



**Republic of the Philippines**  
**Supreme Court**  
**Manila**

**SECOND DIVISION**

**JENNEFER FIGUERA**, as substituted by  
**ENHANCE VISA SERVICES, INC.**,  
 represented by **MA. EDEN R. DUMONT**,  
 Petitioner,

**G.R. No. 204264**

Present:

**CARPIO, J.**, *Chairperson*,  
**BRION**,  
**DEL CASTILLO**,<sup>\*</sup>  
**MENDOZA**, and  
**LEONEN, JJ.**

- versus -

Promulgated:

**29 JUN 2016**

**MARIA REMEDIOS ANG**,

Respondent.

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**DECISION**

**BRION, J.:**

We resolve the petition for review on *certiorari*<sup>1</sup> under Rule 45 of the Rules of Court filed by petitioner Jennefer Figuera<sup>2</sup> (*Figuera*) assailing the **June 29, 2012** decision<sup>3</sup> and the **September 28, 2012** resolution<sup>4</sup> of the Court of Appeals (CA) of Cebu City in CA-G.R. CV. No. 02480.

**The Facts**

Maria Remedios Ang (*Ang*) is the registered owner of a single proprietorship business named "Enhance Immigration and Documentation Consultants" (EIDC).

<sup>\*</sup> On Leave.

<sup>1</sup> *Rollo*, pp. 3-33.

<sup>2</sup> Substituted by Enhance Visa Services, Inc. represented by Ma. Eden R. Dumont.

<sup>3</sup> *Rollo*, pp. 38-48. Penned by CA Executive Justice Pampio A. Abarintos and concurred in by Associate Justices Gabriel T. Ingles and Melchor Q. C. Sadang.

<sup>4</sup> *Id.* at 66-67.

On December 16, 2004, Ang executed a “Deed of Assignment of Business Rights” (*Deed*) transferring all of her business rights over the EIDC to Figuera for One Hundred Fifty Thousand Pesos (₱150,000.00).

In addition to the assignment of rights, the parties also agreed that Ang shall pay the bills for electricity, telephone, office rentals, and the employees’ salaries up to the month of December 2004.<sup>5</sup>

Without Ang’s consent, Figuera paid all the utility bills amounting to ₱107,903.21 as of December 2004. On January 17, 2005, Figuera tendered only the amount of ₱42,096.79 to Ang, after deducting the amount paid for the utility bills from the ₱150,000.00 consideration of the Deed.

Ang refused to accept Figuera’s payment. Figuera mailed the Formal Tender of Payment and gave Ang five (5) days to accept the amount. Despite the lapse of the 5-day period, however, Ang still refused to accept the payment.

Thus, Figuera filed a **complaint** for specific performance before the Regional Trial Court (*RTC*), Branch 9 of Cebu City against Ang. Figuera consigned the amount of ₱42,096.79 to the RTC.

In her answer, Ang maintained that the amount due pursuant to the Deed is ₱150,000.00 and not just ₱42,096.79. She argued that she cannot be compelled to accept the amount because it is not what was agreed upon.

On May 19, 2005, Figuera conveyed all her rights, assets, interests, liabilities, and causes of action over EIDC in favor of the Enhance Visa Services, Inc. (EVSI) through a “Deed of Assignment Coupled with Interest.” Thus, on June 14, 2005, EVSI substituted Figuera, on motion, as plaintiff.

### ***The RTC Ruling***

The RTC ruled in Ang’s favor in its decision dated December 28, 2007.

The RTC held that the unambiguous language of the Deed mandates Ang, as the Assignor, to pay the December 2004 utility bills. Figuera, however, paid the utility bills without Ang’s consent.

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<sup>5</sup> Deed of Assignment of Business Rights, par. 3:

“3. X X X It is the essence therefore, that upon execution of this document, the ASSIGNOR is freed by the ASSIGNEE, from all obligations whatsoever in relation to [EIDC], any of its clientele, the government, and all other parties. **However, the ASSIGNOR shall pay for the following bills up to the month of December, 2004: electricity, telephone, office rentals and salaries for the employees.**”

The RTC explained that for the tender of payment and consignation to be valid, Figuera must tender the full amount of ₱150,000.00 rather than just ₱42,096.79. Ang is not obliged to accept an amount less than what is agreed upon in the Deed.

Figuera appealed the RTC decision to the CA and argued that by operation of law, legal subrogation and compensation had taken place. Consequently, Figuera's obligation to the extent of the amount of ₱107,903.21 is extinguished.

### ***The CA Ruling***

In its June 29, 2012 decision, the CA affirmed the RTC's ruling.

The CA held that there is nothing in the Deed that grants Figuera the option to pay the utility bills and to deduct the payment from the agreed consideration in the Deed; thus, the amount of ₱150,000.00 remains as the due consideration from Figuera. Moreover, Figuera failed to prove that Ang consented to the payment of the bills.

The CA added that Figuera's payment of ₱42,096.79 cannot be considered as a valid tender of payment or a valid consignation because it is insufficient to cover the consideration due to Ang.

As for the other issues and arguments which Figuera failed to raise before the RTC, the CA held that these issues cannot be raised for the first time on appeal.

Figuera sought reconsideration of the CA's decision which the CA denied for lack of merit in its September 28, 2012 resolution.

### **The Parties' Arguments**

In the present petition for review, Figuera challenges the CA's decision and resolution affirming the RTC ruling.

Figuera argues that the CA committed errors of law based on the following grounds: *First*, Figuera was eager to pay the utility bills being the EIDC's new owner.

*Second*, Figuera had been subrogated to the rights of Ang's creditor's (*i.e.*, the Telephone Company, electric company, office space lessor, and company employees) upon payment of the utility bills even if the payment was made without Ang's knowledge. Consequently, Ang became Figuera's debtor.

*Third*, Figuera and Ang became debtors and creditors of one another for a sum of money that is liquidated, due, demandable, and without controversy.

*Fourth*, Figuera and Ang's obligations amounting to ₱107,903.21 were compensated against each other by operation of law.

*Fifth*, Figuera's tender of the amount of ₱42,096.79 to Ang is a valid tender of payment.

*Sixth*, Figuera validly consigned the amount of ₱42,096.79.

*Finally*, Figuera presented the foregoing issues before the RTC and did not raise them for the first time on appeal.

In her comment,<sup>6</sup> Ang argued that: *first*, a petition for review under Rule 45 of the Rules of Court only allows questions of law. Figuera's contention that legal subrogation and compensation took place requires proof that should have been established during the trial.

*Second*, Figuera admitted that the RTC was correct in ruling that there was nothing in the Deed that grants her the option to pay the utilities nor allows any deduction from the agreed consideration upon her payment of the utility bills.

*Third*, legal subrogation cannot take place because the situation of the parties under the Deed is not among the instances provided by law for subrogation to take place.

*Fourth* and last, Figuera should not be allowed to raise issues regarding legal subrogation and compensation because these were raised for the first time on appeal.

### **The Issue**

The main issue to be resolved in this case is whether or not there was a valid tender of payment and consignment.

### **Our Ruling**

**We grant the petition and reverse the CA's ruling.**

***The questions raised in this petition are one of law which the Court can properly review.***

It is a settled rule that the Court cannot review questions of fact on a petition for review under Rule 45 of the Rules of Court. A question of fact

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<sup>6</sup> Rollo, pp. 79-89.

exists when the truth or falsity of the parties' factual allegations is in dispute. A question of law, on the other hand, exists when the application of the law on the stated facts is in controversy.<sup>7</sup>

The parties' description of the questions raised does not determine whether these questions are of fact or of law. The true test is whether the appellate court can resolve the issue without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.<sup>8</sup>

Contrary to Ang's allegation, the question involved in the present case is a question of law which the Court can properly pass upon. There is no dispute regarding the existence of the Deed and its consideration, and the provision that mandates Ang to pay the EIDC's bills until December 2004. Ang also did not refute Figuera's payment amounting to ₱107,903.21 to Ang's creditors and Figuera's tender of payment to Ang amounting to ₱42,096.79.

The CA can assess Figuera's contention that legal subrogation and compensation had taken place even without requiring Figuera to present further evidence. The issue on the validity of Figuera's tender of payment and consignment can be resolved through the application of the relevant laws.

***The Court may properly address the questions raised even though they are raised for the first time on appeal.***

Ang contends that the CA correctly dismissed Figuera's argument that her debt amounting to ₱107,903.21 is extinguished through legal subrogation and compensation. Figuera's argument, Ang insists, was not raised before the trial court and cannot be raised for the first time on appeal.

**We disagree.** The Court grants to consider and resolve the issues on the application of legal subrogation and compensation, even though it was raised for the first time on appeal.

As a general rule, points of law, theories, and arguments not brought before the trial court cannot be raised for the first time on appeal and will not be considered by this Court; otherwise, a denial of the respondent's right to due process will result.<sup>9</sup>

In the interest of justice, however, the Court may consider and resolve issues not raised before the trial court if it is necessary for the complete

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<sup>7</sup> *Bognot v. RRI Lending Corp.*, G.R. No. 180144, September 24, 2004, [sc.judiciary.gov.ph](http://sc.judiciary.gov.ph).

<sup>8</sup> *Century Iron Works, Inc. v. Banas*, G.R. No. 184116, June 19, 2013, 699 SCRA 157.

<sup>9</sup> *Tolosa v. NLRC*, 449 Phil. 271 (2003).

adjudication of the rights and obligations of the parties, and it falls within the issues found by the parties.<sup>10</sup>

Thus, an appellate court is clothed with authority to review rulings even if they are not assigned as errors in the appeal in the following instances:

- (a) grounds not assigned as errors but affecting jurisdiction over the subject matter;
- (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law;
- (c) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice;
- (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored;
- (e) matters not assigned as errors on appeal but closely related to an error assigned; and
- (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.<sup>11</sup>

Figuera's position falls under two of these exceptions, namely – that **the determination of the question newly raised is necessary in arriving at a just decision and complete resolution of the case, and that the resolution of a question properly assigned is dependent on those which were not assigned as errors on appeal.**

For the CA to rule on whether there was a valid tender of payment and consignment, it must first determine the amount that Figuera should have tendered. To do so, the appellate court must examine whether the principles of legal subrogation and compensation, as Figuera argued, should be applied.

To recall, Figuera claims that the consideration for the assignment worth ₱150,000.00 should be reduced by ₱107,903.21, representing the amount that she paid for the EIDC's utility bills. Figuera argues that her payment of the utility bills subrogated her to the rights of Ang's creditors against Ang.

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<sup>10</sup> *Trinidad v. Acapulco*, G.R. No. 147477, June 27, 2006, 493 SCRA 179.

<sup>11</sup> *Mendoza v. Bautista*, G.R. No. 143666, March 18, 2005, 453 SCRA 692. *See also* Sec. 8, Rule 51 of the Rules of Court.

Article 1291 of the New Civil Code<sup>12</sup> provides that the subrogation of a third person to the rights of the creditor is one of the means to modify obligations. Subrogation, sometimes referred to as substitution, is “an arm of equity that may guide or even force one to pay a debt for which an obligation was incurred but which was in whole or in part paid by another.”<sup>13</sup> It transfers to the person subrogated the credit, with all the rights appertaining thereto, either against the debtor or against third persons.<sup>14</sup>

Subrogation of a third person in the rights of a creditor may either be legal or conventional.<sup>15</sup> There is legal subrogation when: (a) a creditor pays another preferred creditor, even without the debtor’s knowledge; (b) a third person who is not interested in the obligation pays with the express or tacit approval of the debtor; and (c) a person interested in the fulfilment of the obligation pays, even without the knowledge of the debtor.<sup>16</sup>

In the present case, Figuera based her claim on the third type of subrogation. She claims that as the EIDC’s new owner, she is interested in fulfilling Ang's obligation to pay the utility bills. Since the payment of the bills was long overdue prior to the assignment of business rights to Figuera, the failure to settle the bills would eventually result in “the disconnection of the electricity and telephone services, ejectment from the office premises, and resignation by some, if not all, of the company’s employees with the possibility of subsequent labor claims for sums of money.”<sup>17</sup> **These utilities are obviously necessary for the continuation of Figuera’s business transactions.**

A person interested in the fulfilment of the obligation is one who stands to be benefited or injured in the enforcement of the obligation. The Court agrees with Figuera that **it became absolutely necessary for her to pay the bills since Ang did not do so when the obligation became due.**

We note that both the RTC and the CA held that Figuera failed to prove that Ang had consented to the payment of the EIDC bills; therefore, Figuera cannot deduct the amount she paid for the utility bills from the ₱150,000.00 consideration.

A clear reading, however, of Article 1302 of the New Civil Code would lead to a different conclusion. **The consent or approval of the debtor is required only if a third person who is not interested in the fulfilment of the obligation pays such. On the other hand, no such requirement exists in cases of payment by a creditor to another creditor**

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<sup>12</sup> Article 1291. Obligations may be modified by: (1) Changing their object or principal conditions; (2) Substituting the person of the debtor; and (3) Subrogating a third person in the rights of the creditor.

<sup>13</sup> *Fireman’s Fund Insurance Company v. Jamila & Company, Inc.*, G.R. No. L-27427, April 7, 1976, citing *Fireman’s Fund Indemnity Co. vs. State Compensation Insurance Fund*, 209 Pac. 2d 55, 70 SCRA 323.

<sup>14</sup> Art. 1303, NCC.

<sup>15</sup> Art. 1300, *id.*

<sup>16</sup> Art. 1302, *id.*

<sup>17</sup> *Rollo*, p. 14.

**who is preferred, and by a person interested in the fulfilment of the obligation.** Notably, Article 1302 (1) and (3) does not require the debtor's knowledge.

Therefore, legal subrogation took place despite the absence of Ang's consent to Figuera's payment of the EIDC bills. Figuera is now deemed as Ang's creditor by operation of law.

On Figuera's argument that legal compensation took place, and in effect, extinguished her obligation to Ang to the extent of the amount Figuera paid for the EIDC bills, Article 1278 of the New Civil Code is instructive.

Article 1278 of the New Civil Code states that there is compensation when two persons, in their own right, are creditors and debtors of one another. These elements must concur for legal compensation to apply: (1) each one of the debtors is bound principally, and that the debtor is at the same time a principal creditor of the other; (2) both debts consist of a sum of money, or if the things due be consumable, they be of the same kind and also of the same quality if the latter has been stated; (3) both debts are due; (4) both debts are liquidated and demandable; and (5) there be no retention or controversy over both debts commenced by third persons and communicated in due time to the debtor.<sup>18</sup> When all these elements are present, compensation takes effect by operation of law and extinguishes both debts to the corresponding amount, even though both parties are without knowledge of the compensation.<sup>19</sup> It operates even against the will of the interested parties and even without their consent.<sup>20</sup>

**We find that all the elements of legal compensation are present in this case.**

*First*, in the assignment of business rights, Figuera stood as Ang's debtor for the consideration amounting to ₱150,000.00. Figuera, on the other hand, became Ang's creditor for the amount of ₱107, 903.21 through Figuera's subrogation to the rights of Ang's creditors against the latter.

*Second*, both debts consist of a sum of money, which are both due, liquidated, and demandable.

*Finally*, neither party alleged that there was any claim raised by third persons against said obligation.

**In effect, even without the knowledge and consent of Ang or Figuera, their obligation as to the amount of ₱107,903.21 had already been extinguished.** Consequently, Figuera owes Ang the remaining due amount of ₱42,096.79.

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<sup>18</sup> Art. 1279, NCC.

<sup>19</sup> Art. 1290, id.

<sup>20</sup> *BPI v. CA*, G.R. No. 116792, March 29, 1996, 255 SCRA 571.



While the RTC and the CA correctly held that there was nothing in the Deed that grants Figuera an option to pay the utility bills and to deduct the amount from the consideration, we stress that although not expressly written, laws are deemed incorporated in every contract entered within our territories. Thus, the Court reads into the Deed the provisions of law on subrogation and compensation.

With the determination of the amount of Figuera's obligation to Ang, the question left to be resolved is: *Was there a valid tender of payment and consignation?*

Tender of payment is the act of offering to the creditor what is due him, together with the demand for the creditor to accept it. To be valid, the tender of payment must be a "fusion of intent, ability, and capability to make good such offer, which must be absolute and must cover the amount due."<sup>21</sup>


As earlier discussed, the remaining amount due in Figuera's obligation is ₱42,096.79. **Thus, Figuera's tender of the remaining amount to Ang is valid and Ang offered no valid justification in refusing to accept the tender of payment. Due to the creditor's refusal, without any just cause, to the valid tender of payment, the debtor is released from her obligation by the consignation of the thing or sum due.**<sup>22</sup>

**WHEREFORE,** the Court **GRANTS** the petition for review on *certiorari*. The decision dated June 29, 2012 and resolution dated September 28, 2012 of the Court of Appeals in CA-G.R. CV. No. 02480 are hereby **REVERSED**.

**SO ORDERED.**

  
ARTURO D. BRION  
Associate Justice

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

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<sup>21</sup> *Far Eastern Bank v. Diaz Realty, Inc.*, G.R. No. 138588, August 23, 2001, 363 SCRA 659.  
<sup>22</sup> Art. 1256, NCC.


(On Leave)  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

  
**MARVIC M.V.F. LEONEN**  
Associate Justice


#### ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

#### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice