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petitioner the benefits of Section 13 of the Workmen's Compensation Act; and

15. In Case No. L-43177, the referee's award-judgment of October 28, 1975 granting petitioner ENGRACIA L. *VDA. DE* DEL PILAR ₱2,381.15 as disability benefits and ₱535.68 — reimbursement of medical expenses and ordering respondent to pay the commission's ₱24.00-administrative fee is hereby reinstated with the modification that the attorney's fees are increased to ₱238.12.

SO ORDERED.

Makasiar, Fernandez, Guerrero, De Castro, and *Melencio Herrera, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-45013. May 28, 1979]

SOUTHWESTERN UNIVERSITY, *petitioner, vs.* **THE HON. CELEDONIO SALVADOR and JOSE BALIGUAT,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; EFFECT OF WITHDRAWAL OF APPEAL. — Where appellant withdraws his appeal, he must face the consequence of his withdrawal, such as the decision of the court *a quo* becoming final and executory. Therefore, the withdrawal of the appeal from the decision of the City Court holding that the defendant was a builder in good faith and should be indemnified for ₱3,000 for the improvements made, and that failure to pay such indemnity shall give the defendant the right to buy the land at a price agreed upon by both parties and with the approval of the court,

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renders said decision final and executory as well as conclusive and estops the appellant from questioning anew said decision. In case of withdrawn or dismissed appeal, the judgment shall be revived and shall be remanded to the municipal court for execution. It is only after the remand of the judgment is revived as of the time of the withdrawal of the appeal, and is to be executed upon its remand. This view is the most logical interpretation of Rule 40, Sec. 9 because where the appeal is not withdrawn, the appeal must have to be decided upon sometime. And it is only from the time to the rendition of the judgment of the appellate court that the time for the judgment's finality shall be reckoned with.

2. **ID.; ID.; JUDGMENT; CONSIGNATION; WHEN NOTICE IS NOT REQUIRED.** — The requirement of notice to make the consignation effective as provided in Art. 1257 of the Civil Code applies only in consignation as contemplated by Art. 1256 of said Code which presupposes a refused tender of payment. This requirement does not apply where the obligation to pay the amount was imposed by the court not by contract, since the creditor could not have refused the tender of payment made in compliance with the order of the court.

3. **ID.; ID.; ID.; FINDINGS OF FACTS OF LOWER COURT WILL NOT BE DISTURBED ON APPEAL.** — Where the allegations made by respondent touch on the very core of the lower court's finding that petitioner is the owner of the land, and therefore contemplate questions of fact, the Supreme Court will not disturb the findings of the lower court.

4. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; WHEN COMMITTED.** — With the timely payment of the indemnity of ₱3,000, the defendant has lost his right to buy the land. The respondent judge, therefore, committed a grave error when he gave the defendant the right to buy the land for ₱8,400, the price as assessed by the Assessor's Office, not only because its judgment provides that "should payment of the indemnity be not made within the 90 day period, the buyer shall have the right to buy the land for a price agreed upon by the parties and approved by the court, "but also because the price was fixed by the Assessor's Office, and not "for the price agreed upon by the parties and approved by the court," as so directed in the judgment.

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APPEARANCES OF COUNSEL

Eustasio Veloso for petitioner.
Vicente Jaime for respondents.

D E C I S I O N

DE CASTRO, *J.*:

This is a petition for review by *certiorari*, but treated by this Court as a special civil action in a resolution dated February 14, 1977 (p. 157, Rollo), instituted by petitioner, Southwestern University, herein referred to as SU, to review the decision of the City Court of Cebu in Civil Case No. 9965 as affirmed by the Court of First Instance of Cebu City on a petition for *certiorari*.

On December 6, 1963, SU an educational institution located in Cebu City filed separate actions for ejectment against Jose Baliguat (Civil Case No. R-9965) and Julia Ilaya (Civil Case No. 9981) with the City Court of Cebu. SU alleged that it had acquired by purchase (conditional sale) three parcels of land located at Jones Avenue, Cebu City, from the Development Bank of the Philippines and more particularly described in TCT Nos. 16951, 16952, 16953 sometime in July 1963. It sought to eject the defendant Baliguat from the 84 square meters lot which forms part of the three parcels of land on which the defendant built a house, when the latter failed to pay the ₱20.00 monthly rental despite repeated demands. Defendant alleged, on the other hand, that the monthly rental of ₱20.00 is violative of the agreement between the Philippine Railway Company which is the original owner of the land in question, the original agreed rental having been only ₱5.00.

The respondent judge rendered judgment on June 18, 1969, the dispositive portion of which insofar as Baliguat is concerned is as follows:

"Wherefore in view of the foregoing, the court hereby renders judgment:

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xxx xxx xxx

3. That defendant, Jose Baliguat is entitled to recover from the plaintiff an indemnity in the total sum of ₱3,000.00 respecting the reasonable value of the house built by him in good faith on the land in question.

4. That defendants Baliguat and Ilaya are entitled to remain in possession of the premises in question until the full amount of indemnity are paid to them.

5. That in case the plaintiff should fail to pay to the defendant the indemnity above-stated, within ninety (90) days from the finality of this judgment, then each of the herein defendants shall have the right to buy the land occupied by their houses at price to be agreed upon by both parties, with the approval of the court." (pp. 60-61, *Rollo*).

From the City Court's decision, SU filed an appeal with the Court of First Instance of Cebu City on July 14, 1969. On August 21, 1971, petitioner made an alleged consignation of the ₱3,000.00 in court. Later, after the appeal was pending for more than three (3) years, it withdrew the appeal on February 1, 1973 on the ground that it is no longer interested in pursuing the appeal, having been convinced of the fairness and reasonableness of the judgment.

On October 9, 1973, petitioner filed a motion for the execution of the judgment dated June 18, 1969 with the City Court. The court denied said motion in an order made on December 20, 1973 disposing as follows:

"Wherefore in view of the foregoing, the Court believes and so holds that the decision of this Court dated June 18, 1969 as against defendant, Jose Baliguat has already become final and executory on July 24, 1969 and since plaintiff has failed to comply with the decision of this Court, particularly paragraph 5 thereof, plaintiff's Motion for Execution of Judgment is hereby denied. However in the interest of justice and equity, the defendant in the exercise of the right granted him in the decision of this Court is hereby ordered to pay to the plaintiff the value of 84 square meters which is occupied by him in the amount of ₱8,400.00 from the Office of the City Treasurer at the

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rate of ₱100.00 per square meter which according to the City Assessor was the prevailing assessed value of the land in 1969." (p. 70, *Rollo*).

SU filed a Motion for Reconsideration. The City Court denied it in an order dated February 28, 1974 for lack of merit and ordered the plaintiff to withdraw the amount of ₱8,400.00 from the office of the City Treasurer and further required him to execute a Deed of Sale in favor of the defendant for the 84 square meters of land located at Pelaez Street, Cebu City. (p. 88, *Rollo*).

From the above orders of the City Court, SU filed a petition for *certiorari* with the Court of First Instance of Cebu, Branch XIV whereby the actuations of the respondent judge were assailed for lack, or being in excess, of jurisdiction and tainted with grave abuse of discretion in issuing the above orders.

In its decision dated November 25, 1975, the CFI of Cebu dismissed the petition. (p. 87, *Rollo*). Motion for Reconsideration was filed by petitioner-plaintiff but was denied. Thus petitioner filed the instant petition for review on *certiorari* with this Court, but treated as a special civil action. (p. 157, *Rollo*).

In its Memorandum petitioner raised the following issues, corresponding to the errors assigned:

1. WHETHER OR NOT BALIGUAT IS A BUILDER IN GOOD FAITH TO JUSTIFY THE APPLICATION OF ARTICLE 448 OF THE CIVIL CODE AND WHETHER THIS PROVISION GRANTS THE BUILDER IN GOOD FAITH THE RIGHT TO BUY THE LAND.

2. WHETHER OR NOT THE PAYMENT OF INDEMNITY OF ₱3,000.00 WAS WELL WITHIN THE 90 DAY PERIOD FROM THE TIME THE JUDGMENT HAS BECOME FINAL AND EXECUTORY.

3. WHETHER OR NOT IT IS WITHIN THE JURISDICTION OF THE TRIAL COURT TO GO OUTSIDE THE TENOR OF THE JUDGMENT THAT ORDERED THE PURCHASE PRICE TO BE AS AGREED UPON BY BOTH PARTIES, AND DECREE THAT PETITIONER ACCEPT RESPONDENT'S ₱8,400.00 AS THE PRICE OF THE LAND AT THE RATE OF ₱100.00 PER

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SQUARE METERS AS FIXED BY THE OFFICE OF THE CITY ASSESSOR BASED ON THE PREVAILING ASSESSED VALUE OF THE LAND IN QUESTION. (Petitioner's Memorandum, pp. 172-173, *Rollo*).

The petitioner questions the finding of the City Court and the Court of First Instance that respondent was a builder in good faith, by relying on the fact that as a lessee, he cannot be considered a builder in good faith and therefore Article 448 of the Civil Code does not apply. Such finding of the lower courts can no longer be disturbed at this stage because the petitioner's act of withdrawing his appeal is tantamount to his acquiescense and acceptance of the decision, as petitioner himself said in his motion to dismiss that "he is no longer interested in pursuing the appeal x x x *having been convinced of the fairness and reasonableness of the judgment of the lower court.*" (p. 137, Rollo). Where an appellant withdraws his appeal, he must face the consequence of his withdrawal, such as the decision of the court *a quo* becoming final and executory. (*Director of Lands vs. Alberto*, L-28516, July 31, 1973 52 SCRA 186). Therefore, the withdrawal of the appeal from the decision of the City Court holding that the defendant was a builder in good faith and should be indemnified for ₱3,000 for the improvements made, and that failure to pay such indemnity shall give the defendant the right to buy the land at a price agreed upon by both parties and with the approval of the court, renders said decision final and executory as well as conclusive and estops the petitioner from questioning anew said decision.

The next issue to be resolved is when the judgment of the City Court become final. The City Court in its order dated December 20, 1973 relying strongly upon the cases of *Singh vs. Liberty Insurance Corporation* (L-16860, July 31, 1963, 8 SCRA 517) and *Firestone Tire and Rubber Co. vs. Tempongko* (L-24399, March 28, 1969, 27 SCRA 418) held that since Baliguat did not interpose any appeal from the decision of this Court, dated June 18, 1969, said decision has long become final and executory as to Baliguat after the lapse of 15 days from June 18, 1969 and more specifically on July 24, 1969.

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Petitioner contends that the judgment of this Court has become final only upon the withdrawal of the appeal.

After a careful study of this issue, this Court is of the belief that it would be absurd to accept the view that the judgment pending appeal has become final and executory as to respondent, Baliguat, and not final and executory as to the petitioner, because the result of the appeal proceedings is determinative of the respective rights of the litigants. The ruling relied upon by the City Court in the cases of *Singh vs. Liberty Insurance Corporation* and *Firestone Tire and Rubber Co. of the Phil. vs. Tempongko* which states that "x x x as against other parties adversely affected by the decision who did not appeal, the decision must be deemed to have become final and executory as to him," finds no application in the case at bar. The cited cases dealt with collection actions to recover certain sum of money where the plaintiffs obtained judgment in the municipal court against defendants who in turn obtained judgment for reimbursement against the 3rd party defendants, but only the latter appealed to the CFI. The defendants did not appeal. It is true that in the case at bar the defendant also did not appeal from the questioned decision. However, in the Singh and Firestone cases, notwithstanding the appeal of the 3rd party defendants the decision insofar as the plaintiff and defendant were concerned, there was no hindrance to the execution of the judgment which could stand despite the appeal made by the 3rd party defendant from whom the defendant can seek contribution, indemnity or subrogation or any other relief (Rule 6, Sec. 12 Rules of Court). The rights and claim of the plaintiff against defendant remain unaffected. In the present case however, it is the plaintiff who appealed from the City Court's decision. Pending the appeal, with trial *de novo*, the decision was vacated. But as to the plaintiffs and defendants in the Singh and Firestone cases, the judgment is final since neither is disputing the said judgment notwithstanding the appeal instituted by the 3rd party defendant.

Our ruling on the matter is in accordance with Rule 40, Section 9 of the Rules of Court which is applicable in the case at bar since the appeal was made on July 14, 1969, that is, before the passage of RA 6031 on August 1969 (*New Japan Motors*

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Inc. vs. Perucho, L-44387, November 5, 1976, 74 SCRA 14). The aforecited Rule which reads:

"x x x If the appeal is withdrawn or dismissed for failure to prosecute, the judgment shall be deemed revived and forthwith be remanded to the municipal or City Court for execution."

clearly shows that what makes the decision executory, when same is appealed, is its withdrawal.

In the case at bar, the appeal filed by the petitioner before the CFI was withdrawn on February 1, 1973. The CFI gave due course to the withdrawal on March 30, 1973. The records of the remanded case was received by the City Court on August 14, 1973. Since the appeal was withdrawn by the petitioner, the case has been revived and shall be remanded to the municipal court for execution. In many cases (*Saulog vs. Custombuilt Manufacturing Corporation, et al.,* L-29612, Nov. 15, 1968, 26 SCRA 1; *International Harvester Macleod Inc. vs. Co Ban Ling and Sons Co., et al.*, L-26863, October 26, 1968, 25 SCRA 612 and the early cases of *Tomas Fortuna vs. Rufina Villoria*, No. 4526, October 24, 1909, 14 Phil. 232; *Mateo Capunu vs. Julio Llorente No. 9990,* February 1, 1915, 29 Phil. 3921; *Smith vs. Icasiano, et al.,* 57 OG 757) this Court has consistently enunciated the uniform ruling that in cases of withdrawn or dismissed appeal, the judgment shall be revived and shall be remanded to the municipal court for execution. It is only after the remand of the judgment that execution will lie. It follows, then, that the judgment is revived as of the time of the withdrawal of the appeal, and is to be executed upon its remand. This view is the most logical interpretation of Rule 40, Sec. 9 because where the appeal is not withdrawn, the appeal must have to be decided upon sometime. And it is only from the time of the rendition of the judgment of the appellate court that the time for the judgment's finality shall be reckoned with.

Furthermore, the appeal filed by the petitioner gave the respondent the time to remain in the premises. In a way, this incident worked to his benefit for his having stayed in the premises longer. Equity dictates that petitioner be not punished for the appeal he had taken but later withdrawn.

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The consignation cannot be attacked on ground of lack of notice to the defendant because, if execution has to be made from the time the case is remanded to the court of origin, notice of the consignation must have come to the knowledge of private respondent when SU moved for execution on Oct. 9, 1973, following the receipt of the remanded case by said court on Aug. 14, 1973. Less than 90 days expired from the date of receipt of the remanded case by the court of origin to the date of the motion for execution filed by petitioner. Moreover, the requirement of notice to make the consignation effective as provided in Art. 1257 of the Civil Code applies only in consignation as contemplated by Art. 1256 of said Code which presupposes a refused tender of payment. The deposit of the sum of ₱3,000 with the Court was not actually preceded by a tender of payment that was refused, for the obligation to pay the amount to the defendant Baliguat was imposed by the Court not by contract, and Baliguat could not have refused the tender of payment made in compliance with the order of the Court.

With timely payment of the indemnity of ₱3,000.00, the defendant Baliguat has lost the right to buy the land. The respondent judge, therefore, committed a grave error when he gave the defendant the right to buy the land for ₱8,400.00, the price as assessed by the Assessor's Office, not only because its judgment provides that "should the payment of the indemnity be not made within the 90 day period, the buyer shall have the right to buy the land for a price agreed upon by the parties and approved by the court," but also because the price was fixed by the Assessor's Office, and not "for a price agreed upon by the parties and approved by the court," as so directed in the judgment.

The allegations made by the respondent, Baliguat, in a memorandum submitted to this court, that at the time the action for ejectment was filed, petitioner SU is not yet the owner of the parcels of land in question, having purchased the same only in 1971; that the 84 square meters of the land occupied by him is located at Pelaez Street and not Jones Avenue; that there is no definite showing as to which portion of the land is 84 square meters located — all these contemplate questions of fact which can not be resolved by this Court. Said allegations

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touch on the very core of the lower court's finding that petitioner is the owner of the land, a finding which will not be disturbed by this Court. (*Reyes, et al. vs. Court of Appeals*, L-28466, March 27, 1971, 38 SCRA 138).

WHEREFORE, the decision of the respondent court is hereby reversed. Accordingly, the private respondent, Jose Baliguat, is hereby ordered to vacate the land in question and to accept from the Clerk of Court the ₱3,000.00 deposited with the latter as valid payment for the value of the house built by him in good faith on the premises.

SO ORDERED.

Makasiar, Fernandez and *Guerrero, JJ.*, concur.

Teehankee (Chairman) and *Melencio Herrera, JJ.*, concurs in a separate opinion.

TEEHANKEE, *J., concurring:*

I concur with the judgment in the main opinion of Mr. Justice De Castro ordering respondent to vacate the land and to accept from the Clerk of Court the sum of ₱3,000.00 as deposited by petitioner in payment of the house built by respondent in good faith on petitioner's property.

Respondent judge's judgment of June 18, 1969 providing for ejectment of respondent from petitioner's land upon petitioner's paying respondent the sum of ₱3,000.00 by way of indemnity for the value of the house built thereon by respondent and furthermore that upon petitioner's failure to pay such indemnity within 90 days from finality of the judgment, respondent would have the right to buy the land occupied by his house "at a price to be agreed upon by both parties with the approval of the court" is patent error. As pointed out by Mme. Justice Melencio Herrera in her separate opinion, the only right of respondent-lessee is to remove his house should petitioner (as lessor) refuse to pay one-half the value thereof under Article 1678 of the Civil Code, but the Code gives respondent-lessee no right whatever to buy the land.

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But since petitioner withdrew its appeal from respondent judge's decision, said decision upon its revival with the withdrawal of the appeal, has become the law of the case, notwithstanding its manifest error. The petitioner chose to abide by it and timely paid by way of consignation the indemnity adjudged in favor of respondent. Respondent has no other recourse but to vacate the land, by the terms of the very judgment.

Respondent judge's questioned Order of *December 20, 1973* ruling that his revived decision of June 18, 1969 *instantly* became final and executory (*retroactively* as of *July 24, 1969*) upon petitioner's withdrawal on February 1, 1973 of its appeal from said judgment has been aptly rejected as "*absurd*" in the Court's judgment. A bit of sound discretion and circumspection on the primary objective of the Rules of Court to assist the parties in obtaining a just and expeditious determination of their action would have rendered it unnecessary for respondent judge's "absurd" order (of *instant retroactive finality* of a decision upon withdrawal of the appeal) to have reached this Court. Worse, such "absurd" order frustrated for over *six years* until now petitioner's commendable move of withdrawing its appeal and cutting short the litigation (at the cost of paying the indemnity erroneously awarded by respondent judge) and prevented petitioner up to now from recovering the rightful possession of its land as adjudged in respondent judge's ten-year old judgment of June 18, 1969.

MELENCIO-HERRERA, *J., concurring:*

I concur in the result.

A lessee is neither a builder in good faith nor in bad faith (*Albioso vs. Villanueva,* 7 Phil. 277). His rights are governed not by Article 448 but by Article 1678 of the Civil Code, which reads:

"Art. 1678. If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon the termination of the lease shall pay the lessee one-half of the value

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of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary.

"xxx xxx xxx"

It is evident from the foregoing provision that the lessee may remove the improvements should the lessor refuse to reimburse, but the lessee does not have the right to buy the land. "The tenant cannot improve the landlord out of his property."

As a practical measure to end this controversy, the ₱3,000.00 consigned by petitioner can be deemed to be one-half of the value of the house built by private respondent on the land leased to him. As a matter of fact, if petitioner should opt not to pay said amount of ₱3,000.00, it would be private respondent's obligation to remove his house from the portion of the land occupied by him.

SECOND DIVISION

[G.R. No. L-47629. May 28, 1979]

MANUEL L. GARCIA, *petitioner, vs.* **JUDGE ANTONIO M. MARTINEZ,** ***ET AL.****, respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; LACK OF JURISDICTION CURED BY AN AMENDATORY LAW VESTING JURISDICTION IN THE COURT. — Where the court *lacks jurisdiction to entertain an action at the time it was filed,* but during its pendency an amendatory law which is in the nature of a curative statute with retrospective application to pending proceedings was issued vesting jurisdiction in the