relationship.[13]

Trusts are either express or implied. Express trusts are created by the intention of the trustor or of the parties, while implied trusts come into being by operation of law,[14] either through implication of an intention to create a trust as a matter of law or through the imposition of the trust irrespective of, and even contrary to, any such intention.[15] In turn, implied trusts are either resulting or constructive trusts. Resulting trusts are based on the equitable doctrine that valuable consideration and not legal title determines the equitable title or interest and are presumed always to have been contemplated by the parties. They arise from the nature or circumstances of the consideration involved in a transaction whereby one person thereby becomes invested with legal title but is obligated in equity to hold his legal title for the benefit of another. On the other hand, constructive trusts are created by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold.[16]

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[12] 4 ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 669 [1991] (hereinafter 4 TOLENTINO).

[13] *Id.*

[14] Article 1441, Civil Code of the Philippines.

[15] 4 TOLENTINO 673.

[16] Huang *v.* Court of Appeals, 236 SCRA 420, 428 [1994]; Vda. de Esconde *v.* Court of Appeals, 253 SCRA 66, 73-74 [1996].

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A resulting trust is exemplified by Article 1448 of the Civil Code, which reads:

> Art. 1448. There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, no trust is implied by law, it being disputably presumed that there is a gift in favor of the child.

The trust created under the first sentence of Article 1448 is sometimes referred to as a *purchase money resulting trust.*[17] The trust is created in order to effectuate what the law presumes to have been the intention of the parties in the circumstances that the person to whom the land was conveyed holds it as trustee for the person who supplied the purchase money.[18]

To give rise to a purchase money resulting trust, it is essential that there be:

1. an actual payment of money, property or services, or an equivalent, constituting valuable consideration;
2. and such consideration must be furnished by the alleged beneficiary of a resulting trust.[19]

There are recognized exceptions to the establishment of an implied resulting trust. The first is stated in the last part of Article 1448 itself. Thus, where A pays the purchase money and title is conveyed by absolute deed to A's child or to a person to whom A stands *in loco parentis* and who makes no express promise, a trust does not result, the presumption being that a gift was intended. Another exception is, of course, that in which an actual contrary intention is proved. Also where the purchase is made in violation of an existing statute and in evasion of its express provision, no trust can result in favor of the party who is guilty of the fraud.[20]

As a rule, the burden of proving the existence of a trust is on the party asserting its existence, and such proof must be clear and

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[17] 76 Am. Jur. 2d *Trusts* § 179 [1992].

[18] *Id.*

[19] 76 Am. Jur. 2d *Trusts* § 180.

[20] 4 TOLENTINO 679-680.

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satisfactorily show the existence of the trust and its elements.[21] While implied trusts may be proved by oral evidence,[22] the evidence must be trustworthy and received by the courts with extreme caution, and should not be made to rest on loose, equivocal or indefinite declarations. Trustworthy evidence is required because oral evidence can easily be fabricated.[23]

In the instant case, petitioners' theory is that Rosendo Avelino owned the money for the purchase of the property and he requested Celso, his son, to buy the property allegedly in trust for the former. The fact remains, however, that title to the property was conveyed to Celso. Accordingly, the situation is governed by or falls within the exception under the third sentence of Article 1448, which for convenience we quote:

> ... However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, *no trust is implied by law*, it being disputably presumed that there is a gift in favor of the child. (Italics supplied).

On this basis alone, the case for petitioners must fall. The preponderance of evidence, as found by the trial court and affirmed by the Court of Appeals, established positive acts of Celso Avelino indicating, without doubt, that he considered the property he purchased from the Mendiolas as his exclusive property. He had its tax declaration transferred in his name, caused the property surveyed for him by the Bureau of Lands, and faithfully paid the realty taxes. Finally, he sold the property to private respondents.

The theory of implied trust with Celso Avelino as the trustor and his parents Rosendo Avelino and Juan Ricaforte as trustees is not even alleged, expressly or impliedly, in the verified Answer of Rodolfo Morales[24] nor in the Answer in Intervention of Priscila A. Morales.[25] In the former, Rodolfo alleged that:

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[21] 76 Am. Jur. 2d *Trusts* § 688 [1992].

[22] Article 1457, Civil Code.

[23] Salao *v.* Salao, 70 SCRA 65, 84 [1976]; O'laco *v.* Co Cho Chit, 220 SCRA 656, 664-665 [1993]; Ong Ching Po *v.* Court of Appeals, 239 SCRA 341, 347 [1994].

[24] OR, Civil Case No. 265, 35-39.

[25] *Id.*, 43-46.

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A. [T]he lot and the two-storey building in question . . . which are actually possessed by Rodolfo Morales, defendant herein, and by his parents — Priscila A. Morales and Cesar Morales — and consequently, the ones now in litigation in the above-entitled case, were originally and exclusively owned and possessed by his grandparents-Rosendo Avelino and Juana Ricaforte;

B. [S]aid lot, together with an old house then thereon, were (sic) acquired by said couple — Rosendo Avelino and Juana Ricaforte — on July 8, 1948, which they right away possessed exclusively in the concept of owner; [26]

Priscila, on her part, merely reiterated the foregoing allegations in subparagraphs A and B of paragraph 2 of her Answer in Intervention.[27]

Rodolfo and Priscila likewise even failed to suggest in their respective Special and Affirmative Defenses that Celso Avelino held the property in trust despite Rodolfo's claim that:

4. [T]he alleged sale by Celso Avelino alone of the properties in question in favor of plaintiff Erlinda Ortiz and the alleged TD-47606 in the name of Erlinda Ortiz, were clandestine, fraudulent, null and void because, first, said documents cover the entire properties in question of the late Rosendo Avelino and Juana Ricaforte; second, only Celso Avelino sold the entire properties, without the knowledge and consent of said Priscila A. Morales, Trinidad A. Cruz and Concepcion E. Peralta — children and heirs of said Rosendo Avelino and Juana Ricaforte; and, third, said documents were also made without the knowledge and consent of defendant Rodolfo Morales who has prior and legal possession over the properties in question and who is a builder in good faith of the shop building thereon.[28]

Not surprisingly, Priscila merely restated these allegations in paragraph 2 of her Special and Affirmative Defenses. If truly they were convinced that Celso Avelino acquired the property in trust

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[26] *Id.*, 35.

[27] *Id.*, 43.

[28] *Id.*, 37.

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for his parents, it would have been far easier for them to explicitly state such fact.[29]

The separate Answers of Rodolfo and Priscila do not likewise allege that Celso Avelino committed any breach of the trust by having the property declared in his name and paying the realty taxes thereon and by having the lot surveyed by the Bureau of Lands which gave it a lot number: Lot 1949.[30] Even more telling is that in the Pre-Trial Order[31] of the trial court, petitioners *did not claim* the existence of an implied trust; the parties merely agreed that the main issues were:

a. Who is the owner of the premises in question?

b. Who is entitled to the possession thereof?

Yet, petitioners now want us to reverse the rulings of the courts below that Celso Avelino was the absolute and exclusive owner of the property in question, on strength of, primarily, their "implied trust" theory. The problem with petitioners is that they entirely forgot that the trial court and the Court of Appeals did not base their rulings on this alone. As shown earlier, the trial court pointed out numerous other flaws in petitioners' theory, such as laches. Then, too, the rule is settled that the burden of proving the existence of a trust is on the party asserting its existence and that such proof must be clear and satisfactory.[32] As to that, petitioners relied principally on testimonial evidence. It is, of course, doctrinally entrenched that the evaluation of the testimony of witnesses by the trial court is received on appeal with the highest respect, because it is the trial court that has the direct opportunity to observe them on the stand and detect if they are telling the truth or lying through their teeth. The assessment is accepted as correct by the appellate court and binds it, absent a clear showing that it was reached arbitrarily.[33] In this case, petitioners failed to assail, much less overcome, the following observation of the trial court:

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[29] OR, 44-45.

[30] Exhibit "J", OR, 65.

[31] *Id.*, 275.

[32] *Supra.* note 23.

[33] National Power Corp. *v.* Court of Appeals, 223 SCRA 649, § 655 [1993].

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Six. On the witness chair, Intervenor's demeanor and manner of testifying show that she was evasive and shifty and not direct in her answers to simple questions that she was admonished by the Court not to be evasive and direct and categorical in her answers; and which rendered her testimony unworthy of full faith and credit.[34]

Likewise fatal to petitioners' cause is that Concepcion Peralta's sworn Confirmation dated 14 May 1987 cannot be considered hearsay evidence due to Concepcion's failure to testify. On the contrary, it is an exception to the hearsay rule under Section 38 of Rule 130 of the Rules of Court, it having been offered as evidence of an act or declaration against interest. As declarant Concepcion was a daughter of Rosendo Avelino and Juana Ricaforte, and a sister of Celso Avelino and intervenor Priscila Morales, Concepcion was thus a co-heir of her siblings, and would have had a share, equal to that of each of her co-heirs, in the estate of Rosendo and Juana. However, Concepcion explicitly declared therein thus:

That my aforenamed brother [Celso Avelino], during the time when he was City Fiscal of Calbayog City and still a bachelor, out of his own money, bought the parcels of land located at corner Umbria Street and Rosales Blvd., Brgy. Central, Calbayog City, from Culets Mendiola de Bartolome and Alejandra Fua Mendiola by virtue of a Deed of Sale entered as Doc. No. 37; Page No. 20; Book No. XI; Series of 1948 in the Notarial Book of Atty. Celedonio Alcazar, Notary Public of Calbayog, Samar; Likewise, out of his own money, he constructed a residential building on the lot which building is made of strong materials.

If indeed the property was merely held in trust by Celso for his parents, Concepcion would have been entitled to a proportionate part thereof as co-heir. However, by her Confirmation, Concepcion made a solemn declaration against interest. Petitioners, realizing that the Confirmation was admissible, attempted to cushion its impact by offering in evidence as Exhibit "4"[35] Concepcion's affidavit, dated 16 June 1987, wherein Concepcion stated:

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[34] Page 21 of Decision, OR 479; *Rollo*, 199.

[35] OR, 394-395.

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3. The property in question (particularly the house), however forms part of the state of our deceased parents, and, therefore, full and complete conveyance of the right, title and interest in and to such property can only be effected with the agreement of the other heirs, namely, my sisters Trinidad A. Cruz and Priscila A. Morales, and myself.

Note that Concepcion seemed to be certain that only the house formed part of the estate of her deceased parents. In light of the equivocal nature of Concepcion's later affidavit, the trial court and the Court of Appeals did not then err in giving more weight to Concepcion's earlier Confirmation.

At bottom, the crux of the matter is whether petitioners discharged their burden to prove the existence of an implied trust. We rule in the negative. Priscila's justification for her and her sisters' failure to assert co-ownership of the property based on the theory of implied trust is, to say the least, flimsy. In light of their assertion that Celso Avelino did not have actual possession of the property because he "was away from Calbayog continuously for more than 30 years until he died on October 31, 1987,[36] and the established fact that the tax declarations of the property were in Celso's name and the latter paid the realty taxes thereon, there existed no valid and cogent reason why Priscila and her sisters did not do anything to have their respective shares in the property conveyed to them after the death of Rosendo Avelino in 1980. Neither is there any evidence that during his lifetime Rosendo demanded from Celso that the latter convey the land to the former, which Rosendo could have done after Juana's death on 31 May 1965. This omission was mute and eloquent proof of Rosendo's recognition that Celso was the real buyer of the property in 1948 and the absolute and exclusive owner thereof.

II

Was Rodolfo Morales a builder in good faith? Petitioners urge us to so rule and apply Article 448 of the Civil Code, which provides:

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[36] Page 6, Motion for Reconsideration, *Rollo*, 277.

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The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

Clearly, Article 448 applies only when the builder, planter or sower believes he has the right to so build, plant or sow because he thinks he owns the land or believes himself to have a claim of title.[37] In the instant case Rodolfo Morales knew from the very beginning that he was not the owner of the land. He alleged in his answer that the land was acquired by his grandparents Rosendo Avelino and Juana Ricaforte and he constructed the shop building in 1979 "upon due permission and financial assistance from his mother, Priscila A. Morales and from his aunts Trinidad A. Cruz and Concepcion A. Peralta . . ., with the knowledge and consent of his uncle Celso Avelino."[38]

Petitioners, however, contend that:

> Even assuming the argument that Rodolfo Morales was a builder in bad faith because he was aware of Celso Avelino's supposed exclusive ownership of the land, still, however, the *unrebutted* evidence shows that Celso Avelino consented to Rodolfo Morales' construction of the beauty shop on the land. TSN, April 4, 1988, p.40; TSN, April 4, 1988, p. 40; TSN, October 19, 1990, p. 21. Under Article 453 of the Civil Code, such consent is considered bad faith on the part of the landowner. In such a case, the rights of the landowner and the builder shall be considered as though both acted in good faith.[39]

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[37] Floreza *v.* Evangelista, 96 SCRA 130, 136 [1980] citing Alburo *v.* Villanueva, 7 Phil. 277 [1907]; Quemuel *v.* Olaes, 1 SCRA 1159 [1961]; and Racaza *v.* Susan Realty, Inc., 18 SCRA 1172 [1966].

[38] OR, 36.

[39] Said Article pertinently provides as follows:

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This so-called unrebutted testimony was rejected by the courts below, and with good reason. First, it was clearly self-serving and inconsistent with petitioners' vigorous insistence that Celso Avelino was away from Calbayog City continuously for more than 30 years until he died on October 31, 1987."[40] The circumstances of when and where allegedly the consent was given are unclear. Second, only Celso Avelino could have rebutted it; but the testimony was given after Avelino's death, thus forever sealing his lips. Reason and fairness demand that the attribution of an act to a dead man must be viewed with utmost caution. Finally, having insisted with all vigor that the land was acquired by Rosendo Avelino and Juanita Ricaforte, it would be most unlikely that Rodolfo would have taken the trouble of securing Celso's consent, who had been "continuously away from Calbayog City for more than 30 years," for the construction of the shop building.

III

We cannot however give our affirmance to the awards of moral damages, attorney's fees and litigation expenses.

Pursuant to Article 2217 of the Civil Code, moral damages, which include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury may be recovered in the cases enumerated in Article 2219 and 2220 of the same Code.[41]

ART. 453. If there was bad faith not only on the part of the person who built . . . on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith.

It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part.

[40] *Rollo*, 277.

[41] These articles provide as follows:

ART. 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;

(2) Quasi-delicts causing physical injuries;

(3) Seduction, abduction, rape, or other lascivious acts;

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For moral damages to be recovered, it must be shown that they are the proximate result of the defendant's wrongful act or omission in the cases provided for in Articles 2219 and 2220, *i.e.*, it must be shown that an injury was suffered by the claimant and that such injury sprang from any of the cases stated in Articles 2219 and 2220.[42] Moral damages are emphatically not intended to enrich a plaintiff at the expense of the defendant. They are awarded only to enable the injured party to obtain means, diversion, or amusements that will serve to alleviate the moral sufferings he underwent, by reason of the defendant's culpable action and must, perforce, be proportionate to the suffering inflicted.[43] In the same vein, moral damages must be understood to be in concept of grants, not punitive or corrective in nature, calculated to compensate the claimant for the injury suffered.[44]

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(4) Adultery or concubinage;

(5) Illegal or arbitrary detention or arrest;

(6) Illegal search;

(7) Libel, slander or other form of defamation;

(8) Malicious prosecution;

(9) Acts mentioned in Article 309;

(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 25.

The parents of the female seduced, abducted, raped, or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brothers and sisters may bring the action mentioned in No. 9 of this article, in the order named.

ART. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[42] Del Mundo *v.* Court of Appeals, 240 SCRA 348, 357 [1995].

[43] Grand Union Supermarket, Inc. *v.* Espino, 94 SCRA 966 [1979]; R & B Surety & Insurance Co. Inc. *v.* Intermediate Appellate Court, 129 SCRA 736, 745 [1984]; Prudenciado *v.* Alliance Transport System, Inc., 148 SCRA 440, 449 [1987]; Radio Communications of the Phils. Inc. *v.* Rodriguez, 182 SCRA 899, 907 [1990].

[44] Del Mundo *v.* Court of Appeals, *supra*, note 42.

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In the instant case, the private respondents have not convincingly shown that they suffered "mental anguish" for certain acts of herein petitioner which fell under any of the cases enumerated in Articles 2219 and 2220 of the Civil Code. However, the trial court invoked Articles 19, 20, 21, 2217, 2219, 2220 to support the award for moral damages. Article 2220 is definitely inapplicable since this is not a case of willful injury to property or breach of contract.

The attendant circumstances in this case also reject the application of Articles 19, 20 and 21 of the Chapter on Human Relations of the Civil Code.

Accordingly, for lack of factual and legal basis, the award of moral damages must be set aside.

For the same reason the award of attorney's fees and litigation expenses must suffer the same fate. The award of attorney's fees is the exception rather than the rule and counsel's fees are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal and equitable justification; its basis cannot be left to speculation and conjecture.[45] The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate.[46]

WHEREFORE, premises considered, except as to the award of moral damages, attorney's fees and litigation expenses which are hereby DELETED, the judgment of the respondent Court of Appeals is AFFIRMED.

Costs against petitioners.

SO ORDERED.

Narvasa, C.J. (Chairman), Melo ,and *Panganiban, JJ.,* concur.

Francisco, J., on leave.

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[45] Scott Consultants & Resources Development Corp. Inc. *v.* Court of Appeals, 242 SCRA 393, 406 [1995].

[46] Firestone Tire & Rubber Co. of the Phils. *v.* Ines Chavez, Chaves & Co. Ltd., 18 SCRA 356, 358 [1966]; Philippine Air Lines *v.* Miano, 242 SCRA 235, 240 [1995].