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Costs against petitioner.

SO ORDERED.

Puno, C.J. (Chairperson), Sandoval-Gutierrez, Azcuna, and *Garcia, JJ.,* concur.

FIRST DIVISION

[G.R. No. 157593. March 22, 2007]

SPS. ALBERTO and JOCELYN AZANA, *petitioners, vs.* **CRISTOPHER LUMBO and ELIZABETH LUMBO-JIMENEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT AND APPELLATE COURTS ARE BINDING AND ARE GIVEN GREAT WEIGHT AND RESPECT; EXCEPTION APPLIES TO CASE AT BAR. — As a general rule, it is not the Supreme Court's function to review, examine and evaluate or weigh the probative value of the evidence presented. The factual findings of the trial and appellate courts are binding on this Court and are given great weight and respect. However, the rule is not absolute. In instances where there is divergence in the findings and conclusions of the trial court, on one hand, and the appellate court, on the other, the Court may give the petition due course and re-examine the evidence on record. Satisfied that the foregoing exception applies to this case, the Court ordered the reinstatement of G.R. No. 157593 (this petition).

2. ID.; CIVIL PROCEDURE; JUDGMENT; *RES JUDICATA*; REQUISITES; NOT PRESENT IN CASE AT BAR. — *Res judicata* calls for the concurrence of the following requisites: (1) there is final judgment or order; (2) the court rendering it

has jurisdiction over the subject matter and the parties; (3) the judgment or order is on the merits and (4) there is, between the two cases, identity of parties, subject matter and causes of action. Here, the first requisite is absent. The Court's resolution denying the spouses Gregorio's petition is not the final judgment contemplated by the first requisite. Rather, "final judgment" entails a decision which perpetually settles the controversy and lays to rest all questions raised. At that point, there was no final judgment because the spouses Azana's appeal of the CA decision was still pending before us. Stated differently, there was yet no final judgment which could be entered and executed.

3. CIVIL LAW; LAND REGISTRATION; TAX DECLARATIONS ARE NOT CONCLUSIVE EVIDENCE OF OWNERSHIP OF THE PROPERTIES STATED THEREIN BUT ARE AN *INDICIA* OF POSSESSION IN THE CONCEPT OF AN OWNER. — Jurisprudence is consistent that tax declarations are not conclusive evidence of ownership of the properties stated therein. A disclaimer is even printed on their face that they are "issued only in connection with real property taxation [and] should not be considered as title to the property." At best, tax declarations are an *indicia* of possession in the concept of an owner. However, non-declaration of a property for tax purposes does not necessarily negate ownership. From the foregoing, the fact that both tax declarations in the names of respondents covered Lot 63 only did not necessarily mean they did not own Lot 64 as they were in fact able to present a document evidencing ownership of both properties — the final bill of sale. Clearly, respondents have been able to establish by preponderance of evidence that they are the rightful owners of Lot 64.

4. ID.; ACTIONS; QUIETING OF TITLE; MAY BE BROUGHT BY AN OWNER OF REAL PROPERTY WHEN HIS RIGHTS OVER THE SAME ARE DISTURBED BY THE UNFOUNDED CLAIM OF OTHERS; CASE AT BAR. — When an owner of real property is disturbed in any way in his rights over the property by the unfounded claim of others, he may bring an action for quieting of title. The purpose of the action is to remove the cloud on his title created by any instrument, record, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid and prejudicial to his title. Here, the deeds of sale executed in favor of petitioners and the spouses Gregorio were *prima*

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facie valid and enforceable. However, further scrutiny and investigation established that petitioners' predecessor-in-interest, Ignacio Bandiola, could not have owned the disputed lot. Consequently, the subsequent conveyances of Lot 64 to the spouses Gregorio and thereafter, to petitioners, were null and void. Therefore, respondents, as the adjudged owners of Lot 64, are entitled to have the aforementioned deeds of sale nullified to remove any doubt regarding their ownership of the lot. While the appellate court adequately explained its decision, it failed to categorically declare the deeds of sale as null and void in its dispositive portion. Since it is the dispositive portion of the decision which shall be carried out, it is important that the status of the deeds of sale be clearly stated therein.

APPEARANCES OF COUNSEL

Quiason Makalintal Barot Torres and Ibarra for petitioners.
Roque and Butuyan Law Offices for respondents.

D E C I S I O N

CORONA, *J.*:

In this appeal by *certiorari*, spouses Alberto and Jocelyn Azana assail the decision[1] dated September 17, 2002 and resolution[2] dated March 12, 2003 of the Court of Appeals (CA) in CA-G.R. CV No. 60973. After a re-evaluation of the evidence on record, the appellate court held that the trial court's factual findings were contrary to the evidence presented and, on that basis, reversed the latter's ruling.

Originally, respondents filed an action for quieting of title[3] in the Regional Trial Court (RTC) of Kalibo, Aklan. The subject

[1] Penned by Associate Justice Wenceslao I. Agnir, Jr. (retired) and concurred in by Associate Justices B.A. Adefuin-de la Cruz (retired) and Edgardo F. Sundiam of the Ninth Division of the Court of Appeals; *rollo*, pp. 48-60.

[2] Penned by Associate Justice B.A. Adefuin-de la Cruz (retired) and concurred in by Associate Justices Marina L. Buzon and Edgardo F. Sundiam of the Former Ninth Division of the Court of Appeals; *id.*, p. 61.

[3] Docketed as Civil Case No. 5253.

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matter of the action was a piece of real property located in the island of Boracay, a prime tourist destination. It was designated as Lot 64 during the national reservation survey of Boracay on April 14, 1976.

Respondents alleged that they were the owners of Lot 64. They claimed that, in a deed of absolute sale dated December 1, 1996, the spouses Emilio and Estela Gregorio sold Lot 64 to petitioners. This cast a cloud over their title.

To support their claim of ownership, respondents stated that Lot 64 was originally part of the 8.0488-hectare land bought in a public auction by their parents, which they inherited entirely; that such sale in the public auction was evidenced by a final bill of sale dated September 18, 1939; that Lot 64 was separately designated during the national reservation survey only because it was also being claimed by the spouses Gregorio; and that, if Lots 63 and 64 were combined, the boundaries of the resulting lot coincided with the boundaries of the lot purchased under the final bill of sale.

For their part, petitioners claim that they purchased Lot 64 from the spouses Gregorio in good faith; that the spouses Gregorio became the lawful owners of Lot 64 by virtue of a deed of absolute sale dated March 25, 1976 executed by Ignacio Bandiola in favor of Estela Gregorio whereby Bandiola transferred to Gregorio a parcel of land with an area of 3.4768 hectares; and that Lot 64 was part of this 3.4768-hectare land.

According to the RTC of Kalibo, Aklan, respondents failed to establish the identity of the lot sold under the final bill of sale. Consequently, their claim of title over Lot 64 also had to fail. In the words of the court *a quo*:

> Assaying the evidence presented by the parties in relation to their respective submissions, the Court noted that the land acquired by [respondents'] parents at the public auction is not solely bounded on the North and East by [the] Visayan Sea, but also by Anunciacion Gelito and Guillermo Sualog, respectively. Indeed, [respondents]

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[4] RTC Decision dated June 26, 1998; *rollo*, p. 69.

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own survey plan discloses that Lots 63 and 64 [are] bounded by Lot 62 and seashore.

Hence, it is not clear that the land acquired by [respondents'] parents at an auction sale includes Lot 64. The Court could probably sustain [respondents'] theory if the said land is solely bounded on the North and East by [the] Visayan Sea or seashore. There would be no space for any intervening lot.[4] (citations omitted)

Finding equiponderance of evidence,[5] the trial court ruled in favor of petitioners and upheld the validity of the sale of Lot 64 to them.

On review, the CA arrived at a different conclusion. It declared respondents as owners of Lot 64 and nullified the sale by the spouses Gregorio to petitioners. The appellate court agreed with respondents that Lot 64 was part of the 8.0488-hectare property described in the final bill of sale. As opposed to the findings of the trial court, the appellate court was satisfied that the boundaries of the lot resulting from the merger of Lots 63 and 64 coincided with the boundaries of the 8.0488 hectare property. Moreover, the CA noted that the areas of Lots 63 and 64 were 7.0300 hectares and 1.2012 hectares respectively, meaning that the area resulting from the combination of the two lots was equivalent to "8.0000 hectares, more or less, which [was] the total area being claimed by the [respondents]."[6]

Aggrieved, the spouses Gregorio and the spouses Azana filed in this Court separate petitions for review on *certiorari* under

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[5] Equiponderance of evidence is defined as:

When the scale shall stand upon an equipoise and there is nothing in the evidence which shall incline it to one side or the other, the court will find for the defendant.

Under said principle, the plaintiff must rely on the strength of his evidence and not on the weakness of the defendant's claim. Even if the evidence of the plaintiff may be stronger than that of the defendant, there is no preponderance of evidence on his side if such evidence is insufficient in itself to establish his cause of action. (*Sapu-an, et al. v. Court of Appeals*, G.R. No. 91869, 19 October 1992, 214 SCRA 701, 705-706, cited in the CA Decision, *supra* note 1, at 58.)

[6] CA Decision, *supra* note 1, at 56.

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Rule 45 of the Rules of Court. The petitions were separately docketed as G.R. No. 157617[7] and G.R. No. 157593, respectively. The Court instantly denied both petitions for essentially raising questions of fact which are generally beyond our review.

Thereafter, both the Gregorios and petitioners filed their respective motions for reconsideration. The Court denied the MR[8] of the spouses Gregorio, in effect denying G.R. No. 157617 with finality.

Meanwhile, the MR of the spouses Azana was granted. As a general rule, it is not the Supreme Court's function to review, examine and evaluate or weigh the probative value of the evidence presented.[9] The factual findings of the trial and appellate courts are binding on this Court and are given great weight and respect.[10] However, the rule is not absolute. In instances where there is divergence in the findings and conclusions of the trial court, on one hand, and the appellate court, on the other, the Court may give the petition due course and re-examine the evidence on record.[11] Satisfied that the foregoing exception applies to this case, the Court ordered the reinstatement of G.R. No. 157593 (this petition).

Respondents oppose the petition on the ground that it is already barred by prior judgment. They argue that the dismissal of the Gregorios' petition (G.R. No. 157617) was a final judgment constituting a bar to the institution of a similar petition.

Respondents' position is incorrect. *Res judicata* calls for the concurrence of the following requisites: (1) there is final judgment or order; (2) the court rendering it has jurisdiction over the

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[7] Comment, *rollo*, pp. 183, 187.

[8] Motion for reconsideration.

[9] *Asia Trust Development Bank v. Concepts Trading Corporation*, G.R. No. 130759, 20 June 2003, 404 SCRA 449, 461-462.

[10] *Francisco v. Court of Appeals*, G.R. No. 118749, 25 April 2003, 401 SCRA 594, 606.

[11] *See Gutierrez v. Singer Sewing Machine Company*, G.R. No. 140982, 23 September 2003, 411 SCRA 512, 518.

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subject matter and the parties; (3) the judgment or order is on the merits and (4) there is, between the two cases, identity of parties, subject matter and causes of action.[12] Here, the first requisite is absent. The Court's resolution denying the spouses Gregorio's petition is not the final judgment contemplated by the first requisite. Rather, "final judgment" entails a decision which perpetually settles the controversy and lays to rest all questions raised. At that point, there was no final judgment because the spouses Azana's appeal of the CA decision was still pending before us. Stated differently, there was yet no final judgment which could be entered and executed.

We now proceed to consider the documents relied upon by the parties.

To prove their claim, petitioners submitted a deed of absolute sale of real property[13] dated March 25, 1976 to show that Ignacio Bandiola sold to Estela Gregorio 3.4768 hectares of land located in Manoc-Manoc, Malay, Aklan. The property was particularly described as follows:

> THE PORTION SOLD CONSISTS of 3.4768 hectares, more or less, located at the southern side of the whole parcel and with the following pertinent boundaries: on the North by Visayan Sea and Ernesto Bandiola; on the East by Visayan Sea; on the South by Felicitas Lumbo, D. Pelayo, and D. Magapi; and on the West by Teodorica Bandiola.[14]

They also presented the corresponding tax declaration[15] which reiterated the same property boundaries.

Petitioners point out that a portion of this property was separately declared for realty tax purposes under ARP/TD No. 93-011-1020/1021 as Lot 64 with an area of 1.48 hectares.[16] The tax declaration indicated that the boundaries of Lot 64 were:

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[12] *Romero v. Tan*, G.R. No. 147570, 27 February 2004, 424 SCRA 108, 122.

[13] Annex "P" of Petition, *rollo*, p. 158.

[14] *Id*.

[15] Annex "F" of Reply, *rollo*, p. 245.

[16] Petition, *id*., p. 16

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North: Visayan Sea	South: Lot 63
West: lot 99-pt	East: Visayan Sea

In the hope of strengthening their case, petitioners narrated the supposed origin of the disputed property. They claimed that the 3.4768-hectare property was taken from the consolidated lots owned by Ignacio Bandiola, *i.e.*, three contiguous parcels of land with individual areas of 8.7766 hectares, 6550 square-meters and 4994 square-meters.[17] From this land mass, Ignacio Bandiola carved out 3.4768 hectares and sold the same to Estela Gregorio. Allegedly, this portion included Lot 64 which Estela Gregorio, in turn, sold to petitioners.

Granting for the sake of argument that petitioners' preceding allegations are true, it follows that Ignacio Bandiola's lots, if taken as one, must have extended to the Visayan Sea in the east to have roped in Lot 64. It also follows that at least one of the lots should have the Visayan Sea as its eastern boundary. However, this conclusion is belied by the tax declarations petitioners themselves presented. Not one of the tax declarations stated that any of Bandiola's lots was bound in the east by the Visayan Sea. On the contrary, *all* the tax declarations stated that each of the lots was bound in the east by a particular *land mass*:

Tax Declaration No. 3066

Land Area:	8.7766 hectares		
Boundaries:	North	–	Visayan Sea
	East	**–**	**Lorenzo Lumbo, Vanancio Maming**
	West	–	Conchita Tirol, Visayan Sea
	South	–	Moises Pelayo, Paula Gelito[18]

Tax Declaration No. 3087

Land Area:	0.6550 hectare		
Boundaries:	North	–	Visayan Sea

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[17] Annexes "C", "D", "E" and "F" of Reply, *id*., pp. 242-245.

[18] Annexes "C" and "D" of Reply, *id*., pp. 242-243.

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East – Felicitas Alag de Lumbo
West – Felicitas Alag de Lumbo
South – Quirica Lumbo[19]

Tax Declaration No. 3068

Land Area: 0.4994 hectare
Boundaries: North – Ignacio Bandiola
East – Anunciacion Gelito and F.A. Lumbo
West – Ignacio Bandiola
South – Gertrudes Casimero & Salvador Magapi[20]

Petitioners strained to explain the discrepancy by pointing out that "Lot 64 was but a mere portion of the three parcels of land covered by the [three] tax declarations. x x x. It [was] therefore, quite unlikely that Lot 64 would have the exact same boundaries as any or all of these [three] parcels."[21]

We find their explanation wanting. If, indeed, Lot 64 was part of Ignacio Bandiola's mass of properties it would have been in its south-east corner, occupying part of its southern and eastern perimeter.[22] Therefore, the parcels of land covered by the three tax declarations must reflect southern and/or eastern boundaries similar to those of Lot 64. But, as explained earlier, none of the lots was enclosed or partly enclosed in the east by the sea. It is highly unlikely that the corner portion of the mother property would not have similar boundaries as those of the latter on at least two sides.

The Court is not inclined to pronounce which of the documents presented by petitioners is true and correct. It is enough to say that the evidence they presented cast doubt on the validity of their claim. Petitioners failed to establish, by preponderance of evidence, the exact perimeters of the land which they claim as their own.

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[19] Annex "E" of Reply, *id*., p. 244.

[20] Annex "F" of Reply, *id*., p. 245.

[21] Reply, *id*., pp. 216, 218.

[22] Annex "1" of Reply, *id*., p. 240.

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On the other hand, respondents anchor their claim over Lot 64 on a final bill of sale[23] dated September 18, 1939. Apparently, the document was executed in favor of Lorenzo and Felicitas Lumbo who bought an 8.0488-hectare property in a public auction. It stated:

> That on September 30, 1937, the real property under Tax Declaration No. 6523 was forfeited to the Government in the manner and form prescribed by Act 3995 known as the Assessment Law, for non-payment of land taxes corresponding to the years 1931 to 1937, inclusive, the description of which follows:
>
> > A parcel of cocal land situated in the barrio of Manocmanoc, municipality of Buruanga, province of Capiz, Philippines, having an area of 80, 488 square meters more or less. Bounded on the North by Visayan Sea; on the East by the property of Guillermo Sualog and Visayan Sea; on the South by the property of Moises Pelayo; and on the West by the properties of Venancio Maming and Lucino Gelito, and assessed at ₱1,040.00. x x x.[24]

The trial court discredited the final bill of sale by highlighting the fact that the property bought at the public auction was not solely bound on the north and east by the Visayan Sea but also by the properties of Anuncion Gelito and Guillermo Sualog, respectively. With this, the trial court deduced that there was an intervening space which should not have been there if the lot referred to in the document included Lot 64. Thus, the final bill of sale must pertain to a different parcel of land.

We find the trial court's conclusion inaccurate. The Gelito and Sualog properties were not located between the Visayan Sea and the disputed property. Otherwise, the tax declarations and final bill of sale would have indicated that the Lumbo property was solely bound in the north by the Gelito property and in the east by the Sualog property. A cursory look at the survey map[25] reveals that the perimeter of the Lumbo property ran along the Visayan Sea and Gelito's property in the north, and the Visayan

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[23] Respondent's Memorandum, *id*., pp. 311, 356-357.

[24] *Id*., p. 356.

[25] Annex "L" of Respondent's Memorandum, *id*., p. 370.

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Sea and Sualog's property in the east. Naturally, the tax declarations and final bill of sale included the two properties mentioned as part of the boundaries of the Lumbo property.

Petitioners underscore the seeming irregularities in the description of the property under the final bill of sale, a deed of sale dated May 20, 1939 and the tax declarations for the years 1991 and 1993 in the names of respondents. They posit that these irregularities negate respondents' claim of legal or equitable title and ultimately justify the resolution of the case in their favor.

A deed of absolute sale[26] was executed on May 20, 1939 between Pantaleon Maming and the respondents' parents, stipulating the sale to the Lumbos of "an approximate area of [five hectares], being a part of the land under Tax No. 6523 in the name of Pantaleon Maming . . .."[27] Petitioners emphasize the fact that the property sold under the final bill of sale was the same lot under Tax Declaration No. 6523. This discrepancy supposedly blurred the identification of the property claimed by respondents.

We disagree.

The CA sufficiently reconciled the difference in the land areas in the two deeds:

> x x x. It may be asked why there were two deeds of sale covering the same property. We find credence in [respondents'] explanation. The public auction was held on 13 September 1938 and therefore Pantaleon Maming had up to 13 September 1939 to redeem the property. Before the expiration of the period of redemption, Lorenzo Lumbo bought [five] hectares of the [eight]-hectare property in an attempt, as [respondents] put it, to persuade Maming not to redeem the property. This can be inferred from the price of ₱500.00 he paid for the [five] hectares while in the auction sale held, he bought the entire 8.0488 hectares for only ₱56.78. x x x.[28]

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[26] Annex "A" of Respondents' Memorandum, *id*., pp. 354-355.

[27] *Id*., p. 354.

[28] CA Decision, *supra* note 1, at 54-55.

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Next, petitioners highlight the tax declarations filed by respondents for the years 1991[29] and 1993[30] covering Lot 63 only. In the absence of contrary evidence, tax declarations, being official documents, enjoy a presumption of truth as to their contents. Petitioners contend that, unlike them, respondents never actually declared Lot 64 as theirs and cannot therefore claim ownership of the property.

Jurisprudence is consistent that tax declarations are not conclusive evidence of ownership of the properties stated therein.[31] A disclaimer is even printed on their face that they are "issued only in connection with real property taxation [and] should not be considered as title to the property." At best, tax declarations are an *indicia* of possession in the concept of an owner.[32] However, non-declaration of a property for tax purposes does not necessarily negate ownership.[33]

From the foregoing, the fact that both tax declarations in the names of respondents covered Lot 63 only did not necessarily mean they did not own Lot 64 as they were in fact able to present a document evidencing ownership of both properties — the final bill of sale.

Clearly, respondents have been able to establish by preponderance of evidence that they are the rightful owners of Lot 64.

When an owner of real property is disturbed in any way in his rights over the property by the unfounded claim of others, he may bring an action for quieting of title. The purpose of the action is to remove the cloud on his title created by any instrument,

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[29] Petition, *rollo*, p. 97.

[30] *Id*., p. 96.

[31] *Cuenco v. Cuenco Vda. de Manguena*, G.R. No. 149844, 13 October 2004, 440 SCRA 252, 264-265; *Abejeron v. Nabasa*, 411 Phil. 552, 572 (2001); *Heirs of Anastacio Fabela v. Court of Appeals*, 414 Phil. 838, 856 (2001).

[32] *Id*.

[33] *Cf. Republic v. Court of Appeals*, G.R. No. 116372, 18 January 2001, 349 SCRA 451, 462.

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record, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid and prejudicial to his title.[34]

Here, the deeds of sale executed in favor of petitioners and the spouses Gregorio were *prima facie* valid and enforceable. However, further scrutiny and investigation established that petitioners' predecessor-in-interest, Ignacio Bandiola, could not have owned the disputed lot. Consequently, the subsequent conveyances of Lot 64 to the spouses Gregorio and thereafter, to petitioners, were null and void. Therefore, respondents, as the adjudged owners of Lot 64, are entitled to have the aforementioned deeds of sale nullified to remove any doubt regarding their ownership of the lot.

While the appellate court adequately explained its decision, it failed to categorically declare the deeds of sale as null and void in its dispositive portion. Since it is the dispositive portion of the decision which shall be carried out, it is important that the status of the deeds of sale be clearly stated therein.

WHEREFORE, the petition is hereby *DENIED*. The decision dated September 17, 2002 and resolution dated March 12, 2003 of the Court of Appeals are *AFFIRMED* with the *MODIFICATION* that the deed of absolute sale dated March 25, 1976, in so far as it covers Lot 64, and the deed of absolute sale dated December 1, 1996 are hereby declared null and void.

Costs against petitioners.

SO ORDERED.

Puno, C.J. (Chairperson), Sandoval-Gutierrez, Azcuna, and *Garcia, JJ.,* concur.

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[34] CIVIL CODE, Article 476.