

BOHOL
City of Tagbilaran

ANDREW ESGUERRA and
EVANGELINE ESGUERRA, For
Herself and as Attorney-in-Fact.
Plaintiffs.

DARAB CASE NO. VII-BOH-547-2004
For. EJECTMENT

-VERSUS-

NICOLAS YBAÑEZ.
Defendant.

-----/

SHERIFF'S REPORT

Last March 27, 2004 undersigned went to the Municipal Agrarian Reform Office in Ubay, Bohol in order to conduct an execution conference with the parties of this case who were also present at that time, together with Saturnino Lusterio, the Defendant's counsel and a DAR Technologist and hersunder are the events occurred relative thereto:

1. That undersigned explained fully to parties the purpose of the said conference to the parties;
2. Defendant interposed no objection regarding his eviction of the two (2) houses, and likewise allowed the plaintiff to occupy the said houses;
3. Then the revision of leasehold contract ensued thereafter.

In light of the foregoing, the herein execution although substantially complied but fully satisfied.

30th day of March 2006, City of Tagbilaran, Philippines

Respectfully submitted by,

DONALD S. DORON
COB/Sheriff III

B O H O L
City of Tagbilaran

ANDREW ESGUERRA and
EVANGELINE ESGUERRA, For
Herself and as Attorney-in-Fact,
Plaintiffs,

-versus-

DARAB CASE NO. VII-BOH-547-2004

For: EJECTMENT

NICOLAS YBAÑEZ,

Defendant.

x-----/

WRIT OF EXECUTION

TO: Donald S. Doron
Acting Clerk of the Board/Sheriff III
DARAB Office, DARPO
Province of Bohol

WHEREAS, The Department of Agrarian Reform Adjudication Board (DARAB), after hearing the above-captioned case, rendered a Decision dated 28th October 2005, the dispositive portion of which reads:

WHEREFORE, premises considered, the Complaint filed on 11 August 2004 by petitioners Andrew Esguerra and Evangeline Esguerra seeking to eject respondent Nicolas Ybañez from a parcel of land covered by Tax Declaration No. 45-007-00518 with a area of 9,902 square meters located at Barangay Bood, Ubay, Bohol, is hereby DISMISSED.

We AFFIRM our ruling in DARAB Case No. VII-BOH-414-2003 and the subject agreement by the parties during a conference held on 25 October 2004 at the DAR Municipality Office, Ubay, Bohol.

Respondent Nicolas Ybañez, his agents, assigns or any person acting for and in his behalf are DIRECTED to immediately vacate the two (2) residential structures constructed within subject property and turn over the physical possession of the same to the petitioners.

The Municipal Agrarian Reform Officer (MARO) of Ubay, Bohol, is hereby DIRECTED to assist the parties in execution of a revised leasehold contract or a new leasehold contract that shall embody the terms and conditions mutually agreed upon by them regarding payment of lease rentals with respect to the coconut, mango and other crops that are found in the property in accordance with prevailing laws and rules. The MARO of Ubay, Bohol, is further DIRECTED to submit a report within ten (10) days from termination of any action undertaken pursuant to this Decision.

SO ORDERED. (*States mine*)

WHEREAS, the Clerk of the Board, DARAB Office, Tagbilaran City issued a Certification dated 09 January 2006 stating that the Order/Decision of the above-entitled case has become final and executory, the pertinent portion of which announced:

CERTIFICATION
(Finality of Judgment)

*THIS IS TO CERTIFY that the ORDER/DECISION of the
above-entitled case has become FINAL and EXECUTORY there being
NO APPEAL taken or any MOTION FOR RECONSIDERATION filed
within the reglementary period provided for by the RULES. (Italics mine)*

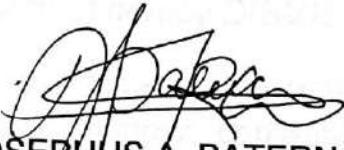
x x x

WHEREAS, this Board finds the Motion for Writ of Execution proper pursuant to Section 1, Rule XX of the DARAB 2003 Rules of Procedure;

WHEREFORE, premises considered, DARAB Acting Clerk of the Board/Sheriff III, Donald S. Doron, is hereby DIRECTED to enforce and implement the aforementioned Decision dated 28th October 2004 and to submit a report thereafter consistent with Rule XX of the DARAB 2003 Rules of Procedures.

SO ORDERED.

13th day of March 2006, DARAB Office, City of Tagbilaran, Philippines.


JOSEPHUS A. BATERNA
Provincial Agrarian Reform Adjudicator

ANDREW ESGUERRA and
EVANGELINE ESGUERRA, For
Herself and as Attorney-in-Fact,
Plaintiffs.

DATE 3/9/06
NAME 9
TIME 2:16

DARAB Case No. VII-BOH-547-2004

For:

EJECTMENT

- versus -

NICOLAS YBAÑEZ,
Defendant.

X-----/

MOTION FOR EXECUTION

COME NOW the plaintiffs, through counsel, unto this Honorable Board most respectfully moves for the execution of its judgment and further states that:

1. That on October 28, 2005, the Honorable Board promulgated a Decision, the dispositive portion of which reads:

"Respondent Nicolas Ybanez, his agents, assigns or any person acting for and in behalf are DIRECTED to immediately vacate the two (2) residential structures constructed within subject property and turn over the physical possession of the same to the petitioners."

"The Municipal Agrarian Reform Officer (MARO) of Ubay, Bohol, is hereby DIRECTED to assist the parties in the execution of a revised leasehold contract or a new leasehold contract that shall embody the terms and conditions mutually agreed upon by them regarding payment of lease rentals with respect to the coconut, mango and other crops that are found in the property in accordance with prevailing laws and rules. The MARO of Ubay, Bohol is further DIRECTED to submit a report within ten (10) days from termination of any action undertaken pursuant to this Decision."

2. That the said Decision has become final and executory after the lapse of sufficient time. However, defendant did not comply the same.

WHEREFORE, in view of the foregoing, plaintiffs most respectfully pray unto this Honorable Board to order the immediate execution of its Decision promulgated on 28 October 2005. Other relief and remedies just and equitable under the premises are likewise prayed for.

Tagbilaran City, Philippines; March 9, 2006.


DONI D. PIQUERO

Counsel for the Plaintiffs

#35 M. Parras St., Tagbilaran City

PTR No. 6572260 - 01/02/2006; IBP Lifetime No. 466996

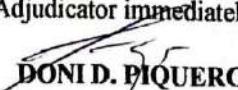
Roll No. 40853

The Clerk

Office of the Provincial Land Reform Adjudicator
Province of Bohol, Region VII
2nd Floor BODARE Bldg., JA Clarin St, Tagbilaran City

Sir/Madam:

Kindly submit the foregoing to the Honorable Adjudicator immediately upon receipt for its kind consideration and resolution. Thank you.


DONI D. PIQUERO

Copy furnished by registered mail:

SATURNINO LUSTER
MARO, Ubay, Bohol

REGISTRY RECEIPT

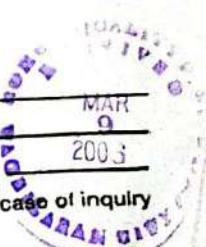
Post Office _____ MAR _____

Letter/Package No. 4370 MAR 9

Posted on 20 MAR 2003

Preserve this receipt for reference in case of inquiry

Postmaster/Teller



DEPARTMENT OF AGRARIAN REFORM
ADJUDICATION BOARD
B O H O L
city of Tagbilaran

ANDREW ESGUERRA and
EVANGELINE ESGUERRA, For
Herself and as Attorney-in-Fact,

Plaintiffs,

-versus-

DARAB CASE NO. VII-BOH-547-2004

For: EJECTMENT

NICOLAS YBAÑEZ,
Defendant..
x-----/

Certificate of Finality

This is to certify that a DECISION of the above-entitled case has become FINAL and EXECUTORY there being NO APPEAL taken or any MOTION FOR RECONSIDERATION filed within the reglementary period provided for by the RULES.

This certification is issued this 09th day of January 2006 at the Department of Agrarian Reform Adjudication Board Office, 2nd floor, BODARE Bldg., Dao District, J. A. Clarin Street, City of Tagbilaran, Philippines.


DONALD S. DORON
Acting Clerk of the Board/Sheriff III

Received by:

Cristie Bangcac

DEPARTMENT OF AGRARIAN REFORM
ADJUDICATION BOARD
BOHOL
City of Tagbilaran

ANDREW ESGUERRA and EVANGELINE
ESGUERRA,
Petitioners,

-versus-

DARAB CASE NO. VII-BOH-547-2004

FOR: EJECTMENT

NICOLAS YBAÑEZ,
Respondent.
X-----/

NOTICE OF ORDER/DECISION

TO:

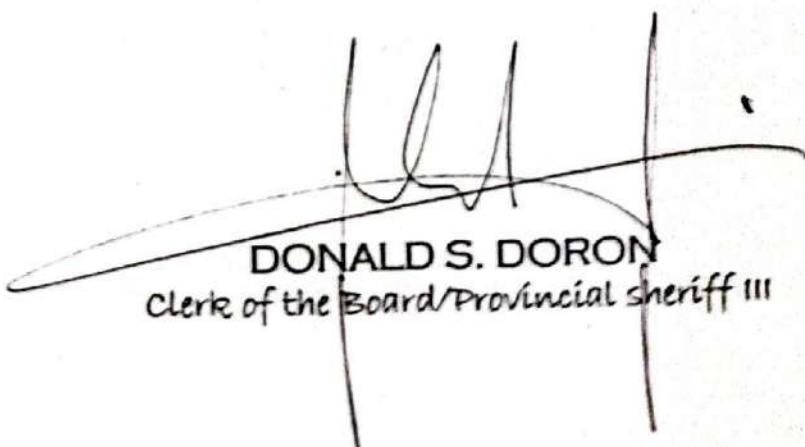
Mrs. Evangeline Esguerra &
Mr. Andrew Esguerra
Atty. Saturnino Lusterio
Municipal Agrarian Reform Officer
Atty. Doni D. Piquero
Mr. Nicolas Ybañez

- Bood, Ubay, Bohol
- DAR Office, Ubay, Bohol
- DLR Mun. Office, Clarin, Bohol
- 35 M. Parras St., Tagbilaran City
- Bood, Ubay, Bohol

G r e e t i n g s :

Please be informed that an Order/Decision of the above-entitled case has been issued by this Honorable Board, a copy of which is hereto attached for your proper guidance and due information.

WITNESS THE HONORABLE DARAB ADJUDICATOR, JOSEPHUS A. BATERNA,
this 28th day of October 2005, Tagbilaran City, Philippines.


DONALD S. DORON
Clerk of the Board/Provincial Sheriff III



PROVINCE OF BOHOL, REGION VII
2nd Floor BODARE Building (Beside Capitol Annex)
J.A. Clarin Street, Dao District, Tagbilaran City
Tel. No.: (038) 235-3560 / Fax No.: (038) 235-4243

ANDREW ESGUERRA and
EVANGELINE ESGUERRA,
Petitioners,

- versus -

DARAB CASE NO. VII-BOH-547-2004
For: Ejectment

NICOLAS YBAÑEZ,
Respondent.
x-----x

Promulgated:
OCT 28 2005

DECISION

For consideration is a Complaint filed on 11 August 2004 by petitioners Andrew Esguerra and Evangeline Esguerra seeking to eject respondent Nicolas Ybañez from a parcel of land covered by Tax Declaration No. 45-007-00518. Said parcel of land has an area of 9,902 square meters located at Barangay Bood, Ubay, Bohol.

The antecedent facts are set forth below.

Petitioners Andrew Esguerra and Evangeline Esguerra are the co-owners of subject property. On 11 September 1995, petitioner Andrew Esguerra and respondent Nicolas Ybañez entered into an agricultural leasehold contract denominated as "PANAGSABUTAN ALANG SA ABANG SA YUTA." The said contract specified that respondent Ybañez obligated himself to pay ten (10) sacks of *palay* for the *panuig* cropping season and seven (7) sacks of *palay* for the *pangulilang* cropping season. Each sack should weigh forty-two (42) kilos.

On 5 June 2003, herein petitioners filed a case for Collection of Rentals and Damages against respondent Ybañez for his alleged failure to pay his obligations pursuant to their leasehold contract. It was alleged that the respondent has already incurred arrears amounting to forty-eight (48) sacks of *palay* as of the *pangulilang* cropping season of 2003. The case was docketed as DARAB Case No. VII-BOH-414-2003.

"WHEREFORE, premises considered, the Complaint dated 5 June 2003 filed by petitioner Andrew Esguerra is hereby **GRANTED** with respect to the claim for payment of forty-eight (48) sacks of *palay* representing the lease rental up to the *pamig* cropping season of 2003. The said obligation shall be paid on top of respondent's regular lease rental obligation amounting to seven (7) sacks for the *pangulilang/pangamihan* cropping season and ten (10) sacks for the *pamig* cropping season.

The Municipal Agrarian Reform Officer (MARO) of Ubay, Bohol, is **DIRECTED** to assist the parties in executing an agreement as to the manner in which the cited obligation of respondent Nicolas Ybañez shall be complied. In this regard, the MARO of Ubay, Bohol, is **DIRECTED** to call the parties for a conference regarding this matter within thirty (30) days from receipt of this Order. He is further **DIRECTED** to submit a report of compliance to this Office within five (5) days from termination of any proceeding as herein indicated.

No pronouncement as to cost and other reliefs prayed for.

SO ORDERED."

No motion for reconsideration of, or an appeal from, said Decision has been filed by either of the parties.

Subsequently, herein petitioners filed the present case for ejectment alleging that respondent Nicolas Ybañez failed to pay his lease rentals pursuant to their leasehold contract. In addition, herein respondent allegedly committed the following violations: (1) construction of residential structures within subject property; and (3) non-sharing of other crops.

In the course of the hearing of this case, this Office issued an Order on 12 October 2004 for the conduct of an ocular inspection of subject property. On 9 November 2004, the DARAB Sheriff who conducted the ocular inspection submitted a Sketch Map indicating the various crops and improvements on subject property. The same Sketch Map shows that there are three (3) residential structures built in the property with a combined total area of seventy-four (74) square meters, more or less.

After the presentation of evidence for both parties, this Office issued an Order dated 5 February 2005 directing the parties to submit their respective Position Papers. Counsel for the respondent complied with the Order on 11 March 2005 while counsel for the respondent submitted his Position Paper on 13 April 2005.

There is no doubt that herein respondent Nicolas Ybañez is an agricultural tenant of subject property. This is clearly established by the leasehold contract executed by the parties dated 11 September 1995.

Herein petitioners, however, claim that respondent Nicolas Ybañez committed acts that violated said leasehold contract. In their Complaint and Position Paper, said acts are as follows:

1. Failure to pay lease rentals;
2. Construction of residential structures within subject property; and
3. Non-sharing of the produce of the other crops.

The contentions of the petitioners are without merit.

As regards the non-payment of lease rentals, we note with dismay that this matter has already been resolved by this Office in our Decision dated 9 August 2004 in DARAB Case No. VII-BOH-414-2003. In the said Decision, we declared that:

"x x x

There is likewise no question that herein respondent incurred arrears in its obligation to pay the corresponding lease rental to the petitioner. As admitted in his Answer, respondent's arrears have reached forty-eight (48) sacks of *palay* as of the *pangulilang* season of year 2003. The said arrears were incurred in 1998 and the *pangulilang* of 2000 and 2003. He further incurred arrears for the cropping seasons of 2002 due to the refusal of the landowner to accept the lease rental.

In this regard, the Court of Appeals in *Villanueva vs. Mendoza*, CA-G.R. No. 06612-SP (17 June 1977) that:

‘It devolves upon agricultural lessee, as his legal obligation, to pay the lease rental when it falls due. A lessee cannot be authorized to remain in the possession and cultivation of landholding without giving the landowner his share in the produce, for the law recognizes the basic right of landowner to enjoy his legitimate share in the produce of his property.’

A concomitant issue arises, however, on whether or not herein respondent's non-payment of lease rentals in 1998 and the *pangulilang* of 2000 and 2003 violated the agricultural leasehold contract between the

amended by RA No. 6389, provides:

'Sec. 36. Possession of Landholding;
Exceptions. — Notwithstanding any agreement as to the period or future surrender of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:

x x x

(6) The agricultural lessee does not pay the lease rental when it falls due: Provided, That if the non-payment of the rental shall be due to crop failure to the extent of seventy-five per centum as a result of a fortuitous event, the non-payment shall not be a ground for dispossession, although the obligation to pay the rental due that particular crop is not thereby extinguished; or

x x x" (Emphasis and underscoring supplied)

In the case at hand, a Certification dated 23 September 2003 issued by Melecia A. Butawan, Agricultural Technologist, Municipal Agriculture Office of Ubay, Bohol, states that respondent Nicolas Ybañez "has no harvest of his planted ricefield due to EL NIÑO PHENOMENON, that severely hit the province of Bohol last November, 1997 to April, 1998 (during dry season) and on July, 1998 to November, 1998 (Wet Season)." This aptly explained the non-payment of lease rental for 1998.

For the *pangulilang* of 2000 and 2003, herein respondent claims that his non-payment of the lease rental was due to the fact a *palay* disease ("Tongro") devastated his harvest. Besides his bare allegation, no evidence was presented to prove said claim as a fact. Be that as it may, we hold that his failure to pay the lease rentals for the cited cropping seasons, standing alone, cannot be considered as a ground to dispossess him as an agricultural tenant of the subject property.

In *Tanedo vs. De la Cruz*, 1 SCRA 1106, the Supreme Court held that "[t]he mere failure of a tenant to pay the landholder's share does not necessarily give the latter the right to eject the former where there is lack of deliberate intent on the part of the tenant to pay."

x x x"

With the foregoing findings, we declared respondent Nicolas Ybañez liable to pay on installment a total of forty-eight (48) sacks of *palay* representing the lease rental up to the *panuig* cropping season of 2003. Said obligation is on top of his regular lease rental of seventeen (17) sacks for each agricultural year. In the same Decision, we directed the MARO of Ubay, Bohol, to assist the parties in the execution of an agreement as to how payment of the back rentals by the respondent shall be complied.

conducted on 25 October 2004. The pertinent portion of said Minutes reads:

X X X

Evangeline Esguerra through the suggestion of her child Jessica Boysillo, suggested that the sixty five (65) sacks *palay* be paid in three (3) installments in successive three (3) cropping up to *pangamihan* 2006.

Hearing Officer – What is the answer of the tenant?

Mr. And Mrs. Nicolas Ybañez – We are willing to pay it in four (4) installments or croppings so that it would be fully paid in *panuig* cropping of 2006.

Hearing Officer – What is the answer of the landowner?

Evangeline Esguerra – We are agreeable that the balance or arrears amounted to sixty five (65) sacks *palay* be fully paid not later than the *panuig* cropping of 2006.

Settled.

In witness whereof, the parties affix their signatures this 25th day of October 2004 at DARMO, Ubay, Bohol.

(Sgd.) Mrs. Evangeline Esguerra
Landowner

(Sgd.) Mr. Nicolas Ybañez
Tenant-Tiller

(Sgd.) Mrs. Antonia Ybañez
Wife of Tenant

(Sgd.) Mrs. Jessica Boysillo
Daughter of Landowner

Witness:

(Sgd.) Saturnino Lusterio
Hearing Officer

(Sgd.) Dorcor Cuyacot
ARPT-DARMO Ubay”

The foregoing agreement forged between respondent Nicolas Ybañez and petitioner Evangeline Esguerra clearly shows that payment of back rentals is already a settled matter. Thus, we find no ground to eject the respondent on the ground of non-payment of lease rentals.

As regards the second ground relied upon in the present Complaint, we likewise rule that the construction of residential structures *per se* is not a valid ground to eject herein respondent Nicolas Ybañez.

It should be pointed out that an agricultural tenant is entitled to a home lot pursuant to Section 24 of Republic Act (RA) No. 3844, as amended by RA No. 6389. Said provision reads:

which shall be considered as included in the leasehold."

Furthermore, Item (3), Section 22 of RA No. 1199, as amended by RA No. 2263, provides:

"Sec. 22. Rights of Tenant:

x x x

(3) The tenant shall have the right to demand for a home lot suitable for dwelling with an area of not more than [three] 3 per cent of the area of his landholding provided that it does not exceed one thousand square meters and that it shall be located at a convenient and suitable place within the land of the landholder to be designated by the latter where the tenant shall construct his dwelling and may raise vegetables, poultry, pigs and other animals and engage in minor industries, the products of which shall accrue to the tenant exclusively. The tenant's dwelling shall not be removed from the lot already assigned to him by the landholder, except as provided in section twenty-six unless there is severance of the tenancy relationship between them as provided under section nine, or unless the tenant is ejected for cause, and only after the expiration of forty-five days following such severance of relationship or dismissal for cause." (Underscoring supplied.)

In the Sketch Map submitted by the DARAB Sheriff, it is indicated that the areas occupied by respondent Ybañez is only seventy-four (74) square meters, more or less; far less than three percent (3%) of the total area of subject property which is 9,902 square meters. One residential structure which has an area of forty-two (42) square meters, more or less, is occupied by respondent Ybañez himself. Another structure with an area of twenty-four (24) square meters, more or less, used to be occupied by the respondent's child; while the other structure with an area of eight (8) square meters, more or less, is occupied by the respondent's parents.

Secondly, said residential structures are occupied by the immediate household of respondent Ybañez who helped him in cultivating subject property. Section 166 (2) of R.A. No. 1199, as amended by R.A. No. 6389, defines an "agricultural lessee" as follows:

(2) "Agricultural lessee" means a person who, by himself and with the aid available from within his immediate farm household, cultivates the land belonging to, or possessed by another with the latter's consent for purposes of production, for a price certain in money or in produce or both. It is distinguished from civil law lessee as understood in the Civil Code of the Philippines." (Underscoring supplied)

In *Gabriel vs. Pangilinan*, 58 SCRA 590, the Supreme Court held that:

are included in the term "immediate farm household."

Thirdly, the construction of said residential structure did not, in any way, destroy the agricultural nature of subject property. Said structures were constructed in idle lots within the property.

The petitioner, however, is correct in asserting that only one homelot should be occupied by respondent Ybañez and his immediate farm household. Hence, he and any member of his farm household occupying the same should immediately vacate the other two (2) residential structures. They should confine their homelot occupation to any of the three (3) residential structures built within the property subject to the limitations provided under Section 22 of R.A. No. 1199. The pertinent provisions of the New Civil Code on builders in bad faith should analogously apply as regards the other two (2) residential structures.

As regards non-payment of lease rentals on the other crops planted within subject property, we also do not consider it as a valid ground to eject herein respondent.

We note that besides rice which is the main crop of subject property, there are also around twenty (20) coconut trees, six (6) mango trees and several *gemelina* trees in the area. There is no written agricultural leasehold contract executed between the parties on how the produce of the mentioned crops shall be shared between the parties. The existing leasehold contract between the parties only refers to their agreement as regards the planting of *palay*. Hence, we can hardly ascribe any gross violation on the part of respondent Ybañez in this regard when no clear proof has been established on the manner by which the proceeds of said crops should be shared by the parties. What is clear is that herein respondent delivered quantities of the mango harvest to the petitioners.¹

Nevertheless, respondent Ybañez has the obligation to share the proceeds of the coconut trees and the mango trees to the petitioners. To clarify this matter, a provision in their existing leasehold contract or separate leasehold contracts should be executed by the parties.

¹ Exhibits "3" and "4"

seeking to eject respondent Nicolas Ybañez from a parcel of land covered by Tax Declaration No. 45-007-00518 with an area of 9,902 square meters located at Barangay Bood, Ubay, Bohol, is hereby **DISMISSED**.

We **AFFIRM** our ruling in DARAB Case No. VII-BOH-414-2003 and the subsequent agreement by the parties during a conference held on 25 October 2004 at the DAR Municipal Office, Ubay, Bohol.

Respondent Nicolas Ybañez, his agents, assigns or any person acting for and in his behalf are **DIRECTED** to immediately vacate the two (2) residential structures constructed within subject property and turn over the physical possession of the same to the petitioners.

The Municipal Agrarian Reform Officer (MARO) of Ubay, Bohol, is hereby **DIRECTED** to assist the parties in the execution of a revised leasehold contract or a new leasehold contract that shall embody the terms and conditions mutually agreed upon by them regarding payment of lease rentals with respect to the coconut, mango and other crops that are found in the property in accordance with prevailing laws and rules. The MARO of Ubay, Bohol, is further **DIRECTED** to submit a report within ten (10) days from termination of any action undertaken pursuant to this Decision.

SO ORDERED.

Tagbilaran City, Philippines.



JOSEPHUS A. BATERNA
Provincial Agrarian Reform Adjudicator

Copy furnished:

1. **MRS. EVANGELINE ESGUERRA**
MR. ANDREW ESGUERRA
Bood, Ubay, Bohol
2. **ATTY. DONI D. PIQUERO**
Counsel for the Petitioners
No. 35 M. Parras Street, Tagbilaran City

3. **MR. NICOLAS YBAÑEZ**
Bood, Ubay, Bohol
4. **MR. SATURNINO P. LUSTERIO**
Counsel for the Respondent
DAR Municipal Office
Ubay, Bohol
5. **THE MUNICIPAL AGRARIAN REFORM OFFICER**
DAR Municipal Office
Ubay, Bohol

ANDREW ESGUERRA and
EVANGELINE ESGUERRA, For
Herself and as Attorney-in-Fact,
Plaintiffs.

DARAB Case No. VII-BOH-547-2004
For:
EJECTMENT

- versus -

NICOLAS YBAÑEZ,
Defendant.
x-----/

POSITION PAPER

COMES NOW the Plaintiffs, by the undersigned counsel, unto this Honorable Board, most respectfully submits this Position Paper:

FACTS OF THE CASE

On 11 September 1995, ANDREW ESGUERRA (Plaintiff) and NICOLAS YBAÑEZ (Defendant) entered into a leasehold contract over a parcel of land located in Bood, Ubay, Bohol covered by Tax Declaration No. 45-007-00518, which is still in the name of the late father of the Plaintiff. Copy of the said Tax Declaration is attached to the Complaint.

In that contract, Defendant obligated himself to deliver four hundred twenty (420) kilos of rice for the first cropping and two hundred ninety-four (294) kilos of rice for the second cropping every year to the Plaintiff.

Defendant reneged on his promise to religiously pay the rentals due herein. Plaintiffs reason why Plaintiffs filed a case for Collection of Rentals and Damages before this Honorable Office and docketed herein as Case No. VII-BOH-414-2003 on June 5, 2003. In that case Defendant was found to be in arrears in a Decision promulgated on 9 August 2004.

Furthermore, defendant built two (2) residential houses for his children, other than his residential house without asking permission from the plaintiffs.

case was filed when defendant delivered mango fruits to the son of the plaintiff.

ISSUES

WHETHER OR NOT DEFENDANT SHOULD BE EJECTED FROM THE LAND OF THE PLAINTIFFS

WHETHER OR NOT DEFENDANT HAVE THE RIGHT TO BUILD RESIDENTIAL BUILDINGS FOR HIS CHILDREN AND ALLOW THEM TO STAY THEREIN

WHETHER OR NOT DEFENDANT SHOULD BE MADE TO SHARE TO THE PLAINTIFF THE FRUITS OF THE PLANTS PLANTED TO THE LAND OF THE PLAINTIFF

ARGUMENTS AND DISCUSSION

Considering that the issues are inter-related, we shall discuss the issues together.

Section 36 of RA 3844, as amended provides, thus:

Sec. 36. Possession of Landholding; Exceptions. Notwithstanding any agreement as to the period or future surrender of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:

- (1) The agricultural lessor-owner or a member of his immediate family will personally cultivate the landholding or will convert the landholding, if suitably located, into residential, factory, hospital or school site or other useful non-agricultural purposes: Provided, That the agricultural lessee shall, be entitled to disturbance compensation equivalent to five years rental on his landholding in addition to his rights under Sections twenty-five and thirty-four, except when the land owned and leased by the agricultural lessor is not more than five hectares, in which case instead of disturbance compensation the lessee may be entitled to an advanced notice of at least one agricultural year before ejectment proceedings are filed against him: Provided, further, That should the landholder not cultivate the land himself for three years or fail to substantially carry out such conversion within one year after the dispossession of the tenant, it shall be presumed that he acted in bad faith and the tenant shall have the right to demand possession of the land and recover damages for any loss incurred by him because of said dispossession;
- (2) the agricultural lessee failed to substantially comply with any of the terms and conditions of the contract or any of the provisions of this Code unless his failure is caused by fortuitous event or force majeure:

determined under paragraph 3 of Section twenty-nine,

(5) the land or other substantial permanent improvement thereon is substantially damaged or destroyed or has unreasonably deteriorated through the fault or negligence of the agricultural lessee;

(6) the agricultural lessee does not pay the lease rental when it falls due. Provided, That if the nonpayment of the rental shall be due to crop failure to the extent of seventy-five per centum as a result of a fortuitous event, the non-payment shall not be a rental due that particular crop year, is not thereby extinguished, or

(7) the lessee employed a sub-lessee on his landholding in violation of the terms of paragraph 2 of Section twenty seven.

It has been the consistent position of the plaintiff that defendant violated the terms and conditions of the leasehold agreement. Defendant built two (2) residential houses in addition to his residence without any permission from the plaintiff. Under the law, a lessee should not build a residential house other than that which he would use for his family. This provision of law was made part of the contract entered into by the plaintiffs and the defendant particularly in paragraph 9 thereof when they stated to the effect that all instructions under RA 3844 as amended by RA 6389 should form part of their contract.

Secondly, defendant was found to be have not paid his rental during the previous case. It is respectfully submitted that his failure to pay the rentals is a ground for ejection. Defendant alleged that he was not able to pay rentals because of "tungro" and el nino. This allegation of the defendant was only made after he was sued by the plaintiffs. Under their agreement he should inform plaintiff of such fact in that year when he suffered these problems. There was no information coming from the defendants about the same in those years. Plaintiff maintains that defendant was able to harvest *palay* during the period when he was in arrears. Granting that there el nino and tungro affected his harvest, he did not suffer any damage at the extent of 75% on his crops as a consequence thereof.

is a clear violation of the law which protects equally the owner of the land who still enjoys the right to be given whatever fruits that may be derived therefrom. This is especially true if the plants that bear these fruits were planted by the owner himself. Defendant's act of harvesting the fruits of the mangoes and coconuts without sharing any to the plaintiff is a clear violation of the law and their contractual agreement.

PRAYER

WHEREFORE, foregoing premises considered, it is most respectfully prayed that the prayers of the plaintiffs in their Complaint please be granted.

Other relief and remedies are likewise prayed for.

Tagbilaran City, Philippines.

April 13, 2005.


DONI D. PIQUERO
Counsel for the Plaintiffs
#35 M. Parras Street, Tagbilaran City, Bohol
PTR. No. 3387043 - 01/03/2005; IBP Lifetime No. 466996
Roll No. 40853

NOTICE

THE CLERK
DARAB, Bohol
Tagbilaran City

Sir/Madam:

Please submit the foregoing Position Paper to the Honorable Board immediately upon receipt for consideration and approval sans presence of counsels and parties.

Thank you.

Copy furnished (by registered mail):


DONI D. PIQUERO
same

SATURNINO LUSTERIO
Municipal Agrarian Reform Office
Ubay, Bohol



ANDREW ESGUERRA, REP. BY
ATTORNEY - IN- FACT, EVANGELINE
ESGUERRA.

3/11/05
NAME: DARAB CASE NO. VJ-BOH-547-2004
JVS

Plaintiff

For:

EJECTMENT

-VERSES-

NICOLAS YBANEZ,

Defendant.

X-----/

POSITION PAPER

Defendant through counsel, to this Honorable Board, most respectfully submit this position paper :

BRIEF STATEMENT OF THE CASE

This is a case for the case of **EJECTMENT** filed by plaintiff Andrew Esquerre represented by his Attorney-in-fact, Evangeline Esquerre over the landholding embraced under Tax Declaration No. 45-007-00518 with an area of .9902 hectare, located at Bood, Ubay, Bohol.

STATEMENT OF FACTS

On September 11, 1995, defendant executed a Leasehold Contract with the landowner to the effect that the rental for the panuig is ten 10 sacks palay and for the pangamihan is seven (7) sacks palay.

Since 1995 up to 1997 defendant religiously gave his rentals to the landowner.

That on the following years defendant submits the summary of rentals as follows:

Calendar Year	Rental (Pangamihan)	Rental (Panuig)	Remarks
1998	7 sks. Palay arrear	10 sks. Arrear	Total of - 17 sks. Palay arrear Due to "El Niño Phenomenon
1999	- complete -	- complete -	- complete -
2000	7 sks. Palay arrear	-complete -	7 sks. Palay arrear Due to Tongro
2001	- complete -	- complete -	- complete -
2002	T.I. delivered to LO 14 sks. palay but LO refused to accept	T.I. delivered to LO. 10 sks. palay but LO refused to accept	17 sks. Palay arrear due to non-accep- tance by LO
2003	7 sks. Palay		7 sks. Palay arrear Due to "Tongro" =====
		Total arrear	48 sks. palay

That the arrears on the pangamihan and panuig croppings of 1998 were incurred due to the "El Niño phenomenon" which is certified to by Mrs. Melecia A. Bulawan, the Agricultural Technologist of barangay Bood and Mrs. Nena B. Alangilan, the Municipal Agricultural Officer of Ubay, Bohol.

Possession of landholding : exceptions .

Notwithstanding any agreement as to the period or future surrender of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding, except when his dispossession has been authorized by the court in a judgment that is final and executory if after due hearing it is shown that:

1. XXX

2. The agricultural lessee failed to substantially comply with any of the terms and conditions of the contract or any of the provisions of this code, unless his failure is caused by fortuitous event or force majeure.

The arrears incurred by the herein tenant-defendant was due to the "El Niño phenomenon" a fortuitous event or force majeure in the later part of 1997 and in the year 1998, wherein not only Bohol province was affected by said phenomenon but almost the whole of Region VII.

This fact was supported by a certification issued by Melecia Butawan the agricultural technologist of said barangay and by Nena Alangilan the Municipal Agricultural Officer of Ubay, Bohol.

That the other arrears were incurred due to "Tongro" a palay disease in the pangamihan of year 2000 and the pangamihan of year 2003.

That the lessee-defendant delivered to the landowner on April 12, 2003 the rental for the pangamihan cropping numbering fourteen (14) sacks palay. Defendant was supposed to give only seven (7) sacks palay as rental for that cropping season but he made it double for the payment of the balance incurred in the year 2000 and during the "El Niño" phenomenon, but the fourteen (14) sacks palay delivered to the landowner were not accepted. This fact was certified by Napoleon Cañeda the BARC chairman and same time Barangay Chairman of barangay Bood, Ubay, Bohol.

That the lessee-defendant also delivered on October 21, 2003 ten (10) sacks palay to the landowner for the rental of the panuig 2002 cropping but the same it was not accepted by the landowner, this fact was also certified by Napoleon Cañeda.

Had the landowner accepted the fourteen (14) sacks palay for the pangamihan and ten (10) sacks palay for the panuig of year 2002 this would total twenty four (24) sacks palay which would lessen his (tenant) arrear.

Defendant is manifesting to pay the arrears. For this panuig 2003 cropping he is intending to give twenty (20) sacks palay, so that only thirty eight (38) sacks are balance to be paid as soon as there enough harvest.

SUPPLEMENT STATEMENT OF FACTS

In the year 1987, there was a mediation conference conducted at DARMO Ubay, between the landowner (plaintiff) and tenant-tiller (defendant) regarding the carabao owned by the plaintiff which the defendant took care for ten years but was taken by the plaintiff with the agreement that now defendant be paid an amount of P7,300.00 or two (2) pesos per day. Of the P7,300.00 only P150.00 was given by the plaintiff to the defendant, so that there is still a balance of P7,150.00 which until now is not paid. (Xerox copy of receipt here to attached)

It is worth emphasizing that the tenant remains unless, otherwise tenancy relationship is extinguished for causes provided by law.

In all cases, a tenant is entitled to security of tenure (Section 7 and 49, RA 1199 as amended by paragraph 3 of Section 6, RA 6657)

The failure of the defendant in not giving the complete rental to the plaintiff-landowner is reasonably justified for it was during the "El Niño" phenomenon" and when the palay was damaged by "Tongro" a known palay disease.

plaintiff-landowners refused to accept the subject rentals.

For the mango fruit share of the landowner the tenant religiously gave her share as testified by Eliza Tumala.

The landowner also received her mango share from the tenant on October 22, 2004.

As to the palay arrears of the tenant, it is now moot and academic for there was already an agreement executed on Aug. 9, 2004, signed by the landowner and the tenant that said arrears be completely paid not later than December, 2006.

PRAYER

WHEREFORE, it is respectfully prayed of this Honorable Board that judgment be rendered:

1. To dismiss the complaint;
2. Directing the complainant to refrain from disturbing the tenant in their peaceful cultivation.

Tagbilaran City, November 12, 2003.



Copy furnished:
By Registered mail

ATTY. DONI B. PIQUERO
Counsel for the Plaintiff
35 M. Parra St. Tagbilaran City

Department of Agrarian Reform
Provincial Agrarian Reform Office
Province of Bohol
Counsel for the Defendant

By:

SATURNINO PALUSTERIO
Legal Officer

VERIFICATION

I NICOLAS YBAÑEZ, hereby state; that I am the defendant in this case; that I have caused this position paper to be prepared; that I have read and understood the contents herein and that the same are true and correct to my knowledge and belief. That I have not commenced any action involving the same issue in the supreme court, Court of Appeals or any other tribunal or agency.

NICOLAS YBAÑEZ
Affiant

2003 at Tan. Copy SUBSCRIBED AND SWORN to before me this 20 day of March, 2005, Bohol, affiant exhibited to me his Community Tax Certificate No. 18357187 issued on March 7, 2005 at Ubay, Bohol.

ATTY. RICARDO L. VILLARES

NOTARY PUBLIC
UNTIL DECEMBER 31, 2005
IBP NO. 545797 - 12/28/04
PTR NO. 3596200 - 1/3/05

Notary Public

Office of the Provincial Agrarian Reform Adjudicator
Province of Bohol, Region VII
2nd Floor BODARE Building (Beside Capitol Annex)
J.A. Clarin Street, Dao District, Tagbilaran City

**ANDREW ESGUERRA and
EVANGELINE ESGUERRA,
For Herself and as Attorney-in-Fact,**
Plaintiffs,

DARAB CASE NO. VII-BOH-547-2004

For: Ejectment

- versus -

NICOLAS YBAÑEZ,

Defendant.

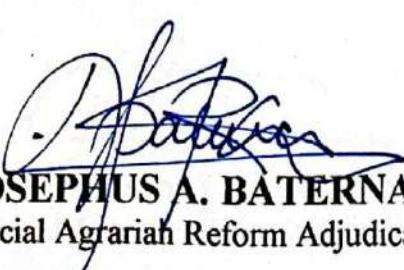
X ----- /

ORDER

When this case was called for hearing, counsels for both parties appeared. Mr. Cirilo Payot was called to the witness stand to clarify the Certification dated November 18, 2003 and pursuant to the Order of this Office dated January 5, 2005. Thereafter, counsel for the respondent formally offered his exhibits and counsel for the petitioners articulated his comments and objections to said exhibits. This Office will issue the corresponding Order with respect to respondent's Formal Offer of Exhibits and petitioner's comments on the same. Thereafter, the parties will submit their respective position papers with thirty (30) days from receipt of the Order. Upon compliance of said Order or upon the lapse of the period as herein provided, the case is deemed submitted for decision. Both parties and counsels are notified of this Order in open session of this Board.

SO ORDERED.

03 February 2005, Tagbilaran City, Philippines.



JOSEPHUS A. BATERNA
Provincial Agrarian Reform Adjudicator



2nd Floor BODARE Building (Beside Capitol Annex)
J.A. Clarin Street, Dao District, Tagbilaran City
Tel. No.: (038) 235-3560 / Fax No.: (038) 235-4243

**ANDREW ESGUERRA,
REP. BY Attorney-in-fact,
EVANGELINE ESGUERRA,
*Plaintiff,***

DARAB CASE NO. VII-BOH-414-2003

For: Collection of Rentals and
Damages

- versus -

NICOLAS YBAÑEZ,

Defendant.

X-----/

TRANSCRIPT

OF STENOGRAPHIC NOTES TAKEN DOWN DURING THE PROCEEDINGS
OF THE ABOVE-ENTITLED CASE HELD AT DARAB OFFICE,
TAGBILARAN CITY ON 3 FEBRUARY 2005

JOSEPHUS A. BATERNA

Presiding Adjudicator

PARAD The hearing of DARAB Case No. VII-
BOH-414-2003 Andrew Esguerra,
petitioner vs. Nicolas Ybañez,
respondent. Appearances please.

appear as counsel for the petitioner Your Honor.

LO Saturnino P. Lusterio -

respectfully appearing as counsel for the respondent Your Honor.

PARAD During the last hearing, counsel for the respondent manifested the issuance of subpoena ad testificandum to Mr. Cirilo Payot to shed light on some documentary evidence presented before this case. On January 17, 2005, this Office issued the appropriate subpoena as requested. This was received by Mr. Payot on January 25, 2005. May we know if Mr. Cirilo Payot is present?

LO Lusterio Yes your Honor.

PARAD Mr. Cirilo Payot is requested to take the witness stand.

Please raise your right hand.

Do you swear to tell the truth and nothing but the whole truth in this investigation?

Answer Yes I do.

PARAD Please state your name and other personal circumstances.

Answer **I'm Cirilo Payot, 37 years old, married, residing at Bood, Ubay, Bohol and a farmer.**

PARAD Before counsel may be allowed to ask some clarificatory questions, can I propound some questions first just for him to identify the document presented to this Office.

LO Lusterio Yes your Honor.

PARAD to Cirilo Payot

Q Mr. Payot, I am showing you a certification dated November 18, 2003, are you familiar with this certification?

Q There is a name on the bottom portion of this document with a notation Cirilo Payot, Barangay Kagawad and there is a signature above said name. Whose signature is that?

A That is my signature.

Q The other names beside your name in the said document, are you familiar with these names?

A Yes I am familiar.

Q Marvin Lescabo, there is a signature affixed on the top of the name. Whose signature is this?

A That of Marvin.

Q How do you know that this is the signature of Marvin Lescabo?

A I saw Mr. Lescabo affixed his signature on this document.

T. Colon, whose signature is that?

A

The signature of Felipe Colon.

Q

How do you know that this is his signature?

A

I saw him affixed his signature.

Q

Do you have a copy of this certification?

A

I have no copy of the certification.

Q

Mr. Witness, why did you issue this certification?

A

I was requested by Mr. Ybañez to certify the fact stated in this document. So, as a public servant of Bood, Ubay, Bohol, I complied with his request.

PARAD

Are there any clarificatory questions from both counsels? Let's

Atty. Piquero

Thank you your Honor.

PARAD

You may proceed.

Atty. Piquero to Cirilo Payot

Q

You said Mr. Payot that Mr. Ybañez requested you to issue this certification. Was the request made on the date when the certification was made?

A

This document was already presented to us. So, we affixed our signatures.

Q

If you know, who prepared this document?

A

I do not know who prepared this document but when we check the contents of the said certification and found them to be truthful, we affixed our signatures.

you for signature?

A Mr. Ybañez.

Q Am I correct to say that it was Mr. Ybañez who informed you that Mrs. Esguerra refused to accept the twenty (20) sacks of palay.

A That was what he explained to us.

Q At the time you were informed by Mr. Ybañez that Mrs. Esguerra refused to accept the twenty (20) sacks of palay, Mrs. Esguerra was not present?

A She is not present.

Q In fact, you never had a talk with Mrs. Esguerra prior to the issuance of this Certification?

A None.

on the allegations of Mr. Ybañez.

A Yes.

Q When you signed this certification,
Felipe Colon was also present.

A Yes we simultaneously affixed our
signature.

Q Together with Marvin Lescabo.

A Yes.

Q Do you know if these two also had a
talk with Mrs. Esguerra before they
affixed their signatures on this
certification.

A I do not know about that.

Q But at the time when they affixed
their signatures, Mrs. Esguerra was
not present.

A She was not present.

Honor.

LO Lusterio

Few questions your Honor.

LO Lusterio to Cirilo Payot

Q

Did you verify to see the twenty (20) sacks of palay in the house of Mr. Ybañez?

A

Yes.

Q

There was that twenty (20) sacks of palay that he intended to give to Mrs. Esguerra.

A

We saw the twenty (20) sacks.

LO Lusterio

That is all your Honor.

PARAD

Mr. Payot, where was this twenty (20) sacks of palay deposited?

Mr. Payot

In the house of Mr. Ybañez.

question.

PARAD

Proceed.

Atty. Piquero to Cirilo Payot

Q

Did you inquire Mrs. Esguerra if indeed Mr. Ybañez delivered these twenty (20) sacks of palay.

A

I did not.

Q

How about these two, do you know if they inquired from Mrs. Esguerra if indeed Mr. Ybañez delivered these twenty (20) sacks of palay to her.

A

I do not know if they inquired.

PARAD to Cirilo Payot

Q

You stated in your certification that Mr. Nicolas Ybañez notified the landowners that he is giving twenty (20) sacks of palay for panuig harvest. How did you know that

A Pursuant to the narration/declaration of Mr. Ybañez.

Q You also stated that the landowners refused to accept the twenty (20) sacks of palay. How did you know that the landowners refused to accept the twenty (20) sacks of palay?

A Also based on the statement of Mr. Nicolas Ybañez.

Q Furthermore, you stated in your certification that *this* twenty (20) sacks palay is the partial payment of the arrears of the tenant numbering 58 sacks palay. How did you know that this twenty (20) sacks was a partial payment of the arrears.

A Also based on the statement of Mr. Ybañez to us.

PARADAY ORIGINATED TO ISSUE
certifications of this nature
without verifying the allegations of
the person requesting the issuance
of said certification?

A What we certified are the things
that we saw.

Q But you stated a while ago that you
have not talk to Mrs. Esguerra and
that, you did not know for a fact
that indeed Nicolas Ybañez notified
the landowner. That, you have no
knowledge that said twenty (20) sacks
are partial payment of the arrears.
How can you explain that?

A Our certification only pertains to
what Mr. Nicolas Ybañez narrated to
us.

PARAD Any further questions?

Atty. Piquero No further questions your Honor.

LO Lusterio No more questions your Honor.

ready to formally offer your exhibits?

LO Lusetrio Yes your Honor.

PARAD Proceed.

LO Lusterio To this Honorable Board, defendants formally offer in evidence the following: Exh "1", the letter of Mrs. Esguerra to Sp. Ybañez to the effect that she refused to accept the partial payment given by Nicolas Ybañez in the amount of P5,000.00 and I want to request your Honor that in exh "1", there is a letter coming from Nicolas Ybañez and Antonia Ybañez which is the basis of this exh "1", the answer of Mrs. Esguerra that she refused to accept the amount of P5,000.00. May I request that this be consider as an annex to this exh "1"

PARAD Have you submitted a copy of that?

Atty. Piquero I remember this one. I remember now that this was marked during the trial.

PARAD Perhaps both documents were received by this office at appropriate time. Perhaps both documents were attached to the other case.

Atty. Piquero Yes.

PARAD I suppose you will not object to have that letter attached as annex to exh "1".

Atty. Piquero I will make my objection/manifestation later your Honor.

PARAD So, we'll have this marked as exh "1-B".

LO Lusterio Yes.

PARAD You may now proceed.

NICOLAS YBAÑEZ THE PURPOSE OF WHICH IS TO PROVE THAT DEFENDANT NICOLAS YBAÑEZ HAS GIVEN TO THE LANDOWNER HER SHARE OF THE MANGO FRUITS IN NOVEMBER 2003 WHICH IS MORE OR LESS 70 KILOS; EXH "3" AND ITS SUB-MARKINGS, THE AFFIDAVIT OF ELISA TUMALA TO PROVE THAT DEFENDANT NICOLAS YBAÑEZ HAD GIVE A SHARE OF THE PRODUCE OF MANGO FRUITS TO THE LANDOWNER IN NOVEMBER 2003; EXH "4", RECEIPT DATED OCTOBER 22, 2004 SIGNED BY ALVIN ESGUERRA, THE SON OF EVANGELINE ESGUERRA TO PROVE THAT THE TENANT NICOLAS YBAÑEZ HAD GIVE TEN (10) SACKS OF PALAY RENTAL FOR THE PANUIG 2004 HARVEST AND HE ALSO GAVE THE SHARE OF THE MANGO FRUITS TO THE LANDOWNER CONSISTING OF 27 KILOS.

PARAD

IS THAT MARKED AS EXHIBITS?

ATTY. PIQUERO

NOT MARKED YOUR HONOR.

PARAD

IS THAT DOCUMENT RELATED TO WHOSE TESTIMONY?

22, 2004 and the 27 kilogram of mango fruits. So, this is the second time that the tenant Nicolas Ybañez give as far as the mango produce is concerned.

PARAD My question is, whose testimony would that relate because this was not previously presented. Is that document related to the testimony of Eliza Tumala?

Atty. Piquero With respect to another case your Honor.

PARAD When was this presented?

LO Lusterio I think your Honor this was not presented but because this is relevant to the case.

PARAD Can I take a look. (PARAD examine the document)
This was shown to us during the ocular inspection by Mrs. Ybañez.

PARAD

I remember her showing me the notebook but I told her to present it to your lawyer to be presented during the trial. Whose signature is this?

LO Lusterio

That is the signature of Alvin Esguerra.

PARAD

Is Alvin Esguerra present?

Atty. Piquero

Yes.

PARAD

Can we verify if indeed this is his signature.

Atty. Piquero

May I see your Honor.

The son of my client confirmed that there was in fact delivery but that was with respect to the rental for last year after already when this case was filed because I gave them the advise to accept the rental for the panuig last year.

PARAD

receipt. Anyway, let's clarify.

Is this your signature? It states here Received the 420 kgs. (10 sacks-PANUIG) from MRS. A. Ybañes. Sobra-16 kgs. Ang gibayad kay way sako. Mangga-27 kgs (Received)

Alvin Esquerra Yes.

PARAD So, 436 kilos were received.

Alvin Esquerra Yes.

PARAD Can we just admit this as an additional exhibits. Anyway, the contents were confirmed by Mr. Esquerra.

Atty. Piquero We submit to the sound discretion of this Honorable Board.

PARAD Exh "4" is a receipt dated October 22, 2004. We will allow you to comment regarding his formal offer.

PARAD

Anything else?

LO Lusterio Yes your Honor. Exh "5" is the Certification termed KAMATUORAN dated April 12, 2002 signed by Napoleon B. Cañeda, the Brgy. Chairman and concurrently the BARC Chairman of Bood, Ubay, Bohol to prove that on said date Nicolas Ybañez requested and notified the landowner that he intended to give 14 sacks of palay. Each sack containing 42 kilos but the landowner refused to accept it. Exh "6" a Certification signed by Napoleon Cañeda dated October 21, 2002 to prove that Nicolas Ybañez manifested to give 10 sacks of palay to the landowner. That, he notified the landowner of his intention but it was not accepted by the landowner. So, instead, he ask a certification from the Brgy. Chairman. Exh "7" is a Certification dated September 23, 2003 prepared by Melecia Butawan,

by Nena Alangilan of Municipal Agriculture Office, Ubay, Bohol to prove that Nicolas Ybañez is a farmer of Bood, Ubay, Bohol, that he has no harvest on his planted ricefield due to El Niño phenomenon that severely hit the province of Bohol on November 1997 to April 1998 and on July 1998 to November 1998. That this certification was issued to Nicolas Ybañez as a supporting document that he was not able to give rentals for the successive cropping due to calamity. Exh "8" is the Panagsabutan Alang sa Abang sa Yuta executed by Alberto Esguerra and Nicolas Ybañez dated September 11, 1995 to prove that Nicolas Ybañez is a tenant/lessee of the landholding of the Esguerras. Exh "9" is a certification dated November 18, 2003 signed by three (3) Brgy. Kagawads of Bood, Ubay, Bohol namely; Cirilo Payot, Marvin Lescabo and Felipe Colon to prove that Nicolas Ybañez has notified the landowner that he manifested to give

refused to accept it. Exh "10"
Minutes of the Mediation Conference.
That is all your Honor.

PARAD Are you ready to make your oral comment?

Atty. Piquero Yes your Honor.

PARAD You may proceed.

Atty. Piquero We object to the purpose for which exh "1" was offered considering that this is not relevant to this case. This letter of Mrs. Esguerra was made in respect to that failed agreement in the previous case wherein after consultation with this representation, she decided not to go with that agreement and that is why when Mr. Ybañez told her that he would deliver the palay, she replied with this letter that probably Mr. Ybañez was not able to understand the supposed agreement. This exh "1" has nothing to do therefore with

"2" was offered for the same was being self-serving; likewise, we object to the purpose for which exh "3" was offered, the same likewise being biased considering that the affiant therein Eliza Tumala was a close friend of the respondent and that said person was connected with the ~~cross~~^{cause}-oriented groups which are common knowledge to be fond of concocting stories just to favor the cause that they are espousing. Exh "4" your Honor was not identified or testified to by the witness or the respondent while the same was admitted before this court today, the acceptance of this ten (10) sacks of palay was with respect to the rentals...

PARAD

Wait a minute. You said you are not amenable to the admission of this document. Then, you are explaining the contents, I mean, contrary to your... ,

PARAD Can we just... I will make a ruling with respect to this document. Because the receipt was positively identified by Alvin Esguerra, we will admit it as evidence but you may comment on the contents. As far as we are concerned, we are admitting this receipt as part of evidence for the respondent.

Atty. Piquero Our comment to this exhibits your Honor, granting that this was received by...

PARAD Well, it was received.

Atty. Piquero Yes, it was received by Alvin Esguerra your Honor, the same of course, there was no evidence to prove that the same was received by the plaintiff or by petitioner in this case. Again, for the sake of argument, granting that the same was received by the petitioner, this sacks of palay pertained to the

this case had been filed by the plaintiff. We object to exhs. 5, 6 & 7 because these were not identified by the signatories in these certifications. Therefore, these are worthless piece of papers. Granting that these will be accepted in evidence, we most respectfully submit that these certifications are again based solely on the allegations of Mr. Ybañez. For exh "8", admitted. This was also part of our exhibits. We object to the purpose of which exh "9" is being offered. This Certification was biased, the same was made solely on the allegations of Mr. Ybañez. How would we know if Mr. Ybañez in fact delivered this palay when the petitioner in this case were not investigated or inquired upon by the signatories in this certification. Exh "10" your Honor, we believed is not relevant to this case considering that this minutes has something to do with the previous case which was already decided and

comply the decision of this Honorable Board in that case. Those are all our comment your Honor.

PARAD

We will issue the corresponding Order as regards your comment. Maybe in that Order, we will also direct counsel to file your respective position papers within thirty (30) days from receipt of the Order.

ORDER

When this case was called for hearing, counsels for both parties appeared. Mr. Cirilo Payot was called to the witness stand to clarify the certification dated November 18, 2003 and pursuant to the Order of this Office dated January 5, 2005. Thereafter, counsel for the respondent formally offered his exhibits. Counsel for the petitioner articulated his comments and objections to said offer. This Office will issue the corresponding Order with respect to the comments by petitioner. Thereafter, both parties are DIRECTED to submit their respective position papers within thirty (30) days from today. Upon compliance of the Order or

case is deemed is submitted for resolution.

SO ORDERED.

Tagbilaran City, Philippines, 3 February 2005.

C E R T I F I C A T I O N

I hereby certify that the above transcripts of stenographic notes are true and correct to the best of my knowledge and belief.

LIZA F SOSOTER


~~Exhibit B~~
~~Exhibit C~~

Received the 4.70 kgs (10
sacks - PAN16) from
MRS. A. Ybanez.,

A. Ybanez

A. Ybanez

Cohiba - 16 kgs. and cigar
long way sets.

Manggi - 27 kgs (Received)

X:

165

Steering

**Probensiya sa Bohol
Barangay sa Bood**

ETH ✓ 8
2/3/04

KAMATU - ORAN

Kamatu - oran ako si Nicolas Ybañez hingod ang panuigong minyo ngadto ni Antonia Bantilan nag - saop sa yuta nilang Alberto Esguera (Deceased) minyo ngadto ni Evangelina Reyes Esguera .

Ang yuta nahamotang sa Barangay sa Bood , Ubay , Bohol .

Ako si Nicolas Ybañez imaginatuod ning mosunod nga adunay akoy humay nga katurse (14) ka sako nga tag cuarentay dos (42) kilos .

Ug ako untang ihatag o iabang sigon sa akong obligasyon pagadto sa tag-iya nga si Evangelina R. Esguera , apan nagdumili sela sa pagdawat tungod sa unsang hinungdan .

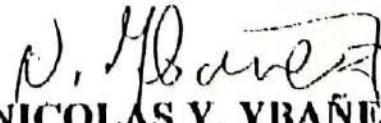
Ug kini akong gipa himoan ug kamatu-oran sa among (BARC-Chairman) nga maong among kapitan si Napoleon B. Cañeda .

Ug ang maong humay among ipondo taghulat kon kanus - a nila kuhaon .

Aron pagmatu - od ning tanan akong pagaperahan sa ubos ning kamatu-oran uban sa perina sa Kapetan , ning bulan sa Abril 12 , 2002 diha sa opisena sa among barangay kapetan .


NAPOLEON B. CAÑEDA

Barangay Kapetan


NICOLAS Y. YBAÑEZ

Nag - Saop

Republic of the Philippines
Province of Bohol
Municipality of Ubay
Barangay of Bood

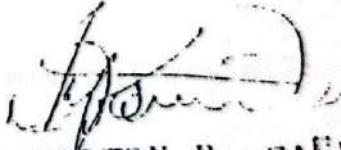
Exh "6"
2/3/05 80

(6) CERTIFICATE

I hereby certify that NICOLAS YBANEZ, the tenant of Mrs. Evangelina A. Paguerra, has to give his obligation to the owner of the land for his rental of ten sacks of rice in every harvest. But, this was not accepted by the owner.

This certification is issued upon the request of Mr. Nicolas Ybanez for any legal purposes it may serve for him.

Done this 21st of October, 2002 at the office of the barangay chairman (BARC).


NAPOLÉON B. CAFREDA
BARC Chairman

Province of Bohol
MUNICIPAL AGRICULTURE OFFICE
Ukay, Bohol

2/3/05 7

September 23, 2003

(D)

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

I hereby certify that MR. NICOLAS IBANEZ, a bonafide farmer of Bood, Ukay, Bohol, has no harvest of his planted ricefield due to EL NIÑO PHENOMENON that severely hit the province of Bohol last November, 1990 to April, 1998 (during dry season) and on July, 1998 to November, 1998, (wet season).

This certification is issued to MR. NICOLAS IBANEZ, as supporting documents, that he was not able to give rentals for the successivecroppings due to the calamity.

DOHE this 23rd of September, 2003 at Municipal Agriculture Office, Ukay, Bohol.

PREPARED BY:


MELENCITA A. BUTAWAN
Agricultural Technologist

NOTE:


HEMAJILL ALAJWILLAN
Municipal Agricultural Officer

Kinig "KARAPATAN SA ANGKABOON TUNOG SA YUTA" na napurog sa
hingkod ang panigdon, minyo/alitwido/alitwos ng nagapuyos na Poblacion
Langod sa Ubay, Lalawigan sa Bohol, Pilipinas, guli-tila naga mady NAGPAA-
BANG SA YUTA ug Lubang Ubang Langod sa UBAY Lalawigan
sa Bohol, guli-tila nera mdy HAI-ADANI na yuta.

NAGKASABOT

1. Nga ang napasabot ni yuta mas ang tag-isa sa yuta ka parilla nga anaa
mahirutang sa Barongay na Bood Langod sa Ubay Lalawigan
sa Bohol, ur sulemento sa Titulo o Deklarasyon No. 4-27-222 ut ang kanait
mao kining mosunod:

Amihan : _____ Silangan: _____
Habagatan: _____ Kasadpan: _____

nga may guidak-on ngs 1,446 ka likaryo ug napugos ug 70 ka gantang/
kabanes nga humay/mais/lobi ug uban po kpin kun kulang;

2. Nga ang naasoy nga yuta sa itaas, 6000 (area) ang gutamnan sa NAG-
ABANG SA YUTA ug napugos ug 70 ka gantang/kabanes nga humay/mais ug
ang kanait mao kining mosunod:

Amihan : Jacinta Stil Silangan: Stock Farm
Habagatan: Iti Leytes Kasadpan: Iti Leytes

3. Nga ang abang sa maong yuta sa itaas mao kining mosunod: (Isaysay ang
paagi sa abangan)

Panuig : 10 sacks palay hinungd (42 kilos/sack)
Pangulilang: 7 sacks ,aliy hinungd(42 kilos/sack),

4. Nga ang unang abangan pagabayaran o pagakuhaon sa Oct. 19 06
o dili pa moabit ang adlaw sa tuig nga nahisayay sa itaas; ug sa kada tuig
human niama ang maong abangan ihated o pagakuhaon an aulod sa Katapusang pitsa
sa metag ting-giok o ting-an;

5. Nga ang abang adto ibayad/ihated sa balay/bodega/kamalig sa NAG-ABANG
SA YUTA/ sa iyang piniyalan o kuhaon sa NAGPABANG SA YUTA o sa iyang piniya-
lah ngadto sa balay/kamalig/yutang gui-uguid sa NAG-ABANG SA YUTA;

6. Nga and nag-abang sa yuta dili magatan m si maong yuta sa bisan unsang
tanom naga makadoot sa naasoy nga yuta; kinahanglan usab naga ang NAG-ABANG SA
YUTA magapahibalo sa NAGPABANG SA YUTA o sa iyang piniyalan sa tulo (3) ka
adlawsa dili pa moani o mogiok sa humay/mais/ubp. ug walay katungod ang NAG-
ABANG SA YUTA sa pagkuha ug laing mga tawo aron moabang o motrabaho sa naasoy
nga yuta, gawas sa panahon sa pagkasakit o temporary nga pagkabardado, mahimo
siya sa pag suhol ug mga tawo kansang serbisyo iyang pagabayran;

7. Nga kon pananglitan ang maong tanom madaut ug 75% tungod sa hinungdan
nga dili tinuyo (Fortuitous Events/Force Majure) ang NAG-ABANG SA YUTA maga
pahibalo ug dili mapugos sa pagbayad sa guikasabutang abang nianang tuiga,
apan kinahanglan iyang pagabayaran ang maong abangan pinaagi sa datadata sa
kantidad nga (kwarta/humay/mais ug ubp.) sa kada ting-ani o ting-giok
hangtud maiimpas ang abangan;

8. Nga ang pagbaligya o pagbalhin sa maong yuta ngadto sa lain o kon
unsay kausaban sa mga kondesyoness niining kasabutan, dili makapausab sa NAG-
ABANG SA YUTA sa iyang malinawong paghupot o pag-ugmad sa maong yuta nga iyang
gui-abangan;

9. Ug dugang sa mga kondeyones nga gikasabutan dinihi, ang tanang sugo sa
balaod ubos sa R.A. 3844 nga gui-aminda sa R.A. 6389, ilabi na niadtong mahitungod
sa mga hingtungdan ug ubang dekreto Presidential o instroksyoness nga may kalabu-
tan niining kasabutan, gui-apil ug guihimo nea kauban niining kontrata.

(CP) Province of Negros
Municipality of Ubay
Barangay of Bood

Uxvi
2/3/05

CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that Nicelias Ybañez, tenant-tiller of the landholding declared in the name of Alberto Esguerra and Evangeline Esguerra has notified the landowners that he is giving twenty (20) sacks palay for this panig harvest, but the landowners refused to accept the twenty (20) sacks palay.

This twenty (20) sacks palay are the partial payment of the arrears of the tenant numbering 58 sacks palay.

Barangay Bood, Ubay, Bohol, November 18, 2003.



MARVIN N. ESCABDO
Barangay Kagawad

Barangay Kagawad


CIRILO PAYOT

Barangay Kagawad


Felipe T. Colos

Barangay Kagawad

MRS. EVANGELINE R. ESGGERRA
Fatima, Ubay
Bohol

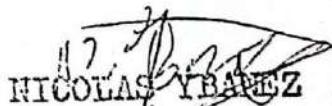
Dear Mrs. Esggerra :

This is to inform you that the undersigned is now ready to give you the rental of the pangamihen harvest of your land in Food, Ubay, Bohol, plus partial payment of our arrears.

The amount that we are giving you now is P 5,600.00, kindly get the money at the Dep't of Agrarian Reform, Municipal Agrarian Reform Office, Ubay, Bohol, on March 30, 2004 at 9:30 in the morning.

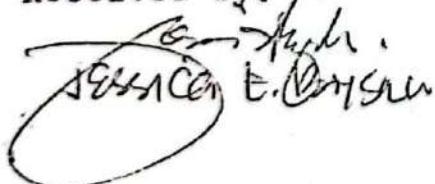
Thank you.

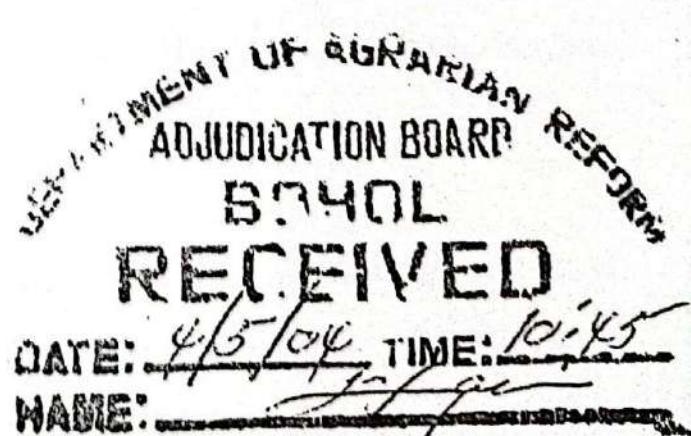
Very truly yours,


NICOLAS YBANEZ


ANTONIA YBANEZ

Received by:


JESSICA T. ORSIU



infra.

CITY OF
City of Tagbilaran

ANDREW ESGUERRA and,
EVANGELINE ESGUERRA,
For Herself and as Attorney-in-Fact,
Complainants,

DARAB CASE NO. VII-BOH-547-2004

-versus-

FOR: EJECTMENT

NICOLAS YBAÑEZ

Defendant.

X----- /

S U B P O E N A

TO: Mr. CIRILO PAYOT - Bood, Ubay, Bohol

G r e e t i n g s :

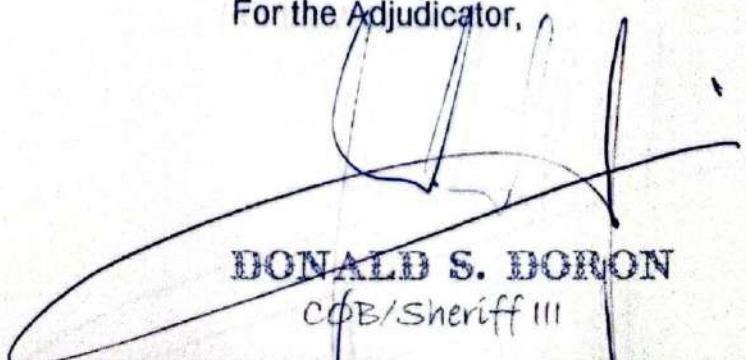
You are hereby directed/commanded to appear and testify relative to the above-entitled case, which is set for hearing on February 03, 2005 (Thursday) at 10:00 O'clock in the morning, DAR-Adjudication Board Office, 2nd Floor, BODARE Bldg., Beside Provincial Capitol Annex Bldg., J.A. Clarin Street, Tagbilaran City, Philippines.

In view hereof, you are further directed to bring with you any necessary documents if any, needed and vital to the issue of the case during the aforesaid date of hearing.

"FAIL NOT UNDER THE PENALTY OF THE LAW"

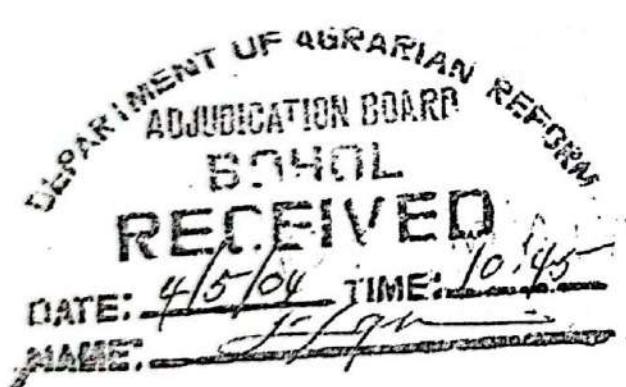
WITNESS THE HONORABLE DARAB ADJUDICATOR, JOSEPHUS A. BATERNA, this 17th day of January 2005, Tagbilaran City, Philippines.

For the Adjudicator,


DONALD S. DORON
COB/Sheriff III

U ug ang + danae
Nakasabot ba ikaw sa
gipanagsulfikar sa atong abogado,
sa imong legal counsel ug sa judge
niadtong atong hearing sa miaging
March 17? Wala no?

Pangitana og imong legal
counsel ug ngano nga di'g also
modawat nianang imong ipadawat
kanako. Kasabot ka? Hinunt pa.



Safamat, exp. P.A.
DR. Isagani

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Felipe Colon }

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AFFIDAVIT

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I, ELIZA S. TUMALA, of legal age, married, resident of Son-oc, Ubay, Bohol, after having duly sworn to in accordance with law, depose and say:

1. That I am employed with Saint Peter Life Plan Inc. as Marketing Supervisor and collector in ubay, Bohol;

2. That sometime in November 2003, I rode in a tricycle driven by Nicolas Ybañez with his wife also with him at that time bringing with them mango fruits placed in a sack;

3. That before I reached my destination in Poblacion of Ubay, Bohol, the couple Nicolas Ybañez and Antonia Ybañez, delivered the mango fruits to the house of Evangeline Esguerra located in Purok 6, Fatima, Ubay, Bohol;

4. That I saw Evangeline Esguerra accepting the mango fruits.

IN WITNESS WHEREOF, I hereunto affix my signature this 26th day of November 2004 at Ubay, Bohol.

Eliza S. Tumala
ELIZA S. TUMALA
Affiant

Exh. "3-A"

Dec. 2004 at Tagb
SUBSCRIBED AND SWORN to before me this 2nd day of
Bohol. Affiant exhibited to me his
CTC No. 18004748 issued on 11-26-04 issued at
Ubay, Bohol.

Ricardo L. Villares
ATTY. RICARDO L. VILLARES
NOTARY PUBLIC
UNTIL DEC. 31, 2005
IBP NO. 546416, 1/5/2004
PTR NO. 9091254, 1/9/2004

Exh. "3-B"

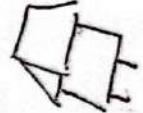
$\leftarrow \rightarrow$
Area = 1.3 ha.

Lot - 12779 4' (4x6)

PIA SERVICE ROAD & CANAL
(LAT-12777)

Riceland

(extreme)
Floor Area:
(7x8)



(6x4)

LEGEND:

○ - mango

〃 - camilina

□ - house

✗ - coconut

■ - rice paddies

Prepared by:

DONALD S. DORON
DATAS - Bohol

ENCLOSURE

Oct. 29, 2004

10/29/04 UPM

Respectfully forwarded to the Provincial Agrarian Reform Adjudicator (PARAD) ATTY. JOSEPHUS A. BATERNA, Tagbilaran City, the herein minutes of the agreement between LO Evangeline Esguerra and Tenant Nicolas Ybañez as to the manner in the payment of the arrears incurred by the tenant totalling 65 sacks palay as of panuig 2004 cropping in compliance with the order dated August 9, 2004 RE Esguerra vs. Ybañez for Collection of Rentals case.

DARMO, Ubay, Bohol.

SATURNINO R. LUSTERIO
Legal Officer I

- 2/21st
1. Nicolor Yboney - wife & FT.
 2. Latoria Yboney - landowner
 3. Evangeline Esquera - landowner
 4. Jessica E. Boysillo - daughter of landowner
 5. SP Fusteris - Hearing officer

Started at 10:00 AM.

Hearing Officer - The arrears of the tenant amounted to 65 socks palay as of the cropping season 2004-2005. If this is the suggested number of socks to be paid by the tenant.

Mrs. Nicolor Yboney - It depends on the production of my fronted area, if the produce is high, then I will give more.

Hearing Officer - What is the comment of the LO?

Hearing Officer - What is the comment of the LO?
 Evangeline Esquera - On this parchment 2005, the cre-
 ditor suggested that the 65 socks palay be paid by
 half of the 65 socks palay to be paid by
 the tenant and the other half to be paid
 on the paring 2005.

Hearing Officer - What is the other suggestion of the landowner?

Evangeline Esquera thrown the suggestion of her child Jessica Boysillo, suggested that the sixty five (65) socks palay be paid in three (3) installments
 in successive three (3) cropping up to parchment 2006.

Hearing Officer - What is the answer of the tenant?

Mrs. and Mrs. Nicolor Yboney - We are willing to pay it in four (4) installments on cropping so that it would be fully paid in paring cropping of 2006.

Hearing Officer - What is the answer of the landowner?

Evangeline Esquera - We are ^{agreed} settling that the balance on arrears amounted to sixty five (65) socks palay be fully paid not later

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X 11 2000 m. 1985 to 1986

- versus -

NICOLAS YBAÑEZ,
Defendant.

x-----/

COMPLIANCE

COME NOW the plaintiffs, assisted by counsel, unto this Honorable Board, most respectfully submits the affidavits of their witnesses in compliance with the last order of this Honorable Board.

Copy of these affidavits are furnished to counsel for the Defendant by personal delivery.

Tagbilaran City, Philippines; October 8, 2004.


DONI D. PIQUERO
Counsel for Plaintiff
#35 M. Parras St., Tagbilaran City
PTR. No. 9094453-02/24/2004; IBP Lifetime No. 466996
Roll No. 40853

Copy furnished (by personal delivery)

SATURNINO P. LUSTERIO *Registry Receipt # 12610*
Counsel for the Defendant
Legal Assistance Division
DAR Provincial Office
Tagbilaran City

AFFIDAVIT

at. 12/2004 c v

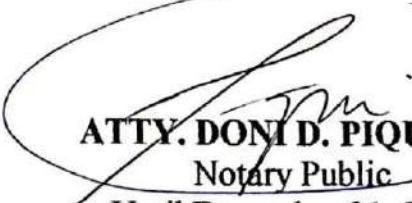
I, MARIANNE PINO, of legal age, Filipino, and a resident of Ubay, Bohol, Philippines, after having been duly sworn to in accordance with law, hereby depose and say:

1. That I am an officemate of Prescifel Dabatos, son – in – law of Nicolas Ybañez;
2. That sometime this year, I, together with Oliver Abayabay, Florianne Caduldulan, and Analie Llorente were invited by Prescifel Dabatos to go to his residence located at Bood, Ubay, Bohol;
3. That we were invited because accordingly he was going to treat us with young coconut fruit (in local dialect called manglamaw) which were planted to the land where she lived;
4. That I noticed that other than the house where Nicolas Ybañez lived, which house is made of concrete materials, I noticed that there were ~~two~~ (2) other residential houses (one made of concrete materials, the other of light materials) erected nearby;
5. That I know that the land on which these residential buildings are erected is owned by the Esguerras; and
6. That I am executing this affidavit to attest the truth of the foregoing and for whatever legal purpose this may serve.

IN WITNESS HEREOF, I have hereunto affixed my signature this 6th day of October 2004 at Tagbilaran City, Philippines.


Exh. "A-1"
MARIANNE PINO
Affiant

SUBSCRIBED AND SWORN to before me this 6th day of October 2004 at Tagbilaran City, Bohol, Philippines. I certify that affiant freely and voluntarily executed this affidavit and that she understood its contents.


Exh. "A-2"
ATTY. DONI D. PIQUERO
Notary Public
Until December 31, 2005
PTR. No. 9094453 – 02/24/2004
IBP Lifetime No. 466966
TIN 118 – 665 – 300

I, LOLITA L. GUTIERREZ, of legal age, Filipino, married and a resident of Ubay, Bohol, Philippines, after having been duly sworn to in accordance with law, hereby depose and say:

1. That I and my husband are engaged in the business of mango by entering into agreements with owners and/or caretakers of mango fruit trees that we would be the one that would spend amount and effort in order that the mango trees would bear fruits and that the owner/caretaker would be given a share of the fruits that could harvested therefrom;
2. That sometime late last year we were able to enter into an agreement with one NICOLAS YBAÑEZ regarding the mango fruit trees in the land which he accordingly was taking cared of located at Bood, Ubay, Bohol;
3. That as a result of such agreement I gave more or less TWO HUNDRED FIFTY (250) KILOS of mangoes to NICOLAS YBAÑEZ as his share in the harvest and pursuant to our agreement and with the belief that he would give the owners of the land their due share;
4. That I learned later that NICOLAS YBAÑEZ had not given the ESGUERRAS their share of the mangoes; and
6. That I am executing this affidavit to attest to the truth of the foregoing and for whatever legal purpose this may serve.

IN WITNESS HEREOF, I have hereunto affixed my signature this 6th day of October 2004 at Tagbilaran City, Philippines.

LoLita L. Gutierrez
LOLITA L. GUTHERRREZ
Affiant

Exh. F-1
fst

SUBSCRIBED AND SWORN to before me this 6th day of October 2004 at Tagbilaran City, Bohol, Philippines. I certify that affiant freely and voluntarily executed this affidavit and that she understood its contents.

Jm-
ATPY. DOMI D. PIQUERO
Notary Public
Until December 31, 2005
PTR. No. 9094453 - 02/24/2004
IBP Lifetime No. 466996
TIN 118-665-300

Exh. F-2
fst

- versus -

DARAB CASE NO. VII-BOH-547-2004
For: Ejectment

NICOLAS YBAÑEZ,
Respondent.

X-----X

ORDER

When this case was called for hearing, counsel for the respondent appeared. Also appearing are petitioner Evangeline Esguerra and respondent Nicolas Ybañez. On record is an "Ex-Parte Urgent Motion for Resetting" filed this morning by counsel for the petitioner. The motion for resetting is on the ground that counsel for the petitioner is attending the Mandatory Continuing Legal Education (MCLE) at Bohol Tropics Resort and Restaurant, Tagbilaran City.

Despite the late filing of the motion, we take judicial notice of the ground relied upon in the said motion. However, pursuant to the summary nature of the proceedings in this case and the presence of the parties, we proceeded with the preliminary conference of the case to explore any possibility of amicable settlement.

Despite earnest efforts, it appears that no amicable settlement is forthcoming. Hence, we terminate the initial preliminary conference of this case.

Let the second preliminary conference of this case be set on the 27th of Sept. 2004 at 10:00 o'clock in the morning at DARAB Office; 4th Floor, FCB Building, Tagbilaran City. In that hearing, the parties and their counsels are hereby **DIRECTED** to be ready to manifest on the following: (1) number of

Tagbilaran City, 15 September 2004.



JOSEPHUS A. BATERNA

Provincial Agrarian Reform Adjudicator

Copy furnished:

1. **ATTY. DONI D. PIQUERO**
Counsel for Petitioner
No. 35 M. Parras Street
Tagbilaran City
2. **MS. EVANGELINE ESGUERRA**
Barangay Bood, Ubay, Bohol
3. **MR. SATURNINO P. LUSTERIO**
Counsel for Respondent
DAR Provincial Office
3rd Floor FCB Building
Carlos P. Garcia Avenue
Tagbilaran City
4. **MR. NICOLAS YBAÑEZ**
Barangay Bood, Ubay, Bohol
5. **THE MUNICIPAL AGRARIAN REFORM OFFICER**
DAR Municipal Office
Ubay, Bohol

EVANGELINE BOQUEVINA,
Plaintiffs.

DARAB Case No. VII-BOH-547-2004

For:

EJECTMENT

- versus -

NICOLAS YBAÑEZ,
Defendant.

X-----/

EX-PARTE URGENT MOTION FOR RESETTING

COMES NOW the undersigned counsel for the plaintiffs, unto this Honorable Board, most respectfully states:

1. That this case is set for preliminary conference today at 10:00 A.M.;
2. That unfortunately, counsel for the plaintiffs is not available today because he is currently attending the Mandatory Continuing Legal Education (MCLE) conducted by the National Prosecutors League of the Philippines and UP Law Center Institute of Judicial Administration at Bohol Tropics Resort, Tagbilaran City set on September 14-16, 2004;
3. That when he checked late Monday afternoon whether he had already complied with the requirements of MCLE per Bar Matter No. 850, he found out that he was still lacking some units. Thus, undersigned decided to register yesterday, September 14, 2004 so that he could make up with his deficiency and in order to avoid being sanctioned by the Supreme Court pursuant to said Bar Matter 850;
4. That he was not able to file earlier a motion to reset this case because of lack of sufficient time to do the same and in view of his late realization that he had not yet met the requirements of MCLE;
5. That this motion is filed not to unduly delay the administration of justice but sole based on the foregoing reasons.

WHEREFORE it is most respectfully prayed that this case be reset for preliminary conference on a date most convenient to this Honorable Office.

Tagbilaran City, Philippines; September 15, 2004.


DONI D. PIQUERO

Counsel for the Plaintiff

#35 M. Parras St., Tagbilaran City

PTR. No. 9094453-02/24/2004; IBP Lifetime No. 466996

Roll No. 40853

ANDREW ESGUERRA and
EVANGELINE ESGUERRA,
Plaintiffs,

-versus-

DARAB CASE NO. VII-BOH-547-2004

FOR: EJECTMENT

NICOLAS YBAÑEZ,

Defendant.

X-----/

SUMMONS AND NOTICE OF PRELIMINARY CONFERENCE

TO: Nicolas Ybañez - Bood, Ubay, Bohol

Greetings:

You are hereby summoned and required to file and serve your Answer with sworn statement, affidavits and documentary evidence, a copy of petition/complaint is herewith served upon you within a non-extendible period of (15) days after service hereof, exclusive of the day of service, furnishing a copy thereof to the petitioner/complainant.

On the other hand, the parties are hereby directed to attend the preliminary/pre-trial conference of the case on September 15, 2004 (Wednesday) at 10:00 O'clock in the morning, DAR-Adjudication Board Office, 4th floor, FCB Bldg., CPG North Avenue, Tagbilaran City, for purposes of:

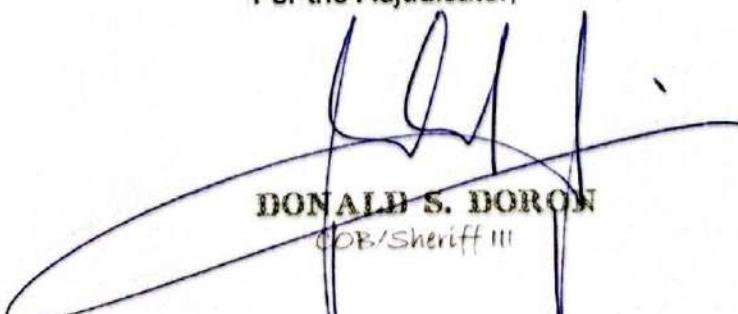
1. Possibility of amicable settlement or of a submission to alternative modes of disputes resolution;
2. Resolving and disposing the preliminary incidents related to the case, and
3. Taking up other matters as may simplify and aid in the prompt disposition of the case.

Any failure hereof to do as herein directed, will be interpreted by the Adjudicator as a waiver to present evidence. The hearing of the instant case shall commence and continue until the termination of the reception of the evidence of the complainant/petitioner.

"FAIL NOT UNDER THE PENALTY OF THE LAW"

WITNESS THE HONORABLE DARAB ADJUDICATOR, JOSEPHUS A. BATERNA, this 12th day of August 2004, Tagbilaran City, Philippines.

For the Adjudicator,


DONALD S. DORON

COB/Sheriff III

- # 35 M. Parras St., Tagbilaran City
- Bood, Ubay, Bohol

c.c.

- Atty. Doni D. Piquero
- Evangeline Esguerra

0580431

PAYOR Atty. Dom Pignano	BUSINESS NAME	ADDRESS
NATURE OF COLLECTION		
Filing fee	FUND AND ACCOUNT CODE	AMOUNT
		P 750 -
OFFICE OF THE TREASURER		
PROVINCE OF BOHOL OFFICIAL SEAL		
REPUBLIC OF THE PHILIPPINES Province of Bohol		
OFFICE OF THE TREASURER		
Accountable Form No. 51 (Revised January 1992)		
DATE 8-11-02 NO. 0580431		
PAYOR Atty. Dom Pignano		
BUSINESS NAME		
ADDRESS		
NATURE OF COLLECTION		
Filing fee	FUND AND ACCOUNT CODE	AMOUNT
		P 750 -
Amount in Words <i>Atty. Seven Hundred Fifty Peso</i>		
Cash <input type="checkbox"/> Drawee Bank <input type="checkbox"/> Number <input type="checkbox"/> Date		
Check <input type="checkbox"/>		
Money Order <input type="checkbox"/>		
Received the amount stated above <i>Atty.</i>		
NOTE: Write the number and date of this receipt on the back of check or money order received		
Collecting Officer		
Write the number and date of this receipt on the back of check or money order received		

0580431

PAYOR Atty. Dom Pignano	BUSINESS NAME	ADDRESS
NATURE OF COLLECTION		
Summons fee	FUND AND ACCOUNT CODE	AMOUNT
		P 90 -
		P 20 -
OFFICIAL RECEIPT		
REPUBLIC OF THE PHILIPPINES Province of Bohol		
OFFICE OF THE TREASURER		
Accountable Form No. 51 (Revised January 1992)		
DATE 8-11-02 NO. 0580431		
PAYOR Atty. Dom Pignano		
BUSINESS NAME		
ADDRESS		
NATURE OF COLLECTION		
Filing fee	FUND AND ACCOUNT CODE	AMOUNT
		P 750 -
Peso as		
cheque	Number	Date
stated above		
<i>Atty.</i> Collecting Officer		
umber and date of this receipt on check or money order received		

ppines, more particularly described as

RECEIVED - 2:30 P.M.
DATE: 8/11/04 TIME: 2:30 P.M.
NAME: JWT
ANDREW ESGUERRA and
EVANGELINE ESGUERRA, For
Herself and as Attorney-in-Fact,
Plaintiffs.

DARAB Case No. VII-BOH-547-2004
For: EJECTMENT

Exh. "E"
Aut. 12/2004 DLSL

- versus -

NICOLAS YBAÑEZ,
Defendant.

X-----/

COMPLAINT

COME NOW Plaintiffs, assisted by the undersigned counsel, unto this Honorable Board,
most respectfully state:

I. THE PARTIES

1. That herein Plaintiff Andrew Esguerra is of legal age, Filipino, married and a resident of Cebu City, Philippines, herein represented by his Attorney-in-Fact and co-Plaintiff Evangeline Esguerra, likewise of legal age, Filipino, widow and a resident of Bood, Ubay, Bohol, Philippines, where she may be served with notices and other processes of this Honorable Board, per Special Power of Attorney executed on July 29, 2002 and acknowledged before ATTY. DONI D. PIQUERO, Notary Public, and entered in his Notarial Register as Doc. No. 80, Page No. 36, Book No. 5V, Series of 2004, copy thereof is hereto attached as Annex "A";

2. That herein Defendant Nicolas Ybañez is likewise of legal age, Filipino, married and a resident of Bood, Ubay, Bohol, Philippines where he may be served with summons and other processes of this Honorable Board;

II. STATEMENT OF RELEVANT ANTECEDENT FACTS

3. That Plaintiffs Andrew Esguerra and Evangeline Esguerra are the co-owners of a parcel of land located at Bood, Ubay, Bohol, Philippines, more particularly described as follows, to wit:

copy of the Tax Declaration is hereto attached as Annex "B;"

4. That above-described parcel of land was previously covered by Tax Declaration Number 45C7-358 in 1984, per Certification issued by the Office of the Provincial Assessor of Bohol dated June 4, 2002, copy thereof is hereto attached as Annex "C;"

5. That herein Plaintiff Andrew Esguerra and herein Defendant Nicolas Ybañez, on September 11, 1995, entered into a leasehold contract over the above-described parcel of land wherein the latter obligated himself to part with four hundred twenty (420) kilos of rice for the first cropping and two hundred ninety four (294) kilos for the second cropping for every year to the former, as evidenced by a Leasehold Contract acknowledged before one Fernando C. Maslog, Notary Public, copy thereof is hereto attached as Annex "D;"

6. That however, herein Defendant, despite repeated demands by herein Plaintiffs, reneged on his promise to religiously pay the rentals due herein Plaintiffs reason why Plaintiffs filed a case for Collection of Rentals and Damages before this Honorable Office and docketed herein as Case No. VII-BOH-414-2003 on June 5, 2003. This case is now submitted for Decision;

7. The Leasehold Contract (Annex "D") would clearly show that Defendant is not allowed to build residential building on the said parcel of land for his children because there is no express provision therein which would allow him to do so. Under the law, his children are likewise not allowed to build a dwelling house on the said parcel of land. However despite and over the vehement objections of Plaintiffs, Defendant built residential houses on the said parcel of land for his children. These residential houses which are presently occupied by his children are without any Building Permit from the Municipal Government of Ubay, Bohol;

a parcel of land located at Bood, Uday, Bohol measuring
SEVEN THOUSAND SEVENTY-SEVEN (7,077) SQUARE METERS, more or less.

Copy of the document showing such fact is hereto attached and marked as Annex "E";

9. Defendant despite demands had and has never given any share of any produce of the fruits trees found in the parcel of land subject matter of this instant case to herein Plaintiffs. He claimed all the produce as his own as if he is the absolute owner of the said parcel of land. Attached hereto and marked as Annex "F" is a Certification executed by one LOLITA GUTIERREZ to show that Defendant was able to harvest mangoes from said land and had never given even a single fruit to herein Plaintiffs as their share.

10. That Plaintiff Evangeline Esguerra for herself and in behalf of her co-plaintiff elevated the matter to the Chairman of the Barangay Agrarian Reform Committee and concurrently the Barangay Chairman of Bood, Uday, Bohol, for mediation and conciliation, but no peaceful settlement was arrived at due to the non-appearance of herein Defendant. Copy of the Certification is hereto attached and marked as Annex "G";

11. That despite the failure of the parties to arrive at a peaceful settlement at the barangay level, herein Plaintiff Evangeline Esguerra sought a mediation conference with herein Defendant at the Department of Agrarian Reform, Municipal Agrarian Reform Office at Ubay, Bohol, but likewise to no avail, as evidenced by a Certification therefore duly issued by one Saturnino P. Lusterio, Paralegal Officer, copy thereof is hereto attached as Annex "H";

CAUSES OF ACTION

12. That herein Defendant's actuations are clear and blatant violations of the contractual stipulations, freely, voluntarily, and willfully entered into by and between him and herein Plaintiff Andrew Esguerra, to which herein Defendant should faithfully comply and oblige. His acts are likewise manifest violations of RA 1199 as amended by RA 2263;

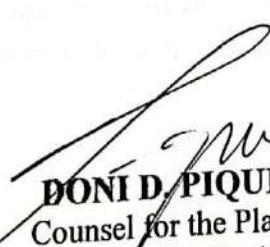
- (PhP15,000.00) PESOS as litigation expenses and attorney's fees, which will increase as the trial ensues;
14. That herein Defendant's actuations caused herein Plaintiffs sleepless nights, anxieties and mental anguish, warranting the award of moral damages in the amount of FIFTEEN THOUSAND (PhP15,000.00) PESOS;
15. That to deter others from emulating the wanton acts of herein Defendant, an award of exemplary damages in the amount of FIFTEEN THOUSAND (PhP15,000.00) PEOS is warranted.

PRAYER

WHEREFORE, on the strength of all the foregoing, it is hereby most respectfully prayed of this Honorable Board, after due notice and hearing that herein Defendant be directed and ordered to:

- a. Vacate the land in question
- b. Pay PhP15,000.00 as conservative amount for litigation expenses;
- c. Pay PhP15,000.00 as moral damages;
- d. Pay PhP15,000.00 as exemplary damages;
- e. Pay the costs.

Tagbilaran City, Philippines; August 10, 2004.


DONI D. PIQUERO
Counsel for the Plaintiffs
#35 M. Parras St., Tagbilaran City
PTR No. 9094453 - 02/24/2004; IBP Lifetime No. 466996
Roll No. 40853

VERIFICATION AND CERTIFICATION

I, EVANGELINE ESGUERRA, Filipino, of legal age, widow, and a resident of Fatima, Ubay, Bohol, Philippines, after having been duly sworn to in accordance with law, hereby depose and say:

1. That I am one of the Plaintiffs in the above-entitled case and the Attorney-in-Fact of my co-Plaintiff, Andrew Esguerra;
2. That I have caused the preparation of this Complaint;
3. That I have read, known, and understood the contents thereof;
4. That the allegations therein are true and correct of my own knowledge;
5. That I have not theretofore commenced any action involving the same issues in the Supreme Court, the Court of Appeals or any other tribunal or agency;
6. That to the best of my knowledge, there is no pending action involving the same issued in the Supreme Court, the Court of Appeals or any tribunal or agency; and
7. That if I should learn that a case is filed or is pending involving the same issues before the Supreme Court, the Court of Appeals or any other tribunal or agency, I undertake to inform the Honorable Commission of the same fact within five (5) days from notice thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this
18 AUG 2004 at Tagbilaran City, Philippines.

EV Esguerra
EVANGELINE ESGUERRA
Affiant

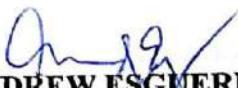
SUBSCRIBED AND SWORN to before me this 18 AUG 2004
at Tagbilaran City, Philippines affiant exhibited to me her CTC No.
03437356 issued on Jan. 12, 2004 at Ubay, Bohol.

J. Piquero,
ATTY. DONI D. PIQUERO
Notary Public
Until December 31, 2005
PTR. No. 9094453 - 02/24/2004
IBP Lifetime No. 466996
TIN 118-665-300

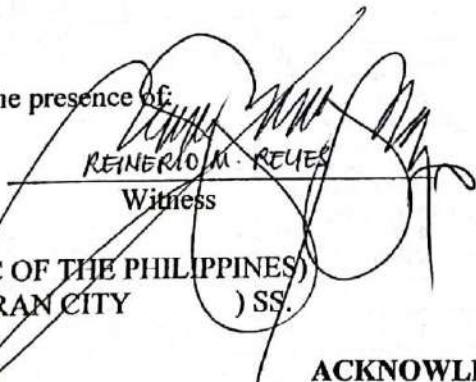
- legal age, Filipino, widow, and also a resident of Tagbilaran City, Bohol, Philippines, and I do hereby appoint and authorize my said attorney, for me and in my name, place and stead to do the following acts and things:
1. To represent herein grantor/principal in a case for UNLAWFUL DETAINER or EJECTMENT against NICOLAS YBAÑES over a certain parcel of land in Ubay, Bohol before the Department of Agrarian Reform Adjudicatory Board, Tagbilaran City, Philippines;
 2. To represent herein grantor/principal in all stages of the case including the Pre-Trial and to enter into or sign any compromises for and his behalf;
 3. To sign and receive any document, paper or contract of any kind, or anything for that matter; and
 4. To delegate to any person, who may exercise in his stead, any or all of the powers and authority granted to his, or substitute any person in his place to do and perform for me any of the said powers and authority.

HEREBY GIVING AND GRANTING unto my said attorney full powers and authority to do and perform all and every act requisite or necessary to carry into effect the foregoing authority, as fully to all intents and purposes as she might or could lawfully do if personally present, with full power of substitution and revocation, and hereby ratifying and confirming all that my said attorney or her substitute shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of June 2004 at Tagbilaran City, Bohol, Philippines.

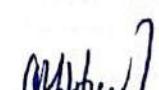

ANDREW ESGUERRA
Principal/Grantor

Signed in the presence of:


REINERIO M. REYES

Witness

REPUBLIC OF THE PHILIPPINES
TAGBILARAN CITY) SS.

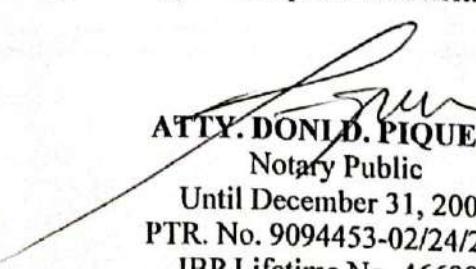

CONSTANCE V. ATUEL
Witness

ACKNOWLEDGMENT

BEFORE ME, Notary Public, this 4th day of June 2004 in Tagbilaran City, Bohol, Philippines personally appeared Andrew Esguerra with his CTC No. 17866957 issued on April 25, 2004 at Ubay, Bohol, Philippines known to me to be the same person who executed this instrument and acknowledged that the same is his free act and voluntary deed.

WITNESS MY HAND AND SEAL on the day, month, year and place first written above.

Doc. No. 80
Page No. 36
Book No. V
Series of 2004


ATTY. DONALD PIQUERO
Notary Public
Until December 31, 2005
PTR. No. 9094453-02/24/2004
IBP Lifetime No. 466996
TIN 118-665-300

Declaration of Property

(Filed under Presidential Decree No. 464 as amended by P.D. 1621)

Owner Alberto Esguerra (deceased)
 (address)

Administrator _____
 (address)

DESCRIPTION AND OTHER PARTICULARS OF PROPERTY

Location of Property _____

Bead, Ubay, Bohol
 (MUNICIPALITY/CITY/PROVINCE)

(NUMBER AND STREET)

Certificate of Title No. _____ Cadastral Lot No. 12777-CAD Assessor's Lot No. _____

Boundaries:

North: Lot 12778

554-D Block No. _____

East: Lot 12772, 12768 & 12774

South: NIA Service Road & Canal

West: Lot 12778 & 12780

(STATE, STREETS, LOTS OR STREAMS BY WHICH BOUNDED OR NAMES OF OWNERS OF ADJOINING LANDS)

I (a) LAND (AGRICULTURAL/MINERAL)

OWNER'S DECLARATION			ASSESSOR'S FINDINGS				
KIND	AREA	VALUE	KIND	AREA	CLASS	UNIT VALUE	MARKET VALUE
Cacao	.5000	P 3000.00			5	18600	
Upland	.4992	P 2000.00			5	17400	
Total	.9992	P 18000	Total				P

14760 ADJUSTED MARKET VALUE

I (b) PLANTS & TREES

OWNER'S DECLARATION			ASSESSOR'S FINDINGS			
KIND	NO./AREA	VALUE	KIND	NO./AREA	UNIT VALUE	MARKET VALUE
Cacao	20-7	P 1600.00	Market Value	100%		
			Adjustments			
			(a) Along or no road frontage	-9 %		
			(b) Kms. to all Weather rd	0 %		
			(c) Kms. to market (pob.)	-4 %		
			Total Adjustments	-13 %		
			Adjusted Market Value	87 %		
			Total			P
			Adjusted Market Value			P

RESIDENTIAL, COMMERCIAL, INDUSTRIAL, SPECIAL)

N	ASSESSOR'S FINDINGS				
VALUE	KIND	AREA	UNIT VALUES	ADJUSTMENTS	MARKET VALUE
This is to certify that this is a true and correct copy from office file. Issued upon the request of Mrs. Evangelina Esguerra, June 6, 2002 Ubay, Bohol.					
VIRGINIA M. BOISER Assistant Municipal Assessor					
Total					P

(Do only the valuation of the entire place if the value of each portion thereof cannot be determined.)

OFFICE OF

June 4, 2002

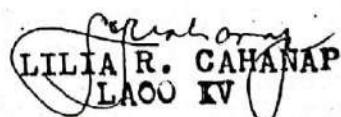
Date

TO WHOM IT MAY CONCERN:

This is to certify that according to the records on file on this office, the following Tax Declarations have been issued by this Office in lieu sequentially of each other in whole or in part, viz;

Tax Dec. Number	Year Issued	Declared Owner	Location of Property	Superseded Declaration
4223	1917	Genovevo Reyes	San Pascual, Ubay, Bohol	930 & 932
7349	1922	-do-	-do-	4223
8018	1924	Herederos de Faustina Reyes Timoteo Bestar	-do-	7349 part
R-1269	1950	-do-	-do-	8018
R-16077	1966	-do-	-do-	R-1269 part
R-16853	1968	Alberto Esguerra	-do-	R-16077 part
D-3786	1973	-do-	-do-	R-16853
45C7-358	1984	-do-	Bood, Ubay, Bohol	D-3786
45-007-00517	2001	-do-	-do-	45C7-358 part

Issued upon the request of Mr. Alberto Esguerra for whatever legal purpose it may serve.



LILIA R. CAHANAP
LAOO KV

fir: EDGARDO P. ORIG
Asst. Provincial Assessor, ICO

