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OF THE

PHILIPPINES

FROM

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MANILA
2013

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.C. No. 6422. August 28, 2007]

WILFREDO T. GARCIA, *complainant, vs.* **ATTY. BENIAMINO A. LOPEZ,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; LAWYERS; PROPER DECORUM. — Lawyers are officers of the court who are empowered to appear, prosecute and defend the causes of their clients. The law imposes on them peculiar duties, responsibilities and liabilities. Membership in the bar imposes on them certain obligations. They are duty bound to uphold the dignity of the legal profession. They must act honorably, fairly and candidly towards each other and otherwise conduct themselves beyond reproach at all times.

2. ID.; ID.; LAWYER'S OATH; "TO DO NO FALSEHOOD NOR CONSENT TO THE DOING OF ANY IN COURT"; VIOLATED IN MISREPRESENTATION COMMITTED IN CASE AT BAR. — Complainant was the counsel of Sarmiento, the original applicant. Upon her death, the attorney-client relationship was terminated. However, complainant was retained as counsel by Gina Jarviña and Alfredo Ku. In filing an entry of appearance with motion of postponement in behalf of the "compulsory heirs of the late Angelita Sarmiento" when in truth he was merely representing some of the heirs but not all of them, respondent was guilty of misrepresentation which could have deceived the court. He had no authorization to represent all the heirs. He clearly violated his lawyer's oath that he will

"do no falsehood nor consent to the doing of any in court." Likewise, the CPR states: CANON 10 — A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT. Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

3. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); DUTY TO CONDUCT THEMSELVES IN COURTESY, FAIRNESS AND CANDOR TOWARD FELLOW LAWYERS; VIOLATED WHEN LAWYER ENTERED APPEARANCE AS COURT COUNSEL IN PLACE OF HANDLING LAWYER. —Canon 8 of the CPR demands that lawyers conduct themselves with courtesy, fairness and candor toward their fellow lawyers: CANON 8 — A lawyer shall conduct himself with courtesy, fairness and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel. x x x Rule 8.02 — A lawyer shall not, directly or indirectly, encroach upon the professional employment of another lawyer; however, it is the right of any lawyer, without fear or favor, to give proper advice and assistance to those seeking relief against unfaithful or neglectful counsel. Respondent failed to observe the foregoing rules. He made it appear that he was entering his appearance as counsel for all the heirs of Sarmiento which was highly unfair to complainant who had worked on the case from the very beginning (*i.e.*, since 1996) and who had not been discharged as such. It is true that without the formal withdrawal of complainant as counsel of record, respondent would merely be considered as collaborating counsel. Nevertheless, by being less than candid about whom he was representing, respondent undeniably encroached upon the legal functions of complainant as the counsel of record. We cannot casually brush aside what respondent did. Even assuming that it was not a calculated deception, he was still remiss in his duty to his fellow lawyer and the court. He should have been more careful about his actuation since the court was relying on him in its task of ascertaining the truth.

APPEARANCES OF COUNSEL

Wilfredo T. Garcia for and in his own behalf.
Lopez and Associates Law Office for respondent.

R E S O L U T I O N

CORONA, *J.*:

In a complaint dated September 24, 2002, complainant Atty. Wilfredo T. Garcia charged respondent Atty. Beniamino A. Lopez with violation of his oath as a member of the bar and officer of the court, and misrepresentation, amounting to perjury and prayed that respondent be suspended or disbarred.

Complainant was the counsel of the late Angelina Sarmiento, applicant in LRC Case No. 05-M-96 which was pending in the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 15.[1] Sarmiento sought the registration and confirmation of her title over a 376,397 sq. m. tract of land. This was granted by the court.[2] The case went all the way to the Supreme Court and ultimately, the RTC decision was upheld. The decision became final and executory and the RTC, in an order dated February 21, 2002, directed the Land Registration Authority (LRA) to issue the decree of registration and certificate of title.[3] The LRA failed to comply, prompting the complainant to file an urgent motion to cite the LRA administrator or his representative in contempt of court. Hearings were scheduled.

On September 19, 2002, respondent, claiming to be the counsel of the heirs of Sarmiento, filed his entry of appearance and motion for postponement.[4]

Complainant alleged that he was surprised by this, considering that he had not withdrawn from the case. He contended that respondent should be sanctioned for misrepresenting to the court that he was the counsel of all the heirs of Sarmiento and omitting to mention that complainant was the counsel of record. According

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[1] *Rollo*, p. 6.

[2] In a decision dated November 29, 1997 penned by Judge Carlos C. Ofilada; *id.*, p. 15.

[3] *Id.*, p. 17.

[4] *Id.*, pp. 21-22.

to him, his attorney's fee was arranged on a contingent basis and therefore, the attempt of respondent to enter his appearance at the final stage of the proceedings was tantamount to "unfair harvesting" of the fruit of complainant's labors since 1996.[5]

It appears that Sarmiento was succeeded by the following compulsory heirs: Gina Jarviña (Angelina's daughter by her common-law husband Victor Jarviña), Alfredo, Zenaida, Wilson, Jeanette and Geneva, all surnamed Ku (Angelina's children by her husband prior to her relationship with Victor). Complainant presented an affidavit executed by Gina Jarviña and Alfredo Ku wherein they stated that they did not engage the services of respondent and that they recognized complainant as their only counsel of record.

In his defense, respondent claimed that he was merely representing Zenaida and Wilson Ku[6] who sought his help on September 19, 2002 and told him that they wanted to retain his services. They allegedly did not have a lawyer to represent them in a hearing scheduled the next day. Because of the scheduled hearing, he had to immediately file an entry of appearance with motion for postponement. He asserted that it was an honest mistake not to have listed the names of his clients. He claimed it was not deliberate and did not prejudice anyone. He insisted that he had no intention of misrepresenting himself to the court.

The complaint was referred to the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP). The investigating commissioner, Wilfredo E.J.E. Reyes, in his report and recommendation dated January 8, 2004, found respondent guilty of misrepresentation and violation of Rule 8.02 of the Code of Professional Responsibility (CPR) when he failed to specify in his entry of appearance the individuals he was representing. He recommended that respondent be strongly reprimanded for his act with a reminder that a repetition of the same or similar offense would be dealt with more severely. This was adopted

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[5] *Id.*, p. 4.

[6] Although in respondent's Rejoinder, he alleged that he also represented Geneva and Jeanette Ku. *Id.*, p. 122.

and approved by the IBP Board of Governors in its resolution passed on February 27, 2004.

We affirm the factual findings of the IBP but modify the penalty recommended.

Lawyers are officers of the court who are empowered to appear, prosecute and defend the causes of their clients. The law imposes on them peculiar duties, responsibilities and liabilities. Membership in the bar imposes on them certain obligations.[7] They are duty bound to uphold the dignity of the legal profession. They must act honorably, fairly and candidly towards each other and otherwise conduct themselves beyond reproach at all times.[8]

Complainant was the counsel of Sarmiento, the original applicant. Upon her death, the attorney-client relationship was terminated. However, complainant was retained as counsel by Gina Jarviña and Alfredo Ku. In filing an entry of appearance with motion of postponement in behalf of the "compulsory heirs of the late Angelita Sarmiento" when in truth he was merely representing some of the heirs but not all of them, respondent was guilty of misrepresentation which could have deceived the court. He had no authorization to represent all the heirs. He clearly violated his lawyer's oath that he will "do no falsehood nor consent to the doing of any in court."

Likewise, the CPR states:

CANON 10 — A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

Moreover, Canon 8 of the CPR demands that lawyers conduct themselves with courtesy, fairness and candor toward their fellow lawyers:

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[7] *Reyes v. Chiong*, A.C. No. 5148, 1 July 2003, 405 SCRA 212, 217.

[8] *Dallong-Galicinao v. Castro*, A.C. No. 6396, 25 October 2005, 474 SCRA 1, 8, citing *Alcantara v. Atty. Pefianco*, 441 Phil. 514, 519 (2002).

CANON 8 — A lawyer shall conduct himself with courtesy, fairness and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel.

x x x x x x x x x

Rule 8.02 — A lawyer shall not, directly or indirectly, encroach upon the professional employment of another lawyer; however, it is the right of any lawyer, without fear or favor, to give proper advice and assistance to those seeking relief against unfaithful or neglectful counsel.

Respondent failed to observe the foregoing rules. He made it appear that he was entering his appearance as counsel for all the heirs of Sarmiento which was highly unfair to complainant who had worked on the case from the very beginning (*i.e.* since 1996) and who had not been discharged as such. It is true that without the formal withdrawal of complainant as counsel of record, respondent would merely be considered as collaborating counsel. Nevertheless, by being less than candid about whom he was representing, respondent undeniably encroached upon the legal functions of complainant as the counsel of record.

We cannot casually brush aside what respondent did. Even assuming that it was not a calculated deception, he was still remiss in his duty to his fellow lawyer and the court. He should have been more careful about his actuation since the court was relying on him in its task of ascertaining the truth.

WHEREFORE, respondent Atty. Beniamino A. Lopez is hereby *SUSPENDED* from the practice of law for one (1) month for violating Canons 8 and 10, Rules 8.02 and 10.01 of the Code of Professional Responsibility. He is warned that the commission of the same or similar act in the future will be dealt with more severely.

Let this resolution be furnished the Bar Confidant for appropriate annotation in the record of respondent.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. MTJ-06-1645. August 28, 2007]
(Formerly A.M. OCA IPI No. 05-1702-MTJ)

IN RE: SANDRA L. MINO *vs.* JUDGE DONATO SOTERO A. NAVARRO, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 6, CEBU CITY.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; OPTIONS OF JUDGE UPON FILING OF INFORMATION; ON ISSUANCE OF WARRANT OF ARREST; EXISTENCE OF PROBABLE CAUSE TO BE RESOLVED WITHIN THIRTY DAYS FROM FILING OF INFORMATION. — Under Section 6(a) of Rule 112, a judge, upon the filing of an Information, has the following options: (1) dismiss the case if the evidence on record clearly failed to establish probable cause; (2) if he or she finds probable cause, issue a warrant of arrest; and (3) in case of doubt as to the existence of probable cause, order the prosecutor to present additional evidence within five days from notice, the issue to be resolved by the court within thirty days from the filing of the information.

2. ID.; ID.; ID.; ID.; ID.; ID.; VIOLATED IN CASE AT BAR. — By acting on the Information only after the lapse of 97 days following its filing, and taking him 87 days or almost three months to resolve the Prosecution's *Ex-Parte* Motion for Reconsideration and Motion for Inhibition, respondent did not comply with the reglementary periods prescribed by Section 6(a) of Rule 112. Particularly with respect to his delay in resolving the Prosecution's motion, it reflects respondent's lack of awareness that immediate resolution thereof was essential to setting the case in motion in order not to frustrate the parties' right to a speedy disposition of their case and thus avoid inflaming distrust and discontent in the judiciary as a whole.

3. JUDICIAL ETHICS; JUDGES; CODE OF JUDICIAL CONDUCT; COMPETENCE AND DILIGENCE. —

Respondent is reminded of Canon 6 of the New Code of Judicial Conduct, which took effect on June 1, 2004, reading: Canon 6 COMPETENCE AND DILIGENCE Competence and diligence are prerequisites to the due performance of judicial office. x x x SEC. 3. **Judges shall take reasonable steps to maintain and enhance their knowledge, skills and personal qualities** necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges. x x x SEC. 5. **Judges shall perform all judicial duties**, including the delivery of reserved decisions, **efficiently, fairly and with reasonable promptness**. He is reminded too of Rule 3.05 of the Code of Judicial Conduct, which is applied in suppletory character, requiring judges to dispose of the court's business promptly and decide cases within the required periods.

4. ID.; ID.; GROSS IGNORANCE OF THE LAW; PENALTY. — Since the law or procedure violated is so elementary for respondent not to know it or act as if he does not know, he is guilty of gross ignorance. Section 8, Rule 140 of the Rules of Court classifies gross ignorance of the law or procedure a serious charge for which a penalty of (1) fine of more than ₱20,000 but not exceeding ₱40,000, or (2) suspension from office without salary and other benefits for more than three but not exceeding six months, or (3) dismissal from service. The penalty recommended by the OCA for respondent's gross ignorance of the law — suspension from the service for a period of six months without salary and benefits — merits this Court's approval.

5. ID.; ID.; UNJUST DELAY IN RENDERING DECISION; PENALTY. — Respondent also committed unjust delay in rendering a decision or order, classified as a less serious charge under Section 9, Rule 140 of the Rules of Court which is punishable by suspension from office, without salary and other benefits, for not less than one (1) nor more than three (3) months or a fine of more than ₱10,000 but not exceeding ₱20,000. Respondent being guilty also of unjust delay, this Court imposes on him a fine of ₱10,000.

D E C I S I O N

CARPIO MORALES, *J.*:

By letter of March 7, 2005[1] addressed to the Court Administrator which was received by the Office of the Court Administrator (OCA) on March 14, 2005, Sandra Mino (complainant) charged Judge Donato Sotero A. Navarro (respondent), Presiding Judge of Branch 6 of the Municipal Trial Court in Cities in Cebu City, with gross inexcusable negligence arising from his failure to issue a warrant of arrest, within the period prescribed by the Rules of Court, in Criminal Case No. 124511-R, *People of the Philippines v. Allan Arcilla*, for Attempted Homicide.

It appears that the above-said criminal case was raffled to the sala of respondent on October 21, 2003. Despite repeated requests for the issuance of a warrant for the arrest of the accused, respondent did not grant the same.

After ninety seven (97) days from the raffling of the case to his sala or on February 5, 2004, respondent issued an Order[2] declaring that on the basis of the affidavits of the offended party and his witness, "the accused may actually be charged only with Grave Threats, as there is no probable cause to believe that the accused had acted with intent to kill, not having persisted in his threat against the offended party."

Respondent accordingly ordered the remand of the record of the case to the Office of the City Prosecutor "so that the information may be amended to reflect the proper crime."[3]

To the February 5, 2004 Order of respondent, the prosecution filed on March 8, 2004 an *Ex-Parte* Motion for Reconsideration with Motion for Inhibition,[4] alleging that the prosecution was not given a chance to be heard before the Order was issued.

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[1] *Rollo*, pp. 1-2.

[2] *Id*. at 9.

[3] *Ibid*.

[4] *Id*. at 12-14.

In the same *Ex-Parte* Motion, the Prosecution argued that amending the Information was no longer proper, the Office of the Cebu City Prosecutor having already issued a resolution "after a preliminary investigation" finding probable cause against the accused for Attempted Homicide from which no appeal, either to the Office of the Regional State Prosecutor or to the Department of Justice, was taken.[5]

The Prosecution further argued that the Order is contrary to law and jurisprudence since respondent practically conducted his own preliminary investigation of the case which he has no authority to do as it is exclusively lodged with the Office of the Prosecutor.[6]

Eighty seven (87) days from the filing on March 8, 2004 by the Prosecution of its *Ex-Parte* Motion or on June 3, 2004, respondent issued an Order[7] refuting the arguments of the Prosecution, but nevertheless recusing himself and leaving the resolution of the said motion "to what branch of th[e] [c]ourt the case maybe raffled," thus:

> The prosecutors making the instant motion should be thoroughly familiar with the 2000 Rules on Criminal Procedure by now that requires judges to make a determination of probable cause before issuing warrants, in effect reviewing the sufficiency of the allegations in the record of preliminary investigation filed by the Office of the City Prosecutor so that the Court may even dismiss the case outright without any motion from the accused. There is actually no basis for the Judge of this Court to recuse himself from this case.
>
> The Court is deeply disturbed by the actuations of the three prosecutors who filed the motion for inhibition, … particularly as they would insist that the Court issue a warrant for the arrest of the accused when the Court has determined that this case falls only under the rule on summary procedure, so that the issuance of a warrant is completely unnecessary. Something is not right.
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> x x x x x x x x x

[5] *Id*. at 13.

[6] *Ibid*.

[7] *Id*. at 7-8.

The Court shall leave the resolution of the motion for reconsideration to whatever branch of this Court the case may be raffled to.

Remand the record of this case to the Clerk of Court so that it may be so raffled. (Underscoring supplied)

To complainant, respondent has been trifling with the findings of the Office of the City Prosecutor, to show a pattern of which she submitted a copy of respondent's October 12, 2004 Order[8] in another criminal case, Criminal Case No. 122800-R, *People of the Philippines v. J. Walter Palacio*, also for Attempted Homicide. In this criminal case, respondent downgraded the crime to Grave Threats and ordered the remand of the case to the Office of the City Prosecutor "for the amendment of the Information." The said Order, complainant informs, was issued forty five (45) days from the time the case was raffled to his sala.

In his Letter-Comment dated September 19, 2005,[9] respondent maintains that the determination of probable cause is no longer considered the exclusive domain of prosecutors, he justifying his February 5, 2004 Order in this wise:

It was important for the respondent that the prosecution show clear probable cause for the crime charged because the effect of doing so would be for the respondent to issue a warrant of arrest. The liberty of the accused is at stake! As the record of preliminary investigation does not support such a finding, respondent had no choice but to dismiss the case, ask for additional evidence, or remand the record as he did so that *the prosecution had the option of submitting additional evidence or amending the information*. This was the best course of action among the options left to the respondent.[10] (Italics in the original)

In its Report dated May 8, 2006,[11] the OCA came up with the following:

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[8] *Id*. at 6.

[9] *Id*. at 25-29.

[10] *Id*. at 28.

[11] *Id*. at 31-36.

EVALUATION: Paragraph (a), Section 6, Rule 112 of the Revised Rules on Criminal Procedure, which is applicable to first level courts when the preliminary investigation was conducted by the public prosecutor, provides, thus:

> SEC. 6. *When warrant of arrest may issue.* — (a) *By the Regional Trial Court.* — **Within ten (10) days from the filing of the complaint or information**, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to [S]ection 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecution to present additional evidence **within five (5) days from notice** and the issue must be resolved by the court **within thirty (30) days from the filing of the complaint or information**.[12]

From the foregoing, the judge is required to personally evaluate the resolution of the prosecutor and its supporting evidence within ten (10) days from the filing of the complaint or information, and to forthwith issue a warrant of arrest or dismiss the case, as the evidence may warrant. In fact, a maximum period of thirty (30) days from the filing of the complaint or information was set for the court to resolve the issue on the existence of probable cause, should the prosecution be required to submit additional evidence.

Criminal Case No.124511-R was raffled to Branch 6, presided over by respondent judge, on October 21, 2003. However, it took respondent judge **ninety-seven (97) days longer than the prescribed**

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[12] Section 6 (b) of Rule 112 provides:

(b) *By the Municipal Trial Court*. — When required pursuant to the second paragraph of section 1 of this Rule, the preliminary investigation of cases falling under the original jurisdiction of the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court may be conducted by either the judge or the prosecutor. **When conducted by the prosecutor, the procedure for the issuance of a warrant of arrest by the judge shall be governed by paragraph (a) of this section**. x x x (Emphasis supplied)

period to issue the questioned February 5, 2004 Order. The delay was further exacerbated when respondent **judge did not immediately rule on the *Ex-Parte* Motion** for Reconsideration with Motion for Inhibition filed by the prosecution on March 8, 2004. It was only on June 3, 2004, **or after almost three months** from the time the motion was filed, that he inhibited himself from the case.

On the issue of downgrading the crime charged from attempted homicide to grave threats, respondent judge **manifested ignorance of the rule mentioned above**. When the preliminary investigation was conducted by the prosecutor, the judge has three options after the filing of the information and upon evaluation of the prosecutor's resolution and its supporting evidence. He/she may (a) dismiss the case, (b) issue a warrant of arrest or a commitment order, as the case may be, against the accused, or (c) require the prosecution to submit additional evidence to support the existence of probable cause. **Nowhere in the rule was the judge authorized to determine the proper crime** that the accused should be charged with. The options given to the judge are exclusive, and preclude him/her from interfering with the discretion of the public prosecutor in evaluating the offense charged.

x x x x x x x x x

Respondent judge's clarification that his Order returning the records of the preliminary investigation to the Office of the City Prosecutor so that the information 'may be amended' gave the prosecution an option to submit additional evidence does not inspire belief. Nothing in the questioned Order suggests that the prosecution may exercise that option. He could have expressly ordered the prosecution to present additional evidence in support of its earlier findings, pursuant to Section 6(a), Rule 112, Revised Rules on Criminal Procedure, had he so intended. In fact, this is not the first time that he ordered the downgrading of the crime charged. In *People of the Philippines vs. J. Walter Palacio*, docketed as Criminal Case No. 122800-R for attempted homicide, he also ordered the crime charged to be reduced to grave threats, and directed the prosecution to amend the information accordingly in an Order dated October 12, 2004.[13] (Italics in the original, emphasis and underscoring supplied)

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[13] *Rollo*, pp. 33-35.

The OCA, noting that respondent's actions in the two criminal cases "fell short of the standards set by the New Code of Judicial Conduct, not to mention that he [had been previously] sanctioned by this Court in two other cases,"[14] recommended that he be suspended for six (6) months without salary and benefits.

By Resolution of July 31, 2006,[15] this case was re-docketed as a regular administrative matter following which the parties were directed to manifest whether they are willing to submit the case for decision on the basis of the pleadings already filed.

Respondent, in his Manifestation of October 6, 2006, responded as follows:

> 2. The respondent is willing to have this case submitted for decision on the basis of the pleadings/records already submitted provided the following are taken into consideration:
>
> a. The only basis for the filing of the charges in Criminal Case No. 124511-R is the affidavit of the offended party, sadly now deceased Alvin Mino, that appears in the record of preliminary investigation;
>
> b. Only the second and third paragraphs of the affidavit of the offended party in the record of [the] preliminary investigation is relevant to the crime charged, to wit;
>
> 2. That on or about 5:30 P.M. of the same date . . . That upon going out from our house I noticed that somebody was behind me when I look at back (sic) it was my brother in law Allan Arcilla. That on that juncture he was holding his bolo and without any apparent reason struck me but I was not hit for I was able to wave (sic). That I ran for my life and I heard him uttered (sic)

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[14] In the Resolution dated September 21, 2004, the Court in A.M. No. OCA IPI No. 03-1476-MTJ, *Fernandez v. Navarro*, respondent was cited for contempt for failure to comply with the directives of the Court to submit his comment despite several directives. He was fined in the amount of ₱20,000. In A.M. No. OCA IPI No. 04-1579-MTJ, *Fernandez v. Navarro*, the Court in a Resolution dated February 22, 2006 admonished respondent to be more circumspect in the performance of his judicial and administrative responsibilities.

[15] *Rollo*, pp. 41-42.

"*Pangagi pamo dinhi kay pamungotan tamo ug ulo*." (If you continue to pass here, I will chop off your heads);

3. That my wife Sandra . . . stopped and confronted Allan Arcilla by saying "*Nganong man imo mang harason ang akong bana wala man ka hilabti*. (Why do you harass my husband although he has not bothered you?) x x x[16]

By imposing the above-quoted qualification to his willingness to submit the case for decision on the basis of the pleadings/ records already submitted, respondent betrays his gross failure to understand the main issue in the present administrative complaint, which is whether he is aware of and complied with Rule 112, Sec. 6(a).

Under Section 6(a) of Rule 112, a judge, upon the filing of an Information, has the following options: (1) dismiss the case if the evidence on record clearly failed to establish probable cause; (2) if he or she finds probable cause, issue a warrant of arrest; and (3) in case of doubt as to the existence of probable cause, order the prosecutor to present additional evidence within five days from notice, the issue to be resolved by the court within thirty days from the filing of the information.

Contrary to respondent's assertion, he did not have the option of remanding the case to the prosecutor "so that *the prosecution had the option of submitting additional evidence or amending the information*."[17] (Italics in the original)

At all events, by acting on the Information only after the lapse of 97 days following its filing, and taking him 87 days or almost three months to resolve the Prosecution's *Ex-Parte* Motion for Reconsideration and Motion for Inhibition, respondent did not comply with the reglementary periods prescribed by Section 6(a) of Rule 112.

Particularly with respect to his delay in resolving the Prosecution's motion, it reflects respondent's lack of awareness

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[16] *Id*. at 43-44.

[17] *Id*. at 23.

that immediate resolution thereof was essential to setting the case in motion in order not to frustrate the parties' right to a speedy disposition of their case and thus avoid inflaming distrust and discontent in the judiciary as a whole.[18]

Respondent is reminded of Canon 6 of the New Code of Judicial Conduct, which took effect on June 1, 2004, reading:

> Canon 6
>
> COMPETENCE AND DILIGENCE
>
> Competence and diligence are prerequisites to the due performance of judicial office.
>
> x x x x x x x x x
>
> SEC.3. **Judges shall take reasonable steps to maintain and enhance their knowledge, skills and personal qualities** necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.
>
> x x x x x x x x x
>
> SEC. 5. **Judges shall perform all judicial duties**, including the delivery of reserved decisions, **efficiently, fairly and with reasonable promptness.** (Emphasis supplied)

He is reminded too of Rule 3.05 of the Code of Judicial Conduct, which is applied in suppletory character, requiring judges to dispose of the court's business promptly and decide cases within the required periods.

In fine, since the law or procedure violated is so elementary for respondent not to know it or act as if he does not know, he is guilty of gross ignorance.[19]

Section 8, Rule 140 of the Rules of Court classifies gross ignorance of the law or procedure a serious charge for which a

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[18] *Vide Custodio v. Judge Quitain*, 450 Phil. 70, 76 (2003).

[19] *Vide Ligaya Santos v. Judge Rolando G. How*, A.M. No. RTJ-05-1946, January 26, 2007, 513 SCRA 25, 37; *Dantes v. Caguioa*, A.M. No. RTJ-05-1919, June 27, 2005, 461 SCRA 236, 246.

penalty of (1) fine of more than ₱20,000 but not exceeding ₱40,000, or (2) suspension from office without salary and other benefits for more than three but not exceeding six months, or (3) dismissal from service.[20]

Aside from committing gross ignorance of law or procedure, respondent committed unjust delay in rendering a decision or order, classified as a less serious charge under Section 9, Rule 140 of the Rules of Court which is punishable by suspension from office, without salary and other benefits, for not less than one (1) nor more than three (3) months or a fine of more than ₱10,000 but not exceeding ₱20,000.

The penalty recommended by the OCA for respondent's gross ignorance of the law — suspension from the service for a period of six months without salary and benefits — merits this Court's approval. Respondent being guilty also of unjust delay, this Court imposes on him a fine of ₱10,000.

WHEREFORE, Judge Donato Sotero A. Navarro, Presiding Judge, Municipal Trial Court in Cities, Branch 6, Cebu City who has been previously sanctioned by this Court in two other cases, is, for gross ignorance of the law or procedure, *SUSPENDED* from the service for a period of six months without salary and benefits. And for unjust delay in resolving a motion, he is *FINED* the amount of Ten Thousand (₱10,000) Pesos.

He is *WARNED* that a commission of any further administrative offense will be dealt with more severely.

SO ORDERED.

Quisumbing (Chairperson), Carpio, and *Tinga, JJ.*, concur.

Velasco, Jr., J., no part, due to prior action in OCA.

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[20] Section 11 (A), Rule 140.

FIRST DIVISION

[A.M. No. P-05-1982. August 28, 2007]

JUDGE JUANITA C. TIENZO, *complainant*, *vs.* **DOMINADOR R. FLORENDO, Clerk II, Municipal Trial Court of Lupao, Nueva Ecija,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE UNIFORM RULES; DISMISSAL; PROPER PENALTY FOR GAMBLING FOR THE THIRD OFFENSE; THIRD OFFENSE, ELUCIDATED. —The Civil Service Uniform Rules prescribes the penalty of dismissal for gambling for the third offense. When the law speaks of "third offense," the reference is to a third final judgment of guilt after the erring officer has been duly charged with gambling. As it were, respondent was thrice warned to refrain from playing "*tong-its*" during office hours. The records reveal that, for the first two gambling infractions he appeared to have committed, respondent was not charged formally. What is clear is that he was merely warned. Judge Tienzo appeared to be open to the prospect of reform, and the good judge desisted from taking official action against the respondent, as her Office Memorandum to the respondent discloses. Respondent was formally charged only after the occurrence of the third gambling incident. As such, the penalty of dismissal prescribed under Section 52 (c) (5), Rule IV of the Civil Service Commission Uniform Rules on Administrative Cases cannot strictly apply. For all intents and purposes, this case may be considered as respondent's first gambling offense.

2. ID.; ID.; COURT EMPLOYEES; PROPER DECORUM, EMPHASIZED; ANY IMPRESSION OF IMPROPRIETY WILL NEVER BE COUNTENANCED. — Time and again, the Court has emphasized the heavy burden and responsibility which court officials and employees are mandated to carry. They are constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. The Court will never countenance any conduct, act or omission on the part of all

those involved in the administration of justice which would violate the norm of public accountability and diminish the people's faith in the judiciary. Republic Act No. 6713, also known as The Code of Conduct and Ethical Standards for Public Officials and Employees, enunciates the State policy of promoting a high standard of ethics and responsibility in the public service. No other office in the government exacts a greater demand for moral righteousness and uprightness from an employee than the judiciary. Consequently, everyone involved in the administration and dispensation of justice, from the lowliest employee to the highest official, is expected to live up to the most exacting standard of honesty, integrity and uprightness.

3. ID.; ID.; ID.; ID.; ID.; GAMBLING, A VICE THE COURT FROWNS UPON. — Gambling is a pernicious practice rightfully regarded as the offspring of idleness and the prolific parent of vice and immorality, demoralizing in its association and tendencies, detrimental to the best interests of society, and encouraging wastefulness, thriftlessness, and a belief that a livelihood may be earned by means other than honest industry. To be condemned in itself, gambling has the further effect of causing poverty, dishonesty, fraud, and deceit. Many a man has neglected his business and family, and mortgaged his integrity to follow the fickle Goddess of the cards. Many a woman has wasted her hours and squandered her substance at the gambling board while home and children have been neglected if not altogether forgotten. A common gambler is a common nuisance, insensible to honor, deaf to pity, bent upon plunder, he is human cormorant, more destructible than the bird of prey itself. The Court, to be sure, frowns on gambling, as the vice may lead to the more nefarious consequence already all too well-known as graft. The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women at its helm. Hence, it becomes the imperative and sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice.

4. ID.; ID.; ID.; ID.; ID.; ID.; PENALTY OF FINE WITH WARNING PROPER IN CASE AT BAR. — As the Court clearly notes, respondent defied warnings from his superior not to engage anymore in any gambling activity. What is more,

respondent did not even have the good sense of apologizing to the complaining judge about the error of his ways. Compounding the matter is his gall of not even submitting a comment to the charge of gambling, after being repeatedly required by the OCA. A fine with warning would be appropriate under the premises. **WHEREFORE,** respondent Dominador R. Florendo is found *GUILTY* of gambling during office hours and is hereby *FINED* in an amount equivalent to his three (3) months basic salary and *WARNED* against a repetition of such improper conduct.

D E C I S I O N

GARCIA, *J.*:

This administrative matter was initiated by a Memorandum[1] dated September 3, 2003 of Judge Juanita C. Tienzo, presiding judge, Municipal Trial Court of Lupao, Nueva Ecija charging respondent Dominador R. Florendo, Clerk II of the same court, with gambling during office hours and conduct unbecoming a government employee.

The report[2] of the Office of the Court Administrator (OCA) on the administrative matter at hand reads as follows:

Judge Tienzo in her memorandum to respondent copy furnished this Office, stated the following:

She had caught respondent [Florendo] playing a game of chance "*tong-it*" in a hut at the back of the Municipal Building of Lupao despite warning on August 26, 2003.

For repeating the same act the third time she directed respondent to report in the office at 8:00 a.m. to 12:00 noon and from 1:00 to 5:00 p.m. Respondent was also warned to refrain from revealing confidential matters in the office by giving information as to the issuance of a warrant of arrest to those accused of a crime and for relaying fake information to people within the jurisdiction of the Court.

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[1] *Rollo*, p. 1.

[2] *Id.* at 5-7.

There were three (3) directives issued by this Office to respondent on the following dates, to wit:

1. 1st Indorsement dated October 16, 2003 to file Comment within ten (10) days from receipt;
2. First (1st) Tracer dated March 11, 2004 for Comment within five (5) days from receipt; and
3. Second (2nd) Indorsement dated July 2, 2004 for Comment and to explain failure to comply with the two (2) previous directives.

The registry return receipts for the above three (3) directives indicate that respondent received them, but respondent has never submitted his comment.[3]

On the basis of available records, the OCA recommended that the respondent be adjudged guilty of illegal gambling during office hours and he be meted the penalty of dismissal, but without forfeiture of his retirement benefits and leave credits. Cited to justify the imposition of the recommended penalty is Section 52 (c) (5), Rule IV of the Civil Service Commission Uniform Rules on Administrative Cases, which prescribes the penalty of dismissal upon a public officer for engaging in gambling, where said public officer commits the same offense a third time. The said Rule states:

C. The following are Light Offenses with corresponding penalties:

x x x x x x x x x

5. Gambling prohibited by law

1st Offense – Reprimand;
2nd Offense – Suspension for 1-30 days;
3rd Offense – Dismissal.

While it agrees with the OCA's recommendation as to the respondent's guilt, the Court excepts with respect to the imposable

[3] Even up to this time, the respondent has not submitted any comment to the charge against him.

penalty. As it were, the Civil Service Uniform Rules prescribes the penalty of dismissal for gambling for the third offense. When the law speaks of "third offense," the reference is to a third final judgment of guilt after the erring officer has been duly charged with gambling. As it were, respondent was thrice warned to refrain from playing "*tong-its*" during office hours. The records reveal that, for the first two gambling infractions he appeared to have committed, respondent was not charged formally. What is clear is that he was merely warned. Judge Tienzo appeared to be open to the prospect of reform, and the good judge desisted from taking official action against the respondent, as her Office Memorandum to the respondent discloses.[4] Respondent was formally charged only after the occurrence of the third gambling incident. As such, the penalty of dismissal prescribed under Section 52 (c) (5), Rule IV of the Civil Service Commission Uniform Rules on Administrative Cases cannot strictly apply. For all intents and purposes, this case may be considered as respondent's first gambling offense.

The Court, however, would be trivializing a misconduct if it lets go a recalcitrant court employee with a mere slap on the wrist, like a reprimand. As the Court clearly notes, respondent defied warnings from his superior not to engage anymore in any gambling activity. What is more, respondent did not even have the good sense of apologizing to the complaining judge about the error of his ways. Compounding the matter is his gall of not even submitting a comment to the charge of gambling, after being repeatedly required by the OCA. A fine with warning would be appropriate under the premises.

Time and again, the Court has emphasized the heavy burden and responsibility which court officials and employees are mandated to carry. They are constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. The Court will never countenance any conduct, act or omission on the part of all those involved in the administration of justice which

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[4] *Id*. at 1.

would violate the norm of public accountability and diminish the people's faith in the judiciary.[5]

Gambling is a pernicious practice rightfully regarded as the offspring of idleness and the prolific parent of vice and immorality, demoralizing in its association and tendencies, detrimental to the best interests of society, and encouraging wastefulness, thriftlessness, and a belief that a livelihood may be earned by means other than honest industry. To be condemned in itself, gambling has the further effect of causing poverty, dishonesty, fraud, and deceit. Many a man has neglected his business and family, and mortgaged his integrity to follow the fickle Goddess of the cards. Many a woman has wasted her hours and squandered her substance at the gambling board while home and children have been neglected if not altogether forgotten.[6]

> A common gambler is a common nuisance, insensible to honor, deaf to pity, bent upon plunder, he is human cormorant, more destructible than the bird of prey itself.[7]

The Court, to be sure, frowns on gambling, as the vice may lead to the more nefarious consequence already all too well-known as graft. The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women at its helm. Hence, it becomes the imperative and sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice.[8]

Republic Act No. 6713, also known as The Code of Conduct and Ethical Standards for Public Officials and Employees, enunciates the State policy of promoting a high standard of ethics and responsibility in the public service. No other office in the government exacts a greater demand for moral righteousness

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[5] *Office of the Court Administrator v. Liwanag,* A.M. No. MTJ-02-1440, February 28, 2006, 483 SCRA 417.

[6] *United States v. Salaveria,* 39 Phil. 103 (1918).

[7] *Smith v. Wilson,* 31 How. Pr [N.Y.] 22 Fed. case No. 13, 128.

[8] *Aquino v. Fernandez,* A.M. No. P-01-1475, October 17, 2003, 413 SCRA 597.

and uprightness from an employee than the judiciary. Consequently, everyone involved in the administration and dispensation of justice, from the lowliest employee to the highest official, is expected to live up to the most exacting standard of honesty, integrity and uprightness.

It would be well for the respondent to remember these tenets, given his apparent proclivity to the detestable vice.

WHEREFORE, respondent Dominador R. Florendo is found *GUILTY* of gambling during office hours and is hereby *FINED* in an amount equivalent to his three (3) months basic salary and *WARNED* against a repetition of such improper conduct.

SO ORDERED.

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

FIRST DIVISION

[A.M. No. P-05-2091. August 28, 2007]

JUDGE FLORENCIA D. SEALANA-ABBU, Presiding Judge, Regional Trial Court of Cagayan de Oro City, Branch 17, *complainant, vs.* **DOREZA LAURENCIANA-HURAÑO and PAULEEN SUBIDO, Court Stenographers, Regional Trial Court of Cagayan de Oro City, Branch 17,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; REQUIRED DECORUM; MORAL

RIGHTEOUSNESS, EMPHASIZED. — The conduct of all court personnel must be free from any whiff of impropriety not only with respect to their duties in the judicial branch but also as to their behavior outside the court as private individuals. There is no dichotomy of morality; a court employee is also judged by his or her private morals. The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel — hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice. Although every office in the government service is a public trust, no position exacts a greater demand for moral righteousness and uprightness from an individual than one in the judiciary. It is the sacred duty of all court personnel to constantly and strictly adhere to the exacting standards of morality and decency in both their professional and private conduct in order to preserve the good name and integrity of the courts. Measured against these standards, respondents are found wanting.

2. ID.; ID.; ID.; ID.; ID.; IMMORALITY; GRAVE OFFENSE PENALIZED WITH A MAXIMUM OF ONE YEAR SUSPENSION ON THE FIRST OFFENSE, IMPOSED IN CASE AT BAR. — Immorality is not based alone on illicit sexual intercourse. Immorality is not confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is **willful, flagrant or shameless conduct showing moral indifference to opinions of respectable members of the community**, and as **an inconsiderate attitude toward good order and public welfare**. Here, respondents' illicit affair is disgraceful and immoral conduct. Under civil service rules, it constitutes a grave offense penalized with suspension for six months and one day to one year for the first offense and dismissal for the second offense. Since this is respondents' first offense, the proper penalty is suspension. In view of their moral indifference to and callous disregard for the feelings of others even after the institution of criminal and administrative complaints against them, the penalty should be imposed in its maximum period.

R E S O L U T I O N

CORONA, *J.*:

This administrative case calls to task respondents Doreza Laurenciana-Huraño and Pauleen A. Subido, court stenographers in the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 17, for immorality.

Complainant Judge Florencia D. Sealana-Abbu, presiding judge of the RTC Cagayan de Oro City, Branch 17, instituted this case against respondents who are court stenographers in her sala.[1] She stated that respondent Huraño is married to PO3 Leo Huraño while respondent Subido is a bachelor. They often ate lunch or had snacks together. They also frequently worked overtime together. Complainant noticed these things but saw no malice in them even when respondents' unusual closeness became the subject of nasty rumors among court employees.

Sometime thereafter, PO3 Huraño went to see complainant for advice regarding respondent Huraño's plan to separate from him. Complainant, being one of the sponsors at the wedding of the spouses Huraño, talked to the spouses and counseled them to save their 2-year marriage. Nonetheless, respondent Huraño proceeded with her plan and left her husband. She rented a house where she trysted with her co-respondent. Complainant warned respondents about their scandalous conduct.[2]

Meanwhile, PO3 Huraño placed respondents under surveillance.[3] At around 12:30 in the morning of October 23, 2004, he caught them *in flagrante*. He filed a criminal complaint for adultery against them. The criminal case[4] is now pending in Branch 3 of the Municipal Trial Court in Cities of Cagayan de Oro City.[5]

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[1] Notarized letter-complaint dated October 29, 2004. *Rollo*, pp. 1-2.

[2] *Id*.

[3] Affidavit-complaint dated October 25, 2004. *Id*., pp. 4-5.

[4] Docketed as Criminal Case No. M4-12-3621.

[5] See letter dated February 2, 2005. *Rollo*, p. 17.

In his answer,[6] respondent Subido denied the charge against him. He claimed that he and his co-respondent were in the company of other employees whenever they had their lunch or snacks or rendered overtime work. As stenographers in the same court, they often talked about their work. They had no amorous relationship, claiming that he even advised respondent Huraño to preserve her marriage. He admitted that he slept at respondent Huraño's apartment in the evening of October 22, 2004 but only because it was too late for him to go home as they had arrived there at around midnight. He also decided that it was better for him to spend the night there since he undertook to prepare spaghetti and salad for respondent Huraño's 25th birthday the following day. He, however, slept alone in a separate room.[7]

For her part, respondent Huraño made a similar denial.[8] She claimed that she never had an illicit relationship with her co-respondent. She had lunch or rendered overtime work with other court employees and friends. She further alleged that she was only coerced to marry her husband.[9] He often cussed her, "*Yawa ka, Ai! Peste ka, Ai! Kolera kang dako!*" [10] and "*Pangit ka! Bogok kaayo ka, Ai! Yawa ka, Ai! Peste ka, kolera ka!*"[11] He was irresponsible, abusive and insensitive. In fits of anger, he destroyed things which were of great sentimental value to her.[12] At one point, he even threatened to kill her.[13] He battered her emotionally, psychologically and verbally but she remained

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[6] Dated February 28, 2005. *Id*., pp. 37-39.

[7] *Id*.

[8] Answer [of] Respondent Doreza L. Huraño dated February 28, 2005. *Id*., pp. 40-43.

[9] *Id*., p. 41.

[10] You are a devil, Ai! You are a plague, Ai! You are an infectious disease! (Translation was by respondent Huraño herself.) *Id*.

[11] "You are ugly! You are so dumb, Ai! You are a demon, Ai! You are a pestilence, an infectious disease!" *Id*.

[12] TSN, January 30, 2006, pp. 17-18. *Id*., pp. 79-80.

[13] *Id*.

faithful to him. She left him when she could no longer put up with the situation. She moved to a rented apartment with her one-year-old son and Chona Laurenciana Villaroso,[14] her helper.[15] Her co-respondent was just a friend and co-worker. While the latter spent the night in her apartment on October 22, 2004, neither did she sleep with him nor did her husband catch them *in flagrante*.[16]

In a resolution dated November 16, 2005, the Court referred the administrative complaint against respondents to Judge Edgardo T. Lloren, executive judge of the RTC of Cagayan de Oro City, for investigation, report and recommendation.[17] In compliance therewith, Judge Lloren conducted a hearing on January 30, 2006. Subsequently, he submitted his report and recommendation.[18]

He observed that complainant had no ill-motive in filing this administrative case. He added that respondents' denial could not prevail over the positive declaration and affirmative testimony of complainant and respondent Huraño's husband. He recommended that both respondents be found guilty for grossly immoral conduct and suspended for one year.[19]

The report of Judge Lloren was referred to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.[20] In its memorandum-report,[21] the OCA found substantial evidence that respondents had an amorous relationship.

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[14] Also known as "Nene."

[15] Answer [of] Respondent Doreza L. Huraño, *supra* note 8. *Rollo*, p. 42.

[16] *Id.*, pp. 42-43.

[17] Meanwhile, Judge Lloren transferred respondent Huraño to Branch 25 of the same court. Memorandum dated January 10, 2005. *Id.*, p. 36.

[18] Dated February 27, 2006. *Id.*, pp. 84-92.

[19] *Id.*

[20] Internal resolution dated July 19, 2006.

[21] Dated September 1, 2006. *Rollo*, pp. 105-108.

Complainant's charge was corroborated not only by the complaint-affidavit of PO3 Huraño but also by the sworn affidavit[22] of Chona Laurenciana Villaroso who was in the employ of respondent Huraño. Villaroso, respondent Huraño's helper and first cousin, confirmed the illicit affair between respondents:

x x x x x x x x x

P *Kinsay [k]auban nimo sa maong* apartment? (*Who was with you at the said apartment?*)

T *Si* MRS. DOREZA L. HURAÑO, *iyang anak nga si* Michael Ruzzel *nga nagpanuigon ug usa* (1) *ka tuig ug usa* (1) k*a bulan, si* PAULEEN A. SUBIDO *nga kauban ra sa opicina ni* MRS. DOREZA L. HURAÑO. (*MRS. DOREZA HURAÑO, her child, Michael Ruzzel, who is about 1 year and 1 month old, and PAULEEN A. SUBIDO who is an officemate of MRS. DOREZA L. HURAÑO.*)

P *Mahimo ba nimong ikasulti kung ngano nga tua didto si* PAULEEN A. SUBIDO *nga imong guiingon?* (*Can you tell why PAULEEN A. SUBIDO, whom you referred to, was there?*)

T *Kay sigi naman siyang anha sa* apartment *ug matulog dulog ni* MRS. DOREZA L. HURAÑO *bisan pa gani didto pa kami namuyo sa* Door #6, *Maunting* [A]partment, Kauswagan, Cagayan de Oro city *sa bulan sa* August *ning tuig* 2004. (***Because he always go to the apartment and sleep beside MRS. DOREZA L. HURAÑO*** *even when we were still staying at Door #6 of Maunting Apartment in Kauswagan, Cagayan de Oro City in August 2004.*)

P *Buot ba nimong ipasabot nga dunay relasyon isip nagminahalay silang duha ni* MRS. DOREZA L. HURAÑO ug PAULEEN A. SUBIDO? (***Do you mean to say there is a relationship, as lovers, between MRS. DOREZA L. HURAÑO and PAULEEN A. SUBIDO?***)

T ***Oo*. (Yes.)**

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[22] Dated October 25, 2004. *Id*., pp. 6-8.

P *Wala ka ba diay guihimo sa maong sitwasyon nga asawa pa gyod sa pulis kining imong ig-agaw nga si* DOREZA L. HURAÑO? (*Did you not do anything about the situation when in fact your cousin DOREZA L. HURAÑO is married to a policeman?*)

T *Nahadlok ako sa unang higayon samtang didto pa kami nagpuyo sa girentahan nga balay/*apartment *sa* Kausawagan, Cagayan de Oro City *ni* MRS. DOREZA L. HURAÑO *samtang akong nakita si* PAULEEN SUBIDO *nga gipaila kanako ni* DOREZA L. HURAÑO *nga iyang kauban sa opisina nga natulog silang duha uban sa kwarto morag magtiayon ug mao gihapon ang nahitabo didto sa namalhin na kami sa* 4th/7th Sts., Nazareth, Cagayan (de) Oro. (*At first, I was afraid; we were then still staying at the rented apartment in Kauswagan, Cagayan de Oro City, when I saw PAULEEN SUBIDO, whom DOREZA L HURAÑO. introduced to me as her officemate,* ***and both of them slept together in the room like couples do****. The same thing happened when we transferred to 4th/7th Sts., Nazareth, Cagayan de Oro City.*)[23]

x x x x x x x x x

P *Mahimo ba nimong ikasulti kung aduna bay nahitabo nga dili kasagaran niadtong petsa 23 ning maong bulan sa* October 2004 *sa may ala* 1:30 *ang takna kapin kung kulang sa kadlawon?* (Can you tell what you witnessed in the early morning of October 23, 2004 at around 1:30 a.m.?)

T *Oo*. (Yes.)

P *Palihug isulti?* (Can you tell it then?)

T *Sa maong higayon miabot si* [PO3] LEO P. HURAÑO *sa among gipuy-an ug akong giignan nga tua ang iyang asawa sa iyang kuwarto uban ni* PAULEEN SUBIDO *nga tulog ug didto nasapon niya* ([PO3] LEO P. HURAÑO) *ang duha* (MRS. DOREZA L. HURAÑO *ug* PAULEEN SUBIDO) *sa sulod sa maong kuwarto sa* second floor. (At that time, [PO3] LEO P. HURAÑO arrived at our place and **I told him that his wife is sleeping in her room with**

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[23] Translation provided by the OCA. *Id*., pp. 6-7.

PAULEEN SUBIDO and he ([PO3] LEO P. HURAÑO) caught the two (MRS. DOREZA L. HURAÑO and PAULEEN SUBIDO) inside the room in the second floor.)[24]

x x x x x x x x x (emphasis supplied)

The OCA gave credence to the foregoing statements of Villarosa because she was a relative and employee of respondent Huraño. Moreover, respondents never refuted her statements. Hence, the OCA found that respondents were having an illicit affair.[25] Worse, they continued to display their forbidden mutual affection in public even after the criminal action for adultery and administrative complaint for immorality had been filed against them. For example, they were seen eating lunch together inside the office, watching a movie together and having lunch or dinner at a cafe. These developments forced Judge Lloren to detail respondent Huraño to another branch.[26] The OCA recommended that respondents be held liable for disgraceful and immoral conduct and suspended for six months and one day.[27]

The OCA recommendation that respondents be found guilty of disgraceful and immoral conduct is well-taken. The penalty, however, should be modified.

The conduct of all court personnel must be free from any whiff of impropriety not only with respect to their duties in the judicial branch but also as to their behavior outside the court as private individuals.[28] There is no dichotomy of morality; a court employee is also judged by his or her private morals.[29]

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[24] *Id*.

[25] Memorandum dated September 1, 2006, *supra* note 21.

[26] *Supra* note 17.

[27] *Supra* note 24.

[28] *Court Employees of the Municipal Circuit Trial Court, Ramon Magsaysay, Zamboanga del Sur v. Sy*, A.M. No. P-93-808, 25 November 2005, 476 SCRA 127.

[29] *Id*.

The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel — hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice.[30]

Although every office in the government service is a public trust, no position exacts a greater demand for moral righteousness and uprightness from an individual than one in the judiciary.[31] It is the sacred duty of all court personnel to constantly and strictly adhere to the exacting standards of morality and decency in both their professional and private conduct in order to preserve the good name and integrity of the courts.[32] Measured against these standards, respondents are found wanting.

In the face of the evidence presented by complainant, the bare denial and self-serving statements of respondents crumble. The positive and categorical assertions of complainant and her witnesses, specially the uncontradicted statement of Villarosa, have sufficiently established the administrative liability of respondents. They reasonably and logically lead to the conclusion that respondents were intimately and scandalously involved with each other. In fact, even the Office of the City Prosecutor of Cagayan de Oro City found sufficient ground to engender a well-founded belief that respondents committed adultery.

It is morally reprehensible for a married man or woman to maintain intimate relations with another person of the opposite sex other than his or her spouse. Furthermore, in the context of and during such an illicit affair, acts which are otherwise morally acceptable (such as having lunch or dinner, working overtime or watching a movie together) become tainted with immorality when done by a married man or woman with a person not his or her spouse. These otherwise innocent acts are deemed unclean because they are done in furtherance of and in connection with something immoral.

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[30] *Recto v. Racelis*, 162 Phil. 566 (1976).

[31] *Gonzales v. Martillana*, 456 Phil. 59 (2003).

[32] *Bucatcat v. Bucatcat*, 380 Phil. 555 (2000).

Moreover, immorality is not based alone on illicit sexual intercourse.[33]

> [Immorality] is not confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is **willful, flagrant or shameless conduct showing moral indifference to opinions of respectable members of the community**, and as **an inconsiderate attitude toward good order and public welfare**.[34] (emphasis supplied)

Respondents should have ended their affair (an affair which they should not even have entered into at all) when PO3 Huraño sought complainant's advice regarding his wife's intention to leave him. Prudence also dictated that respondents should have distanced themselves from each other when the criminal case for adultery and this administrative case for immorality were filed against them. Instead of taking the necessary steps to deflect charges and to silence rumors of their romantic involvement, they nonchalantly continued their affair. They ignored admonitions that their actions offended the sensibilities of those around them.[35] They were inconsiderate of good order. By persisting in their illicit relationship and in fact flaunting it, respondents showed complete indifference to the sentiments of the good and respectable members of the community.

If respondent Huraño's claim that her husband was maltreating her is true, the Court commiserates with her and strongly condemns the verbal and psychological abuse committed against her. Nonetheless, she could not use it as an excuse to enter in an extramarital liaison with her co-respondent. The Court recognizes her prerogative to live separately from her husband in order to keep herself and her child beyond the reach of her husband's cruel hands. However, she was (and is) still married to her husband and should have sought refuge in the protective arms of the law, not in the affections of another man.

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[33] *Court Employees of the Municipal Circuit Trial Court, Ramon Magsaysay, Zamboanga del Sur v. Sy, supra*.

[34] *Id*.

[35] Complainant's memorandum dated December 6, 2004. *Rollo*, p. 47.

For his part, respondent Subido was more of a manipulator than the friend he claimed to be. He took advantage of the emotional weakness and vulnerability of his co-respondent. Rather than help her mend her shaky marriage, he helped her destroy it. He was a home-wrecker who showed nothing but contempt for the sacred institution of marriage and the laws that seek to preserve and protect it.

Respondents' illicit affair is disgraceful and immoral conduct. Under civil service rules, it constitutes a grave offense penalized with suspension for six months and one day to one year for the first offense and dismissal for the second offense.[36] Since this is respondents' first offense, the proper penalty is suspension. In view of their moral indifference to and callous disregard for the feelings of others even after the institution of criminal and administrative complaints against them, the penalty should be imposed in its maximum period.

ACCORDINGLY, respondents Doreza Laurenciana-Huraño and Pauleen A. Subido are hereby found *GUILTY* of disgraceful and immoral conduct. They are both *SUSPENDED* for one year without pay. They are *STERNLY WARNED* of the possibility of dismissal from the service should they persist in their illegitimate and immoral relationship.

This resolution takes effect immediately.

SO ORDERED.

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

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[36] Section 52 A(15), Uniform Rules on Administrative Cases in the Civil Service.

FIRST DIVISION

[G.R. No. 140985. August 28, 2007]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **VICTORIANO M. ABESAMIS,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; RELEASE ON PAROLE; THAT THE SAME DID NOT RENDER THE CASE MOOT; ELUCIDATED. — The appeal was not mooted by accused-appellant's release on parole. His release only meant that, according to the Board, he had already served the minimum penalty imposed on him and that he was "fitted by his training for release, that there [was] reasonable probability that [he would] live and remain at liberty without violating the law and that such release [would] not be incompatible with the welfare of society." Should he violate the conditions of his parole, accused-appellant may be ordered rearrested, to serve the remaining unexpired portion of the maximum sentence. Parole refers to the conditional release of an offender from a correctional institution after he serves the minimum term of his prison sentence. The grant thereof does not extinguish the criminal liability of the offender. Parole is not one of the modes of totally extinguishing criminal liability under Article 89 of the Revised Penal Code. *Inclusio unius est exclusio alterius.*

2. ID.; ID.; CIVIL LIABILITY, NOT EXTINGUISHED. — Accused-appellant's release on parole did not extinguish his civil liability. Article 113 of the Revised Penal Code provides: ART. 113. **Obligation to satisfy civil liability. —** Except in case of extinction of his civil liability as provided in the next preceding article, **the offender shall continue to be obliged to satisfy the civil liability resulting from the crime committed by him, notwithstanding the fact that he** has served his sentence consisting of deprivation of liberty or other rights, or **has not been required to serve the same by reason of amnesty, pardon, commutation of sentence or any other reason**.

3. ID.; BOARD OF PARDONS AND PAROLE; IMPROVIDENT GRANTING OF PAROLE IN CASE AT BAR. — The grant of parole would be improvident if the CA decision finding

accused-appellant guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua* were to be affirmed by this Court. In such a case, the determination of the Board that accused-appellant would have already served the minimum penalty imposed on him would turn out to be erroneous. Worse, in basing its determination of accused-appellant's eligibility for parole on the penalty imposed in the RTC decision, the Board effectively ignored the decision of the CA. Furthermore, the Board violated its own rules disqualifying from parole those convicted of an offense punished with *reclusion perpetua*. Thus, the Board should be warned in no uncertain terms for acting *ultra vires*, carelessly disregarding the CA decision and improvidently granting parole to accused-appellant.

4. ID.; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS. — He who admits killing or fatally injuring another in the name of self-defense bears the burden of proving: (a) unlawful aggression on the part of his victim; (b) reasonable necessity of the means employed to prevent or repel it and (c) lack of sufficient provocation on his part. By invoking self-defense, the burden is placed on the accused to prove the elements thereof clearly and convincingly.

5. ID.; ID.; ID.; ID.; UNLAWFUL AGRRESSION; NOT ESTABLISHED IN CASE AT BAR. — While all three elements must concur, self-defense relies first and foremost on proof of unlawful aggression on the part of the victim. If no unlawful aggression is proved, no self-defense may be successfully pleaded. Here, both the trial and appellate courts found that there was no unlawful aggression on Ramon's part and that, in fact, it was accused-appellant who was the unlawful aggressor. Thus, accused-appellant's claim of self-defense cannot stand. The nature, number and location of the wounds sustained by the victim disprove accused-appellant's claim of self-defense. On this account, the appellate court correctly ruled that the accused-appellant's version that he fought face to face with the victim was inconsistent with the fatal stab wound at the victim's back. Moreover, the wounds inflicted by accused-appellant on the victim indicated a determined effort to kill and not merely to defend.

6. REMEDIAL LAW; EVIDENCE; FLIGHT; INDICATION OF GUILT. — Accused-appellant's failure to surrender, his

escape to Laguna and hiding for more than a year until his eventual capture and arrest also contradicted his claim that he acted in self-defense. Flight is indicative of guilt.

7. ID.; APPEALS; FACTUAL FINDINGS OF TRIAL COURT AND APPELLATE COURT, RESPECTED. — Whether or not accused-appellant acted in self-defense is a question of fact. It is a matter that is properly addressed to the trial court, not to this Court. In fact, the trial and appellate courts amply evaluated and carefully considered the issue. Their identical conclusions were based on competent evidence. There is therefore no reason to disturb their findings.

8. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; APPRECIATED IN CASE AT BAR. — Accused-appellant perpetrated the killing in such a manner that there was absolutely no risk to himself arising from the defense which the victim might have made. Ramon was unarmed, had his back turned to accused-appellant and was fighting with another person when stabbed in different parts of the body. He was caught totally by surprise and did not even have a chinaman's chance to survive the attack. As we ruled in *People v. Fabrigas, Jr.*: **Treachery is present where the assailant stabbed the victim while the latter was grappling with another** thus, rendering him practically helpless and unable to put up any defense.

9. ID.; ID.; CIVIL PENALTIES; CIVIL INDEMNITY AWARDED IN CASE AT BAR. — The trial court correctly awarded ₱50,000 to the heirs of the victim as civil indemnity for his death. This did not need any evidence or proof of damages.

10. ID.; ID.; ID.; CIVIL LIABILITY OF PERSON CRIMINALLY LIABLE; DISCUSSED. — The award of ₱100,000 "for other damages" was wrong. Under the law, there are various kinds of damages. They differ as to the necessity of proof of pecuniary loss, the purpose of and grounds for their award and the need for stipulation. Thus, the rule is that, in every case, trial courts must specify the award of each item of damages and make a finding thereon in the body of the decision. Every person criminally liable for a felony is also civilly liable. Hence, this Court may go through the records to determine the civil liability of accused-appellant. Moreover, an appeal

in a criminal proceeding opens the entire case for review. This includes a review of the indemnity and damages involved.

11. ID.; ID.; ID.; TEMPERATE DAMAGES AWARDED IN LIEU OF ACTUAL DAMAGES; PROPER MORAL DAMAGES. — The award of actual damages is proper only if the actual amount of loss was proven with a reasonable degree of certainty. It should be supported by receipts. While the victim's mother, Lolita Villo, testified that she incurred expenses in connection with the victim's death (*e.g.,* funeral and burial expenses), she failed to substantiate her claim. Thus, actual or compensatory damages cannot be awarded. Current jurisprudence, however, allows the grant of ₱25,000 as temperate damages when it appears that the heirs of the victim suffered pecuniary loss but the award thereof cannot be established with certainty. Thus, Lolita may be given ₱25,000 as temperate damages. She is also entitled to an award of ₱50,000 moral damages for the mental anguish and distress she suffered for the death of her son. Exemplary damages are not warranted because no aggravating circumstance attended the crime.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Ernesto A. Madamba for appellant.

D E C I S I O N

CORONA, *J.*:

This is an automatic review of the decision[1] dated July 30, 1999 of the Court of Appeals (CA) in CA-G.R. CR No. 21860 finding accused-appellant Victoriano M. Abesamis guilty of murder and meting out the penalty of *reclusion perpetua* to him.

This is a story of a game of billiards with a tragic ending.

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[1] Penned by Associate Justice Romeo J. Callejo, Sr. (who subsequently became a member of the Supreme Court, now retired) and concurred in by Associate Justices Quirino D. Abad-Santos, Jr. (retired) and Mariano M. Umali (retired) of the Sixth Division of the Court of Appeals. CA *rollo*, pp. 121-142.

At around 6:00 p.m. of September 18, 1994, accused-appellant and his brother, Rodel Abesamis, were in the billiard hall located at Cruz corner Pepin Streets in Sampaloc, Manila. Accused-appellant played a game of billiards with Rogelio Mercado, Jr. called "rotation" where the first player who garners 61 points wins the game. A ₱40 bet was on the line. Ramon Villo stood as "spotter" for them.

Accused-appellant was ahead with 59 points when he pocketed the number 3 ball. Ramon erroneously scored it for Rogelio. Aggrieved, accused-appellant protested. Matters got worse when Rogelio suddenly rearranged the balls on the table and the game turned into a shouting match between Rogelio and accused-appellant. Ramon tried to mediate but accused-appellant vented his ire on him, sparking a heated argument.

Ramon decided to leave and proceeded to go out of the hall. However, Rodel, accused-appellant's brother, pursued him and caught up with him in front of Andok's *lechon manok* store a few meters away. A fistfight between the two ensued. While the two were trading blows, accused-appellant ran to a Ford Fiera[2] parked nearby and got a foot-long butcher's knife. He then rushed to where Ramon and Rodel were fighting. He stabbed Ramon in the back. The victim turned around to face accused-appellant but Rodel grabbed his hands and held them from behind. Accused-appellant then stabbed Ramon two more times, one in the upper right portion of the chest and another in the lower left portion of the chest. Thereafter, accused-appellant and Rodel boarded the Ford Fiera and drove away.

Greatly weakened by the mortal wounds inflicted on him, Ramon managed to take a few steps before slumping on the pavement. His mother[3] and brother[4] soon arrived. He was brought to the University of Sto. Tomas Hospital but his wounds were fatal and he was declared dead on arrival.

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[2] The vehicle was owned by Cesar Tapia, accused-appellant's brother-in-law. Accused-appellant used it in going to the billiards hall.

[3] Lolita Villon.

[4] Ronaldo Villon.

Dr. Manuel Lagonera[5] performed an autopsy on Ramon's cadaver. His report stated:

EXTERNAL FINDINGS:

1. Stab wound, right anterior thorax, 51 inches from heel, 5 cms. from anterior midline, measuring 20x6 cms., directed slightly downwards backwards towards right lateral, transecting the sternum at the level of 1st intercostal space, incising the upper lobe of the right lung, transecting the right sub-clavian artery and ascending aorta. Depth – 11 cms.
2. Stab wound, left lower anterior thorax, 43 ½ inches from heel, 17 cms. from anterior midline, measuring 5x2 cms., directed upwards, backwards towards midline, lacerating the diaphragm, and spleen. Depth – 13 cms.
3. Stab wound, left lower posterior thorax, 41 inches from heel[,] 10 cms. from posterior midline, incising the lower lobe of the left lung. Depth – 10 cms.

INTERNAL FINDINGS

1. Injuries to organs and tissues as indicated in the internal extensions of the stab wounds, with massive bleeding in the thoracic and abdominal cavities.
2. About one glassful of partially digested meaty materials with slight alcoholic odor was recovered from the stomach.

CAUSE OF DEATH

STAB WOUNDS.[6]

An information[7] for murder was filed against the brothers accused-appellant and Rodel in the Regional Trial Court (RTC) of Manila, Branch 41. It read:

That on or about September 18, 1994, in the City of Manila, Philippines, the said accused, conspiring and confederating…and helping one another, did then and there willfully, unlawfully and

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[5] A medico-legal officer.

[6] RTC records, p. 62.

[7] *Id.,* pp. 1-2.

feloniously with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon one RAMON VILLO *y* MANGALINDAN… thrice with a butcher's knife, hitting him on the different parts of his body thereby inflicting upon him mortal stab wounds which were the direct and immediate cause of his death thereafter.[8]

However, accused-appellant and his brother remained at-large. Thus, the case was temporarily archived. It was reactivated when accused-appellant was arrested on March 26, 1996.

Accused-appellant pleaded not guilty when arraigned. During the trial, he admitted stabbing Ramon with a butcher's knife but claimed that he did so only to defend himself. He claimed that when he questioned the victim why ball number 3 was credited to Rogelio, he suddenly cussed him and threatened to kill him. When he tried to leave the billiards hall, Ramon blocked his way and tried to stab him with a *balisong*. He evaded the thrust and ran outside to get a butcher's knife from the Ford Fiera. Ramon pursued him but he stood his ground. The victim tried to stab him again, this time hitting him in the left arm. He fought back and stabbed Ramon several times.

He then boarded the Ford Fiera and drove towards España Street in Manila. He encountered heavy traffic along the way and abandoned the vehicle somewhere in Forbes Street, Manila. He wanted to surrender to the police but was advised by his relatives not to do so because Ramon's relatives might kill him. He then went to his hometown in Calamba, Laguna. He managed to elude arrest until March 26, 1996.

On April 1, 1998, the trial court rendered its decision.[9] It ruled that, while it was established that accused-appellant killed Ramon, the prosecution failed to prove the existence of either evident premeditation or treachery. Thus, the trial court found accused-appellant guilty of homicide and sentenced him to suffer the penalty of eight years and one day of *prision mayor* as

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[8] *Id*.

[9] Penned by Judge Rodolfo A. Ponferrada. *Id*., pp. 247-256.

minimum to fourteen years, eight months and one day of *reclusion temporal* as maximum. It also ordered him to pay the heirs of the victim ₱50,000 as indemnity and ₱100,000 "for other damages":

> WHEREFORE, judgment is hereby rendered finding the accused guilty of Homicide and[,] with the application of the Indeterminate Sentence Law[,] sentencing him to suffer the penalty of eight (8) years and one (1) day of *prision mayor* to fourteen (14) years[,] eight (8) months and one (1) day of *reclusion temporal*, as minimum and maximum respectively and to pay the heirs of the victim the amount of ₱50,000.00 for the latter's life and ₱100,000.00 for other damages, with legal interest from the time this decision has become final until the same is fully paid.
>
> SO ORDERED.[10]

On appeal, accused-appellant's conviction was affirmed with modification by the CA.[11] It ruled that the evidence sufficiently established that Ramon was killed with treachery: he was first stabbed in the back while he was engaged in a fistfight with Rodel, then twice in front when he turned around to face accused-appellant, with his hands held behind him by Rodel. He was completely unaware and caught off-guard when he suffered the first stab. He was defenseless when he was stabbed again. Thus, the appellate court found accused-appellant guilty of murder, sentenced him to *reclusion perpetua* and certified the case to this Court for review:

> IN THE LIGHT OF ALL THE FOREGOING, the Decision of the Court **a quo** is hereby ***AFFIRMED*** with the modification that the Appellant is hereby found guilty of "***Murder***" qualified by treachery defined and penalized by Article 248 of the Revised Penal Code and is hereby meted the penalty of "***RECLUSION PERPETUA***." However, considering the penalty imposed on the Appellant, the Court hereby certifies this case to the Supreme Court for appropriate review.

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[10] *Id.*, p. 256.

[11] Decision dated July 30, 1999 of the Court of Appeals in CA-G.R. CR No. 21860, *supra* note 1.

The Clerk of Court of this Court is hereby ordered to elevate all records of this case, including documentary and testimonial evidence, to the Supreme Court for appropriate review.

SO ORDERED.[12]

Accused-appellant faults the appellate court for (1) disregarding his claim that he was only acting in self-defense when he inflicted the mortal wounds on Ramon and (2) finding that the killing was attended by treachery.

In a letter dated June 12, 2007, Julio Arciaga, assistant director for prisons and security of the Bureau of Corrections, informed the Court that accused-appellant was granted parole by the Board of Pardons and Parole (Board) on March 5, 2003 and released from the custody of the Bureau of Corrections on March 20, 2003.[13]

We are thus confronted with the following issues:

1. whether the grant of parole rendered this case moot;

2. whether accused-appellant only acted in self-defense and

3. whether the victim was killed with treachery.

The appeal has no merit.

ACCUSED-APPELLANT'S RELEASE ON PAROLE DID NOT RENDER THE CASE MOOT

The appeal was not mooted by accused-appellant's release on parole. His release only meant that, according to the Board, he had already served the minimum penalty imposed on him[14] and that he was "fitted by his training for release, that there [was] reasonable probability that [he would] live and remain at

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[12] *Id*.

[13] *Rollo*, p. 42.

[14] Section 5, Act No. 4103, as amended, otherwise known as "The Indeterminate Sentence Law."

liberty without violating the law and that such release [would] not be incompatible with the welfare of society."[15] Should he violate the conditions of his parole, accused-appellant may be ordered rearrested, to serve the remaining unexpired portion of the maximum sentence.[16]

Parole refers to the conditional release of an offender from a correctional institution after he serves the minimum term of his prison sentence.[17] The grant thereof does not extinguish the criminal liability of the offender. Parole is not one of the modes of totally extinguishing criminal liability under Article 89 of the Revised Penal Code.[18] *Inclusio unius est exclusio alterius*.

Similarly, accused-appellant's release on parole did not extinguish his civil liability.[19] Article 113 of the Revised Penal Code provides:

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[15] *Id*.

[16] *See* Section 8, Indeterminate Sentence Law.

[17] Rules on Parole dated March 7, 2006.

[18] ART. 89. *How criminal liability is totally extinguished*. — Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.
2. By service of the sentence.
3. By amnesty, which completely extinguishes the penalty and all its effects.
4. By absolute pardon.
5. By prescription of the crime.
6. By prescription of the penalty.
7. By the marriage of the offended woman, as provided in Article 344 of this Code.

[19] Under Article 112 of the Revised Penal Code, civil liability is extinguished in the same manner as other obligations, in accordance with the provisions of civil law. In this connection, Article 1231 of the Civil Code provides that obligations are extinguished by the following: (1) payment or performance, (2) loss of the thing due, (3) condonation or remission of the debt, (4) confusion or merger of the rights of creditor and debtor, (5) compensation, (6) novation, (7) annulment, (8) fulfillment of the resolutory condition and (9) prescription.

ART. 113. *Obligation to satisfy civil liability*. — Except in case of extinction of his civil liability as provided in the next preceding article,[20] **the offender shall continue to be obliged to satisfy the civil liability resulting from the crime committed by him, notwithstanding the fact that he** has served his sentence consisting of deprivation of liberty or other rights, or **has not been required to serve the same by reason of amnesty, pardon commutation of sentence or any other reason**. (emphasis supplied)

Thus, accused-appellant's civil liability subsists despite his release on parole.

Moreover, the grant of parole would be improvident if the CA decision finding accused-appellant guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua* were to be affirmed by this Court. In such a case, the determination of the Board that accused-appellant would have already served the minimum penalty imposed on him would turn out to be erroneous. Worse, in basing its determination of accused-appellant's eligibility for parole on the penalty imposed in the RTC decision, the Board effectively ignored the decision of the CA.

Furthermore, the Board violated its own rules disqualifying from parole those convicted of an offense punished with *reclusion perpetua*.[21] Thus, the Board should be warned in no uncertain terms for acting *ultra vires*, carelessly disregarding the CA decision and improvidently granting parole to accused-appellant.

We will now proceed to consider the merits of the appeal.

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[20] Please see immediately preceding note.

[21] Section 15(a), part IV of the Revised Rules and Regulations of the Board of Pardons and Parole dated November 26, 2002 (the rules on parole applicable at the time accused-appellant was granted parole) provided:

IV. PAROLE

x x x x x x x x x

SEC. 15. **Disqualification for Parole** — The following prisoners shall not be granted parole:

a. Those convicted of an offense punished with Death penalty, *reclusion perpetua* or Life Imprisonment;

x x x x x x x x x

ACCUSED-APPELLANT DID NOT ACT IN SELF-DEFENSE

He who admits killing or fatally injuring another in the name of self-defense bears the burden of proving: (a) unlawful aggression on the part of his victim; (b) reasonable necessity of the means employed to prevent or repel it and (c) lack of sufficient provocation on his part. By invoking self-defense, the burden is placed on the accused to prove the elements thereof clearly and convincingly.[22]

While all three elements must concur, self-defense relies first and foremost on proof of unlawful aggression on the part of the victim.[23] If no unlawful aggression is proved, no self-defense may be successfully pleaded.[24] Here, both the trial and appellate courts found that there was no unlawful aggression on Ramon's part and that, in fact, it was accused-appellant who was the unlawful aggressor. Thus, accused-appellant's claim of self-defense cannot stand.

The nature, number and location of the wounds sustained by the victim disprove accused-appellant's claim of self-defense.[25] On this account, the appellate court correctly ruled that the accused-appellant's version that he fought face to face with the victim was inconsistent with the fatal stab wound at the victim's back. Moreover, the wounds inflicted by accused-appellant on the victim indicated a determined effort to kill and not merely to defend.[26]

Accused-appellant's failure to surrender, his escape to Laguna and hiding for more than a year until his eventual capture and arrest also contradicted his claim that he acted in self-defense. Flight is indicative of guilt.

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[22] *People v. de la Cruz*, G.R. No. 139970, 06 June 2002, 383 SCRA 250.

[23] *Id*.

[24] *Id*.

[25] *Guevarra v. Court of Appeals*, G.R. No. L-41061, 16 July 1990, 187 SCRA 484.

[26] *People v. Pateo*, G.R. No. 156786, 03 June 2004, 430 SCRA 609.

Furthermore, whether or not accused-appellant acted in self-defense is a question of fact. It is a matter that is properly addressed to the trial court, not to this Court. In fact, the trial and appellate courts amply evaluated and carefully considered the issue. Their identical conclusions were based on competent evidence. There is therefore no reason to disturb their findings.

TREACHERY ATTENDED THE KILLING OF THE VICTIM

According to the CA, Ramon was defenseless when accused-appellant stabbed him in the back. And he was completely at the mercy of accused-appellant when he was repeatedly stabbed in front while Rodel was holding his hands from behind. Thus, the CA ruled that Ramon was killed with treachery.

We agree.

Accused-appellant perpetrated the killing in such a manner that there was absolutely no risk to himself arising from the defense which the victim might have made. Ramon was unarmed, had his back turned to accused-appellant and was fighting with another person when stabbed in different parts of the body. He was caught totally by surprise and did not even have a chinaman's chance to survive the attack. As we ruled in *People v. Fabrigas, Jr.*:[27]

Treachery is present where the assailant stabbed the victim while the latter was grappling with another thus, rendering him practically helpless and unable to put up any defense. (emphasis supplied)

THE AWARD OF "OTHER DAMAGES" WAS IMPROPER

The trial court correctly awarded ₱50,000 to the heirs of the victim as civil indemnity for his death. This did not need any evidence or proof of damages. However, the award of ₱100,000 "for other damages" was wrong.

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[27] 330 Phil. 137 (1996) citing *People v. Lingatong*, G.R. No. L-34019, 29 January 1990, 181 SCRA 424.

Under the law, there are various kinds of damages.[28] They differ as to the necessity of proof of pecuniary loss, the purpose of and grounds for their award and the need for stipulation. Thus, the rule is that, in every case, trial courts must specify the award of each item of damages and make a finding thereon in the body of the decision.[29]

Nonetheless, every person criminally liable for a felony is also civilly liable.[30] Hence, this Court may go through the records to determine the civil liability of accused-appellant. Moreover, an appeal in a criminal proceeding opens the entire case for review.[31] This includes a review of the indemnity and damages involved.[32]

The award of actual damages is proper only if the actual amount of loss was proven with a reasonable degree of certainty.[33] It should be supported by receipts.[34] While the victim's mother, Lolita Villo, testified that she incurred expenses in connection with the victim's death (*e.g.*, funeral and burial expenses), she failed to substantiate her claim. Thus, actual or compensatory damages cannot be awarded.

Current jurisprudence, however, allows the grant of ₱25,000 as temperate damages when it appears that the heirs of the victim suffered pecuniary loss but the award thereof cannot be established with certainty.[35] Thus, Lolita may be given ₱25,000

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[28] Under Article 2197 of the Civil Code, damages may be (a) actual or compensatory, (b) moral, (c) nominal, (d) temperate or moderate, (e) liquidated or (f) exemplary or corrective.

[29] *People v. Masagnay*, G.R. No. 137364, 10 June 2004, 431 SCRA 572.

[30] Article 100, Revised Penal Code.

[31] *See People v. Dagani*, G.R. No. 153875, 16 August 2006, 499 SCRA 64.

[32] *People v. Rabanillo*, 367 Phil. 114 (1999).

[33] *People v. Masagnay*, *supra*.

[34] *Id.*

[35] *Id.*

as temperate damages. She is also entitled to an award of ₱50,000 moral damages for the mental anguish and distress she suffered for the death of her son.[36] Exemplary damages are not warranted because no aggravating circumstance attended the crime.

ACCORDINGLY, the decision dated July 30, 1999 of the Court of Appeals in CA-G.R. CR No. 21860 finding accused-appellant Victoriano M. Abesamis guilty of murder, sentencing him to suffer the penalty of *reclusion perpetua* and affirming the trial court's order for him to pay the heirs of Ramon Villo ₱50,000 as civil indemnity is hereby *AFFIRMED* with the modification that he is ordered to pay said heirs ₱50,000 as moral damages and ₱25,000 as temperate damages. Accused-appellant is further ordered to pay the costs of suit.

The grant of parole to accused-appellant by the Board of Pardons and Parole is hereby declared *NULL* and *VOID* for lack of legal and factual basis. Accused-appellant is hereby ordered to be *REARRESTED* immediately to forthwith serve the remaining period of his sentence.

The members of the Board of Pardons and Parole are hereby *WARNED* to never again disregard its rules and the decision of the Court of Appeals.

SO ORDERED.

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

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[36] TSN, July 18, 1996, p. 18.

FIRST DIVISION

[G.R. No. 142938. August 28, 2007]

MIGUEL INGUSAN, *petitioner, vs.* **HEIRS OF AURELIANO I. REYES, represented by CORAZON REYES-REGUYAL and ARTEMIO S. REYES,**[*] *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; TORRENS CERTIFICATE OF TITLE; CANNOT BE COLLATERALLY ATTACKED.— We agree with the CA that OCT No. P-6176 remains valid. The issue of the validity of title (*e.g.* whether or not it was issued fraudulently or in breach of trust) can only be assailed in an action expressly instituted for that purpose. A certificate of title cannot be attacked collaterally. Section 48 of PD 1529 states: SEC. 48. Certificate not subject to collateral attack. — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or canceled except in a direct proceeding in accordance with law. The rationale behind the Torrens System is that the public should be able to rely on a registered title. The Torrens System was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized. In *Fil-estate Management, Inc. v. Trono*, we explained: It has been invariably stated that the real purpose of the Torrens System is to quiet title to land and to stop forever any question as to its legality. Once a title is registered, the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting on the "*mirador su casa*" to avoid the possibility of losing his land. Petitioner merely invoked the invalidity of OCT No. P-6176 as an affirmative defense in his answer and prayed for the declaration of its nullity. Such a defense partook of the nature of a collateral attack against a certificate of title.

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[*] The Court of Appeals was originally impleaded as respondent. However, it was excluded pursuant to Rule 45, Section 4 of the Rules of Court.

2. ID.; ID.; ID.; A CERTIFICATE OF TITLE REGISTERED UNDER THE TORRENS SYSTEM BECOMES INDEFEASIBLE AND INCONTROVERTIBLE AFTER THE LAPSE OF ONE YEAR AS PROVIDED IN SECTION 32 OF P.D. 1529.— OCT No. P-6176 which was registered under the Torrens System on the basis of a free patent became indefeasible and incontrovertible after the lapse of one year as provided in Section 32 of PD 1529. Indeed, both the RTC and CA found that Aureliano, Sr. fraudulently and in breach of trust secured OCT No. P-6176 in his name. Unfortunately, petitioner chose not to pursue a direct proceeding to have this certificate of title annulled. In 1976, he filed an *accion reivindicatoria* against the spouses Aureliano, Sr. and Jacoba questioning the validity of OCT No. P-6176 and seeking to recover a portion of the land (specifically, Lot 120-A with an area of 502 sq. m.) but he voluntarily withdrew the case. Now, the title has undeniably become incontrovertible since it was issued in 1973 or more than 30 years ago.

3. ID.; DAMAGES; NO BASIS FOR AWARD OF DAMAGES; PETITIONER WAS NOT IN GOOD FAITH WHEN HE REGISTERED THE FAKE DOCUMENTS AND WAS AWARE OF THE FRAUDULENT SCHEME CONCEIVED BY RESPONDENT.— Petitioner was not in good faith when he registered the fake documents. Good faith is ordinarily used to describe that state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render the transaction unconscientious." Petitioner claims that he was not aware of the contents of the falsified documents and their legal consequences because of his low level of intelligence and educational attainment. But from his own narration, it is clear that he was aware of the fraudulent scheme conceived by respondent Artemio. Petitioner does not deny that he signed the fictitious deed of donation of titled property and the agreement of subdivision with sale. Even if he reached only grade 3, he could not have feigned ignorance of the net effect of these documents, which was to exclude the other heirs of

the spouses and the original owner Leocadio from inheriting the property and, in the process, acquiring a big chunk of the property at their expense. The cancellation of respondent Corazon's affidavit of loss of the owner's duplicate copy of OCT No. P-6176 also removed all obstacles to the registration of the title covering his portion of the lot. In short, by registering the spurious documents, he had everything to gain. Although it was respondent Artemio, an educated individual, who engineered the whole scheme and prepared the fraudulent documents, still petitioner cannot deny that he was a willing co-conspirator in a plan that he knew was going to benefit him handsomely. As a result, there is no basis for the award of damages to petitioner. Coming to the court with unclean hands, he cannot obtain relief. Neither does he fall under any of the provisions for the entitlement to damages.

4. ID.; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT OR PERFORMANCE; WHOEVER PAYS FOR ANOTHER MAY DEMAND FROM THE DEBTOR WHAT HE HAS PAID, EXCEPT THAT IF HE PAID WITHOUT THE KNOWLEDGE OR AGAINST THE WILL OF THE DEBTOR, HE CAN RECOVER ONLY INSOFAR AS THE PAYMENT HAS BEEN BENEFICIAL TO THE DEBTOR; CASE AT BAR.— [W]e note that petitioner entered into certain agreements with respondents to ensure that he would obtain a portion of the subject land. He not only paid the loan of respondent Artemio to PNB in order to release the mortgage over the land but also bought from respondents 1,171 sq. m. (almost 94% of the 1,254 sq. m. lot) under the *Kasulatan ng Paghahati-hati Na May Bilihan*. These are undisputed facts. Ultimately, however, he failed to get his portion of the property. Although petitioner did not demand the return of the amounts he paid, we deem it just and equitable to direct respondents to reimburse him for these. Article 1236 of the Civil Code provides: Art. 1236. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary. **Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.** (emphasis ours)

Respondent Artemio was the debtor in this case, PNB the creditor and petitioner the third person who paid the obligation of the debtor. The amount petitioner may recover will depend on whether Artemio knew or approved of such payment.

5. ID.; HUMAN RELATIONS; PRINCIPLE OF UNJUST ENRICHMENT; APPLICABLE IN CASE AT BAR.— Petitioner should also be able recover the amount (if any) he paid to respondents under the *Kasulatan* since this agreement was never implemented. Otherwise, it will result in the unjust enrichment of respondents at the expense of petitioner, a situation covered by Art. 22 of the Civil Code: Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him. Petitioner is not entitled to legal interest since he never made a demand for it.

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; A PARTY WHO HAS NOT APPEALED CANNOT OBTAIN FROM THE APPELLATE COURT ANY AFFIRMATIVE RELIEF OTHER THAN THOSE OBTAINED FROM THE LOWER COURT WHOSE DECISION IS BROUGHT UP ON APPEAL.— Respondents presented an additional issue involving the recovery of possession of the subject land. They contend that petitioner, his heirs and relatives illegally occupied it and constructed houses thereon. However, it is well-settled that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than those obtained from the lower court whose decision is brought up on appeal. While there are exceptions to this rule, such as if they involve (1) errors affecting the lower court's jurisdiction over the subject matter; (2) plain errors not specified and (3) clerical errors, none applies here.

APPEARANCES OF COUNSEL

Bauto Bauto & Flores Law Offices for petitioner.
Edralin S. Mateo for respondents.

D E C I S I O N

CORONA, *J.*:

This is a petition for review on *certiorari*[1] of a decision[2] and resolution[3] of the Court of Appeals (CA) dated January 21, 2000 and April 10, 2000, respectively, in CA-G.R. CV No. 56105 which modified the decision[4] dated April 17, 1997[5] of the Regional Trial Court (RTC) of Cabanatuan City, Nueva Ecija, Branch 25 in Civil Case No. 2145-A1.

This case involves a 1,254 sq. m. residential land located in Poblacion, San Leonardo, Nueva Ecija[6] originally owned by Leocadio Ingusan who was unmarried and childless when he died in 1932. His heirs were his two brothers and a sister, namely, Antonio, Macaria and Juan.[7] Antonio died and was succeeded by his son Ignacio who also later died and was succeeded by his son, petitioner Miguel Ingusan.[8] Macaria also died and was succeeded by her child, Aureliano I. Reyes, Sr. (father of respondents Artemio Reyes, Corazon Reyes-Reguyal, Elsa Reyes, Estrella Reyes-Razon, Aureliano Reyes, Jr., Ester Reyes, Reynaldo Reyes and Leonardo Reyes).[9] Thus, petitioner is the grandnephew of Leocadio and Aureliano, Sr. was the latter's nephew.[10]

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Hilarion L. Aquino (retired) and concurred in by Associate Justices Buenaventura J. Guerrero (retired) and Elvi John S. Asuncion (dismissed from the service) of the Eighth Division of the Court of Appeals; *rollo*, pp. 29-37.

[3] No copy of this resolution was submitted to the Court.

[4] Penned by Judge Johnson L. Ballutay; *rollo*, p. 93.

[5] *Id*., p. 33.

[6] Lot 126, Cad. 342-D; *id*., p. 29.

[7] *Id*.

[8] His two sisters, Eladia and Arcadia died with no heirs; *id*., p. 62.

[9] *Id*.

[10] *Id*.

After the death of Leocadio, Aureliano, Sr. was designated by the heirs as administrator of the land.[11] In 1972, while in possession of the land and in breach of trust, he applied for and was granted a free patent over it.[12] As a result, he was issued OCT No. P-6176 in 1973.[13]

In 1976, petitioner filed an *accion reivindicatoria* against Aureliano, Sr. and his wife Jacoba Solomon seeking the recovery of Lot 120-A with an area of 502 sq. m. which was part of the land at issue here.[14] But the case was dismissed because petitioner did not pursue it.

Also in 1976, Aureliano, Sr. executed a special power of attorney (SPA) in favor of his son Artemio authorizing him to mortgage the land in question to any bank. Using that SPA, Artemio mortgaged the land to secure a loan of ₱10,000 from the Philippine National Bank (PNB).[15]

In 1983, Aureliano, Sr. died intestate. He was survived by his children, the respondents.[16]

In 1986, petitioner paid the PNB loan. The mortgage over the land was released and the owner's duplicate copy of OCT No. P-6176 was given to him.[17]

On June 19, 1988, respondents and petitioner entered into a *Kasulatan ng Paghahati-hati Na May Bilihan* wherein they adjudicated unto themselves the land in question and then sold it to their co-heirs, as follows: (a) to petitioner, 1,171 sq. m.

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

[12] The free patent was issued on May 17, 1972; *id*., p. 35.

[13] The title was issued on February 29, 1973; *id.*

[14] Civil Case No. 927 in the Court of First Instance of Nueva Ecija, Branch IV; *id*., p. 63.

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

[16] *Id*.

[17] *Id*.

and (b) to respondent Estrella, 83 sq. m. This deed was notarized but not registered.[18]

On January 8, 1990, respondent Corazon, despite signing the *Kasulatan*, executed an affidavit of loss, stating that she could not find the owner's duplicate copy of OCT No. P-6176. This was registered and annotated on the original copy of said title.[19]

Subsequently, the following documents appeared purportedly with the following dates:

a) April 23, 1994[20] — notarized deed of donation of titled property supposedly executed by the spouses Aureliano, Sr. and Jacoba,[21] whereby said spouses donated 297 sq. m. of the subject land to respondent Artemio and the remaining 957 sq. m. to petitioner;

b) September 5, 1994 — cancellation of affidavit of loss supposedly executed by respondent Corazon stating that the annotation of the affidavit of loss on the title should be canceled and the petition for a new title was no longer necessary because she had already found the missing owner's duplicate copy of OCT No. P-6176;

c) September 27, 1994 — agreement of subdivision with sale purportedly executed by respondent Artemio and petitioner, with the consent of their wives. Pursuant to this document, the land was subdivided into Lot 120-A with an area of 297 sq. m. corresponding to the share

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[18] *Id*. According to petitioner, this document was not implemented; *id*., p. 63.

[19] *Id*. Why she did this considering that she had divested herself of her interest in the land under the *Kasulatan ng Paghahati-hati Na May Bilihan* was never explained.

[20] The year "1982" was superimposed on the typewritten year of 1994; *id*., p. 34.

[21] The signatures of petitioner and respondent Artemio also appeared thereon, presumably as donees; *id*., p. 31.

> of Artemio and Lot 120-B with an area of 957 sq. m. which was the share of petitioner. The document also indicated that Artemio sold Lot 120-A to one Florentina Fernandez.[22]

When respondent Corazon learned about the cancellation of the annotation of her affidavit of loss, she executed an affidavit of adverse claim on January 17, 1995 stating that the cancellation of affidavit of loss and the agreement of subdivision with sale were both spurious and the signatures appearing thereon were forgeries. This affidavit of adverse claim was not registered.[23]

On April 17, 1995, petitioner brought the owner's duplicate copy of OCT No. P-6176, the cancellation of affidavit of loss, deed of donation of titled property and agreement of subdivision with sale to the Registry of Deeds for registration. Consequently, the following took place on that same day:

1. Corazon's annotated affidavit of loss was canceled;
2. by virtue of Aureliano, Sr. and Jacoba's deed of donation of titled property to Artemio and petitioner, OCT No. P-6176 was canceled and in lieu thereof, TCT No. NT-241155 in the name of petitioner and TCT No. NT-241156 in the name of respondent Artemio were issued and
3. by virtue of the agreement of subdivision with sale, TCT Nos. NT-241155 and NT-241156 were canceled and TCT Nos. NT-239747 and NT-239748 were issued in the names of petitioner and Florentina Fernandez, respectively.[24]

On June 27, 1995, petitioner took possession of his portion and built his house thereon.[25]

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[22] *Id.*, pp. 30-31.

[23] *Id.*, p. 31.

[24] *Id.*

[25] *Id.*

On July 4, 1995, respondents filed an action for cancellation, annulment and surrender of titles with damages against petitioner and Florentina Fernandez in the RTC of Cabanatuan City, Nueva Ecija, Branch 25. In their complaint, they alleged the following, among others: they inherited the land in question from their father, Aureliano, Sr.; petitioner caused the preparation of the spurious deed of donation of titled property, cancellation of affidavit of loss, agreement of subdivision with sale and forged the signatures appearing thereon except his (petitioner's) own and, in conspiracy with Fernandez, fraudulently registered said documents which resulted in the cancellation of OCT No. P-6176 and the eventual issuance to them of TCT Nos. NT-239747 and NT-239748. They prayed that these titles be declared null and void and that petitioner and Fernandez be ordered to surrender the land and pay damages to them.[26]

In his defense, petitioner alleged that respondents' father, Aureliano, Sr., fraudulently secured a free patent in his name over the land using a fictitious affidavit dated April 10, 1970 purportedly executed by Leocadio selling to him the land in question and, as a result, OCT No. P-6176 was issued to him; that it was respondent Artemio who proposed to petitioner the scheme of partition that would assure the latter of his share with the condition, however, that he (Artemio) would get a portion of 297 sq. m. (which included the share of respondent Estrella of 83 sq. m.) because he had already earlier sold it to Fernandez and in fact had already been partially paid ₱60,000 for it; that to implement this scheme, respondent Artemio caused the execution of several documents namely: (1) deed of donation of titled property; (2) agreement of subdivision with sale and (3) cancellation of affidavit of loss and that, thereafter, he instructed petitioner to present the said documents to the Registry of Deeds of Nueva Ecija for registration.[27]

On October 26, 1995, respondents moved that Fernandez be dropped as defendant because she was no longer contesting

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[26] *Id.*, p. 32.

[27] *Id.*, pp. 32-33.

their claim and in fact had surrendered to them her owner's duplicate copy of TCT No. NT-239748. Thus, she was excluded from the suit.[28]

In a decision dated April 17, 1997, the RTC dismissed the case and declared OCT No. P-6176 as well as the subsequent certificates of title (TCT Nos. NT-239747 and NT-239748), the deed of donation of titled property, agreement of subdivision with sale and cancellation of affidavit of loss as null and void. It held that the aforementioned documents were spurious since the signatures were falsified by respondent Artemio.

Furthermore, having found that OCT No. P-6176 was issued on the basis of a document falsified by Aureliano, Sr., the RTC ordered the reversion of the land to its status before the OCT was issued.

Finally, it held that petitioner, being an innocent victim, was entitled to damages.[29]

On appeal, the CA modified the RTC decision. It ruled that only TCT Nos. NT-241155, NT-241156, NT-239747 and

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[28] In an order dated November 9, 1995 of the RTC; *id*., p. 33.

[29] *Id*., pp. 33-34. The dispositive portion stated:

"PREMISES CONSIDERED, judgment is hereby rendered as follows:

1. Dismissing the [respondents'] complaint;
2. Declaring OCT No. P-6176 as well as the subsequent certificates of Title (TCT Nos. NT-239747 and NT-239748) all of the Registry of Deeds of the Province of Nueva Ecija and the Deed of Donation, Subdivision Agreement and Cancellation of Affidavit of Loss as null and void, and ordering the reversion of Lot 120, Cad-120-C Case 1 of San Leonardo Cadastre to the status before OCT P-6176 of the Registry of Deeds of Nueva Ecija.
3. Ordering the [respondents] to pay the costs of the suit.

As regards the counterclaim of [petitioner], there is a preponderance of evidence that supports the same, hence the Court hereby orders the [respondents] to jointly and severally pay [petitioner] the [sums] of ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages and ₱20,000.00 as attorney's fees.

SO ORDERED."

NT-239748 were null and void. Their source, OCT No. P-6176, remained valid because it had already become indefeasible and could no longer be attacked collaterally. It also found that petitioner schemed with Artemio in defrauding their co-heirs and was therefore *in pari delicto.* Consequently, neither party was entitled to claim damages from the other.[30] Petitioner's motion for reconsideration was denied.

Hence this petition raising the following issues:

1) whether OCT No. P-6176 was valid or invalid, and

2) whether or not petitioner is entitled to damages.

There is no doubt that the deed of donation of titled property, cancellation of affidavit of loss and agreement of subdivision with sale, being falsified documents, were null and void. It follows that TCT Nos. NT-241155, NT-241156, NT-239747 and NT-239748 which were issued by virtue of these spurious documents were likewise null and void. Neither side disputes these findings and conclusions.

The question is whether the source of these titles, OCT No. P-6176, was valid. Petitioner argues that it should be invalidated because it was issued based on a fictitious affidavit purportedly executed in 1970 by Leocadio (who died in 1932) wherein the latter supposedly sold the land to Aureliano, Sr. According to petitioner, Aureliano, Sr. used this to fraudulently and in breach of trust secure a free patent over the land in his name.

We agree with the CA that OCT No. P-6176 remains valid. The issue of the validity of title (*e.g.* whether or not it was issued fraudulently or in breach of trust) can only be assailed in an action expressly instituted for that purpose.[31] A certificate of title cannot be attacked collaterally. Section 48 of PD 1529[32] states:

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[30] *Id.*, pp. 34-36.

[31] *Caraan v. Court of Appeals*, G.R. No. 140752, 11 November 2005, 474 SCRA 534, 550, citing *Apostol v. Court of Appeals*, G.R. No. 125375, 17 June 2004, 432 SCRA 351, 359.

[32] Property Registration Decree.

SEC. 48. Certificate not subject to collateral attack. — A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or canceled except in a direct proceeding in accordance with law.

The rationale behind the Torrens System is that the public should be able to rely on a registered title. The Torrens System was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized. In *Fil-estate Management, Inc. v. Trono*,[33] we explained:

It has been invariably stated that the real purpose of the Torrens System is to quiet title to land and to stop forever any question as to its legality. Once a title is registered, the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting on the "*mirador su casa*" to avoid the possibility of losing his land.[34]

Petitioner merely invoked the invalidity of OCT No. P-6176 as an affirmative defense in his answer and prayed for the declaration of its nullity. Such a defense partook of the nature of a collateral attack against a certificate of title.[35]

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[33] G.R. No. 130871, 17 February 2006, 482 SCRA 578.

[34] *Id*., p. 585, citing *Domingo v. Santos, et al.*, 55 Phil. 361 (1930).

[35] *Ugale v. Gorospe*, G.R. No. 149516, 11 September 2006, 501 SCRA 376, 386, citations omitted; in *Heirs of Enrique Diaz v. Virata*, we discussed the distinction as to when an action is a direct attack and when is it collateral:

An action is deemed an attack on a title when the object of the action or proceeding is to nullify the title, and thus challenge the judgment pursuant to which the title was decreed. The attack is direct when the object of the action is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment is nevertheless made as an incident thereof. (G.R. No. 162037, 7 August 2006, 498 SCRA 141, 164-165, citing *Sarmiento v. Court of Appeals*, G.R. No. 152627, 16 September 2005, 470 SCRA 99, 107-108.)

Moreover, OCT No. P-6176 which was registered under the Torrens System on the basis of a free patent became indefeasible and incontrovertible after the lapse of one year as provided in Section 32 of PD 1529:

> Sec. 32. Review of decree of registration; Innocent purchaser for value. — The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgment, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.
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> **Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible.** Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other person responsible for the fraud. (Emphasis supplied)

Indeed, both the RTC and CA found that Aureliano, Sr. fraudulently and in breach of trust secured OCT No. P-6176 in his name. Unfortunately, petitioner chose not to pursue a direct proceeding to have this certificate of title annulled. In 1976, he filed an *accion reivindicatoria*[36] against the spouses Aureliano, Sr. and Jacoba questioning the validity of OCT No. P-6176 and seeking to recover a portion of the land (specifically, Lot 120-A with an area of 502 sq. m.) but he voluntarily withdrew

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[36] Docketed as Civil Case No. 927 in the former Court of First Instance of Gapan, Nueva Ecija; *id.*, pp. 30, 105.

the case.[37] Now, the title has undeniably become incontrovertible since it was issued in 1973 or more than 30 years ago.[38]

We now proceed to the issue of whether petitioner is entitled to damages. The RTC held that he is entitled to moral damages (₱50,000), exemplary damages (₱30,000) and attorney's fees (₱20,000) because he was not aware that the documents were falsified and he was merely instructed by respondent Artemio to have them registered. The CA shared the finding of the RTC that it was respondent Artemio who masterminded the preparation and use of the spurious documents.[39] Nevertheless, it did not find petitioner an innocent victim who was merely dragged into litigation:

...[Petitioner] was far from innocent. [Respondent Artemio] and [petitioner] signed the bogus "Deed of Donation of Titled Property" and the fraudulently baseless "Agreement of Subdivision with Sale." It was [petitioner] who personally submitted all the bogus documents with the Registry of Deeds of Nueva Ecija. He stood to benefit from the registration of said fake documents. It was he who received the titles issued in consequence of said fraudulent registration. In the natural course of things and in the ordinary experience of man, the conclusion is inevitable that [he] knew [about] the spurious nature of said documents but he made use of them because of the benefit which he would derive therefrom. In short, [petitioner] confabulated

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[37] *Id*., p. 63. He admitted that this was due to the promise of the spouses Aureliano, Sr. and Jacoba that they would give back the land to him after five years; *id.*, p. 32.

[38] An action for reconveyance based on fraud prescribes in four years while an action for reconveyance based on implied trust prescribes in ten years; *Bejoc v. Cabreros*, G.R. No. 145849, 22 July 2005, 464 SCRA 78, 88.

[39] The RTC and CA relied on the following facts: 1) respondent Artemio was a law graduate and a former chief of police of San Leonardo, Nueva Ecija whereas petitioner merely reached grade 3 of elementary education; 2) respondent Artemio actually received ₱60,000 from Florentina Fernandez as partial payment for the 297-sq. m. portion he allotted for himself which he sold to her and 3) he refused to give specimens of his signature to the National Bureau of Investigation for its report; *id*., p. 102.

with [respondent Artemio] in defrauding all their co-heirs of their shares in said property.[40]

We agree. Petitioner was not in good faith when he registered the fake documents.

Good faith is ordinarily used to describe that state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render the transaction unconscientious."[41]

Petitioner claims that he was not aware of the contents of the falsified documents and their legal consequences because of his low level of intelligence and educational attainment. But from his own narration, it is clear that he was aware of the fraudulent scheme conceived by respondent Artemio:

[Respondent Artemio] approached [petitioner] and propose[d] a [scheme] of partition that [would] assure [petitioner] of getting his share including that which he and his predecessor-in-interest have purchased from the other heirs of the late LEOCADIO INGUSAN, but with the condition that in implementing the document known as PAGHAHATI-HATI NA MAY BILIHAN, the corresponding shares of ESTRELLA RAZON will go to him [respondent Artemio who] has agreed to have it sold in favor of one FLORENTINA FERNANDEZ for ₱120,000.00, partial payment of which has already been received by [respondent Artemio], which negotiation of SALE and the payment made by FLORENTINA FERNANDEZ was acknowledged to be true. Without much ado, a survey of Lot No. 120 was conducted by one Restituto Hechenova upon instruction of [respondent Artemio], partitioning the land into two (2), one share goes to [petitioner] with an area of 957 square meters and the other with an area of 297 square meters in the name of [respondent Artemio], the latter share was to be sold in favor of Florentina Fernandez. To have this IMPLEMENTED, incidental documentation must be made thus;

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[40] *Id.*, p. 36.

[41] *Bercero v. Capitol Development Corporation*, G.R. No. 154765, 29 March 2007, citation omitted.

A DEED OF DONATION OF REAL PROPERTY allegedly executed by Sps. Aureliano Reyes and JACOBA SOLOMON; SUBDIVISION AGREEMENT WITH SALE by and between [petitioner] and [respondent Artemio] as alleged DONEES and SALE in the same document in favor of Florentina Fernandez, making in the process [petitioner] presentor of all these questioned documents, adding among others an AFFIDAVIT OF LOSS of Original Certificate of Title No. P-6176 allegedly falsified by [petitioner] of the signature of [respondent] CORAZON REYES REGUYAL.[42]

Petitioner does not deny that he signed the fictitious deed of donation of titled property and the agreement of subdivision with sale. Even if he reached only grade 3, he could not have feigned ignorance of the net effect of these documents, which was to exclude the other heirs of the spouses and the original owner Leocadio from inheriting the property and, in the process, acquiring a big chunk of the property at their expense. The cancellation of respondent Corazon's affidavit of loss of the owner's duplicate copy of OCT No. P-6176 also removed all obstacles to the registration of the title covering his portion of the lot. In short, by registering the spurious documents, he had everything to gain.

Although it was respondent Artemio, an educated individual, who engineered the whole scheme and prepared the fraudulent documents, still petitioner cannot deny that he was a willing co-conspirator in a plan that he knew was going to benefit him handsomely.

As a result, there is no basis for the award of damages to petitioner. Coming to the court with unclean hands, he cannot obtain relief. Neither does he fall under any of the provisions for the entitlement to damages.

Respondents presented an additional issue involving the recovery of possession of the subject land. They contend that petitioner, his heirs and relatives illegally occupied it and constructed houses thereon.[43] However, it is well-settled that a party who has not

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[42] *Rollo*, p. 64.

[43] *Id.*, p. 131.

appealed cannot obtain from the appellate court any affirmative relief other than those obtained from the lower court whose decision is brought up on appeal.[44] While there are exceptions to this rule, such as if they involve (1) errors affecting the lower court's jurisdiction over the subject matter; (2) plain errors not specified and (3) clerical errors, none applies here.[45]

Lastly, we note that petitioner entered into certain agreements with respondents to ensure that he would obtain a portion of the subject land. He not only paid the loan of respondent Artemio to PNB in order to release the mortgage over the land but also bought from respondents 1,171 sq. m. (almost 94% of the 1,254 sq. m. lot) under the *Kasulatan ng Paghahati-hati Na May Bilihan*. These are undisputed facts. Ultimately, however, he failed to get his portion of the property. Although petitioner did not demand the return of the amounts he paid, we deem it just and equitable to direct respondents to reimburse him for these.

Article 1236 of the Civil Code provides:

> Art. 1236. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.
>
> **Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.** (emphasis ours)

Respondent Artemio was the debtor in this case, PNB the creditor and petitioner the third person who paid the obligation of the debtor. The amount petitioner may recover will depend on whether Artemio knew or approved of such payment.

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[44] *Real v. Belo*, G.R. No. 146224, 26 January 2007, citing *Tangalin v. Court of Appeals*, 422 Phil. 358, 364 (2001); *Rural Bank of Sta. Maria, Pangasinan v. Court of Appeals*, 373 Phil. 27, 45 (1999).

[45] *Id.*, citing *Santos v. Court of Appeals*, G.R. No. 100963, April 6, 1993, 221 SCRA 42, 46.

Petitioner should also be able to recover the amount (if any) he paid to respondents under the *Kasulatan* since this agreement was never implemented. Otherwise, it will result in the unjust enrichment of respondents at the expense of petitioner, a situation covered by Art. 22 of the Civil Code:

> Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

Petitioner is not entitled to legal interest since he never made a demand for it.

WHEREFORE, the petition is hereby *DENIED*. However, respondents are ordered to return to petitioner the amounts he paid to the Philippine National Bank and under the *Kasulatan ng Paghahati-hati Na May Bilihan.* The court *a quo* is directed to determine the exact amount due to petitioner. The January 21, 2000 decision and April 10, 2000 resolution of the Court of Appeals in CA-G.R. CV No. 56105 are *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 149738. August 28, 2007]

QUINTIN B. BELGICA, *petitioner, vs.* **MARILYN LEGARDE BELGICA and ANTONIO G. ONG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS BY *CERTIORARI* TO THE SUPREME COURT; REMEDY OF APPEAL BY *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT SHOULD INVOLVE ONLY QUESTIONS OF LAW, NOT QUESTIONS OF FACT.— Time and again, we have stressed that the remedy of appeal by *certiorari* under Rule 45 of the Rules of Court should involve only questions of law, not questions of fact. There exists a question of law when there is doubt on what the law applicable to a certain set of facts is. Questions of fact, on the other hand, arise when there is an issue regarding the truth or falsity of the statement of facts. Questions on whether certain pieces of evidence should be accorded probative value or whether the proofs presented by one party are clear, convincing and adequate to establish a proposition are issues of fact. Such questions are not subject to review by this Court. As a general rule, we review cases decided by the CA only if they involve questions of law raised and distinctly set forth in the petition. Petitioner himself admits in his petition that the issue he wants this Court to pass upon is the authenticity of the SPA. He is thus asking us to consider a *question of fact*, something that has already been raised in and satisfactorily established by the RTC and the CA. This is not allowed because, as a general rule, findings of fact of the RTC, when affirmed by the CA, become final and conclusive. We do not review their factual findings on appeal, specially when these are supported by the records or are based on substantial evidence. While the application of this rule is not absolute and admits of exceptions, none of them is present in this case. Both the RTC and the CA competently ruled on the issues brought before them by petitioner as they properly laid down both the factual and legal bases for their respective decisions.

2. ID.; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; THE AUTHENTICITY OF A SIGNATURE THOUGH OFTEN THE SUBJECT OF PROFERRED EXPERT TESTIMONY, IS A MATTER THAT IS NOT SO HIGHLY TECHNICAL SO AS TO PRECLUDE JUDGES FROM EXAMINING THE SIGNATURE THEMSELVES AND BASED THEIR FINDINGS AND CONCLUSIONS ON

THEIR EVALUATION OF THE QUESTIONED DOCUMENT ITSELF.— It is important to note that the authenticity of a signature though often the subject of proffered expert testimony, is a matter that is not so highly technical as to preclude a judge from examining the signature himself and ruling upon the question of whether the signature on a document is forged or not. It is not as highly technical as questions pertaining to quantum physics, topology or molecular biology. A finding of forgery does not depend exclusively on the testimonies of expert witnesses as judges can and must use their own judgment, through an independent examination of the questioned signature, in determining the authenticity of the handwriting. This is what the RTC and the CA did. Both courts not only considered the expert testimonies presented but also based their findings and conclusions on their evaluation of the questioned document itself. We therefore see no reason to disturb the lower courts' findings on the authenticity of petitioner's signature appearing in the SPA.

3. ID.; ID.; CREDIBILITY OF WITNESSES; THE TESTIMONY OF A NOTARY PUBLIC, WHO IS AN OFFICER OF THE COURT, ENJOYS GREATER CREDENCE THAN THAT OF AN ORDINARY WITNESS, SPECIALLY IF THE LATTER'S TESTIMONY CONSISTS OF NOTHING MORE THAN MERE DENIALS.— It must be noted that Atty. Balguma, the notary public who notarized the SPA, testified that petitioner signed the document in his presence. The testimony of a notary public (who is an officer of the court) enjoys greater credence than that of an ordinary witness, specially if the latter's testimony consists of nothing more than mere denials. Petitioner denied signing the aforementioned documents and invoked forgery but presented no competent evidence to support his accusation. His testimony paled in comparison with that of Atty. Balguma who stated in no uncertain terms that petitioner signed the documents in his presence.

APPEARANCES OF COUNSEL

R.A. Din, Jr. & Associates Law Office for petitioner.

Pineda Pineda Mastura Valencia & Associates for respondents.

D E C I S I O N

CORONA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks to set aside the June 30, 2000 decision[1] and August 30, 2001 resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 44783.

Petitioner Quintin B. Belgica and his wife, respondent Marilyn L. Belgica, purchased a house and lot located in Greenfields Subdivision, Novaliches, Quezon City in 1983. While petitioner was in the United States, his wife, through a special power of attorney (SPA)[3] he executed in her favor, sold the property to respondent Antonio G. Ong.

When petitioner returned to the country, he questioned the authenticity of the SPA. He claimed that the signature appearing above his typewritten name was not his. He sought the help of the Presidential Action Center for the examination of the said signature and was referred to the director of the National Bureau of Investigation (NBI).

Petitioner submitted to the NBI a *photocopy* of the questioned SPA and several documents containing his standard signatures. The examination of the documents was assigned to Eliodoro M. Constantino, document examiner III. After examination, the NBI made the following report:

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[1] Penned by Associate Justice Presbitero J. Velasco, Jr. (now a member of this Court) and concurred in by Associate Justices Edgardo P. Cruz and Bernardo LL. Salas (retired) of the Seventeenth Division of the Court of Appeals. *Rollo*, pp. 28-38.

[2] Penned by Associate Justice Presbitero J. Velasco, Jr. (now a member of this Court) and concurred in by Associate Justices Elvi John S. Asuncion (dismissed from the service) and Edgardo P. Cruz of the Special Former Seventeenth Division of the Court of Appeals. *Id.*, pp. 47-48.

[3] Dated July 14, 1989. *Id.*, p. 107.

x x x x x x x x x.

FINDINGS – CONCLUSION:

Comparative examination of the specimens submitted thru photographic enlargements reveals that there exist fundamental differences between the questioned and the standards/sample specimen signatures, "Quintin B. Belgica," such as in:

- Structural pattern of the elements
- Direction of strokes
- Other identifying details

These fundamental differences suggest a different writer of the questioned signature from that of the standard signature. **A definite determination may be made, subject to analysis of the original copy of the Special Power of Attorney bearing the questioned signature "Quintin B. Belgica."**[4] (emphasis supplied)

Meanwhile, after earnest efforts towards a compromise between petitioner and respondent Belgica failed, petitioner filed a complaint for annulment of deed of sale, cancellation of title and reconveyance with damages against respondents in the Regional Trial Court (RTC) of Quezon City, Branch 86.[5] He contended that the sale of the property by his wife to her co-respondent was void because it was made without his consent since the signature appearing on the questioned SPA was a forgery.

During the trial, NBI document examiner Constantino[6] testified on his findings and conclusions in the questioned documents report. Respondents, on the other hand, presented as evidence a report of Francisco Cruz, Jr., chief of the PNP Crime Laboratory Service, who examined and compared the questioned and standard signatures and found that the signatures were written by one and the same person. He based his findings on a *carbon original copy* of the SPA. His findings and conclusions were as follows:

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[4] Documents Report No. 730-1091 dated November 5, 1991. *Id.*, p. 50.

[5] Docketed as Civil Case No. Q-92-12525.

[6] He also prepared the Documents Report No. 730-1091 which contained the findings. *See* note 5 *supra*.

x x x x x x x x x

FINDINGS:

Microscopic and photographic standard examination and comparison of the questioned and the submitted signatures reveal significant similarities in the manner of execution, skill of writing, quality of lines and other individual handwriting characteristics and habit.

x x x x x x x x x

CONCLUSION:

The questioned signature QUINTIN B. BELGICA marked "Q" appearing in the Special Power of Attorney, dated July 14, 1989 and the submitted standard signatures of Quintin B. Belgica marked "S-1" to "S-8" inclusive, WERE WRITTEN BY ONE AND THE SAME PERSON.

x x x x x x x x x[7]

Respondents also presented Atty. Leopoldo Balguma, the notary public who notarized the SPA. He testified that petitioner signed the questioned document in his presence.

After trial, the RTC dismissed the complaint.[8] It found that the signature appearing in the SPA was the true and genuine signature of petitioner. Thus, the deed of absolute sale executed by respondent Marilyn Belgica in favor of respondent Ong was a valid and binding agreement.

Petitioner appealed the RTC decision to the CA.[9] The CA denied the same[10] in the absence of strong evidence to warrant the reversal of the RTC decision.

Petitioner moved for reconsideration[11] but it was also denied.[12] Hence, this petition.

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[7] Dated November 6, 1992. *Rollo*, p. 114.

[8] Decision dated September 20, 1993.

[9] Dated October 13, 1993.

[10] Dated June 30, 2000. *Rollo*, pp. 28-38.

[11] Dated July 19, 2000. *Id.*, pp. 39-45.

[12] Dated August 30, 2001. *Id.*, pp. 47-48.

Petitioner basically questions the authenticity of the SPA. He contends that his signature appearing therein was forged. Thus, the deed of absolute sale executed by his wife, purportedly in her own behalf and the petitioner's as well, did not constitute a valid and binding agreement. Consequently, the sale of the conjugal property to respondent Ong was void.

The petition has no merit.

Time and again, we have stressed that the remedy of appeal by *certiorari* under Rule 45 of the Rules of Court should involve only questions of law, not questions of fact. There exists a question of law when there is doubt on what the law applicable to a certain set of facts is. Questions of fact, on the other hand, arise when there is an issue regarding the truth or falsity of the statement of facts.[13] Questions on whether certain pieces of evidence should be accorded probative value or whether the proofs presented by one party are clear, convincing and adequate to establish a proposition are issues of fact. Such questions are not subject to review by this Court. As a general rule, we review cases decided by the CA only if they involve questions of law raised and distinctly set forth in the petition.[14]

Petitioner himself admits in his petition that the issue he wants this Court to pass upon is the authenticity of the SPA. He is thus asking us to consider a *question of fact*, something that has already been raised in and satisfactorily established by the RTC and the CA. This is not allowed because, as a general rule, findings of fact of the RTC, when affirmed by the CA, become final and conclusive. We do not review their factual findings on appeal, specially when these are supported by the records or are based on substantial evidence.[15]

While the application of this rule is not absolute and admits of exceptions, none of them is present in this case.[16] Both the

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[13] *Potenciano v. Reynoso*, 449 Phil. 396, 405 (2003).

[14] *Benguet Corporation v. Commissioner of Internal Revenue*, G.R. No. 141212, 22 June 2006, 492 SCRA 133, 142.

[15] *Potenciano v. Reynoso, supra* note 13 at 398.

[16] *See Baricuatro, Jr. v. Court of Appeals*, 382 Phil. 15, 24 (2000).

RTC and the CA competently ruled on the issues brought before them by petitioner as they properly laid down both the factual and legal bases for their respective decisions.

Both courts found the testimony of petitioner's expert witness hardly conclusive and binding because the comparison was made only on the basis of a photocopied SPA. Even petitioner's expert witness himself admitted that the examination of a photocopy, when compared to the examination of an original, may affect the result. In fact, he clearly stated that his finding was still "subject to verification." Therefore, it was an acknowledgement that his findings and conclusions were neither definite nor conclusive. Something more needed to be done — the examination of the original document itself — to enable the testimony to become fully and legally acceptable.

On the other hand, both courts found the testimony of respondents' expert witness to be more persuasive as he based his findings and conclusions on a *carbon original copy* of the document containing the signature of petitioner. It was an original document.[17] Thus, he was able to study in detail the strokes and nuances of petitioner's handwriting.

The CA also examined the alleged forged signature, just as the trial court did, and it saw no reason to overturn the trial court's findings.

It is important to note that the authenticity of a signature though often the subject of proffered expert testimony, is a matter that is not so highly technical as to preclude a judge from examining the signature himself and ruling upon the question of whether the signature on a document is forged or not. It is

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[17] RULES OF COURT, Rule 130, Section 4. The section provides:

Sec. 4. *Original of document*.

(a) The original of a document is one the contents of which are the subject of inquiry.

(b) When a document is in two or more copies executed at or about the same time, with identical contents, all such copies are equally regarded as originals. x x x

not as highly technical as questions pertaining to quantum physics, topology or molecular biology.[18]

A finding of forgery does not depend exclusively on the testimonies of expert witnesses as judges can and must use their own judgment, through an independent examination of the questioned signature, in determining the authenticity of the handwriting.[19] This is what the RTC and the CA did. Both courts not only considered the expert testimonies presented but also based their findings and conclusions on their evaluation of the questioned document itself.

We therefore see no reason to disturb the lower courts' findings on the authenticity of petitioner's signature appearing in the SPA.

Finally, it must be noted that Atty. Balguma, the notary public who notarized the SPA, testified that petitioner signed the document in his presence. The testimony of a notary public (who is an officer of the court) enjoys greater credence than that of an ordinary witness, specially if the latter's testimony consists of nothing more than mere denials.[20] Petitioner denied signing the aforementioned documents and invoked forgery but presented no competent evidence to support his accusation. His testimony paled in comparison with that of Atty. Balguma who stated in no uncertain terms that petitioner signed the documents in his presence.

WHEREFORE, the petition is hereby *DENIED*. The June 30, 2000 decision and the August 30, 2001 resolution of the Court of Appeals in CA-G.R. CV No. 44783 are *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

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[18] *Alcos v. Intermediate Appellate Court*, No. 79317, 28 June 1988, 162 SCRA 823, 833.

[19] *Jimenez, et al. v. Commission on Ecumenical Mission*, 432 Phil. 895, 907 (2002).

[20] *Sales v. CA*, G.R. No. L-40145, 29 July 1992, 211 SCRA 858, 865.

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

EN BANC

[G.R. No. 149941. August 28, 2007]

GABRIEL A. MAGNO, NIEVES P. CASTRO, EMIDIO S. MORALES, CONCEPCION Y. AQUINO AND RODOLFO Y. CERVAS, AS MEMBERS OF THE BOARD OF DIRECTORS, MANGALDAN WATER DISTRICT, *petitioners, vs.* **HON. COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; RIGHTS AND PRIVILEGES; COMPENSATION; BASIS FOR AFFIRMING NOTICE OF DISALLOWANCE AGAINST PETITIONERS IS REPUBLIC ACT NO. 6758 OTHERWISE KNOWN AS THE "COMPENSATION AND POSITION CLASSIFICATION ACT OF 1989 OR SALARY STANDARDIZATION LAW" AS IMPLEMENTED BY THE DEPARTMENT OF BUDGET AND MANAGEMENT CORPORATE COMPENSATION CIRCULAR NO. 10 (DBM CCC NO. 10) AND NOT THE OPINION OF THE COMMISSION'S GENERAL COUNSEL.— As can be gleaned from the COA Decision, it is crystal clear that its basis for affirming the Notice of Disallowance against the petitioners was Republic Act No. 6758, as implemented by DBM CCC No. 10 and not the Opinion of the COA General Counsel. And this gave rise to the second issue: Whether the COA gravely abused its discretion in finding that the petitioners were governed by Republic Act No. 6758, as implemented by DBM CCC No. 10; thus, they were not anymore entitled to the bonuses, allowances and benefits provided for in Resolution No. 313, as amended.

2. ID.; ID.; ID.; ID.; ID.; THE COMMISSION ON AUDIT (COA) COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING THE DISALLOWANCE OF BONUSES, BENEFITS AND ALLOWANCES CONSIDERING THAT PETITIONERS, AS DIRECTORS OF WATER DISTRICTS, ARE EXCLUDED FROM THE COVERAGE OF REPUBLIC ACT NO. 6758.— In *Molen, Jr. v. Commission on Audit*, citing the case of *Baybay Water District v. Commission on Audit*, the Court already ruled that: x x x [R.A. No. 6758 also known as] the Salary Standardization Law, does not apply to petitioners because directors of water districts are in fact limited to policy-making and are prohibited from the management of the districts. [Section 18, P.D. No. 198] described the functions of members of boards of directors of water districts as follows: Sec. 18. Functions Limited to Policy-Making. — The function of the board shall be to establish policy. The Board shall not engage in the detailed management of the district. Furthermore, the fact that [Secs.] 12 and 17 of the Salary Standardization Law speak of allowances as "benefits" paid in addition to the salaries incumbents are presently receiving makes it clear that the law does not refer to the compensation of board of directors of water districts as these directors do not receive salaries but per diems for their compensation. It is noteworthy that even the Local Water Utilities Administration (LWUA), in Resolution No. 313, s. 1995, entitled "Policy Guidelines on Compensation and Other Benefits to WD Board of Directors," on which petitioners rely for authority to grant themselves additional benefits, acknowledges that directors of water districts are not organic personnel and, as such, are deemed **excluded from the coverage of the Salary Standardization Law**. Memorandum Circular No. 94-002 of the DBM-CSC-LWUA-PAWD Oversight Committee states in pertinent part: As the WD Board of Directors' function is limited to policy-making under Sec. 18 of Presidential Decree 198, as amended, it is the position of the Oversight Committee that said WD Directors are not to be treated as organic personnel, and as such are deemed excluded from the coverage of RA 6758, and that their powers, rights and privileges are governed by the pertinent provisions of PD 198, as amended, not by R.A. 6758 x x x. Applying the aforesaid pronouncement of the Court in the case at bar, this Court holds that the petitioners, being members of the MAWAD Board of Directors, are

excluded from the coverage of Republic Act No. 6758; thus, it was grave abuse of discretion on the part of the COA to affirm the Notice of Disallowance of petitioners' bonuses, benefits and allowances on the basis of Republic Act No. 6758.

3. ID.; ID.; ID.; ID.; ID.; SINCE REPUBLIC ACT NO. 6758 IS NOT APPLICABLE TO PETITIONERS, IT NECESSARILY FOLLOWS THAT EVEN IN ITS IMPLEMENTING GUIDELINES, DBM CCC NO. 10 IS NOT LIKEWISE APPLICABLE TO THEM.— As regards the implementing guidelines of Republic Act No. 6758, *i.e.*, DBM CCC No. 10, it is already settled in *De Jesus v. Commission on Audit*, that the same is in the nature of an administrative circular, because the purpose is to enforce or implement an existing law, which is Republic Act No. 6758; hence, it must be published in the Official Gazette or in a newspaper of general circulation in the country, as required by law. And since the said DBM CCC No. 10 was not published, the same did not become effective and enforceable. However, it was re-issued on 15 February 1999 and published on 1 March 1999, but still it cannot be enforced against the petitioners as it can only be implemented after 1 March 1999 or upon the completion of the required publication. And most importantly, since Republic Act No. 6758 was not applicable to the petitioners, it necessarily follows that even its implementing guidelines, DBM CCC No. 10, cannot be applied to them.

4. ID.; ID.; ID.; ID.; ID.; THE BONUSES, BENEFITS AND ALLOWANCES GRANTED BY THE LOCAL WATER UTILITIES ADMINISTRATION'S (LWUA's) RESOLUTION NO. 313, AS AMENDED, MUST STILL BE DISALLOWED; PRESIDENTIAL DECREE NO. 198, AS AMENDED, EXPRESSLY PROHIBITS THE GRANT OF COMPENSATION OTHER THAN THE PAYMENT OF *PER DIEMS* TO THE MEMBERS OF THE BOARD OF DIRECTORS OF LOCAL WATER DISTRICTS, THUS PREEMPTING THE EXERCISE OF ANY DISCRETION BY WATER DISTRICTS IN PAYING OTHER ALLOWANCES AND BONUSES.— Although the Court finds that the COA committed grave abuse of discretion in affirming the Notice of Disallowance of petitioners' bonuses, benefits and allowances by applying Republic Act No. 6758, as implemented by DBM CCC No. 10, the said bonuses, benefits

and allowances granted to the petitioners pursuant to LWUA's Resolution No. 313, as amended, must still be disallowed. It is well-settled that Section 13, Presidential Decree No. 198, as amended, governs the compensation of the members of the Board of Directors of the Local Water Districts; hence, they cannot receive allowances and benefits more than those allowed by the aforesaid law. And in construing Section 13, Presidential Decree No. 198, as amended, the Court said that the members of the Board of Directors of the Local Water Districts are precisely intended to be compensated *per diem*. Indeed, the words and phrases in a statute must be given their natural, ordinary, and commonly accepted meaning, by thus specifying the compensation which a director is entitled to receive and by limiting the amount he/she is allowed to receive in a month; and, in the same paragraph, providing "No director shall receive other compensation" than the amount provided for ***per diem***, the law quite clearly indicates that the directors of water districts are authorized to receive only the per diem authorized by law and no other compensation or allowance in whatever form. Section 13 of Presidential Decree No. 198, as amended, is clear enough and it needs no further interpretation. It expressly prohibits the grant of compensation other than the payment of per diems, thus preempting the exercise of any discretion by water districts in paying other allowances and bonuses.

5. ID.; ID.; ID.; ID.; ID.; NO NEED TO REFUND THE BONUSES, BENEFITS AND ALLOWANCES RECEIVED; PETITIONERS CAN BE CONSIDERED TO HAVE RECEIVED THE SAME IN GOOD FAITH AND UNDER THE HONEST BELIEF THAT RESOLUTION NO. 313, AS AMENDED, AUTHORIZED SUCH PAYMENT.— The bonuses, benefits and allowances received by the petitioners pursuant to Resolution No. 313, as amended, must be disallowed. Nevertheless, the petitioners are not required to refund the said bonuses, benefits and allowances because they had no knowledge then that such payment was without legal basis. At the time they received the same, *i.e.*, in the year 1997, the Court had not yet decided *Baybay Water District v. Commission on Audit*, where the Court categorically declared as illegal the payment of additional compensation to members of the water district board of directors, other than the allowed *per diem* in Section 13 of Presidential Decree No. 198, as

amended; thus, petitioners can be considered to have received the said bonuses, benefits and allowances in 1997 in good faith and under the honest belief that Resolution No. 313, as amended, authorized such payment.

APPEARANCES OF COUNSEL

Gabriel A. Magno for petitioners.
The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This case is a Petition for *Certiorari* under Rule 64 in relation to Rule 65 of the 1997 Revised Rules of Civil Procedure, seeking to annul or modify on the grounds of grave abuse of discretion amounting to lack or excess of jurisdiction and for being contrary to law and jurisprudence, (1) Commission on Audit (COA) Decision No. 2000-385,[1] dated 29 December 2000, which affirmed the decision[2] of the Director, COA Regional Office No. 1, San Fernando, La Union, disallowing the payment of various monetary benefits to herein petitioners for calendar year 1997 in the total amount of ₱303,172.00; and (2) COA Resolution No. 2000-177,[3] dated 6 September 2001, which denied petitioners' Motion for Reconsideration.

Herein petitioners Gabriel A. Magno, Nieves P. Castro, Emidio S. Morales, Concepcion Y. Aquino and Rodolfo Y. Cervas were members of the Board of Directors of the Mangaldan Water District (MAWAD), Mangaldan, Pangasinan from 1 January 1997 to 31 December 1997, the period covered by the audit in question.

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[1] Penned by Celso D. Gangan, Chairman, with Commissioners, Raul C. Flores and Emmanuel M. Dalman, concurring; *rollo*, pp. 36-41.

[2] Penned by Regional Director Rafael C. Marquez, *id*. at 206.

[3] Penned by Guillermo N. Carague, Chairman with Commissioners Raul C. Flores and Emmanuel M. Dalman, concurring; *id*. at 42-44.

The factual milieu of the present case are the following:

The Local Water Utilities Administration,[4] through its Board of Trustees, adopted and approved Resolution No. 313, Series of 1995, as amended by Board Resolution No. 39, Series of 1996 (Resolution No. 313, as amended), entitled *Policy Guidelines on Compensation and Other Benefits for the Water District Board of Directors*, under which the members of the Water District Board of Directors were granted bonuses, benefits, and allowances. By virtue of the said Resolution, various benefits consisting of rice, uniform, representation, transportation, special financial assistance, bonus, cash gift and productivity/incentive allowances amounting to ₱303,172.00 were granted by MAWAD to the petitioners.

Meanwhile, the Director and Officer-in-Charge of Corporate Audit Office II, COA, sent a Memorandum to the COA General Counsel requesting an Authoritative Opinion regarding the above-mentioned Policy Guidelines. In response to the said Memorandum, the COA General Counsel issued Opinion No. 97-015,[5] dated 7 August 1997, stating therein that the payments of compensation and other benefits aside from the allowable *per diems* to Water District Board of Directors pursuant to Resolution No. 313, as amended, should be disallowed in audit for lack of legal basis, because the same was inconsistent with the provision of Section 13 of Presidential Decree No. 198,[6] as amended, which is the law governing the Local Water Districts. Said Section 13, Presidential Decree No. 198, as amended, specifically provides that:

> Sec. 13. Compensation. — Each director shall receive a *per diem*, to be determined by the board, for each meeting of the Board actually attended by him, but no director shall receive per diems in any given month in excess of the equivalent of the total *per diem* of four meetings in any given month. **No director shall receive other compensation for services to the district.**

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[4] Established under Presidential Decree No. 198, otherwise known as *Provincial Water Utilities Act of 1973.*

[5] *Rollo,* pp. 45-46.

[6] Otherwise known as *Provincial Water Utilities Act of 1973.*

Any *per diem* in excess of ₱50 shall be subject to approval of the Administration. (Emphasis supplied.)

The Director, COA Regional Office No. 1, San Fernando, La Union, then issued a Memorandum, together with a copy of Opinion No. 97-015, addressed to all the General Managers of various Water Districts in Region I for their guidance and information.

The COA, through its Auditors — namely: Elsa H. Ramos-Mapili and Concordia R. Decano from COA Regional Office No. 1, San Fernando, La Union, in their capacity as team leader and member, respectively — conducted a special audit on the operations of MAWAD for the year 1997. On 19 May 1998, the aforesaid Auditors submitted a Financial Audit Report in the form of Certificate of Settlement and Balances; and appended thereto were Notices of Suspension and Summary of Suspensions, Disallowances and Charges.[7] "Finding No. 9" of the said Financial Audit Report recommended the disallowance of different bonuses, benefits and allowances amounting to ₱303,172.00, which were granted to the petitioners in violation of aforecited Section 13, Presidential Decree No. 198, as amended. The said disallowance was stated under Notice of Disallowance No. 98-002-000 (97). The petitioners were likewise requested to refund the allowances, bonuses and benefits conferred upon them.

Petitioners appealed the aforesaid disallowance to the Director, COA Regional Office No. 1, San Fernando, La Union, asking for the reconsideration of the same, but it was denied. After the denial of the petitioners' request for reconsideration, they filed a Petition for Review before the COA. The COA rendered its Decision No. 2000-0385, dated 29 December 2000, finding the disallowance to be proper. Petitioners moved for the reconsideration of the said Decision, but it was similarly denied by the COA in its Resolution No. 2001-177, dated 6 September 2001.

Hence, this Petition.

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[7] *Rollo,* pp. 363-384.

Petitioners vehemently argue that the COA acted with grave abuse of discretion amounting to lack or excess of jurisdiction in sustaining the Notice of Disallowance against them. Petitioners further claim that the COA Decision, affirming the said Notice of Disallowance, was rendered by it on the basis of Opinion No. 97-015 of the COA General Counsel, which Opinion was not approved by the COA as a collegial body. Citing *Orocio v. Commission on Audit*,[8] petitioners maintain that the COA General Counsel can only offer legal advice or render an opinion to aid the COA in the resolution of a case or a legal question, but it is bereft of any power to act for or on behalf of the COA.

Petitioners likewise ascribe grave abuse of discretion amounting to lack or excess of jurisdiction on the part of COA in finding that they were already under the coverage of Republic Act No. 6758,[9] and were governed by the implementing guidelines set forth in Department of Budget and Management Corporate Compensation Circular (DBM CCC) No. 10, Section 2.0, dated 23 October 1989; thus, they were no longer entitled to the allowances, benefits and bonuses provided for under the previously mentioned Resolution No. 313, as amended. Petitioners contend that for the year 1997, the year covered by the assailed audit, they cannot be said to have been governed by DBM CCC No. 10, dated 23 October 1989, because the same had not yet taken effect in 1989, as it was neither published in the Official Gazette nor in any newspaper of general circulation. Even though the said DBM CCC No. 10 was re-issued on 15 February 1999 and published on 1 March 1999, the same cannot be enforced against them as it can only be implemented after 1 March 1999 or upon the completion of the required publication. Thus, the grant of benefits and allowances in the year 1997 to the petitioners should still be governed by Resolution No. 313, as amended, and not by Republic Act No. 6758, as implemented by DBM CCC No. 10.

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[8] G.R. No. 75959, 31 August 1992, 213 SCRA 109.

[9] Otherwise known as *Compensation and Position Classification Act of 1989*.

Given the foregoing, the issues that must be resolved in this Petition are the following:

I. Whether the COA acted with grave abuse of discretion in affirming the Notice of Disallowance against the petitioners, allegedly based on the Opinion of the COA General Counsel.

II. Whether the COA gravely abused its discretion in finding that the petitioners were governed by Republic Act No. 6758, as implemented by DBM CCC No. 10, thus, they were not anymore entitled to the bonuses, allowances and benefits provided for in Resolution No 313, as amended.

The petitioners in this case are laboring under the wrong impression that the COA Decision, affirming the Notice of Disallowance against them, was based on the Opinion of the COA General Counsel. The Court believes otherwise.

It must be remembered that the COA, before sustaining the Notice of Disallowance against the petitioners, had taken into consideration the findings of its Auditors from COA Regional Office No. 1, San Fernando, La Union, who were duly authorized to conduct an audit examination on the operations of MAWAD; as well as the decision of the Director, COA Regional Office No. 1, San Fernando, La Union. The COA, in affirming the Notice of Disallowance against the petitioners, went further by applying Republic Act No. 6758, as implemented by DBM CCC No. 10. The pertinent portion of the questioned COA Decision reads as follows:

Markworthy is the fact that the decision to impose the subject disallowance was rendered by Auditors Elsa H. Ramos-Mapili and Concordia R. Decano and was affirmed by Atty. Rafael C. Marquez, Director, COA Regional Office No. 1, San Fernando, La Union, obviously convinced that the legal opinion rendered by the then COA General Counsel, Director Raquel R. Habitan, was in order. It must be pointed out that the COA General Counsel is authorized to render opinion or interpret pertinent laws as well as auditing rules and regulations, as a guide to all COA officials/auditors especially on matters within the province of their auditing tasks, as mandated by the Constitution, purposely to see to it that public funds are disbursed pursuant to law.

In this respect, [COA] finds the imposition of the herein subject disallowance to be proper. This is so because Water Districts like the [MAWAD], are classified as government-controlled corporations, and therefore, the Water District Directors like the herein petitioners, are considered as government officials/ employees, whose monetary compensation and other forms of benefits are expressly covered and governed by the provision of R.A. No. 6758 (citation omitted), x x x particularly Section 4 thereof. As the implementing guideline thereon, Corporate Compensation Circular (CCC) No. 10, Section 2.0, issued by the DBM on October 23, 1989, states:

> "The Compensation and Position Classification System herein provided shall apply to all positions, appointive or elective, on full or part-time basis, now existing or hereafter created in the government including government-owned or controlled corporations and government financial institutions," and
>
> "The Compensation and Position Classification System referred to herein, shall apply to all positions, whether permanent, casual, temporary, contractual, on full or part-time basis, now existing or hereafter created in government-owned and/or controlled corporations and government financial institutions whether they perform governmental or proprietory (sic) functions," (Item No. 2.0 DBM CCC No. 10).
>
> x x x x x x x x x

x x x. **Being such, [herein petitioners] are, therefore, covered and governed by R.A. 6758 and [DBM CCC No. 10, dated 23 October 1989], insofar as establishment of standard guidelines on compensation and other benefits are concerned.**

x x x. Hence, the grant of the herein questioned benefits by the LWUA to the [petitioners] is, therefore, null and void for being *ultra vires*.[10] x x x. (Emphasis supplied.)

As can be gleaned from the afore-quoted COA Decision, it is crystal clear that its basis for affirming the Notice of Disallowance against the petitioners was Republic Act No. 6758, as implemented by DBM CCC No. 10 and not the Opinion of the COA General

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[10] *Rollo*, pp. 38-40.

Counsel. And this gave rise to the second issue: Whether the COA gravely abused its discretion in finding that the petitioners were governed by Republic Act No. 6758, as implemented by DBM CCC No. 10; thus, they were not anymore entitled to the bonuses, allowances and benefits provided for in Resolution No. 313, as amended.

In *Molen, Jr. v. Commission on Audit*,[11] citing the case of *Baybay Water District v. Commission on Audit*,[12] the Court already ruled that:

x x x **[R.A. No. 6758 also known as] the Salary Standardization Law, does not apply to petitioners because directors of water districts are in fact limited to policy-making and are prohibited from the management of the districts**. [Section 18, P.D. No. 198] described the functions of members of boards of directors of water districts as follows:

> Sec. 18. Functions Limited to Policy-Making. — The function of the board shall be to establish policy. The Board shall not engage in the detailed management of the district.

Furthermore, the fact that [Secs.] 12 and 17 of the Salary Standardization Law speak of allowances as "benefits" paid in addition to the salaries incumbents are presently receiving makes it clear that the law does not refer to the compensation of board of directors of water districts as these directors do not receive salaries but per diems for their compensation.

It is noteworthy that **even the Local Water Utilities Administration (LWUA), in Resolution No. 313, s. 1995, entitled "Policy Guidelines on Compensation and Other Benefits to WD Board of Directors," on which petitioners rely for authority to grant themselves additional benefits, acknowledges that directors of water districts are not organic personnel and, as such, are deemed excluded from the coverage of the Salary Standardization Law**. Memorandum Circular No. 94-002 of the DBM-CSC-LWUA-PAWD Oversight Committee states in pertinent part:

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[11] G.R. No. 150222, 18 March 2005, 453 SCRA 769, 777-778.

[12] 425 Phil. 326, 340-341 (2002).

> As the WD Board of Directors' function is limited to policy-making under Sec. 18 of Presidential Decree 198, as amended, it is the position of the Oversight Committee that said WD Directors are not to be treated as organic personnel, and as such are deemed excluded from the coverage of RA 6758, and that their powers, rights and privileges are governed by the pertinent provisions of PD 198, as amended, not by R.A. 6758 x x x. (Emphasis supplied.)

Applying the aforesaid pronouncement of the Court in the case at bar, this Court holds that the petitioners, being members of the MAWAD Board of Directors, are excluded from the coverage of Republic Act No. 6758; thus, it was grave abuse of discretion on the part of the COA to affirm the Notice of Disallowance of petitioners' bonuses, benefits and allowances on the basis of Republic Act No. 6758.

As regards the implementing guidelines of Republic Act No. 6758, *i.e.*, DBM CCC No. 10, it is already settled in *De Jesus v. Commission on Audit*,[13] that the same is in the nature of an administrative circular, because the purpose is to enforce or implement an existing law, which is Republic Act No. 6758; hence, it must be published in the Official Gazette or in a newspaper of general circulation in the country, as required by law. And since the said DBM CCC No. 10 was not published, the same did not become effective and enforceable. However, it was re-issued on 15 February 1999 and published on 1 March 1999, but still it cannot be enforced against the petitioners as it can only be implemented after 1 March 1999 or upon the completion of the required publication. And most importantly, since Republic Act No. 6758 was not applicable to the petitioners, it necessarily follows that even its implementing guidelines, DBM CCC No. 10, cannot be applied to them.

Although the Court finds that the COA committed grave abuse of discretion in affirming the Notice of Disallowance of petitioners' bonuses, benefits and allowances by applying Republic Act No. 6758, as implemented by DBM CCC No. 10, the said

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[13] 355 Phil. 584, 590 (1998).

bonuses, benefits and allowances granted to the petitioners pursuant to LWUA's Resolution No. 313, as amended, **must still be disallowed**.

It is well-settled that Section 13, Presidential Decree No. 198, as amended, governs the compensation of the members of the Board of Directors of the Local Water Districts; hence, they cannot receive allowances and benefits more than those allowed by the aforesaid law.[14] And in construing Section 13, Presidential Decree No. 198, as amended, the Court said that the members of the Board of Directors of the Local Water Districts are precisely intended to be compensated *per diem*. Indeed, the words and phrases in a statute must be given their natural, ordinary, and commonly accepted meaning, by thus specifying the compensation which a director is entitled to receive and by limiting the amount he/she is allowed to receive in a month; and, in the same paragraph, providing "**No director shall receive other compensation**" **than the amount provided for *per diem*, the law quite clearly indicates that the directors of water districts are authorized to receive only the *per diem* authorized by law and no other compensation or allowance in whatever form**. Section 13 of Presidential Decree No. 198, as amended, is clear enough and it needs no further interpretation. It expressly prohibits the grant of compensation other than the payment of per diems, thus preempting the exercise of any discretion by water districts in paying other allowances and bonuses.[15]

Therefore, the bonuses, benefits and allowances received by the petitioners pursuant to Resolution No. 313, as amended, must be disallowed. Nevertheless, the petitioners are not required to refund the said bonuses, benefits and allowances because they had no knowledge then that such payment was without legal basis. At the time they received the same, *i.e.*, in the

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[14] *Querubin v. Regional Cluster Director Legal and Adjudication Office, COA Regional Office VI, Pavia, Iloilo City* , G. R. No. 159299, 7 July 2004, 433 SCRA 769, 771-772.

[15] *Id.* at 772.

year 1997, the Court had not yet decided *Baybay Water District v. Commission on Audit*,[16] where the Court categorically declared as illegal the payment of additional compensation to members of the water district board of directors, other than the allowed *per diem* in Section 13 of Presidential Decree No. 198, as amended; thus, petitioners can be considered to have received the said bonuses, benefits and allowances in 1997 in good faith and under the honest belief that Resolution No. 313, as amended, authorized such payment.[17]

WHEREFORE, premises considered, the instant Petition is *PARTIALLY GRANTED*. COA Decision No. 2000-385 and COA Resolution No. 2001-177 of the Commission on Audit, dated 29 December 2000 and 6 September 2001, respectively, are hereby *AFFIRMED* as regards the disallowance of the bonuses, benefits and allowances granted to the petitioners by virtue of Resolution No. 313, as amended, with the following *MODIFICATIONS*: (1) petitioners are not required to return the bonuses, benefits and allowances they received in 1997; and (2) the petitioners are not covered by Republic Act No. 6758, as implemented by DBM CCC No. 10. No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Garcia, Velasco, Jr., Nachura, and *Reyes, JJ.*, concur.

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[16] It was decided only in 1992.

[17] *Querubin v. Regional Cluster Director Legal and Adjudication Office, COA Regional Office VI, Pavia, Iloilo City, supra* note 14 at 773.

THIRD DIVISION

[G.R. No. 150089. August 28, 2007]

ERLINDA B. DANDOY, represented by her Attorney-in-Fact, REY ANTHONY M. NARIA, *petitioner, vs.* **COURT OF APPEALS, HON. THELMA A. PONFERRADA, in her capacity as the Presiding Judge of the Regional Trial Court of Quezon City, Branch 104, and NERISSA LOPEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; AUTHORITY GRANTED TO THE ATTORNEY/S-IN-FACT IS NOT LIMITED TO THE FILING OF THE PETITION WITH THE COURT OF APPEALS BUT INCLUDES PLEADINGS WHICH MAY SUBSEQUENTLY FILED WITH THE COURT; USE OF *AND/OR* BETWEEN *PETITION FOR CERTIORARI* AND *APPEAL* CAN ONLY MEAN THAT EITHER OR BOTH COURSES OF ACTION MAY BE UNDERTAKEN.— The SPA executed by Dandoy grants to her attorney/s-in-fact, Marie Anne B. Barboni, Atty. Julian R. Torcuator, Jr. and/or Mr. Rey Anthony M. Naria, the authority to do and perform the following: To file a petition for *Certiorari* and/or Appeal to the Court of Appeals or Supreme Court with respect to the Decisions, resolutions or orders issued or that may hereafter be issued x x x such other matters as may aid in the prompt disposition of the action; and to file and/or execute such pleadings, motions, papers, and agreements, petitions, appeal as may be necessary to prosecute the above cases and/or settle the same. Clearly, the authority granted to the attorney/s-in-fact is not limited to the filing of the petition with the CA but includes a pleading which may be subsequently filed before this Court. Dandoy's intention to endow her attorney/s-in-fact with such power is unmistakable from the language of the SPA. The use of *and/or* between *petition for certiorari* and *appeal* can only mean that either or both courses of action may be undertaken. Thus, after Dandoy, through her attorney-in-fact, filed a petition for *certiorari* before the CA which

proved unsuccessful, the same attorney-in-fact could appeal the CA decision to this Court *via* a petition for review on *certiorari* under Rule 45. Besides, the last clause in the above-quoted portion of the SPA amply indicates that Dandoy intended for the authority to continue until the termination of the case.

2. ID.; ID.; DEMURRER TO EVIDENCE; EXPOUNDED.— Demurrer to evidence authorizes a judgment on the merits of the case without the defendant having to submit evidence on his part as he would ordinarily have to do, if plaintiff's evidence shows that he is not entitled to the relief sought. Demurrer, therefore, is an aid or instrument for the expeditious termination of an action, similar to a motion to dismiss, which the court or tribunal may either grant or deny. A demurrer to evidence may be issued when, upon the facts adduced and the applicable law, the plaintiff has shown no right to relief. Where the totality of plaintiff's evidence, together with such inferences and conclusions as may reasonably be drawn therefrom, does not warrant recovery against the defendant, a demurrer to evidence should be sustained. A demurrer to evidence is likewise sustainable when, admitting every proven fact favorable to the plaintiff and indulging in his favor all conclusions fairly and reasonably inferable therefrom, the plaintiff has failed to make out one or more of the material elements of his case, or when there is no evidence to support an allegation necessary to his claim. It should be sustained where the plaintiff's evidence is *prima facie* insufficient for a recovery.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONDITIONAL OBLIGATIONS; OBLIGATIONS WITH A PERIOD; PURE OBLIGATION.— We also cannot accept petitioner's argument that her obligation is one with a period, that is, her obligation arises only after the sale of the Bicutan property. An obligation with a period is one for the fulfillment of which a day certain has been fixed. A day certain is understood to be that which must necessarily come, although it may not be known when. The sale of the Bicutan property cannot be characterized as a day certain because the event, though future, is not sure to happen. Notwithstanding the representation made by petitioner that there are many buyers, the fact remains that the property may not be bought at all. At

best, the sale of the property may be considered a condition because it is a *future and uncertain event* as opposed to a period which is *future and certain*. But if such a condition indeed exists, to be sure, the same was not imposed upon the birth of the obligation. Neither was there any showing that there was novation. Thus, the obligation cannot even be denominated as one with a condition. Accordingly, on the basis of the respondent's evidence alone, the existence of petitioner's obligation arising from the sale of the subject jewelry, was sufficiently established. The obligation, as already pointed out above, should be characterized as pure — as opposed to conditional or one with a period — which is demandable at once upon its constitution.

4. ID.; ID.; RENDITION OF JUDGMENTS AND FINAL ORDERS; A DECISION SHALL STATE CLEARLY AND DISTINCTLY THE FACTS AND THE LAW ON WHICH IT IS BASED.— Section 14, Article VIII of the Constitution provides: "No decision shall be rendered by any court without expressing clearly and distinctly the facts and the law on which it is based." Section 1, Rule 36 of the Rules of Court also requires that a judgment or final order determining the merits of the case "shall be in writing, personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of court." This requirement is an assurance to the parties that, in reaching judgment, the judge did so through the processes of legal reasoning. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached. It is precisely prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal.

5. ID.; ID.; ID.; ID.; REQUIREMENT OF SPECIFICITY OF RULINGS IS STRINGENTLY APPLIED ONLY TO JUDGMENTS AND FINAL ORDERS; A LIBERAL INTERPRETATION OF THE REQUIREMENT MAY BE GIVEN TO AN ORDER DISMISSING A DEMURRER TO EVIDENCE WHICH HAS BEEN CONSISTENTLY CHARACTERIZED AS INTERLOCUTORY; CASE AT BAR.— In the case at bench, even only a cursory examination of the questioned Orders of the RTC will show that there was

> sufficient compliance with the above requirements. The Court notes that petitioner's demurrer to evidence is founded on the alleged admission made by the respondent from which an inference is sought to be drawn that the latter's complaint was prematurely filed. In denying the demurrer to evidence, the trial court did not accept the petitioner's conclusion and held instead that "considering plaintiff's (respondent herein) evidence which, standing alone and in the absence of controverting evidence, affords sufficient basis for a judgment in her favor, the Court is inclined to deny the demurrer to evidence." Moreover, in the later order denying the petitioner's motion for reconsideration, the court more than amply explained the factual and legal basis for the denial. It even quoted a portion of the transcript of stenographic notes as basis for its conclusion in overruling the petitioner's claim. Said discussion clearly complies with the constitutional and statutory requisites. Besides, the requirement of specificity of rulings discussed above is stringently applied only to judgments and final orders. A liberal interpretation of this requirement, on the other hand, may be given to an order dismissing a demurrer to evidence which has been consistently characterized by this Court as interlocutory. The assailed Orders neither terminated nor finally disposed of the case as they still left something to be done by the court before the case is finally decided on the merits.

APPEARANCES OF COUNSEL

De Borja Santos Torcuator and *Santos Law Offices* for petitioner.

Leandro X.M. Viloria, Jr. for private respondent.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a Petition for Review on *Certiorari* of the Decision[1] of the Court of Appeals (CA) dated May 25,

[1] Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Teodoro P. Regino and Josefina Guevara-Salonga, concurring; *rollo*, pp. 106-110.

2001 in CA-G.R. SP No. 59397, and its Resolution[2] dated September 19, 2001. The assailed decision dismissed the petition for *certiorari* filed by petitioner Erlinda Dandoy (Dandoy), seeking to nullify the Orders[3] issued by the Regional Trial Court (RTC), Quezon City, Branch 104, dated January 31, 2000 and May 11, 2000 in Civil Case No. 98-33895.

The facts of the case as found by the CA, are as follows:

Herein petitioner Erlinda Dandoy-Barboni [also referred to as "Erlinda Dandoy" and "Barboni"], represented by her Attorney-in-Fact, Rey Anthony Naria, and the private respondent, Nerissa Lopez [Lopez], were high school classmates in Zamboanga del Sur from 1970 to 1975. The latter is now a businesswoman with various products as her stocks-in-trade which include jewelry. According to Lopez, the petitioner Dandoy on November 13, 1996, bought a set of jewelry with a total value of ₱35,000.00 from her on cash basis, but the latter pleaded that she be allowed to buy the items on credit, being a regular customer and friend of the former. Seller Lopez acceded to the request upon the representation of the buyer that she will settle her account before enplaning for France. On December 5 of the same year, buyer Dandoy-Barboni bought another set for ₱75,000.00. Sometime April, 1997, Lopez demanded payment for the sets of jewelry but the buyer countered that she still had to wait for the proceeds of the sale of her condominium in Pasig or her lot in Bicutan. To assuage Lopez, Barboni even appointed the former as one of her agents in selling her properties. On October 12, 1997, Barboni partially paid ₱30,000.00 and at the same time, bought two more sets of jewelry worth ₱230,000.00, which increased the latter's debt to ₱310,000.00. Four days after the partial payment, Lopez went to the house of Barboni and again demanded payment but was assured that the paper work for the sale of the Bicutan property was almost through and that the payment for $1,000,000.00 would be out soon. Barboni then inquired about other jewelry for sale and though apprehensive, Lopez showed the buyer a ₱1,000,000-worth diamond marquise which the former borrowed for appraisal. After several days, Lopez returned to retrieve the set but was told by the petitioner that she failed to have the jewelry appraised. At the same

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[2] *Rollo*, p. 118.

[3] Penned by Judge Thelma A. Ponferrada; *rollo*, pp. 69 and 76-78.

instance, the petitioner again bought two other pieces of jewelry valued at ₱60,000.00, representing that it would be given to her sister. On October 25, 1997, both parties met and again, the petitioner promised to settle her obligation within that day but she failed, compelling the private respondent to demand that the debtor-buyer just return the items she obtained. Thereafter, the petitioner began avoiding the jeweler, thus the latter made demands, both oral and written, for the former to settle her lawful obligations. Inspite of those demands, the petitioner continued and still continues to fail to settle her obligations. Hence, the private respondent was constrained to file the instant case for sum of money with preliminary attachment against the former.

In her Answer, the petitioner manifested that Lopez's complaint is malicious and done in bad faith. The truth is that the petitioner never intended to buy the jewelry but only wanted to help Lopez sell the goods. When not sold, the petitioner tried to return the merchandise but the seller refused to accept the same and insisted that the former pay for it upon the sale of her Bicutan property. Lopez obviously had the temerity to sue the petitioner inspite of the latter's benevolent assistance to the former for years. As counterclaim, the petitioner prayed that the amount of ₱5,000,000.00 as moral damages, ₱500,000.00 per month for lost interest as a result of the attachment of the Bicutan property, attorney's fees of ₱50,000.00 and a per appearance fee of ₱1,500.00 be adjudged in her favor.[4]

For failure of the parties to arrive at an amicable settlement during the preliminary conference, trial on the merits ensued.

After Lopez completed the presentation of her evidence, Dandoy, through counsel, moved for the dismissal of the complaint by way of a Demurrer to Evidence.[5] Dandoy relied on the alleged admission of Lopez that the payment for the jewelry will be made only after the sale of Dandoy's property situated at Bicutan. Since the property had not yet been sold at the time of the filing of the complaint (and even thereafter), the obligation was not yet due and demandable; thus, the dismissal of the case was warranted.

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[4] *Rollo*, pp. 106-107.

[5] *Id.* at 55-59.

In its Order[6] dated January 31, 2000, the trial court denied the Demurrer to Evidence, and set the case for presentation of Dandoy's evidence. Dandoy filed a motion for reconsideration which was likewise denied on May 11, 2000.[7]

Aggrieved, Dandoy elevated the matter to the CA through a petition for *certiorari* under Rule 65, praying that the RTC Orders be annulled, and the case be dismissed.

On May 25, 2001, the CA dismissed the petition on a finding that the RTC committed no grave abuse of discretion.[8] Thereafter, on September 19, 2001, the CA denied Dandoy's motion for reconsideration.[9]

Petitioner Dandoy now comes before this Court on a petition for review on *certiorari* under Rule 45 raising the following issues:

7.1. WHETHER OR NOT THE APPELLATE COURT ERRED IN NOT HOLDING THAT THE LOWER COURT COMMITTED A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN REFUSING TO DISMISS THE CASE INSPITE OF THE GLARING EVIDENCE WHICH WARRANTS SUCH DISMISSAL;

7.2. WHETHER OR NOT THE TRIAL COURT SHOULD HAVE ORDERED THE DISMISSAL OF THE CASE BEFORE IT BY WAY OF PETITIONER'S DEMURRER TO EVIDENCE;

7.3. WHETHER OR NOT THE APPELLATE COURT ERRED IN NOT HOLDING THAT THE ORDER OF THE TRIAL COURT VIOLATED SECTION 14, ARTICLE VIII OF THE 1987 CONSTITUTION;

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[6] *Id*. at 69.

[7] *Id*. at 76-78.

[8] The dispositive portion of which reads:

WHEREFORE, the instant Petition is hereby ***denied*** and accordingly ***DISMISSED.***

SO ORDERED. (*Rollo*, p. 110.)

[9] *Rollo*, p. 118.

7.4. WHETHER OR NOT THE SPECIAL POWER OF ATTORNEY ISSUED BY THE PETITIONER IS SUFFICIENT TO CONFER THE POWER UNTO THE ATTORNEY-IN-FACT TO FILE THE INSTANT PETITION.[10]

We initially discuss the last of these issues and, thereafter the other three.

Dandoy avers that the special power of attorney (SPA) she executed in favor of her attorney-in-fact is sufficient authority for the latter to file the instant petition notwithstanding the absence of any specific reference to the present case.

We agree.

The SPA executed by Dandoy grants to her attorney/s-in-fact, Marie Anne B. Barboni, Atty. Julian R. Torcuator, Jr. and/or Mr. Rey Anthony M. Naria, the authority to do and perform the following:

> To file a petition for *Certiorari* and/or Appeal to the Court of Appeals or Supreme Court with respect to the Decisions, resolutions or orders issued or that may hereafter be issued x x x i) such other matters as may aid in the prompt disposition of the action; and to file and/or execute such pleadings, motions, papers, and agreements, petitions, appeal as may be necessary to prosecute the above cases and/or settle the same.[11]

Clearly, the authority granted to the attorney/s-in-fact is not limited to the filing of the petition with the CA but includes a pleading which may be subsequently filed before this Court. Dandoy's intention to endow her attorney/s-in-fact with such power is unmistakable from the language of the SPA. The use of *and/or* between *petition for certiorari* and *appeal* can only mean that either or both courses of action may be undertaken. Thus, after Dandoy, through her attorney-in-fact, filed a petition for *certiorari* before the CA which proved unsuccessful, the same attorney-in-fact could appeal the CA decision to this Court

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[10] *Id*. at 139.

[11] *Id*. at 29.

via a petition for review on *certiorari* under Rule 45. Besides, the last clause in the above-quoted portion of the SPA amply indicates that Dandoy intended for the authority to continue until the termination of the case.

Now, on to the other issues.

Petitioner anchored her demurrer to evidence on Lopez's alleged admission that payment of the obligation shall be made only upon the sale of Dandoy's property in Bicutan. With such admission, petitioner contends that her debt had become an obligation with a period. And since the property had not yet been sold, Lopez had no right to demand payment. Thus, petitioner posits that the filing of the collection suit by Lopez was premature, and the case should be dismissed.

We do not agree.

Demurrer to evidence authorizes a judgment on the merits of the case without the defendant having to submit evidence on his part as he would ordinarily have to do, if plaintiff's evidence shows that he is not entitled to the relief sought. Demurrer, therefore, is an aid or instrument for the expeditious termination of an action, similar to a motion to dismiss, which the court or tribunal may either grant or deny.[12]

A demurrer to evidence may be issued when, upon the facts adduced and the applicable law, the plaintiff has shown no right to relief. Where the totality of plaintiff's evidence, together with such inferences and conclusions as may reasonably be drawn therefrom, does not warrant recovery against the defendant, a demurrer to evidence should be sustained. A demurrer to evidence is likewise sustainable when, admitting every proven fact favorable to the plaintiff and indulging in his favor all conclusions fairly and reasonably inferable therefrom, the plaintiff has failed to make out one or more of the material elements of his case, or when there is no evidence to support an allegation

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[12] *Heirs of Emilio Santioque v. Heirs of Emilio Calma*, G.R. No. 160832, October 27, 2006, 505 SCRA 665, 679.

necessary to his claim. It should be sustained where the plaintiff's evidence is *prima facie* insufficient for a recovery.[13]

Even with Lopez's admission, as claimed by the petitioner, the demurrer to evidence has to be denied. As correctly held by the CA, the respondent's testimony on cross-examination cannot be considered separately from her testimony on direct examination because the testimony of a witness is weighed as a whole.[14]

On direct examination,[15] the respondent testified that she went to Bicutan because petitioner wanted to pay her obligation from the proceeds of the sale of her Bicutan property. However,

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[13] *Id.* at 679-680.

[14] *Rollo,* p. 77.

[15] The respondent's testimony during her direct examination reads:

Q: What did she tell you, if any? When she called up your house what did she tell you?

A: Please come to the house because I have to talk some important matters to you. The buyer will be coming today and once the property will be paid I'll pay you in cash with my other balance.

x x x x

Q: Why were you going to Bicutan?

A: Because she told me she wants to pay me because the buyer of the house will be coming that afternoon.

Q: x x x (W)hat did you do then when you arrived at the house of the defendant?

A: She let us wait for the buyer of her house and then "*pinakilala n'ya ako doon sa buyer niya, nag-usap sila. Sabi ng buyer niya, ang asawa niya hindi dumaan sa Pilipinas at dumeretso sa* Germany" and she is the signatory of that check. *So maghintay na lang*.

Q: After being told this by the buyer, what did the defendant say? Ms. Witness?

A: If this transaction will not push through, I will return the item.

Q: Did this transaction push through? The sale of the Bicutan property?

A: No, it did not push through.

according to respondent, the transaction did not push through and the petitioner promised to return the items to the respondent. But the items were never returned. On the other hand, during her cross-examination,[16] respondent answered in the affirmative when asked whether she acceded to the request of the petitioner that the obligations be paid from the proceeds of the sale of the Bicutan property, which at that time was not yet effected.[17] From this testimony, it appears that while Lopez agreed that payment would come from the proceeds of the sale, she did not necessarily bind herself to the commitment that the payment of the obligation will be sourced solely from the sale of the Bicutan property. It is noteworthy that, responding to an earlier demand for payment, petitioner promised to pay out of the proceeds of the sale of her Ortigas condominium or Bicutan

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Q: What happened to the items?

A: She promised to return the items on October 28 because the item is not in her possession, it is in her wallet.

Q: After committing to return the same on October 28, 1997, what did the defendant do?

A: She evaded me and I cannot find her anymore. (*Id*. at 77-78.)

[16] Respondent's testimony during her cross-examination reads:

Q: x x x And then, it appears here in your testimony on page 30 of the tsn that she was and I quote your answer: "She was assuring me that the property in Lower Bicutan will be sold because there are many buyers." And so, she was promising to pay you your jewelries with the proceeds of the sale of her house in Lower Bicutan so, not anymore to condominium because at that time the condominium was already sold. And, of course, you acceded to that promise by the defendant and so you gave her another jewelry which you said is worth ₱1 Million so that the same will be paid including her previous balance with you with the proceeds of [the] Bicutan property, am I correct? Is that right?

A: Yes.

Q: To your knowledge, Madam Witness, up to this time, was the Bicutan property sold?

A: No, Excuse me. (*Id*. at 53-54.)

[17] *Id*. at 76-78.

property. Yet, on October 12, 1997, petitioner made a partial payment in the amount of ₱30,000.00. Had the parties really intended that the payment of the obligation be sourced only from the proceeds of the sale of petitioner's properties, no partial payment would have been made by the petitioner. Moreover, prior to the filing of the complaint, respondent demanded the payment of petitioner's obligation and the latter promised to pay within the day. Nowhere in the narration of facts is it shown that she protested that her obligation was not yet due and demandable because her Bicutan property was not yet sold. These acts of petitioner negate the claim that her obligation is not yet due and demandable.

We also cannot accept petitioner's argument that her obligation is one with a period, that is, her obligation arises only after the sale of the Bicutan property. An obligation with a period is one for the fulfillment of which a day certain has been fixed. A day certain is understood to be that which must necessarily come, although it may not be known when.[18] The sale of the Bicutan property cannot be characterized as a day certain because the event, though future, is not sure to happen. Notwithstanding the representation made by petitioner that there are many buyers, the fact remains that the property may not be bought at all. At best, the sale of the property may be considered a condition because it is a *future and uncertain event* as opposed to a period which is *future and certain*. But if such a condition indeed exists, to be sure, the same was not imposed upon the birth of the obligation. Neither was there any showing that there was novation. Thus, the obligation cannot even be denominated as one with a condition.

Accordingly, on the basis of the respondent's evidence alone, the existence of petitioner's obligation arising from the sale of the subject jewelry, was sufficiently established. The obligation, as already pointed out above, should be characterized as pure — as opposed to conditional or one with a period — which is demandable at once upon its constitution. At the time the jewelry

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[18] Article 1193, New Civil Code.

were received by the petitioner, the contract of sale was consummated, and the corresponding obligation to pay had arisen. It is, therefore, gross error to attribute grave abuse of discretion to the trial court for denying the petitioner's demurrer to evidence.

Petitioner likewise raises the RTC's alleged violation of the Constitution due to the failure of the court to recite its findings of facts and conclusions of law in the questioned orders.

The Court disagrees with the petitioner.

Section 14, Article VIII of the Constitution provides: "No decision shall be rendered by any court without expressing clearly and distinctly the facts and the law on which it is based." Section 1, Rule 36 of the Rules of Court also requires that a judgment or final order determining the merits of the case "shall be in writing, personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of court." This requirement is an assurance to the parties that, in reaching judgment, the judge did so through the processes of legal reasoning. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached. It is precisely prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal.[19]

In the case at bench, even only a cursory examination of the questioned Orders of the RTC will show that there was sufficient compliance with the above requirements. The Court notes that petitioner's demurrer to evidence is founded on the alleged admission made by the respondent from which an inference is sought to be drawn that the latter's complaint was prematurely filed. In denying the demurrer to evidence, the trial court did not accept the petitioner's conclusion and held instead that "considering plaintiff's (respondent herein) evidence which,

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[19] *Report on the Judicial Audit Conducted in the Municipal Trial Court of Tambulig*, A.M. No. MTJ-05-1573, October 12, 2005, 472 SCRA 419, 429.

standing alone and in the absence of controverting evidence, affords sufficient basis for a judgment in her favor, the Court is inclined to deny the demurrer to evidence."[20] Moreover, in the later order denying the petitioner's motion for reconsideration, the court more than amply explained the factual and legal basis for the denial. It even quoted a portion of the transcript of stenographic notes as basis for its conclusion in overruling the petitioner's claim. Said discussion clearly complies with the constitutional and statutory requisites.

Besides, the requirement of specificity of rulings discussed above is stringently applied only to judgments and final orders. A liberal interpretation of this requirement,[21] on the other hand, may be given to an order dismissing a demurrer to evidence which has been consistently characterized by this Court as interlocutory.[22] The assailed Orders neither terminated nor finally disposed of the case as they still left something to be done by the court before the case is finally decided on the merits.[23]

WHEREFORE, the petition is hereby *DENIED*. The May 25, 2001 Decision of the Court of Appeals and its September 19, 2001 Resolution are *AFFIRMED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Reyes, JJ.,* concur.

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[20] *Rollo,* p. 69.

[21] *Malicdem v. Flores*, G.R. No. 151001, September 8, 2006, 501 SCRA 248, 258.

[22] *Choa v. Choa*, 441 Phil. 175, 182 (2000).

[23] *Malicdem v. Flores, supra* note 26, at 256.

THIRD DIVISION

[G.R. No. 156248. August 28, 2007]

MARISSA CENIZA-MANANTAN, *petitioner, vs.* **THE PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WITNESSES ARE WEIGHED, NOT NUMBERED; CONVICTION MAY BE HAD ON THE BASIS OF THE POSITIVE AND CREDIBLE TESTIMONY OF A SINGLE WITNESS.— It is axiomatic that truth is established not by the number of witnesses but by the quality of their testimonies. In the determination of the sufficiency of evidence, what matters is not the number of witnesses but their credibility and the nature and quality of their testimonies. The testimony of a lone witness, if found positive and credible by the trial court, is sufficient to support a conviction especially when the testimony bears the earmarks of truth and sincerity. While the number of witnesses may be considered a factor in the appreciation of evidence, proof beyond reasonable doubt is not necessarily with the greatest number. Witnesses are to be weighed, not numbered; hence, it is not at all uncommon to reach a conclusion of guilt on the basis of the testimony of a single witness. Conviction of the accused may still be had on the basis of the positive and credible testimony of a single witness.

2. ID.; ID.; ID.; TESTIMONY OF PROSECUTION'S LONE WITNESS FOUND CONSISTENT, POSITIVE AND CATEGORICAL; TRIAL COURT'S CALIBRATION OF THE TESTIMONIES OF WITNESSES AND ITS ASSESSMENT OF THE PROBATIVE WEIGHT THEREOF ARE ACCORDED HIGH RESPECT IF NOT CONCLUSIVE EFFECT.— The prosecution presented only one witness, who was Carilla himself as the complainant. However, we find the latter's testimony consistent with his Complaint-Affidavit dated 11 March 1996, which was positive and categorical. The RTC and the Court of Appeals both found Carilla's testimony credible and truthful. More telling are the documentary evidences

consisting of various checks issued by Manantan which later bounced and the demand letters of Carilla addressed to Manantan. Although the admissibility of these checks was objected to by Manantan during the trial, the RTC, nevertheless, admitted them as part of the testimony of Carilla. The rule is that the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.

3. ID.; ID.; ID.; BETWEEN BARE DENIAL AND POSITIVE TESTIMONY ON AFFIRMATIVE MATTERS, THE LATTER IS ACCORDED GREATER EVIDENTIARY WEIGHT.— In stark contrast, the evidence for the defense consists mainly of denials. Manantan denied having transacted with Carilla. Beyond her bare denials, however, she has not presented any plausible proof to successfully rebut the evidence for the prosecution. It is jurisprudentially settled that as between bare denials and positive testimony on affirmative matters, the latter is accorded greater evidentiary weight.

4. CRIMINAL LAW; SWINDLING (ESTAFA); ELEMENTS OF THE CRIME.— The elements of *estafa* in the above provision are as follows: a) That money, goods or other personal property is received by the offender in trust or on commission, or for administration or under any other obligation involving the duty to make delivery of or to return the same; b) That there be misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; and c) That such misappropriation or conversion or denial is to the prejudice of another. The essence of *estafa* under this paragraph is the appropriation or conversion of money or property received, to the prejudice of the owner thereof. It takes place when a person actually appropriates the property of another for his own benefit, use and enjoyment. In a prosecution for *estafa*, demand is not necessary where there is evidence of misappropriation or conversion; and failure to account, upon demand for funds or property held in trust, is circumstantial evidence of misappropriation.

5. ID.; ID.; ID.; ESTABLISHED IN CASE AT BAR.— All elements of *estafa* under paragraph 1(b), Article 315 of the Revised Penal Code, are duly established herein. *First*, Manantan received in trust the jewelries from Carilla for the purpose of selling them within two weeks from receipt thereof; and to remit the proceeds to Carilla within two weeks after the sale or to return the jewelries in case they were not sold. It was also agreed that Manantan will earn from any amount that she would add to the original sale price of the jewelries fixed by Carilla. This, in effect, created a fiduciary relationship between Carilla and Manantan. The absence of a written document showing receipt of jewelries or other property in trust does not necessarily mean that no such contract exists between the parties. Contracts can be made verbally for as long as there is a meeting of the minds of the parties thereto. Carilla positively and categorically testified on the transaction that transpired between him and Manantan. *Second*, there is misappropriation or conversion by Manantan of the jewelries or the proceeds of the sale thereof, as well as a denial on her part of receipt of the jewelries. The words "misappropriate" and "convert" as used in the said provision of law connote an act of using or disposing of another's property as if it were one's own or of devoting it to a purpose or use different from that agreed upon. Misappropriation or conversion may be proved by the prosecution by direct evidence or by circumstantial evidence. In an agency for the sale of jewelries, as in the present case, it is the agent's duty to return the jewelry upon demand of the owner and failure to do so is evidence of conversion of the property by the agent. In other words, the demand for the return of the thing delivered in trust and the failure of the accused to account for it are circumstantial evidence of misappropriation. However, this presumption is rebuttable. If the accused is able to satisfactorily explain his failure to produce the thing delivered in trust or to account for the money, he may not be held liable for *estafa*. Manantan misappropriated Carilla's properties, which she held in trust, by failing to remit the sale price of the jewelries or return the same to Carilla upon the expiration of the stipulated period, despite repeated demands by the latter. Manantan issued checks to Carilla as supposed payment of the sales proceeds of the jewelries but these checks were dishonored. Carilla hired a lawyer and sent a demand-letter to Manantan but the latter still failed to turn

over the jewelries or the sale prices thereof. As already heretofore pointed out, failure to account upon demand for the return of the thing delivered in trust raises a presumption of misappropriation. Manantan's bare denials are not sufficient to overcome such presumption. *Estafa* may also be committed by denying untruthfully that the thing was received. Manantan denied having received jewelries from Carilla. However, as we have already determined, such denial is unsubstantiated and therefore cannot prevail over the categorical declarations of Carilla that the jewelries were turned over in trust to Manantan. Hence, Manantan's denial of the receipt of jewelries also constitutes *estafa*. *Finally,* Manantan's failure or refusal to account for or return the jewelries to Carilla had evidently prejudiced the rights and interests of the latter. Not only did Carilla fail to recover his investment, but he also lost the opportunity to realize profits from the sales of the jewelries. Carilla further incurred expenses in hiring a lawyer and in litigating the present case.

6. ID.; ID.; ID.; PRISON TERM IMPOSABLE ON PETITIONER CONSIDERING THE AMOUNT INVOLVED AND APPLYING THE INDETERMINATE SENTENCE LAW.— In the present case, since the amount involved is ₱1,079,000.00, which exceeds ₱22,000.00, the penalty imposable should be the maximum period of 6 years, 8 months and 21 days to 8 years of *prision mayor*. Article 315 further states that a period of one year shall be added to the penalty for every additional ₱10,000.00 defrauded in excess of ₱22,000.00, but in no case shall the total penalty which may be imposed exceed 20 years. The amount swindled from Carilla greatly exceeds the amount of ₱22,000.00 which, when translated to the additional penalty of one year for every ₱10,000.00 defrauded, goes beyond 20 years. Under the law, the maximum penalty to be imposed in the present case should be 20 years of *reclusion temporal*. We now apply the Indeterminate Sentence Law in computing the proper penalty. Since the penalty prescribed by law for the *estafa* charge against Manantan is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* in its minimum to medium periods. Thus, the minimum term of the indeterminate sentence should be anywhere from 6 months and 1 day to 4 years and 2 months, while the maximum term of the indeterminate sentence should be 20 years. Thus, the Court of Appeals was correct in

imposing a prison term of 4 years and 2 months of *prision correccional* as minimum to 20 years of *reclusion temporal* as maximum.

7. LEGAL ETHICS; ATTORNEYS; NEGLIGENCE OF COUNSEL BINDS HIS CLIENT; EXCEPTIONS TO THE RULE; PRESENT CASE FALLS WITHIN THE GENERAL RULE RATHER THAN THE EXCEPTIONS.— Settled is the rule that mistake and negligence of a counsel bind his client. The basis is the tenet that an act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. Consequently, the mistake or negligence of a counsel may result in the rendition of an unfavorable judgment against his client. A contrary view would be inimical to the greater interest of dispensing justice. For all that a losing party will do is to invoke the mistake or negligence of his counsel as a ground for reversing or setting aside a judgment adverse to him, thereby putting no end to litigation. To allow this obnoxious practice would be to put a premium on the willful and intentional commission of errors by accused persons and their counsel, with a view to securing new trials in the event of conviction. Mistakes of attorneys as to the competency of a witness; the sufficiency, relevancy or irrelevancy of certain evidence, the proper defense, or the burden of proof; and failure to introduce certain evidence, to summon witness and to argue the case are not proper grounds for a new trial. Error of the defense counsel in the conduct of the trial is neither an error of law nor an irregularity upon which a motion for new trial may be presented. Concededly, the foregoing rule admits of exceptions. Hence, in cases where (1) the counsel's mistake is so great and serious that the client is prejudiced and denied his day in court, or (2) the counsel is guilty of gross negligence resulting in the client's deprivation of liberty or property without due process of law, the client is not bound by his counsel's mistakes, and a new trial may be conducted. Tested against these guidelines, we find that Manantan's case falls within the general rule rather than the exceptions.

8. ID.; ID.; ID.; COUNSEL CANNOT BE CONSIDERED RECKLESS OR GROSSLY NEGLIGENT BECAUSE THERE WAS NEITHER A TOTAL ABANDONMENT NOR A DISREGARD OF PETITIONER'S CAUSE OR A SHOWING OF CONSCIOUS INDIFFERENCE TO OR

DISREGARD OF CONSEQUENCES.— It appears from the foregoing that Atty. Mallabo's questions were aimed at proving that Carilla was not the owner of the subject jewelries. It can be reasonably deduced from the questions that Atty. Mallabo's strategy in securing petitioner's acquittal was to display the absence of the element of prejudice or damage on the part of Carilla. Notably, however, the questions were confined to the issue of the ownership of jewelries. Despite the preceding, Atty. Mallabo cross-examined Carilla and conducted a direct examination of Manantan. Atty. Mallabo also interposed several objections during the re-direct examination of Carilla and challenged the admissibility of the dishonored checks as evidence for the prosecution. Atty. Mallabo even moved for the dismissal of the charge against Manantan. Admittedly, Atty. Mallabo committed mistakes and shortcomings in conducting examinations on Carilla and Manantan and in assessing the proper and sufficient evidence for the defense. Nonetheless, such cannot be considered as recklessness or gross negligence on his part, because there was neither a total abandonment nor a disregard of Manantan's cause or a showing of conscious indifference to or disregard of consequences. If at all, the mistakes and omissions of Atty. Mallabo may only be considered as simple negligence or a slight want of care that circumstances reasonably impose.

APPEARANCES OF COUNSEL

Noble Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

In this Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court, petitioner Marissa Ceniza-Manantan prays for the reversal of the Decision,[2] dated 29 August 2001,

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[1] *Rollo,* pp. 9-32.

[2] Penned by Associate Justice Perlita J. Tria Tirona with Associate Justices Eugenio S. Labitoria and Eloy R. Bello, Jr., concurring; *rollo,* pp. 33-40.

and Resolution,[3] dated 26 November 2002, of the Court of Appeals in CA-G.R. CR No. 23676, affirming with modification the Decision,[4] dated 30 July 1999, of the Quezon City Regional Trial Court (RTC), Branch 78, in Criminal Case No. Q-97-72787, finding petitioner guilty of the crime of *Estafa* as defined and penalized under paragraph 1(b), Article 315 of the Revised Penal Code.

On 1 August 1997, petitioner Marissa Ceniza-Manantan (Manantan) and her sister-in-law, Regina Manantan-Vizconde (Vizconde), were indicted in an Information[5] for *estafa* under paragraph 1(b), Article 315 of the Revised Penal Code allegedly committed as follows:

> That on or about the period comprised from July 15, 1994 to September 3, 1994, in Quezon City, Philippines, the said accused, conspiring together, confederating with and mutually helping each other, did, then and there, willfully, unlawfully and feloniously defraud one ALBERTO CARILLA, in the following manner to wit: the said accused, pursuant to their conspiracy, received in trust from said complainant several pieces of jewelry worth ₱1,079,000.00, Philippine Currency, for the purpose of selling the same on commission basis under the express obligation on the part of the said accused of turning over the proceeds of the sale to said Alberto Carilla, if sold, or of returning the same if unsold to said complainant, but the said accused, once in possession of the said items, far from complying with their obligations as aforesaid, with intent to defraud, unfaithfulness and grave abuse of confidence, failed and refused and still fails and refuses to fulfill their aforesaid obligation despite repeated demands made upon them to do so, and instead misapplied, misappropriated and converted the same or the value thereof, to their own personal use and benefit, to the damage and prejudice of said Alberto Carilla, in the aforesaid amount of ₱1,079,000.00, Philippine Currency.

On 2 December 1998, Manantan was arrested whereas Vizconde remained at large. When arraigned on 5 March 1999,

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[3] *Id*. at 42.

[4] Penned by Judge Percival Mandap Lopez; *rollo*, pp. 44-47.

[5] Records, p. 1.

Manantan pleaded "Not Guilty" to the charge.[6] Thereafter, trial on the merits ensued.

The facts, according to the prosecution, are summarized in the Comment dated 4 July 2003 of the Office of the Solicitor General (OSG), to wit:

> Herein private complainant, Alberto Carilla, is a jeweler whose office is located at Aurora Blvd., Cubao, Quezon City. Sisters-in-law Regina Manantan-Vizconde and Marissa Ceniza-Manantan entered into an agreement with Carilla that they would act as the latter's agent in selling the pieces of jewelry worth ₱1,079,000.00. They received the jewelry in trust with the obligation to sell them within two (2) weeks and remit the proceeds to private complainant within another two (2) weeks or to return them within the same period if they were unable to sell. The sisters-in-law would earn any amount that they would add to the selling price.
>
> After the lapse of the above-mentioned period, accused sisters-in-law failed to remit the purchase price or return the pieces of jewelry. As such, Carilla made verbal demands for their return or the proceeds of the sale. After several verbal demands, the sisters-in-law issued several checks. Regina Manantan-Vizconde issued thirteen (13) postdated checks, while Marissa Ceniza-Manantan issued four (4) postdated checks.
>
> Upon maturity of the checks, Carilla deposited the checks to his bank account. But to his dismay, the checks were dishonored for the reason that the account from which the checks were drawn had been closed. The checks that were still to fall due were stamped on their face "account closed."
>
> Carilla thus sought the help of a lawyer who made out a written demand upon the accused through their counsel. But despite this, the two accused still refused to pay. Hence, Carilla was constrained to file a criminal complaint.[7]

Manantan denied the foregoing accusations. In her Counter-Affidavit with Motion to Dismiss dated July 1996,[8] Manantan

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[6] *Id*. at 74.

[7] *Rollo,* pp. 80-82.

[8] Records, pp. 37-41.

alleged that Carilla's filing of *estafa* case against her was a mere harassment suit as Carilla desperately tried but failed to recover from her the jewelries allegedly entrusted to her and to Vizconde; that Vizconde borrowed several checks from her after Vizconde ran out of her own checks; that Vizconde told her that the borrowed checks will only be shown to the former's customers or other persons from whom she received jewelries so as to convince them that she had collections; and that Vizconde promised to return the checks. During her direct examination before the RTC,[9] Manantan denied that she had any business transaction with Carilla. Manantan also disclaimed any knowledge as to how the four dishonored checks in her name came into the possession of Carilla.

On 30 July 1999, the RTC rendered a Decision convicting Manantan of *estafa* under paragraph 1(b), Article 315 of the Revised Penal Code. Thus:

> WHEREFORE, this Court finds accused MARISSA CENIZA-MANANTAN, GUILTY of the crime of *Estafa*, defined and penalized under par.1 (b) of Article 315 of the Revised Penal Code, and is hereby sentenced to suffer imprisonment of, there being no mitigating and aggravating circumstances, and applying the Indeterminate Sentence Law, TWELVE (12) YEARS, and ONE (1) DAY, as minimum, to FOURTEEN (14) YEARS, and EIGHT (8) MONTHS, as maximum, of *Reclusion Temporal* in its minimum period.
>
> Further, the award of civil liability is appropriate as the preponderance of evidence sanctioned by the Rules has been satisfied, the accused Marissa Ceniza-Manantan is ordered to pay ₱1,079,000.00 as actual damages.[10]

Aggrieved, Manantan filed an appeal with the Court of Appeals. On 29 August 2001, the appellate court promulgated its Decision affirming with modification the assailed RTC Decision. The modification pertains to Manantan's period of imprisonment as provided under the Indeterminate Sentence Law. The decretal portion of the appellate court's decision reads:

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[9] TSN, 12 May 1999, pp. 9-11.

[10] *Rollo,* p. 47.

WHEREFORE, in view of the foregoing, the instant appeal is DENIED and the assailed decision of the court *a quo* in Criminal Case No. Q-97-72787 is hereby AFFIRMED with modification that accused is hereby sentenced to suffer an indeterminate penalty of Four (4) years and two (2) months of *prision correccional* as minimum to Twenty (20) years of *reclusion temporal* as maximum.[11]

Manantan filed a motion for reconsideration but this was denied for lack of merit by the appellate court in its Resolution dated 26 November 2002.

Hence, Manantan filed the instant Petition. In our Resolution dated 10 March 2003,[12] we denied the Petition due to Manantan's (a) failure to state the material dates showing when the notice of the assailed decision and resolution were received and when the motion for reconsideration was filed thereby violating Sections 4(b) and 5 of Rule 45, in relation to Sec. 5(d) of Rule 56; and (b) failure to indicate in the Petition the counsel's roll number as required in Bar Matter 1132. Manantan filed a Motion for Reconsideration which we subsequently granted in our Resolution dated 7 May 2003.[13] The petition was then reinstated.

Manantan proffered the following issues[14] for our consideration:

I.

CONTRARY TO THE FINDINGS OF THE TRIAL COURT, WHICH FINDINGS THE COURT OF APPEALS AFFIRMED, THE PROSECUTION FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT, CONSIDERING *INTER ALIA* THAT NOT *ALL* THE ELEMENTS CONSTITUTING THE OFFENSE CHARGED, SPECIFICALLY CONSPIRACY AND THE ALLEGED CONTRACTUAL RELATION (*i.e.*, THE RECEIPT IN TRUST BY PETITIONER OF CERTAIN PIECES OF JEWELRY FROM PRIVATE COMPLAINANT), WERE ESTABLISHED.

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[11] *Id*. at 39-40.

[12] *Id*. at 66.

[13] *Id*. at 74.

[14] *Id*. at 14, 21-22.

II.

MORE IMPORTANTLY, THE COUNSEL FOR PETITIONER IN THE TRIAL COURT MISERABLY FAILED AND/OR REFUSED TO DISCHARGE HIS BOUNDEN DUTY TO HIS CLIENT. STATED DIFFERENTLY, SAID COUNSEL'S INCOMPETENCE WAS SO GREAT AND SO EXECRABLE THAT, IN THE INTEREST OF SUBSTANTIAL JUSTICE, *AT LEAST* A NEW TRIAL SHOULD BE ORDERED BY THIS HONORABLE COURT IF ONLY TO AFFORD PETITIONER THE CONSTITUTIONALLY MANDATED OPPORTUNITY TO DEFEND HERSELF WITH THE ASSISTANCE OF AN EFFECTIVE AND VIGILANT COUNSEL OF HER OWN CHOICE. THE AFORESAID FAILURE AND/OR REFUSAL OF HER COUNSEL WERE A VIRTUAL GIVEAWAY TO THE PROSECUTION TO SEND HER TO THE GALLOWS. THE CONSEQUENCE WAS A MISCARRIAGE OF JUSTICE.

Anent the first issue, Manantan alleged that the RTC conducted only one hearing where the prosecution presented only one witness, which was Carilla himself, and thereafter rested its case; that the said lone hearing was abbreviated at the expense of the rights and liberty of Manantan; that the direct testimony of Carilla, upon which the RTC based its conviction of Manantan, consisted only of five double-spaced pages as shown in the transcript of stenographic notes (TSN); and that Manantan's guilt cannot be proven on the basis of the few questions propounded by the private prosecutor on Carilla and Manantan.[15]

EVIDENCE FOR THE PROSECUTION

The prosecution presented the lone court testimony of Carilla as its testimonial evidence. Carilla testified that Manantan and Vizconde agreed to be his agents in selling jewelries; that Manantan and Vizconde received from him in trust jewelries with the obligation to sell them within two weeks from receipt thereof, and to remit the proceeds to him within two weeks after the sale or to return the jewelries in case they were not sold; that Manantan and Vizconde would earn from any amount that they would add to the original sale price of the jewelries fixed by

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[15] *Id*. at 14-21.

him; that after the expiration of the stipulated period, Manantan and Vizconde failed to remit to him the proceeds of the sale of the jewelries or return the unsold jewelries themselves; that he made several verbal demands on Manantan and Vizconde to remit the proceeds of the sale of the jewelries or return the unsold jewelries; that Manantan and Vizconde issued to him postdated checks as supposed payment of the sales proceeds of the jewelries; that these checks were dishonored by reason of "Account Closed"; that Manantan and Vizconde failed to make good the value of the dishonored checks despite his repeated demands for them to do so; and that by reason of the foregoing, he instituted the instant case against Manantan and Vizconde.

The prosecution also offered documentary evidence to buttress Carilla's court testimony. It introduced Carilla's Complaint-Affidavit dated 11 March 1996 which recounts how Manantan and Vizconde had swindled Carilla of the jewelries.[16] This Complaint-Affidavit was admitted as part of Carilla's direct testimony.[17] It also submitted the dishonored checks issued by Manantan[18] to prove that the jewelries were still unpaid for, and the demand-letters[19] sent by Carilla to Manantan, to substantiate the latter's persistent failure to comply therewith.

EVIDENCE FOR THE DEFENSE

On the other hand, the defense presented Manantan as its sole witness. No documentary evidence was utilized.[20]

Manantan conjured denials and alibi in support of her contentions. Manantan denied having any transaction with Carilla. She claims that she lent the dishonored checks to Vizconde as the latter was running out of checks; that she had no idea as to how the dishonored checks came into the possession of Carilla;

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[16] Records, Exhibit A.

[17] TSN, 12 May 1999, p. 8.

[18] Records, Exhibits B-E.

[19] *Id.*, Exhibit F.

[20] TSN, 12 May 1999, p. 11.

and that Carilla had an ill motive to accuse her of a crime since Carilla failed to recover from her the alleged entrusted jewelries.

The threshold issue is, whose evidence is credible?

It is axiomatic that truth is established not by the number of witnesses but by the quality of their testimonies.[21] In the determination of the sufficiency of evidence, what matters is not the number of witnesses but their credibility and the nature and quality of their testimonies.[22] The testimony of a lone witness, if found positive and credible by the trial court, is sufficient to support a conviction especially when the testimony bears the earmarks of truth and sincerity. While the number of witnesses may be considered a factor in the appreciation of evidence, proof beyond reasonable doubt is not necessarily with the greatest number.[23]

Witnesses are to be weighed, not numbered; hence, it is not at all uncommon to reach a conclusion of guilt on the basis of the testimony of a single witness. Conviction of the accused may still be had on the basis of the positive and credible testimony of a single witness.[24]

Verily, the prosecution presented only one witness, who was Carilla himself as the complainant. However, we find the latter's testimony consistent with his Complaint-Affidavit dated 11 March 1996, which was positive and categorical. The RTC and the Court of Appeals both found Carilla's testimony credible and truthful.[25]

More telling are the documentary evidences consisting of various checks issued by Manantan which later bounced and

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[21] *People v. Ramos*, G.R. No. 135204, 14 April 2004, 427 SCRA 299, 308.

[22] *Cariaga v. Court of Appeals*, 411 Phil. 214, 229 (2001).

[23] *People v. Mallari*, 369 Phil. 872, 881-882 (1999).

[24] *Id*.

[25] CA *rollo*, pp. 179-180; *People v. Genosa*, 464 Phil. 680, 710 (2004); *People v. Ahmad*, 464 Phil. 848, 857 (2004); *People v. Torres*, 464 Phil. 971, 978 (2004); *People v. Cajurao*, 465 Phil. 98, 107 (2004).

the demand letters of Carilla addressed to Manantan. Although the admissibility of these checks was objected to by Manantan during the trial, the RTC, nevertheless, admitted them as part of the testimony of Carilla.

The rule is that the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect.[26] This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.[27]

In stark contrast, the evidence for the defense consists mainly of denials. Manantan denied having transacted with Carilla. Beyond her bare denials, however, she has not presented any plausible proof to successfully rebut the evidence for the prosecution.

It is jurisprudentially settled that as between bare denials and positive testimony on affirmative matters, the latter is accorded greater evidentiary weight.[28]

The next question now crops up — were the elements of *estafa* for which Manantan is charged proven beyond reasonable doubt?

Article 315, paragraph 1(b) of the Revised Penal Code, provides:

ART. 315. ***Swindling (estafa)***. — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

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[26] *People v. Aguila*, G.R. No. 171017, 6 December 2006, pp. 17-18.

[27] *Id*. at 18.

[28] *People v. Comiling*, G.R. No. 140405, 4 March 2004, 424 SCRA 698, 716; *Olivarez v. Court of Appeals*, G.R. No. 163866, 29 July 2005, 465 SCRA 465, 483; *People v. Gusmo*, 467 Phil. 199, 219 (2004); *People v. Dimacuha*, 467 Phil. 342, 351 (2004); *People v. Tagana*, G.R. No. 133027, 4 March 2004, 424 SCRA 620, 640.

x x x x x x x x x

1. With unfaithfulness or abuse of confidence, namely:

x x x x x x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods or any other personal property received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

The elements[29] of *estafa* in the above provision are as follows:

a) That money, goods or other personal property is received by the offender in trust or on commission, or for administration or under any other obligation involving the duty to make delivery of or to return the same;

b) That there be misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; and

c) That such misappropriation or conversion or denial is to the prejudice of another.

The essence of *estafa* under this paragraph is the appropriation or conversion of money or property received, to the prejudice of the owner thereof. It takes place when a person actually appropriates the property of another for his own benefit, use and enjoyment.[30] In a prosecution for *estafa*, demand is not necessary where there is evidence of misappropriation or conversion; and failure to account, upon demand for funds or property held in trust, is circumstantial evidence of misappropriation.[31]

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[29] *Lee v. People*, G.R. No. 157781, 11 April 2005, 455 SCRA 256, 266-267.

[30] *Filadams Pharma, Inc. v. Court of Appeals*, G.R. No. 132422, 30 March 2004, 426 SCRA 460, 468.

[31] *Lee v. People*, *supra* note 29 at 267.

All of the foregoing enumerated elements of *estafa* under paragraph 1(b), Article 315 of the Revised Penal Code, are duly established herein.

First, Manantan received in trust the jewelries from Carilla for the purpose of selling them within two weeks from receipt thereof; and to remit the proceeds to Carilla within two weeks after the sale or to return the jewelries in case they were not sold. It was also agreed that Manantan will earn from any amount that she would add to the original sale price of the jewelries fixed by Carilla. This, in effect, created a fiduciary relationship between Carilla and Manantan.

The absence of a written document showing receipt of jewelries or other property in trust does not necessarily mean that no such contract exists between the parties. Contracts can be made verbally for as long as there is a meeting of the minds of the parties thereto.[32] Carilla positively and categorically testified on the transaction that transpired between him and Manantan.

Second, there is misappropriation or conversion by Manantan of the jewelries or the proceeds of the sale thereof, as well as a denial on her part of receipt of the jewelries.

The words "misappropriate" and "convert" as used in the said provision of law connote an act of using or disposing of another's property as if it were one's own or of devoting it to a purpose or use different from that agreed upon. Misappropriation or conversion may be proved by the prosecution by direct evidence or by circumstantial evidence.[33]

In an agency for the sale of jewelries, as in the present case, it is the agent's duty to return the jewelry upon demand of the owner and failure to do so is evidence of conversion of the property by the agent. In other words, the demand for the return of the thing delivered in trust and the failure of the accused to account for it are circumstantial evidence of misappropriation.

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[32] Article 1356 of the New Civil Code; *Delos Santos v. Jebsen Maritime, Inc.*, G.R. No. 154185, 22 November 2005, 475 SCRA 656, 669.

[33] *Lee v. People, supra* note 29 at 267.

However, this presumption is rebuttable. If the accused is able to satisfactorily explain his failure to produce the thing delivered in trust or to account for the money, he may not be held liable for *estafa*.[34]

Manantan misappropriated Carilla's properties, which she held in trust, by failing to remit the sale price of the jewelries or return the same to Carilla upon the expiration of the stipulated period, despite repeated demands by the latter. Manantan issued checks to Carilla as supposed payment of the sales proceeds of the jewelries but these checks were dishonored. Carilla hired a lawyer and sent a demand-letter to Manantan but the latter still failed to turn over the jewelries or the sale prices thereof.[35]

As already heretofore pointed out, failure to account upon demand for the return of the thing delivered in trust raises a presumption of misappropriation. Manantan's bare denials are not sufficient to overcome such presumption.

Estafa may also be committed by denying untruthfully that the thing was received.[36] Manantan denied having received jewelries from Carilla. However, as we have already determined, such denial is unsubstantiated and therefore cannot prevail over the categorical declarations of Carilla that the jewelries were turned over in trust to Manantan. Hence, Manantan's denial of the receipt of jewelries also constitutes *estafa*.

Finally, Manantan's failure or refusal to account for or return the jewelries to Carilla had evidently prejudiced the rights and interests of the latter. Not only did Carilla fail to recover his investment, but he also lost the opportunity to realize profits from the sales of the jewelries. Carilla further incurred expenses in hiring a lawyer and in litigating the present case.[37]

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[34] *Filadams Pharma, Inc. v. Court of Appeals, supra* note 30 at 468.

[35] *Lee v. People, supra* notes 29 at 266-267; *Filadams Pharma, Inc. v. Court of Appeals, id*.

[36] II Reyes, *The Revised Penal Code,* Criminal Law (14th Ed.), pp. 745-746; *United States v. Yap Tian Jong,* 34 Phil. 10, 12-13 (1916).

[37] Prosecution's Evidence, Exh. A.

Apropos the second assignment of error, Manantan seeks a new trial because her former counsel, Atty. Donato A. Mallabo (Atty. Mallabo) of the Public Attorneys Office (PAO), was incompetent and had failed to discharge his duty as her defense counsel resulting in a denial of due process to her. She claims that Atty. Mallabo asked Carilla only a few questions during the latter's cross-examination and did not conduct a re-cross examination; that after the prosecution had rested its case, the RTC Presiding Judge inquired from Atty. Mallabo if he would file a motion to dismiss on demurrer to evidence, which was already a hint of the weakness of the prosecution's evidence, but Atty. Mallabo ignored the question and presented, instead, Manantan as sole witness for the defense; and after a few perfunctory questions to Manantan, already rested the case for the defense.[38]

Settled is the rule that mistake and negligence of a counsel bind his client. The basis is the tenet that an act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. Consequently, the mistake or negligence of a counsel may result in the rendition of an unfavorable judgment against his client.[39]

A contrary view would be inimical to the greater interest of dispensing justice. For all that a losing party will do is to invoke the mistake or negligence of his counsel as a ground for reversing or setting aside a judgment adverse to him, thereby putting no end to litigation.[40] To allow this obnoxious practice would be to put a premium on the willful and intentional commission of errors by accused persons and their counsel, with a view to securing new trials in the event of conviction.[41]

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[38] *Rollo*, pp. 21-28.

[39] *Air Philippines Corporation v. International Business Aviation Services Phils., Inc*, G.R. No. 151963, 9 September 2004, 438 SCRA 51, 61.

[40] *Ragudo v. Fabella Estate Tenants Association, Inc*., G.R. No. 146823, 9 August 2005, 466 SCRA 136, 146.

[41] *People v. Villanueva*, 393 Phil. 898, 911 (2000).

Mistakes of attorneys as to the competency of a witness; the sufficiency, relevancy or irrelevancy of certain evidence, the proper defense, or the burden of proof; and failure to introduce certain evidence, to summon witness and to argue the case are not proper grounds for a new trial.[42] Error of the defense counsel in the conduct of the trial is neither an error of law nor an irregularity upon which a motion for new trial may be presented.[43]

Concededly, the foregoing rule admits of exceptions. Hence, in cases where (1) the counsel's mistake is so great and serious that the client is prejudiced and denied his day in court, or (2) the counsel is guilty of gross negligence resulting in the client's deprivation of liberty or property without due process of law, the client is not bound by his counsel's mistakes, and a new trial may be conducted.[44]

Tested against these guidelines, we find that Manantan's case falls within the general rule rather than the exceptions.

It is true that Atty. Mallabo asked only few questions during the cross-examination of Carilla. Quoted hereunder is Atty. Mallabo's cross-examination of Carilla:

Court:

Cross.

Atty. Mallabo:

With the permission of this Honorable Court.

Court:

Proceed.

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[42] *Air Philippines Corporation v. International Business Aviation Services Phils., Inc*, *supra* note 39.

[43] *Ragudo v. Fabella Estate Tenants Association, Inc.*, *supra* note 40.

[44] *People v. Aguila*, *supra* note 26.

Atty. Mallabo:

Q: You are a jeweler, sir?

A: Yes, sir.

Q: Where is your office?

A: 876-C Aurora Blvd., sir.

Q: Is it a single proprietor or a corporation?

A: I am only an agent, sir.

Q: You are only an agent, you do not actually own it?

A: Yes, sir.

Q: And therefore, you do not own that jewelry and you are not the owner of those jewelry, is that correct?

A: Yes, sir.

Atty. Mallabo: That will be all for the witness, Your Honor.[45]

It appears from the foregoing that Atty. Mallabo's questions were aimed at proving that Carilla was not the owner of the subject jewelries. It can be reasonably deduced from the questions that Atty. Mallabo's strategy in securing petitioner's acquittal was to display the absence of the element of prejudice or damage on the part of Carilla. Notably, however, the questions were confined to the issue of the ownership of jewelries.

Despite the preceding, Atty. Mallabo cross-examined Carilla and conducted a direct examination of Manantan. Atty. Mallabo also interposed several objections during the re-direct examination of Carilla and challenged the admissibility of the dishonored checks as evidence for the prosecution.[46] Atty. Mallabo even moved for the dismissal of the charge against Manantan.[47]

Admittedly, Atty. Mallabo committed mistakes and shortcomings in conducting examinations on Carilla and Manantan

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[45] TSN, 12 May 1999, pp. 4-5.

[46] *Id*. at 6-8.

[47] *Id*. at 8.

and in assessing the proper and sufficient evidence for the defense. Nonetheless, such cannot be considered as recklessness or gross negligence on his part, because there was neither a total abandonment nor a disregard of Manantan's cause or a showing of conscious indifference to or disregard of consequences.[48] If at all, the mistakes and omissions of Atty. Mallabo may only be considered as simple negligence or a slight want of care that circumstances reasonably impose.

As regards the prison term of Manantan, a perusal of the pertinent provision of Article 315 of the Revised Penal Code is in order:

> ART. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
>
> 1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

The penalty prescribed by Article 315 is composed of two, not three, periods, in which case, Article 65 of the same Code requires the division of the time included in the penalty into three equal portions of time included in the penalty imposed forming one period of each of the three portions.[49] Applying the latter provisions, the maximum, medium and minimum periods of the penalty given are:

Maximum – 6 years, 8 months, 21 days to 8 years

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[48] *Rollo,* pp. 21-28.

[49] *Cosme, Jr. v. People*, G.R. No. 149753, 27 November 2006, 508 SCRA 190, 212.

Medium – 5 years, 5 months, 11 days, to 6 years, 8 months, 20 days

Minimum – 4 years, 2 months, 1 day to 5 years, 5 months, 10 days

In the present case, since the amount involved is ₱1,079,000.00, which exceeds ₱22,000.00, the penalty imposable should be the maximum period of 6 years, 8 months and 21 days to 8 years of *prision mayor*. Article 315 further states that a period of one year shall be added to the penalty for every additional ₱10,000.00 defrauded in excess of ₱22,000.00, but in no case shall the total penalty which may be imposed exceed 20 years. The amount swindled from Carilla greatly exceeds the amount of ₱22,000.00 which, when translated to the additional penalty of one year for every ₱10,000.00 defrauded, goes beyond 20 years. Under the law, the maximum penalty to be imposed in the present case should be 20 years of *reclusion temporal*.[50]

We now apply the Indeterminate Sentence Law in computing the proper penalty. Since the penalty prescribed by law for the *estafa* charge against Manantan is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* in its minimum to medium periods. Thus, the minimum term of the indeterminate sentence should be anywhere from 6 months and 1 day to 4 years and 2 months, while the maximum term of the indeterminate sentence should be 20 years.[51]

Thus, the Court of Appeals was correct in imposing a prison term of 4 years and 2 months of *prision correccional* as minimum to 20 years of *reclusion temporal* as maximum.

We also sustain the indemnification of actual damages in favor of Carilla in the sum of ₱1,079,000.00 made by the RTC and affirmed by the Court of Appeals as this is supported by the records[52] of the instant case.

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[50] *Id*.

[51] *People v. Gabres*, 335 Phil. 242, 257 (1997).

[52] Records, pp. 1-36; Exhibits A-F of the prosecution's evidence.

WHEREFORE, the petition is hereby *DENIED*. The Decision dated 29 August 2001 and Resolution dated 26 November 2002 of the Court of Appeals in CA-G.R. CR No. 23676 are hereby *AFFIRMED in toto*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 156605. August 28, 2007]

EDWARD T. MARCELO, MARCELO FIBERGLASS CORPORATION, PHIL-ASIA AGRO INDUSTRIES CORP., PHILIPPINE SPECIAL SERVICES CORP., PROVIDENT INTERNATIONAL RESOURCES CORP., MARCELO CHEMICAL & PIGMENT CORP., FARMERS FERTILIZER CORP., INSULAR RUBBER CO., INC., HYDRONICS CORPORATION OF THE PHILIPPINES, MARCELO RUBBER & LATEX PRODUCTS, INC., POLARIS MARKETING CORP., H. MARCELO & CO., INC., MARCELO STEEL CORP., PHILIPPINE CASINO OPERATORS CORP., and MARIA CRISTINA FERTILIZER CORP., *petitioners, vs.* **SANDIGANBAYAN and THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUMMARY JUDGMENTS; SUMMARY JUDGMENT IS IN ORDER IN CASE AT BAR; NO GENUINE ISSUE TO BE TRIED, THE

REPUBLIC HAVING FAILED OR REFUSED TO ANSWER THE REQUESTS FOR ADMISSION AND THE WRITTEN INTERROGATORIES OF PETITIONERS.— We examine the records and found that summary judgment is in order. Under Section 3, Rule 35 of the Rules of Court, summary judgment may be allowed where, save for the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Summary or accelerated judgment is a procedural technique aimed at weeding out sham claims or defenses at an early stage of the litigation, thereby avoiding the expense of time involved in a trial. Even if the pleadings appear, on their face, to raise issues, summary judgment may still ensue as a matter of law if the affidavits, depositions and admissions show that such issues are not genuine. The presence or absence of a genuine issue as to any material fact determines, at bottom, the propriety of summary judgment. A genuine issue, as opposed to fictitious or contrived one, is an issue of fact that requires the presentation of evidence. To the moving party rests the onus of demonstrating the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue for trial. In *Estrada v. Consolacion*, the Court stated that when the moving party is a defending party, his pleadings, depositions or affidavits must show that his defenses or denials are sufficient to defeat the claimant's claim. The affidavits or depositions shall show that there is no defense to the cause of action or the **cause of action has no merits**, as the case may be. In fine, in proceedings for summary judgment, the burden of proof is upon the plaintiff to prove the cause of action and to show that the defense is interposed solely for the purpose of delay. After the plaintiff discharges its burden, the defendants has the burden to show facts sufficient to entitle him to defend. With the view we take of the case, there is really no more genuine issues to be tried in this case, the Republic having failed or refused to answer the requests for admission and the written interrogatories of the petitioners. As it were, the Republic only answered petitioner Marcelo's request for admission or interrogatories. But then the Republic's answer serves only to highlight and confirm the fact that petitioner Marcelo's participation in all the transactions subject of this case is as President of MFC.

2. ID.; ID.; ID.; THE COMPLAINT VIOLATES THE FUNDAMENTAL RULES OF PLEADINGS; THE COMPLAINT YIELDS A LACK OF SPECIFIC AVERMENTS CONSTITUTING THE REPUBLIC'S CAUSE OR CAUSES OF ACTIONS AGAINST THE PETITIONERS.— As the Court distinctly notes, the complaint in *Civil Case No. 21* imputes an unlawful or at least a highly improper act against petitioner Marcelo in that he obtained a "favored contract" with the PN, collected hundreds of million of pesos by way of advances and illegally secured a foreign loan with sovereign guarantee courtesy of then Pres. Marcos. The complaint, however fails to disclose why the contract characterization "favored" was, a conclusion of law, as it were. The Court will go further. The complaint violates fundamental rules of pleading. For one, it yields a substantial lack of specific averments constituting the Republic's cause or causes of action against the petitioners, particularly Marcelo. In fine, the complaint does not state with definiteness how or in what specific manner the petitioners committed the alleged illegal and fraudulent acts so broadly enumerated therein. For another, it is replete with sweeping generalizations, conclusions of fact and law, and contains inferences derived from facts that are not found in the complaint. In short, the complaint is an embodiment, a concrete example, of how one should not prepare a legal complaint.

3. ID.; ID.; ID.; THE REPUBLIC HAS VERITABLY ACKNOWLEDGED THE REGULARITY OF THE BOAT CONSTRUCTION CONTRACT BY ITS FAILURE TO ANSWER WRITTEN INTERROGATORIES AND THE REQUEST FOR ADMISSION PROPOUNDED BY PETITIONER MARCELO FIBERGLASS CORPORATION (MFC).— It cannot be over-emphasized that the Republic cannot any more prove malice or wrongdoing on the part of either Marcelo or MFC, or that the separate corporate identity of MFC was used for unlawful means. For, the Republic has veritably acknowledged the regularity of the boat-construction contract by its failure to answer written interrogatories and the request for admission propounded by petitioner MFC. To be precise, the Republic did not answer the written interrogatories of MFC. The Republic did not also answer the written interrogatories of the other defendant corporations. In effect, the Republic admitted the non-participation of the

other defendant corporations in the contracts in question. The Republic cannot plausibly evade the consequences of its failure to answer written interrogatories and requests for admission. If the plaintiff fails or refuses to answer the interrogatories, it may be a good basis for the dismissal of his complaint for non-suit unless he can justify such failure or refusal. To be sure, the Rules of Court prescribes the procedures and defines all the consequence/s for refusing to comply with the different modes of discovery. The case of *Republic v. Sandiganbayan*, a case for recovery of ill-gotten wealth where the defendants served upon the PCGG written interrogatories but the latter refused to make a discovery, is relevant. Some excerpts of what the Court said thereat. x x x **To ensure that availment of the modes of discovery** is otherwise untrammeled and **efficacious, the 'law imposes serious sanctions on the party who refuses to make discovery, such as** dismissing the action or proceeding or part thereof, **…; taking the matters inquired into as established in accordance with the claim of the party seeking discovery; refusal to allow the disobedient party support or oppose designated claims or defenses;** xxx xxx xxx One last word. x x x all that is entailed to activate or put in motion the process of discovery by interrogatories to parties under Rule 25 of the Rules of Court, is simply the delivery directly to a party of a letter setting forth a list of questions with the request that they be answered individually. That is all. The service of such a communication on the party has the effect of imposing on him the obligation of answering the questions "separately and fully in writing under oath," and serving "a copy of the answers on the party submitting the interrogatories …" The sanctions for refusing to make discovery have already been mentioned. So, too, discovery under Rule 26 is begun by nothing more complex than the service on a party of a letter or other written communication containing a request that specific facts therein set forth … be admitted in writing. That is all. Again, the receipt of such a communication by the party has the effect of imposing on him the obligation of serving the party requesting admission with "a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters," ***failing in which "(e)ach of the matters of which admission is requested shall be deemed admitted***." x x x.

4. ID.; ID.; ID.; BASIS FOR PETITIONERS' ENTITLEMENT TO SUMMARY JUDGMENT; ASSUME THE ELEMENT OF REGULARITY AND THE *BONA FIDES* OF THE TRANSACTION AND NO GENUINE ISSUE AS TO ANY MATERIAL FACT WOULD COME INTO FORE.— It does not escape our notice that, in line with our ruling in *Republic* immediately adverted to, petitioner corporations were perhaps not originally impleaded because it was unnecessary, they being perceived to have been formed with ill-gotten wealth. As against them, there is no cause of action other than that they constitute the *res* of the action. However, the fact that they were subsequently impleaded in *Civil Case No. 21* could only mean that a cause of action exists against them, one that must be specifically alleged in the amended complaint. It appears, however, that their inclusion was made without the corresponding insertion of general or specific averments of illegal acts they are alleged to have committed as should constitute the cause of action against them. It may not be said that those general and specific averments already existing in the complaint before the amendment apply to them, because they refer only to the boat building contract, a transaction for which only Marcelo and MFC have been specifically made answerable. The Republic's argument in their Opposition to the Motions for Summary Judgment that the *Final Dispositions* case suggested that the other petitioner corporations should be impleaded does not commend itself for concurrence. On the contrary, we categorically ruled therein that their impleading is not at all proper. In all then, we hold that the Sandiganbayan committed grave abuse of discretion in denying the petitioners' separate motions for a summary judgment. To us, the petitioners were entitled to a summary judgment owing to the interplay of the following premises: 1. The Republic's complaint, as couched and presented to the Sandiganbayan does not contain concise and direct statement of the **ultimate facts** on which it relies for its claim against petitioners Marcelo and MFC. Worse still, it does not specify the act or omission by which the other petitioners wronged the Republic. In net effect, the complaint no less does not present genuine ill-gotten wealth issue; and 2. In view of the Republic's failure to respond to MFC's interrogatories, the Republic veritably conceded the regularity of the PN-MFC contract, that no wrongdoing was committed *vis-à-vis* the conclusion of that contract and that

the separate personality of MFC was not used for unlawful means to activate the piercing of corporate veil principle. The questions in the interrogatories were simple and direct and the answers thereto would have constituted the fact/s sought to be established. We do not see any reason why the Republic could not have answered them. They refer to relevant matters that could clarify the important facts left out by, to borrow from *Republic v. Sandiganbayan*, the "roaming generalities in the complaint." Assume the element of regularity and the *bona fides* of the transaction and no genuine issue as to any material fact would come into fore. With the foregoing disquisitions, each of the petitioners' counterclaim for damages need not detain us long. Suffice it to state that resolution thereof entails factual determination which is not proper in a *certiorari* proceeding.

5. ID.; ID.; ALLEGATIONS IN PLEADINGS; ACTION OR DEFENSE BASED ON A DOCUMENT; WHEN A CLAIM IS BASED ON A WRITTEN INSTRUMENT OR DOCUMENT, THE SUBSTANCE OF SUCH INSTRUMENT OR DOCUMENT SHALL BE SET FORTH IN THE PLEADING, AND THE ORIGINAL COPY THEREOF SHALL BE ATTACHED TO THE PLEADING AS AN EXHIBIT WHICH SHALL BE DEEMED PART OF THE PLEADING.— While earlier touched upon, other considerations obtain which should have impelled the Sandiganbayan to grant the motion for summary judgment. We refer to the defect in the Republic's complaint itself. We start with the very PN-MFC contract itself which served as the main prop of the Republic's case. There is no dispute that the Republic did not attach to its complaint a copy of what it claims to be a "*favored contract*," let alone set out therein the relevant terms and conditions of the contract, or pertinent averments as would show, in general, why the same is unlawful or grossly disadvantageous to the State as would merit the tag "favored." The rule obtains that when a claim is based on a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth therein: "SECTION 7. Action or defense based on document. — Whenever an action

or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading." The record reveals that it was petitioner Marcelo no less who brought out the contract first, as an attachment to his *Answer*.

6. ID.; ID.; ID.; ID.; BASELESS ALLEGATIONS OF THE REPUBLIC; CASE AT BAR.— On the alleged *illegal advances*, the particulars on the matter are not alleged; the circumstances that would justify its conclusion that either petitioner Marcelo or MFC received the 79% monetary equivalent of the contract without delivering a single boat could not be found. Again, the specific information was volunteered by Marcelo himself in his answer. As to the allegation that the petitioners "*secured a loan with a foreign bank with the guarantee of the government, upon the personal behest of defendant Ferdinand Marcos, which loan remains unpaid to date*," a copy of the alleged loan document is not appended to the complaint. Neither is there a reference to the pertinent provisions of the loan agreement made in the complaint, nor were the circumstances surrounding the alleged incurring of the obligation enumerated. This is material in the sense that the petitioners deny that there was any loan at all obtained. On the allegation that petitioners *secured the approval of direct payments on the alleged "favored boat supply contract" in violation of the stipulation that payment should be by "confirmed, irrevocable and divisible letter of credit,"* the existence of a cause of action based on the allegation could not be determined since a copy of the contract was not attached to the complaint, nor was there made a reference to the particular stipulation claimed to have been violated. With respect to the allegation that the petitioners *acted as dummies, nominees or agents of "Ferdinand E. Marcos in corporations such as the Philippine Casino Operators Corporation, beneficially owned and/or controlled by the latter,"* it is noted that allegation partakes of a conclusion of fact unsupported by a particular averment of circumstances that will show why such inference or conclusion was arrived at. In this regard, we are reminded of the Court's ruling in *Republic v.*

Sandiganbayan: Under paragraph 6-A of the Amended Complaint, the Companies alleged to be beneficially owned or controlled by defendants Lucio Tan, Ferdinand and Imelda Marcos and/or the other individual defendants were identified and enumerated, including herein corporate respondents. **But except for this bare allegation, the complaint provided no further information with respect to the manner by which herein corporate respondents are beneficially owned or controlled by the individual defendants. Clearly, the allegation is a conclusion of law that is bereft of any factual basis.**

7. ID.; ID.; ID.; ID.; THE REPUBLIC'S COMPLAINT IS DEFECTIVE FOR IT PRESENTS NO BASIS UPON WHICH THE COURT SHOULD ACT, OR FOR THE DEFENDANT TO MEET IT WITH INTELLIGENT ANSWER; THE VERY DOCUMENTS CLAIMED TO BE THE SOURCE OF THE MARCELO-MARCOS *VINCULUM* WAS NOT ALSO PRESENTED.— To stress, the Rules of Court require every pleading to *"contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense."* A transgression of this rule is fatal. In view of the absence of specific averments in the Republic's complaint, the same is defective for it presents no basis upon which the court should act, or for the defendant to meet it with an intelligent answer. The complaint, to stress, did not present the very documents claimed to be the source of the Marcelo-Marcos *vinculum*: it did not attach the alleged boat supply contract which is the main cause of action against the petitioners; the unpaid loan document from which another claimed cause of action arose; and other relevant documents and information. The Republic tags, at every turn, the PN-MFC contract to be a "favored contract," without, however, so much as stating with sufficient particularity the circumstances that led it to arrive at such conclusion. The foregoing is nonetheless true with respect to the case against the other petitioner corporations (except MFC). There is no cause of action against them. Not only because the complaint does not, as to them, spell out specific illegal acts and omissions committed by them, but also on account of our ruling in *Republic v. Sandiganbayan*, or what subsequent opinions would later refer to as *The Final Dispositions* case, which proscribes their being impleaded in the case.

8. MERCANTILE LAW; CORPORATIONS; DOCTRINE OF PIERCING THE VEIL OF CORPORATE EXISTENCE; WRONGDOING MUST BE CLEARLY AND CONVINCINGLY ESTABLISHED AND CANNOT BE PRESUMED.— It is basic that a corporation is clothed with a personality distinct from that of its officers, its stockholders and from other corporations it may be connected. Under the doctrine of piercing the veil of corporate existence, however, the corporation's separate personality may be disregarded when the separate identity is used to protect a dishonest or fraudulent act, justify a wrong, or defend a crime. In such instance, the wrongdoing must clearly and convincingly be established; it cannot be presumed. Absent malice or bad faith, the officer or shareholder cannot be made personally liable for corporate obligations and cannot be held liable to third persons who have claims against the corporation. A reading of the Republic's answers to Marcelo's interrogatories leads us to view, like the Ombudsman, that there was nothing irregular with the boat supply contract. Neither were the circumstances leading to the contract award tainted with irregularity. For, the answers yield nothing more than a reiteration of mere conclusions of fact stated in the underlying complaint. The complaint does not even state how the conclusion was arrived at that Marcelo was the real beneficiary of the amounts collected under the contract, absent factual averments that would support the same. The Republic's argument that since MFC did not allege in its motion for summary judgment that it is not used as a front by Marcelo, then the two should be treated as one and the same, is simply specious. There is no such principle as "presumption of piercing the veil of corporate fiction." Nor could it be simply assumed that by the mere bare allegation or conclusion of law, in an answer to written interrogatories, that Marcelo is a conduit of the Marcoses, a genuine issue has been created. On this score, the Sandiganbayan was certainly in error.

APPEARANCES OF COUNSEL

Angara Concepcion Regala and Cruz for Marcelo Fiberglass Corp., *et al.*

The Solicitor General for respondents.

D E C I S I O N

GARCIA, *J.*:

This joint petition for *certiorari* under Rule 65 of the Rules of Court seeks the reversal and setting aside of the Resolution[1] dated August 27, 2001 of the Sandiganbayan in its *Civil Case No. 21,* a suit for recovery of ill-gotten wealth, with damages, initiated by the Republic of the Philippines (Republic or RP, for short), denying herein petitioners' respective motions for summary judgment and its Resolution[2] of November 19, 2002 which likewise denied their separate motions for reconsideration.

At the core of the case is the contract entered into on June 10, 1982 by and between the Republic, though the Philippine Navy (PN), and Marcelo Fiberglass Corporation (MFC), represented by its President, herein petitioner Edward T. Marcelo (Marcelo, hereinafter), for the construction of 55 units of 16.46 fiberglass high-speed boats, at the unit price of ₱7,200,000.00, subject to adjustment upon the occurrence of certain stated contingencies.[3] The same contract underwent amendments, the first effected sometime in January 1984,[4] and the second, in October 1984.[5]

The facts:

On February 16, 1987, the Presidential Commission on Good Government (PCGG), pursuant to Executive Order (EO) No. 1, series of 1986, issued a writ of sequestration against MFC.

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[1] Penned by Associate Justice Teresita Leonardo-de Castro, with Associate Justices Anacleto D. Badoy, Jr. and Ricardo M. Ilarde (both retired), concurring; *rollo,* pp. 104-120.

[2] Penned by Associate Justice Godofredo L. Legaspi, with Associate Justices Raoul V. Victorino and Rodolfo G. Palattao, Sr., concurring; *rollo,* pp. 123-125.

[3] *Id*. at 236 *et seq*.

[4] *Id*. at 263-266.

[5] *Id*. at 267 *et seq*.

The next day, PCGG agents proceeded to occupy MFC premises where four of the herein petitioner corporations were holding office.

On July 27, 1987, the PCGG, on behalf of the Republic, filed a *Complaint*[6] with the Sandiganbayan against Marcelo, Fabian Ver (Ver), now deceased, and Ferdinand and Imelda Marcos for recovery of ill-gotten or unexplained wealth which they allegedly acquired in unlawful concert with one another. The complaint, which would later undergo amendments[7] and was docketed in the Sandiganbayan as **Civil Case No. 21,** alleged, in gist, that Marcelo and Ver, taking advantage of their relationship with the Marcoses, (a) obtained from the Republic, thru the PN, a "favored contract" for the construction of high-speed fiberglass boats at the cost of millions of pesos; (b) collected from the Republic advances representing 79% of the contract price; and (c) secured a loan from foreign banks which, upon the behest of then Pres. Marcos, was covered by what amounts to a sovereign guarantee.

On November 20, 1987, the Republic filed its *Second Amended Complaint* to rectify its error in making reference to the "Philippine Amusement and Gaming Corporation," when it should properly be "Philippine Casino Operators Corporation."

On May 17, 1989, Marcelo filed his *Answer*[8] to the *Second Amended Complaint* attaching thereto a copy of the PN-MFC boat-building contract, the alleged "favored contract" adverted to. The Republic filed its *Reply*[9] on June 30, 1989, followed later by Marcelo's *Rejoinder*.[10]

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[6] *Id*. at p. 127.

[7] The complaint was actually thrice amended, the first filed before a responding pleading could be filed.

[8] Answer to the Second Amended Complaint; *rollo*, p. 194.

[9] *Id*. at 278.

[10] *Id*. at 321.

Subsequently, the Republic served a *Request for Admission*[11] dated June 5, 1991 on Marcelo. In his August 15, 1991 *Response to PCGG's Request for Admission,*[12] Marcelo included his own counter-request for admission on matters stated in his response.

In the meantime, the Republic sought and was later granted leave to file a *Third Amended Complaint*[13] dated October 30, 1991, therein impleading the herein petitioner corporations and two others[14] as additional defendants. As alleged, the newly impleaded sixteen (16) corporations are beneficially owned and are dummies of the individual defendants.

To the third amended complaint, the other petitioner corporations filed their respective *Answers,*[15] which contained these common allegations: they are not owned, controlled or were acquired by Marcelo who is merely an officer/stockholder; and that their assets were acquired legally.

Following the filing by the Republic of its *Pre-Trial Brief,* [16] Marcelo submitted his own *Pre-Trial Brief With Written Interrogatories, First Set and Request for Admission*[17] (to admit the truth of the matters of fact stated in his August 15, 1991 reply to the Republic's June 5, 1991 request for admission). On October 15, 1996, MFC filed its *Pre-Trial Brief With Written Interrogatories, First Set and Request for Admission*;[18] the other petitioner corporations, as defendants *a quo,* filed their *Pre-Trial Briefs with Written Interrogatories First Set*[19] on the same day.

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[11] It was not formally annexed to the petition.

[12] *Rollo,* pp. 326 *et seq.*

[13] *Id.* at 342 *et seq.*

[14] Philippine Smelters Corp. and Marcelo Tire and Rubber Co., Inc.

[15] *Rollo,* pp. 362 *et seq.; pp. 365 et seq.*

[16] *Id.* at 369.

[17] *Id.* at 375.

[18] *Id.* at 381.

[19] *Id.* at 433.

Of the written interrogatories and request for admission thus submitted, the Republic filed an answer[20] to that of Marcelo's.

On August 15, 1997, the petitioners filed three separate *Motion for Summary Judgment*.[21] Marcelo's motion was based on two major arguments:

- There is no genuine issue of fact/cause of action against him; and,
- In his Pre-Trial Brief, he (Marcelo) requested the [Republic] to admit the truth of the matter of fact related in his 15 August 1991 'Response (to PCGG Request for Admission) and Request on Plaintiff Republic of the Philippines for Admission' but the Republic did not reply to the request. Thus, pursuant to Sec. 2, Rule 26 of the Rules of Court, "each of the matters of which an admission is requested shall be deemed admitted."

For its part, MFC predicated its motion for summary judgment on two major points:

- Lack of a genuine issue/cause of action against it; and,
- The Republic's failure and continued refusal to answer the written interrogatories and reply to the request for admission of certain facts set forth in its pre-trial brief.

Finally, the other petitioner corporations[22] submit their entitlement to a summary judgment on practically the same grounds invoked by Marcelo and MFC *vis-à-vis* facts embodied in their own pre-trial brief. Thus, they argue that the matters set forth in their written interrogatories are deemed established, more particularly the following: that they: a) are not parties or

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[20] *Id*. at 439.

[21] *Id*. at 446 (for petitioner Marcelo); p. 459 (for Marcelo Fiberglass Corporation [MFC]); and p. 509 (for the other petitioner corporations). The copy of MFC's Motion For Summary Judgment (Annex "V" of the Petition) does not contain a prayer. We take it to be an error in the photocopying.

[22] Per the Sandiganbayan, four defendant corporations did not join in the motion for summary judgment.

signatories to, and were not involved in obtaining the PN-MFC contract in question; b) were not involved in and did not do any act in securing the approval of direct payment for the subject boats, in violation of the stipulation in the contract that payment should be made by Confirmed Irrevocable and Divisible Letter of Credit (L/C); c) did not receive/collect anything from the Republic and there is no document showing they ever received anything; and d) were not involved in the procurement of the alleged aforementioned foreign loan.

The Republic filed separate *Opposition*[23] only to Marcelo's and MFC's respective motions for summary judgment, alleging in refutation to the former's motion the following:

- MFC's defense of having a personality separate from that of Marcelo and the other corporations was not raised in Marcelo's answer.
- The amended complaint alleges that Marcelo and Ver, taking undue advantage of their influence and relationship, by themselves and/or in unlawful concert with the Marcos spouses, for unjust enrichment, engaged in schemes and strategies, including using the other corporations for the above purposes.
- That MFC has a personality distinct from Marcelo is a legal issue, thus trial should not be dispensed with.
- The other corporations are merely the "fruits of the ill-gotten wealth of the individual defendants";
- The case is based on the theory of conspiracy.

Against MFC's motion for summary judgment, the Republic advanced the following arguments:

- The complaint makes out an allegation that the other corporations were utilized as "fronts" for the perpetration of the illegal schemes, devices and "stratagems";

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[23] *Rollo*, pp. 518 *et seq*., and 531 *et seq*.

> ♦ There is no allegation in the motion for summary judgment that defendant corporations were not used as a 'front' by … Marcelo. As a matter of fact, Marcelo claims that it was MFC, not himself, which entered into the contract with the [PN] for the construction of high-speed fiberglass boats labeled as 'favored' in the Third Amended Complaint.

Marcelo and MFC in turn filed their respective ***Replies***[24] to the opposition entered by the Republic.

Eventually, on August 27, 2001, the Sandiganbayan rendered the herein assailed Resolution[25] denying the separate motions of Marcelo and MFC, as defendants *a quo*, for summary judgment and the collective motion for such judgment interposed by the other defending corporations. In a subsequent Resolution[26] of November 19, 2002, the Sandiganbayan denied the petitioners' respective motions for reconsideration. Hence, this recourse.

Before discussing the merits of the petition, the Court deems it appropos to delve into *Criminal Case No. 20224* which involved the subject PN-MFC boat supply contract.

In a Commission on Audit (COA) *Report* dated March 12, 1992 (COA Report), the COA alleged that the PN disbursed for the boat supply contract ₱337,700,000.00. The disbursement, so the report claims, was contrary to pertinent laws and COA rules governing the disbursement of public funds, such as:

(a) There was no certificate of availability of funds;

(b) No performance bond was posted, as required;

(c) No demand for delivery was made despite failure to deliver after payment of 80% of the contract price;

(d) Default provision was not invoked or enforced against MFC; and,

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[24] *Id.* at 522 and 534.

[25] *Supra* note 1.

[26] *Supra* note 2.

(e) Payments were not made in accordance with the terms of the contract.

On the basis of the COA Report, an *Information*, docketed as Criminal Case No. 20224, was filed against Marcelo, then Rear Admiral Simeon Alejandro and three other PN officials for violation of Sec. 3(e) of the Anti-Graft Law (R.A. No. 3019, as amended) penalizing as corrupt practice the act of a public officer and/or the conspiring private individual, *inter alia*, of causing injury to the government by giving unwarranted benefits to a private party through evident bad faith, manifest partiality or gross inexcusable negligence. As alleged, the giving of unwarranted benefits stems from the disbursement of ₱337,437,000 to MFC in partial payment of undelivered 55 units of high speed boats.

Following a review, however, on motion of Alejandro *et al.*, the Ombudsman approved an *Order*[27] of April 14, 1999, for the withdrawal of the Information, on the strength of, *inter alia*, the ensuing findings of the Special Investigator embodied in the same Order:

> Further, the failure to deliver the boats was for reasons not attributable to MFC. First, in breach of contractual stipulations, the PN incurred delay in making the down payments until the foreign exchange crisis supervened. Second, due to the dollar crisis, the Central Bank (CB) refused to authorize the opening of … (LCs) to finance the importation of the boat components. The CB finally authorized the opening of the LCs only two years after the first request was made, and it was for restricted LCs. Third, when the shipment of the 55 MTU diesel engines …arrived in the Philippines between June and December 1986, they were taken to the MFC manufacturing plant in Malabon so that boat manufacture could be commenced. However, before the manufacture … could start, the PCGG, on February 16, 1987, sequestered not only the imported boat components but also all the properties of MFC and padlocked its manufacturing plant. x x x.
>
> The undisputed facts also show that the down payments made by the PN were used for the importation of boat engines, gearboxes

[27] *Rollo*, pp. 664 *et seq.*

and other components needed for the construction of the boats, and that the PN could not lawfully demand the delivery of the boats from MFC since the latter's obligation to deliver the boats had not yet arisen.

x x x x x x x x x

Moreover, a corporation is a distinct juridical entity …. In this case, the party that entered into the Contract with PN for the construction of speed boats was MFC, which exclusively assumed …the obligation to put up a performance bond; it was to MFC that down payments were made by PN…; and it was MFC which, … was solely obligated to build the boats and deliver them to PN. Under the circumstances, if MFC committed any culpable act, it alone bears the responsibility therefor.

x x x x x x x x x

As discussed earlier, there is … no injury or prejudice to the government. The down payments made by the PN to MFC …were used to import MTU engines and other boat parts, which … were seized by the PCGG …. Also, the facts show that no party received any 'unwarranted benefits, advantage or preference' under the contract. It must be emphasized that none of the down payments or money subject of this case inured to the benefit of MFC or Marcelo ….

As no injury or prejudice was caused to the Government and no party received any unwarranted benefit under the Contract, it is baseless to say that undue injury was caused or unwarranted benefits given through 'manifest partiality, evident bad faith or gross inexcusable negligence.' xxx the elements of the crime charged are not present in this case.[28] **(**Underscoring and words in brackets added**)**

The **main issue** tendered in this joint petition turns on whether or not respondent Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying the motion for summary judgment of Marcelo, MFC and the other petitioner corporations. According to the petitioners, "the pleadings of the parties, and the admissions and documentary evidence of the [Republic] show that there is no genuine issue

[28] *Id*. at 673-677.

as to any material fact and that [they] are entitled to a [summary] judgment as a matter of law."[29] They thus urgently urge the reversal of the assailed Resolutions and the consequent dismissal of Civil Case No. 21.

The petition is impressed with merit.

It needs to stress at the outset that Civil Case No. 21 is one of several suits involving ill-gotten or unexplained wealth that the Republic, through the PCGG, has initiated. The Court has resolved several similar cases, establishing in the process doctrinal teachings. As it were, several sub-issues in the present petition may have already been addressed, if not rendered moot and academic, in those cases. Accordingly, this petition shall be resolved taking into stock and in the light of the relevant holdings and doctrines in those cases, foremost of which is *Baseco v. PCGG*.[30] There, the Court made it abundantly clear that the right and duty of the Government to recover ill-gotten wealth are undisputed. The Court added the caveat, however, that plain and valid that right may be, a balance must still be sought to the end that "proper respect be accorded and adequate protection assured, the fundamental rights of private property and free enterprise…." Among the things we stressed in *BASECO* is the need, in ill-gotten wealth cases, to give due regard to the basic rights of the parties, with particular emphasis on the *right to property* and the requirement of *evidentiary substantiation*.

It is the petitioners' main posture, positing the propriety of summary judgment in *Civil Case No. 21*, that there is no more genuine factual issues to be tried by the Sandiganbayan, the Republic, for failing to answer the petitioners' requests for admission, having already admitted certain vital facts in this case. Excepting, the Republic counters that the said requests for admission were sufficiently denied by its allegations in the complaint.

In denying the motions for summary judgment, the Sandiganbayan wrote:

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[29] *Id*. at 41.

[30] G.R. No. 75885, May 27, 1987, 150 SCRA 181.

The answers of [the Republic] to the written interrogatories propounded by … Marcelo indubitably show the existence of genuine factual issues between the parties, such as, whether or not … Marcelo … President of [MFC] was the real beneficiary of the amounts collected from the [Republic] by [MFC] through the alleged favored contract mentioned in the complaint; and whether or not [MFC] was used as conduit by … Marcelo allegedly to amass ill-gotten wealth.

It must be stressed that the crucial factual question that serves as underpinning of the alleged causes of action invoked by the [Republic] in this case is whether or not the subject contract, including the amendments, … was a "favored contract", unlawfully obtained by the defendants in conspiracy with one another. Corollary thereto, whether or not the other [petitioner] corporations allegedly owned or controlled beneficially by the individual defendants were the fruits of the alleged ill-gotten wealth obtained through the said contract or whether individual defendants … Marcelo and … Ver acted as dummies or agents of former President … Marcos in the defendant corporations.

x x x x x x x x x

Incidentally, the instant motions for summary judgment were filed before the [anti-graft] Court could issue an order under Section 1, Rule 9[31] of the Rules of Court relative to the written interrogatories. Moreover, the factual details alleged and conclusions of fact and law adduced in the said pleadings largely rely on the terms and conditions of the [favored] contract … and its amendments which are precisely being questioned … to be a "favored contract". From the allegations of the defendants, it is apparent that the [Republic] extended enormous sums of money …. Even assuming … that the factual background alleged in the Answer of … Marcelo which was reiterated in the Answer of [MFC], to be true or to have been established or admitted, still, a genuine factual issue remains to be tried and that is whether or not the subject contract … was a "favored contract" … as it appears from the record that the implementation of its terms, as narrated by the defendants, had resulted in the expenditure of hundreds of millions of pesos on the part of the [Republic] without a single delivery having been made or required

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[31] SECTION 1. *Defenses and objections not pleaded.*— Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. x x x

to be made …. The factual issue of whether or not the subject contract is a favored one, which we take to mean as "disadvantageous" to the government, is not settled by the allegation that the contract was implemented in the midst of a foreign exchange crisis and that the government failed to comply with the staggered payments which the government was required to tender before any delivery could be made by the … [MFC] under the terms of the contract. For the defendant to invoke the terms of the contract to excuse the non-delivery of the subject matter thereof simply begs the questions because the very stipulations of the contract are in issue in this case.[32] (Words in brackets added)

We examine the records and found that summary judgment is in order. Under Section 3, Rule 35 of the Rules of Court, summary judgment may be allowed where, save for the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Summary or accelerated judgment is a procedural technique aimed at weeding out sham claims or defenses at an early stage of the litigation, thereby avoiding the expense of time involved in a trial. Even if the pleadings appear, on their face, to raise issues, summary judgment may still ensue as a matter of law if the affidavits, depositions and admissions show that such issues are not genuine.[33] The presence or absence of a genuine issue as to any material fact determines, at bottom, the propriety of summary judgment. A genuine issue, as opposed to fictitious or contrived one, is an issue of fact that requires the presentation of evidence. To the moving party rests the onus of demonstrating the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue for trial.[34] In *Estrada v. Consolacion,*[35] the Court stated that when the moving party is a defending party,

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[32] Resolution dated August 17, 2001, at 13-15, *rollo*, pp. 116-118.

[33] *Carcon Development Corporation v. CA*, G.R. No. 88218, December 19, 1989, 180 SCRA 348.

[34] *Evadel Realty and Development Corporation v. Soriano,* G.R. No. 144291, April 20, 2001, 357 SCRA 395.

[35] G.R. No. L-40948, June 29, 1976, 71 SCRA 523, 528-29.

his pleadings, depositions or affidavits must show that his defenses or denials are sufficient to defeat the claimant's claim. The affidavits or depositions shall show that there is no defense to the cause of action or the **cause of action has no merits**, as the case may be. In fine, in proceedings for summary judgment, the burden of proof is upon the plaintiff to prove the cause of action and to show that the defense is interposed solely for the purpose of delay. After the plaintiff discharges its burden, the defendants has the burden to show facts sufficient to entitle him to defend.

With the view we take of the case, there is really no more genuine issues to be tried in this case, the Republic having failed or refused to answer the requests for admission and the written interrogatories of the petitioners. As it were, the Republic only answered petitioner Marcelo's request for admission or interrogatories. But then the Republic's answer serves only to highlight and confirm the fact that petitioner Marcelo's participation in all the transactions subject of this case is as President of MFC,[36] thus:

1.0 Regarding the "Specific Averments of Illegal Acts" in paragraph 11, sub-paragraph (d), of the Third Amended Complaint which reads:

> "(d) illegally securing a loan with a foreign bank with the 'Guarantee of the Government,' upon the personal behest of defendant Ferdinand E. Marcos, which loan remains unpaid to date"

1.1. Was the alleged loan for defendant … Marcelo personally?

ANSWER: The loan was for the [MFC] of which … Marcelo is the President, who stands to benefit from the proceeds of the loan.

1.2. In the affirmative, what documents indicate that the loan was for defendant …. Marcelo personally?

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[36] Pre-Trial Brief with Written Interrogatories First Set and Request for Admission of Marcelo, Annex "n" of Petition, *rollo*, pp. 375 *et seq*.; See also pp. 7-8 Sandiganbayan Resolution of August 27, 2001, *rollo*, pp. 110-111.

ANSWER: The loan was negotiated by … Marcelo in his capacity as President of [MFC] with the Swiss Bank Corporation. The Monetary Board [in] … August 12, 1983 approved the loan.

2.0 Regarding the "Specific Averments of Illegal Acts" in paragraph 11, sub-paragraph (c), of the Third Amended Complaint which reads:

> "(c) unlawfully received and collected from plaintiff hundreds of millions of pesos by way of advances representing 79% of the contract price for the construction of the aforementioned high-speed fiberglass boats, without, to date, delivering a single boat to the prejudice and damage of Plaintiff and the Filipino people"

2.1 Was the amount allegedly received and collected from plaintiff for the personal account of defendant Edward T. Marcelo?

ANSWER: The amounts collected from plaintiff were for the account of [MFC] but only as conduit. The real beneficiary of the amount is … Marcelo. The Contract to Build…and its Amended Contract…provide that payments should be "by CONFIRMED IRREVOCABLE, DIVISIBLE LETTER OF CREDIT established in favor of the BUILDER." However, payments were made directly to [MFC] as shown in Land Bank application for Cashier's Check…;

2.2 In the affirmative, what documents indicate that the amount allegedly received and collected went to the personal account of defendant Edward T. Marcelo?

ANSWER: The defendant, as President of [MFC] stands to benefit from the proceeds of the amount collected. The Amended Article of Incorporation…shows that … Marcelo is the President of the Corporation, a wholly owned family corporation.

3.0 Regarding the "Specific Averments of Illegal Acts" in paragraph 11, sub-paragraph (b), of the Third Amended Complaint which reads:

> "(b) securing the approval of direct payments on the above-mentioned contracts, in violation of the stipulation that payment should be by confirmed, irrevocable and divisible letter of credit"

3.1 Was the direct payment allegedly secured for … Marcelo personally?

ANSWER: The direct payment was secured by defendant as President of [MFC] as shown in his letter dated November 4, 1982 requesting for release of the first downpayment of ₱127,710.00.

3.2 In the affirmative, what documents indicate that the direct payments allegedly secured went to the personal account of defendant Edward T. Marcelo?

ANSWER: The defendant, as President of [MFC] stands to benefit from the proceeds of the direct payments made by plaintiff.

4.0 Regarding the "Specific Averments of Illegal Acts" in paragraph 11, sub-paragraph (a), of the Third Amended Complaint which reads:

"(a) unlawfully obtaining a favored contract with the [PN] for the construction of high-speed fiberglass boats at the cost of hundreds of millions of pesos"

4.1 Is … Marcelo personally a party to the contract referred to by plaintiff?

ANSWER: Yes, defendant is signatory to the contract as President of [MFC]. Defendant Marcelo's letter-request…dated November 4, 1982, to then President Marcos who approved it in his marginal note…dated November 10, 1982. [37] (Words in bracket added.)

It is basic that a corporation is clothed with a personality distinct from that of its officers,[38] its stockholders and from other corporations it may be connected.[39] Under the doctrine of piercing the veil of corporate existence, however, the corporation's separate personality may be disregarded when the separate identity is used to protect a dishonest or fraudulent act, justify a wrong, or defend a crime. In such instance, the

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[37] *Rollo*, p. 375.

[38] *Lafarge Cement Phil., Inc. v. Continental Cement Corp.*, G.R. No. 155173, November 23, 2004, 443 SCRA 522.

[39] *Concept Builders, Inc. v. NLRC*, G.R. No. 108734, May 29, 1996, 257 SCRA 149.

wrongdoing must clearly and convincingly be established;[40] it cannot be presumed.[41] Absent malice or bad faith, the officer or shareholder cannot be made personally liable for corporate obligations and cannot be held liable to third persons who have claims against the corporation.

A reading of the Republic's answers to Marcelo's interrogatories leads us to view, like the Ombudsman,[42] that there was nothing irregular with the boat supply contract. Neither were the circumstances leading to the contract award tainted with irregularity. For, the answers yield nothing more than a reiteration of mere conclusions of fact stated in the underlying complaint. The complaint does not even state how the conclusion was arrived at that Marcelo was the real beneficiary of the amounts collected under the contract, absent factual averments that would support the same. The Republic's argument that since MFC did not allege in its motion for summary judgment that it is not used as a front by Marcelo, then the two should be treated as one and the same,[43] is simply specious. There is no such principle as "presumption of piercing the veil of corporate fiction." Nor could it be simply assumed that by the mere bare allegation or conclusion of law, in an answer to written interrogatories, that Marcelo is a conduit of the Marcoses, a genuine issue has been created. On this score, the Sandiganbayan was certainly in error.

As the Court distinctly notes, the complaint in *Civil Case No. 21* imputes an unlawful or at least a highly improper act against petitioner Marcelo in that he obtained a "favored contract" with the PN, collected hundreds of million of pesos by way of advances and illegally secured a foreign loan with sovereign guarantee courtesy of then Pres. Marcos. The complaint, however

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[40] *Secosa v. Heirs of Francisco*, G.R. No. 160039, June 29, 2004, 433 SCRA 273.

[41] *Matuguina Integrated Wood Products v. Court of Appeals*, G.R. No. 98310, October 24, 1996, 263 SCRA 490.

[42] *Supra* note 27.

[43] *Rollo*, p. 532.

fails to disclose why the contract characterization "favored" was, a conclusion of law, as it were. The Court will go further. The complaint violates fundamental rules of pleading. For one, it yields a substantial lack of specific averments constituting the Republic's cause or causes of action against the petitioners, particularly Marcelo. In fine, the complaint does not state with definiteness how or in what specific manner the petitioners committed the alleged illegal and fraudulent acts so broadly enumerated therein. For another, it is replete with sweeping generalizations, conclusions of fact and law, and contains inferences derived from facts that are not found in the complaint. In short, the complaint is an embodiment, a concrete example, of how one should not prepare a legal complaint. The Court's disposition in *Remitere v. Montinola Vda. De Yulo*[44] should be enlightening:

> It is not stated anywhere in the complaint why the sale … was absolutely void, nor were there stated any particular facts or circumstances upon which the alleged nullity of the sale or transaction is predicated. The averment that "the public sale … was and still is absolutely a void sale …." **is a conclusion of law or an inference from facts not stated in the pleading. A pleading should state the ultimate facts essential to the rights of action or defense asserted**, as distinguished from a mere conclusion of fact, or conclusion of law. **An allegation that a contract is valid or void, as in the instant case, is a mere conclusion of law.**
>
> x x x x x x x x x
>
> Not being statements of ultimate facts which constitute the basis of a right of the plaintiffs-appellants, nor are they statements of ultimate facts which constitute the wrongful acts or omissions of the defendants-appellees that violated the right of the plaintiffs-appellants **the allegations of the complaint** in the present case **have not fulfilled the requirements of Section 3, Rule 6 of the … Rules of Court xxx that the complaint should contain a "concise statement of the ultimate facts constituting the plaintiff's cause or causes of action." (**Emphasis added.)

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[44] G.R. No. L-19751, February 28, 1966, 16 SCRA 251.

It cannot be over-emphasized that the Republic cannot any more prove malice or wrongdoing on the part of either Marcelo or MFC, or that the separate corporate identity of MFC was used for unlawful means. For, the Republic has veritably acknowledged the regularity of the boat-construction contract by its failure to answer written interrogatories and the request for admission propounded by petitioner MFC. To be precise, the Republic did not answer the following written interrogatories[45] of MFC:

1.0 Regarding the "Specific Averments of Illegal Acts" in paragraph 11, sub-paragraph (d), of the Third Amended Complaint which reads:

> (d) illegally securing a loan with a foreign bank with the 'Guarantee of the Government,' upon the personal behest of defendant Ferdinand E. Marcos, which loan remains unpaid to date"

1.1. Was there any loan with a foreign bank ever availed of for … Republic… to say that the "loan remains unpaid to date?

1.2. Who availed of such loan with a foreign bank?

1.2. When was such loan with a foreign bank availed of?

1.3. How much of such loan with a foreign bank was availed of?

1.4. What is the name of the foreign bank from which such loan was secured and availed of?

1.5. Why was the loan with foreign bank secured?

1.6. In 1982, what were the loan options proposed by the Republic['s]… Philippine National Bank for plaintiff Republic['s]… [PN] to pay for the domestic/deferred letter of credit which the latter was supposed to open in favor of defendant [MFC]?

1.7. In 1983, without a long term foreign loan to pay for the letter of credit which … [the] … [PN] was to open with …[the] Land Bank of the Philippines, was plaintiff Republic['s]… Central Bank of the Philippines willing to

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[45] Pre-Trial Brief for MFC, Annex "O" of the Petition, *rollo*, pp. 381 *et seq.*

approve the importations by defendant [MFC] under the boat-building contract?

1.8. What specific provision of law in 1982 was violated for plaintiff Republic… to conclude that securing a loan with a foreign bank with the guarantee of the government is "illegal"?

1.9. Who required and why was the "Guarantee of Government" secured for the loan with a foreign bank?

1.10. In 1982, without the guarantee of the Republic['s]… National Government, was plaintiff Republic's… own [PNB] Bank willing to lend plaintiff Republic['s]… own [PN] the amounts to pay for the latter's opening of a domestic/deferred letter of credit in favor of defendant [MFC]?

1.11. In 1982, who in … [the] National Government has power to approve the issuance of … [the] National Government's guarantee of a loan?

1.12. In 1982, in what a particular form, document or writing should the approval of the issuance of plaintiff Republic['s]… National Government's guarantee of a loan appear?

2.0 Regarding the "Specific Averments of Illegal Acts" in paragraph 11, sub-paragraph (c), of the Third Amended Complaint which reads:

> "(c) unlawfully received and collected from Plaintiff hundreds of millions of pesos by way of advances representing 79% of the contract price for the construction of the aforementioned high-speed fiberglass boats, without, to date, delivering a single boat to the prejudice and

2.1. How much exactly was received and collected from plaintiff Republic…

2.2 Who among the defendants received and collected such amount?

2.3 What does plaintiff Republic… mean by the word "advances"?

2.3.1. Were the amounts received and collected borrowed from plaintiff Republic…?

2.3.2. If they were borrowed, what are the loan documents evidencing the loan?

2.3.3. If they were not borrowed, why were they received and collected from plaintiff Republic…?

2.4. In its 5 June 1991 Request for Admission, plaintiff Republic… asserts and acknowledges that there is an upward adjustment of the contract price from ₱425.7 Million to ₱926.524 Million. This was the agreement in November 1985. What is the "contract price" plaintiff Republic… is referring to in the aforequoted allegations in the Third Amended Complaint?

2.4.1. Under the June 1983 amendment to the contract, the parties agreed that "the foreign exchange risk shall be for the account of the Philippines. With the contract price of ₱425.7 Million in June 1982 at the exchange rate of ₱8.00 to US$1.00, what is the additional amount assumed by the plaintiff Republic… [PN] by November 1985 when the exchange rate had changed to ₱18.00 to US$1.00?

2.5. What are the pre-conditions for the delivery by defendant [MFC] of any boat under the contract?

2.6. Which of these preconditions have been satisfied for plaintiff Republic… to rightfully complain of the non-delivery of the boats to date?

2.7. Article VIII, part B, of the contract stipulates that "delivery of the boats shall be effected" provided that … [PN] shall have fulfilled all its obligations as stipulated in this contract." Has plaintiff Republic… fulfilled all its obligations as stipulated in the contract?

2.8. Article XIII, part A of the contract signed and executed on 18 June 1982, stipulates and obligates plaintiff Republic… to make the following payments:

"1. THIRTY (30) PERCENT of the total contract price as downpayment upon the signing of the Contract on 18 December 1982."

2. TWENTY (20) PERCENT of the total contract price xxx for the engines, gear boxes, fiberglass materials, radar and communication equipment

x x x after SIX (6) MONTHS from date of the execution of this contract x x x or by 18 December 1982."

2.8.1. How many payments were received by defendant [MFC] from plaintiff Republic…?

2.8.2. On what dates were each of such payments received?

2.8.3. What were the amounts received on each of such dates?

2.8.4. How many years, months and/or days had elapsed from 18 June 1992 before each of such payment was received?

2.8.5. How many years, months and/or days had elapsed before or after 18 November 1995 when each payment was received?

2.8.6. What percentage of the adjusted contract price of ₱926.524 Million was received in each of the payment was received?

2.9. Article XIII, part A, of the contract further stipulates and obligates plaintiff Republic… to open a 'CONFIRMED, IRREVOCABLE, DIVISIBLE LETTER OF CREDIT" in favor of defendant Marcelo Fiberglass Corporation.

2.9.1. When did plaintiff Republic… open such a [L/C] for either the full value of the contract price or any part thereof?

2.9.2. What efforts did plaintiff Republic… exert on its own to comply with this obligation?

2.10. Article X, part A, of the contract further provides:

"If, at any time, either the construction of the boat, or any performance required hereunder as a prerequisite to the delivery of the boat, is delayed due to acts of state, x x x by destruction of the shipyard xxx by fire and/or other causes beyond the control of either contracting party, the time of delivery of the boat under this Contract shall be extended for a period of time corresponding to the duration and cause of such events."

2.10.1. Was not the construction of the boats and a prerequisite to the delivery of the boats delayed by an act of state or by cause beyond the control of defendant [MFC] when the state, plaintiff Republic…, paid the 20% of the original contract price, intended for the engines, gear boxes, fiberglass

materials, radar and communication equipment of the boats, only in November 1985 or almost three years past due and when the contract price to be paid had increased because of the change foreign exchange rate?

2.10.2. Was not the construction of the boats and a prerequisite to the delivery of the boats delayed by an act of state and by cause beyond the control of defendant [MFC] when the state, plaintiff Republic… never delivered the full 20% of the increased contract price intended for the very engines, gear boxes, fiberglass materials, radar and communication equipment of the boats?

2.10.3. Was not the construction of the boats delayed by an act of state or by cause beyond the control of defendant [MFC] …when the Central Bank …. from 1982 to 1986, because of the dollar crisis which was aggravated by the murder of Senator Benigno S. Aquino on 21 August 1983, refused or could not provide the foreign exchange necessary for … [MFC] to import the engines, gear boxes, fiberglass materials and radio and communications equipment for the boats?

2.10.4. Was not a prerequisite to the delivery of the boats delayed by an act of state or by cause beyond the control of defendant [MFC] when the State, plaintiff Republic… never opened or could not open the required [L/C]?

2.10.5. Was not the construction of the boats further delayed by an act of state or by cause beyond the control of defendant [MFC] when the state, plaintiff Republic…, sequestered on 17 February 1987 all assets of … [MFC], padlocked its offices and shipyard/plant, and barred entry by anyone thereto up to this day?

2.10.6. Was not the construction of the boats further delayed by an act of state or by cause beyond the control of defendant [MFC] when the State, plaintiff Republic…, negligently caused in 1994 the destruction by fire of the shipyard/plant of defendant [MFC] while under its full and exclusive sequestration, control and custody?

2.10.7. Considering that the foregoing causes of the delay in the construction of the boats and delay in the prerequisite to the delivery of the boats, most of which are still existing

up to this day, is not the extension of time granted in the contract for the delivery of the boats still continuing?

x x x x x x x x x

3.2. Is such direct payment in violation of the stipulation in the amended contract of June 1983 which allows the payment of the 30% downpayment either by bank draft or [L/C]?

x x x x x x x x x

3.3. Is plaintiff Republic… aware of its own documentary evidence consisting of the 22 December 1983 letter of its own Defense Ministry, through then Minister Juan Ponce Enrile, who explained therein that:

> "The Office of Budget and Management (OBM) released the amount of ₱127.71 M. representing the 30% downpayment required in the contract. The amount was subsequently paid to MFC to save for the government front-end fee and other bank charges amounting to ₱1,915,650.00"

3.4. Does plaintiff Republic… know that, for the reason stated by its own Defense Ministry, it was itself who requested defendant [MFC] to accept payment and that the latter merely acceded to the request?

3.4. Who "secured" the approval of, and who "approved"' the direct payments?

3.4.1. What is the basis of plaintiff Republic… in identifying such person (s) as the one who "secured" the approval?

x x x x x x x x x

4.1. What does plaintiff Republic… mean by the phrase "favored contract"?

4.1.2. What circumstances made the contract being referred to a "favored" one?

4.2. What specific provision of law was violated for plaintiff Republic… to conclude that the contract or the act of obtaining it is "unlawful"?

4.2.1. Is obtaining the contract "unlawful" because it is a "favored" one?

4.2.2. Or, is the contract "favored" because obtaining it is "unlawful"?

4.2.3. What is the reason for the answers to the two preceding questions?

4.3. Without using "unlawful" "favored" or words of similarly sweeping conclusionary import, what is wrong with "obtaining that contract with the [PN] for the construction of high speed fiberglass boats at the costs of hundreds of millions of pesos"?

4.4. What did plaintiff Republic…, its then Ministry of National Defense, its [AFP] and its [PN] do to the offer made in 1979 by defendant [MFC] to construct the boats required by the [PN] until the contract was signed on 18 June 1982?

4.5. What did plaintiff Republic…, its then Ministry of National Defense, its [AFP], and its [PN] do to comply with the contract entered into on 18 June 1983 up to the time defendant [MFC] was sequestered in February 1987?

4.6. With its sovereignty and all resources and powers …, what efforts did plaintiff Republic… exert to know what itself, its then Ministry of National Defense, its [AFP] and its [PN] did within the periods of almost four (4) years each referred to in the two preceding questions?" (Words in brackets added.)

The Republic did not also answer the written interrogatories of the other defendant corporations. In effect, the Republic admitted the non-participation of the other defendant corporations in the contracts in question. This is evident from the following written interrogatories which were deemed admitted by the Republic:

1.1. What is the specific involvement of, or the specific acts done by, each of the other Defendant Corporations in securing the alleged loan?

x x x x x x x x x

2.1. How much exactly was received and collected by each of the Other Defendant Corporations from plaintiff?

2.2. When did each of the Other Defendant Corporations receive the amounts allegedly received from plaintiff, if any?

2.3. What documents indicate that each of the Other Defendant Corporations received such amount allegedly received from plaintiff?

x x x x x x x x x

4.1. Which of the other defendant corporations is a party or signatory to the contract referred to by plaintiff?

4.2. What is the specific involvement of, or the specific acts done by, each of the other defendant corporations in obtaining the contract referred to by plaintiff?"

The Republic cannot plausibly evade the consequences of its failure to answer written interrogatories and requests for admission. If the plaintiff fails or refuses to answer the interrogatories, it may be a good basis for the dismissal of his complaint for non-suit unless he can justify such failure or refusal.[46]

To be sure, the Rules of Court prescribes the procedures and defines all the consequence/s for refusing to comply with the different modes of discovery. The case of *Republic v. Sandiganbayan*,[47] a case for recovery of ill-gotten wealth where the defendants served upon the PCGG written interrogatories but the latter refused to make a discovery, is relevant. Some excerpts of what the Court said thereat:

> The message is plain. It is the duty of each contending party to lay before the court the facts in issue — fully and fairly; x x x
>
> Initially, that undertaking of laying the facts before the court is accomplished by the pleadings filed by the parties;… "ultimate facts" are set forth in the pleadings; x x x. The law says that every pleading "shall contain in a … concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts."

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[46] *Santiago Land Development Company v. Court of Appeals*, G.R. No. 103922, July 9, 1996, 258 SCRA 535.

[47] G.R. No. 90478, November 21, 1991, 204 SCRA 213.

Parenthetically, if this requirement is not observed, *i.e.*, the ultimate facts are alleged too generally or "not averred with sufficient definiteness or particularity to enable x x x (an adverse party) properly to prepare his responsive pleading or to prepare for trial," a bill of particulars seeking a "more definite statement" may be ordered …. x x x.

The truth is that "evidentiary matters' may be inquired into and learned by the parties before the trial. Indeed, it is the purpose and policy of the law that the parties — before the trial if not indeed even before the pre-trial — should discover or inform themselves of all the facts relevant to the action, not only those known to them individually, but also those known to their adversaries; in other words, the desideratum is that civil trials should not be carried on in the dark; and the Rules of Court make this ideal possible through the deposition-discovery mechanism set forth in Rules 24 to 29. x x x

x x x *x x x* *x x x.*

In line with this principle of according liberal treatment to the deposition-discovery mechanism, such modes of discovery as (a) depositions … under Rule 24,(b) interrogatories to parties under Rule 25, and (c) requests for admissions under Rule 26, may be availed of without leave of court, and generally, without court intervention. **The Rules of Court explicitly provide that leave of court is not necessary to avail of said modes of discovery after an answer to the complaint has been served. x x x**.

On the other hand, leave of court is required as regards discovery … in accordance with Rule 27, or … under Rule 28, which may be granted upon due application and a showing of due cause.

To ensure that availment of the modes of discovery is otherwise untrammeled and **efficacious, the 'law imposes serious sanctions on the party who refuses to make discovery, such as** dismissing the action or proceeding or part thereof, **…; taking the matters inquired into as established in accordance with the claim of the party seeking discovery; refusal to allow the disobedient party support or oppose designated claims or defenses;** xxx

x x x x x x x x x

> One last word. x x x all that is entailed to activate or put in motion the process of discovery by interrogatories to parties under Rule 25 of the Rules of Court, is simply the delivery directly to a party of a letter setting forth a list of questions with the request that they be answered individually. That is all. The service of such a communication on the party has the effect of imposing on him the obligation of answering the questions "separately and fully in writing under oath," and serving "a copy of the answers on the party submitting the interrogatories …" The sanctions for refusing to make discovery have already been mentioned. So, too, discovery under Rule 26 is begun by nothing more complex than the service on a party of a letter or other written communication containing a request that specific facts therein set forth … be admitted in writing. That is all. Again, the receipt of such a communication by the party has the effect of imposing on him the obligation of serving the party requesting admission with "a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters," ***failing in which "(e)ach of the matters of which admission is requested shall be deemed admitted***." x x x. (emphasis supplied)

While earlier touched upon, other considerations obtain which should have impelled the Sandiganbayan to grant the motion for summary judgment. We refer to the defect in the Republic's complaint itself. We start with the very PN-MFC contract itself which served as the main prop of the Republic's case. There is no dispute that the Republic did not attach to its complaint a copy of what it claims to be a "*favored contract*," let alone set out therein the relevant terms and conditions of the contract, or pertinent averments as would show, in general, why the same is unlawful or grossly disadvantageous to the State as would merit the tag "favored." The rule obtains that when a claim is based on a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth therein:[48]

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[48] Rule 8, Sec. 7, 1964 Revised Rules of Court.

"SECTION 7. Action or defense based on document. — Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading."

The record reveals that it was petitioner Marcelo no less who brought out the contract first, as an attachment to his *Answer*.

On the alleged *illegal advances*, the particulars on the matter are not alleged; the circumstances that would justify its conclusion that either petitioner Marcelo or MFC received the 79% monetary equivalent of the contract without delivering a single boat could not be found. Again, the specific information was volunteered by Marcelo himself in his answer.

As to the allegation that the petitioners "*secured a loan with a foreign bank with the guarantee of the government, upon the personal behest of defendant Ferdinand Marcos, which loan remains unpaid to date*," a copy of the alleged loan document is not appended to the complaint. Neither is there a reference to the pertinent provisions of the loan agreement made in the complaint, nor were the circumstances surrounding the alleged incurring of the obligation enumerated. This is material in the sense that the petitioners deny that there was any loan at all obtained.

On the allegation that petitioners *secured the approval of direct payments on the alleged "favored boat supply contract" in violation of the stipulation that payment should be by "confirmed, irrevocable and divisible letter of credit,"* the existence of a cause of action based on the allegation could not be determined since a copy of the contract was not attached to the complaint, nor was there made a reference to the particular stipulation claimed to have been violated.

With respect to the allegation that the petitioners *acted as dummies, nominees or agents of "Ferdinand E. Marcos in corporations such as the Philippine Casino Operators Corporation, beneficially owned and/or controlled by the latter,"*

it is noted that allegation partakes of a conclusion of fact unsupported by a particular averment of circumstances that will show why such inference or conclusion was arrived at. In this regard, we are reminded of the Court's ruling in *Republic v. Sandiganbayan*:[49]

> Under paragraph 6-A of the Amended Complaint, the Companies alleged to be beneficially owned or controlled by defendants Lucio Tan, Ferdinand and Imelda Marcos and/or the other individual defendants were identified and enumerated, including herein corporate respondents. **But except for this bare allegation, the complaint provided no further information with respect to the manner by which herein corporate respondents are beneficially owned or controlled by the individual defendants. Clearly, the allegation is a conclusion of law that is bereft of any factual basis**. (emphasis supplied)

To stress, the Rules of Court require every pleading to "*contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense.*"[50] A transgression of this rule is fatal.[51]

In view of the absence of specific averments in the Republic's complaint, the same is defective for it presents no basis upon which the court should act, or for the defendant to meet it with an intelligent answer.[52] The complaint, to stress, did not present the very documents claimed to be the source of the Marcelo-Marcos *vinculum*: it did not attach the alleged boat supply contract which is the main cause of action against the petitioners; the unpaid loan document from which another claimed cause of action arose; and other relevant documents and information. The Republic tags, at every turn, the PN-MFC contract to be a "favored contract," without, however, so much as stating

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[49] G.R. No. 115748, August 7, 1996, 260 SCRA 411.

[50] Rule 8, Sec. 1.

[51] *Republic v. Sandiganbayan*, G.R. No. 92594, March 4, 1994, 230 SCRA 710.

[52] *Republic v. Sandiganbayan, supra*.

with sufficient particularity the circumstances that led it to arrive at such conclusion.

The foregoing is nonetheless true with respect to the case against the other petitioner corporations (except MFC). There is no cause of action against them. Not only because the complaint does not, as to them, spell out specific illegal acts and omissions committed by them, but also on account of our ruling in *Republic v. Sandiganbayan*,[53] or what subsequent opinions would later refer to as *The Final Dispositions* case, which proscribes their being impleaded in the case. Thus:

> As regards actions in which the complaints seek recovery of defendants' shares of stock in existing corporations (*e.g.*, San Miguel Corporation, *etc*.) because (they were) allegedly purchased with misappropriated public funds,… the impleading of said firms would clearly appear to be unnecessary. If warranted by the evidence, judgments may be handed down against the corresponding defendants divesting them of ownership of their stock, the acquisition thereof being illegal and consequently burdened with a constructive trust, and imposing on them the obligation of surrendering them to the Government.
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> Quite the same thing may be said of illegally obtained funds deposited in banks. The impleading of the banks would also appear unnecessary. x x x.
>
> x x x x x x x x x
>
> And as to corporations organized with ill-gotten wealth, but are not guilty of misappropriation, fraud or other illicit conduct — in other words, the companies themselves are the object or thing involved in the action, the **res** thereof — there is no need to implead them either. Indeed, their impleading is not proper on the strength alone of having been formed with ill-gotten funds, absent any other particular wrongdoing on their part. The judgment may simply be directed against the shares of stock shown to have been issued in consideration of ill-gotten wealth.
>
> Such showing of having been formed with, or having received ill-gotten funds, however strong or convincing, does not, without more,

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[53] G.R. No. 96073, January 23, 1995, 240 SCRA 376; also, see *Republic v. Sandiganbayan*, G.R. No. 152154, July 15, 2003, 406 SCRA 190.

warrant identifying the corporations in question with the persons who formed or made use of them to give the color or appearance of lawful, innocent acquisition to illegally amassed wealth — at the least, not so as (to) place on the Government the onus of impleading the former together with the latter in actions to recover such wealth. x x x. In this light, they are simply the *res* in the actions for the recovery of illegally acquired wealth, and there is, in principle, no cause of action against them and no ground to implead them as defendants in said actions.

The Government is, thus, not to be faulted for not making such corporations defendants in the actions referred to. It is even conceivable that had this been attempted, motions to dismiss would have lain to frustrate such attempts. (Underscoring supplied)

It does not escape our notice that, in line with our ruling in *Republic* immediately adverted to, petitioner corporations were perhaps not originally impleaded because it was unnecessary, they being perceived to have been formed with ill-gotten wealth. As against them, there is no cause of action other than that they constitute the *res* of the action. However, the fact that they were subsequently impleaded in *Civil Case No. 21* could only mean that a cause of action exists against them, one that must be specifically alleged in the amended complaint. It appears, however, that their inclusion was made without the corresponding insertion of general or specific averments of illegal acts they are alleged to have committed as should constitute the cause of action against them. It may not be said that those general and specific averments already existing in the complaint before the amendment apply to them, because they refer only to the boat building contract, a transaction for which only Marcelo and MFC have been specifically made answerable.

The Republic's argument in their Opposition to the Motions for Summary Judgment that the *Final Dispositions* case suggested that the other petitioner corporations should be impleaded does not commend itself for concurrence. On the contrary, we categorically ruled therein that their impleading is not at all proper.

In all then, we hold that the Sandiganbayan committed grave abuse of discretion in denying the petitioners' separate motions

for a summary judgment. To us, the petitioners were entitled to a summary judgment owing to the interplay of the following premises:

1. The Republic's complaint, as couched and presented to the Sandiganbayan does not contain concise and direct statement of the **ultimate facts** on which it relies for its claim against petitioners Marcelo and MFC. Worse still, it does not specify the act or omission by which the other petitioners wronged the Republic. In net effect, the complaint no less does not present genuine ill-gotten wealth issue; and

2. In view of the Republic's failure to respond to MFC's interrogatories, the Republic veritably conceded the regularity of the PN-MFC contract, that no wrongdoing was committed *vis-à-vis* the conclusion of that contract and that the separate personality of MFC was not used for unlawful means to activate the piercing of corporate veil principle. The questions in the interrogatories were simple and direct and the answers thereto would have constituted the fact/s sought to be established. We do not see any reason why the Republic could not have answered them. They refer to relevant matters that could clarify the important facts left out by, to borrow from *Republic v. Sandiganbayan*,[54] the "roaming generalities in the complaint."

Assume the element of regularity and the *bona fides* of the transaction and no genuine issue as to any material fact would come into fore.

With the foregoing disquisitions, each of the petitioners' counterclaim for damages need not detain us long. Suffice it to state that resolution thereof entails factual determination which is not proper in a *certiorari* proceeding.

WHEREFORE, the instant petition is *GRANTED* and the Resolutions of the Sandiganbayan dated August 27, 2001 and November 19, 2002 are *REVERSED* and *SET ASIDE*. Accordingly, the complaint against the petitioners in *Civil Case No. 21* is *DISMISSED*.

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[54] *Supra* note 51.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 158014. August 28, 2007]

ROSULO LOPEZ MANLANGIT, *petitioner, vs.* **HONORABLE SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; FAILURE OF ACCOUNTABLE OFFICER TO RENDER ACCOUNTS; ELEMENTS OF THE CRIME; DEMAND TO RENDER AN ACCOUNT IS NOT AN ELEMENT BEFORE AN ACCOUNTABLE OFFICER MAY BE HELD LIABLE.— Article 218 consists of the following elements: 1. that the offender is a public officer, whether in the service or separated therefrom; 2. that he must be an accountable officer for public funds or property; 3. that he is required by law or regulation to render accounts to the Commission on Audit, or to a provincial auditor; and 4. that he fails to do so for a period of two months after such accounts should be rendered. Nowhere in the provision does it require that there first be a demand before an accountable officer is held liable for a violation of the crime. The law is very clear. Where none is provided, the court may not introduce exceptions or conditions, neither may it engraft into the law qualifications not contemplated. Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed. There is no room for interpretation, but only application.

2. ID.; ID.; ID.; PETITIONER'S RELIANCE IN *UNITED STATES VS. SABERON* IS MISPLACED; *SABERON* INVOLVED A VIOLATION OF ACT NO. 1740 WHEREAS THE PRESENT CASE INVOLVES A VIOLATION OF ARTICLE 218 OF THE REVISED PENAL CODE.— Petitioner's reliance on *Saberon* is misplaced. As correctly pointed out by the OSP, *Saberon* involved a violation of Act No. 1740 whereas the present case involves a violation of Article 218 of the Revised Penal Code. Article 218 merely provides that the public officer be required by law and regulation to render account. Statutory construction tells us that in the revision or codification of laws, all parts and provisions of the old laws that are omitted in the revised statute or code are deemed repealed, unless the statute or code provides otherwise.

3. ID.; ID.; ID.; ARTICLE 218 PENALIZES THE ACCOUNTABLE OFFICER'S FAILURE TO RENDER AN ACCOUNT WITHIN A PERIOD OF TWO MONTHS AFTER SUCH ACCOUNTS SHOULD BE RENDERED; PETITIONER'S SUBMISSION OF HIS LIQUIDATION REPORT ON JULY 12, 2000 WAS BEYOND THE TWO-MONTH PERIOD ALLOWED BY THE PROVISION.— As shown by the provisions of COA Circular No. 90-331, petitioner was required to render an account of the fund disbursed for the Commission's Info-Media Activities within 20 days after the end of the year. In this case, he should have submitted his liquidation report not later than January 20, 1999 since the fund was issued on October 16, 1998. Article 218 penalizes the accountable officer's failure to render an account within a period of two months after such accounts should be rendered. Clearly, petitioner's submission of his liquidation report on July 12, 2000 was beyond the two-month period allowed by the provision.

4. ID.; ID.; ID.; PENALTY IMPOSED BY SANDIGANBAYAN, MODIFIED.— Indeed the Honorable Sandiganbayan did not err in finding petitioner guilty of violating Article 218 of the Revised Penal Code. But, there is a need to modify the penalty of one year imprisonment that it imposed on petitioner. Article 218 of the Revised Penal Code provides that the felony is punishable by "*prision correccional* in its minimum period, or by a fine ranging from 200 to 6,000 pesos, or both." To determine the proper penalty the Code provides: Art. 64. *Rules for the application of penalties which contain three periods.* — In cases in which the penalties prescribed by law contain

> three periods, … the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances: 1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period. x x x Art. 65. *Rule in cases in which the penalty is not composed of three periods.* — In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions the time included in the penalty prescribed, and forming one period of each of the three portions. In the present case, there are no aggravating or mitigating circumstances proven. Hence, the penalty should be taken from the medium period of *prision correccional* minimum of one (1) year, one (1) month and eleven (11) days to one (1) year, eight (8) months and twenty (20) days. Under the circumstances, the application of the Indeterminate Sentence Law is called for. It provides that "the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense." The penalty next lower to *prision correccional* minimum is *arresto mayor* maximum the duration of which is four (4) months and one (1) day to six (6) months.

APPEARANCES OF COUNSEL

Merito R. Fernandez for petitioner.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review seeks to reverse both the Decision[1] dated February 27, 2003 and the Resolution[2] dated April 24,

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[1] *Rollo*, pp. 53-62. Penned by Associate Justice Rodolfo G. Palattao with Associate Justices Gregory S. Ong and Ma. Cristina G. Cortez-Estrada concurring.

[2] *Id*. at 64-65.

2003 of the Sandiganbayan in Criminal Case No. 26524 entitled *People of the Phils. v. Rosulo Lopez Manlangit*. The Sandiganbayan had convicted petitioner Rosulo L. Manlangit for violation of Article 218[3] of the Revised Penal Code, and denied his motion for reconsideration.

The antecedent facts of the case are as follows:

On October 16, 1998, petitioner, as Officer-in-Charge for Information, Education and Communication of the Pinatubo Commission, received ₱176,300 to fund the 6th Founding Anniversary Info-Media Activities of the Commission. A few months thereafter, he resigned without accounting for the fund.

On April 12, 2000, Artaserxes L. Sampang, then Executive Director of the Commission, filed with the Office of the Ombudsman an affidavit-complaint against petitioner for violation of Articles 217[4] and 218 of the Revised Penal Code. According

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[3] ART. 218. *Failure of accountable officer to render accounts*. — Any public officer, whether in the service or separated therefrom by resignation or any other cause, who is required by law or regulation to render account to the Insular Auditor, or to a provincial auditor and who fails to do so for a period of two months after such accounts should be rendered, shall be punished by *prision correccional* in its minimum period, or by a fine ranging from 200 to 6,000 pesos, or both.

[4] ART. 217. *Malversation of public funds or property. — Presumption of malversation*. — Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

1. The penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.
2. The penalty of *prision mayor* in its minimum and medium periods, if the amount involved is more than two hundred pesos but does not exceed six thousand pesos.
3. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos.

to Sampang, Commission on Audit (COA) Circular No. 90-331[5] dated May 3, 1990, as amended by COA Circular No. 97-002[6] dated February 10, 1997, required petitioner to render a true and correct account of all public funds entrusted to him.

In his counter-affidavit dated July 11, 2000, petitioner averred that he had no intention to appropriate the funds for himself. He failed to submit on time the liquidation report because of the following reasons: a) a new management took over, and reorganized the Commission causing some organizational confusion; b) he resigned and had to look for another employment; and c) he had some personal and family problems. He said that he submitted his liquidation report on July 12, 2000 and settled the account.

However, according to Virginia C. Yap, the appointed Deputy Executive Director of the Commission, petitioner had not submitted any liquidation report for the ₱176,300. She underscored the inconsistency between the date of petitioner's counter-affidavit, July 11, 2000, and the date when he supposedly submitted his report, July 12, 2000.

On March 5, 2001,[7] the Office of the Deputy Ombudsman for Luzon filed an information against petitioner for violation of Article 218 of the Revised Penal Code. It presented as evidence

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4. The penalty of *reclusion temporal* in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos. If the amount exceeds the latter, the penalty shall be *reclusion temporal* in its maximum period to *reclusion perpetua*.

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal use.

[5] *Rollo*, pp. 81-89.

[6] Restatement with Amendments of the Rules and Regulations on the Granting, Utilization and Liquidation of Cash Advances Provided for Under COA Circular No. 90-331 dated May 3, 1990.

[7] Sandiganbayan *rollo*, Vol. I, pp. 1-2.

the affidavit-complaint of Sampang, the counter-affidavit of petitioner, and the reply of Yap.

Meantime, in a letter dated August 12, 2001,[8] Undersecretary Mario L. Relampagos of the Department of Budget and Management Task Force Mt. Pinatubo informed Ombudsman Aniano Desierto that petitioner had already rendered an accounting and requested the withdrawal of the case.

After the Ombudsman rested its case, petitioner, with leave of court, filed a demurrer to evidence. He insisted that there was no criminal delay on his part since there was no demand from the COA for an accounting. Further, the sanction provided in the COA circular for failure to render account was simply the withholding of wages. Moreover, petitioner averred that the case was rendered moot and academic by the letter of Undersecretary Relampagos.

On February 28, 2002, the Sandiganbayan denied the demurrer to evidence.[9] It ruled that demand was not an element of Article 218 and that the letter of Undersecretary Relampagos had no bearing on the offense of petitioner.

Petitioner moved for reconsideration but it was denied. Thereafter, petitioner presented evidence in his defense.

In the Decision dated February 27, 2003, the Sandiganbayan convicted petitioner as follows:

> Wherefore, premises considered, we find accused Rosulo Lopez Manlangit *guilty* of violating the provision of Article 218 of the Revised Penal Code as amended, and is hereby sentenced to suffer imprisonment of one year.
>
> SO ORDERED.[10]

Upon denial of his motion for reconsideration, petitioner now comes before us raising the following issues:

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[8] Exhibit "1", folder of exhibits.

[9] *Rollo*, pp. 125-130.

[10] *Id.* at 61-62.

I.

IS PRIOR DEMAND BY THE COMMISSION ON AUDIT OR PROVINCIAL AUDITOR FOR THE PUBLIC OFFICER TO RENDER AN ACCOUNT, NOT AN ELEMENT OF THE CRIME PENALIZED UNDER ARTICLE 218 OF THE REVISED PENAL CODE?

II.

IS THE RULING IN *UNITED STATES VS. SABERON* (19 PHIL. 391) STILL A GOOD LAW, OR STILL APPLICABLE UP TO THE PRESENT?

III.

HAS ARTICLE 218 OF THE REVISED PENAL CODE DISPENSED WITH THE NECESSITY OF DEMAND ENUNCIATED IN THE SABERON CASE, BY "SPECIFICALLY MENTION(ING) THAT THE PUBLIC OFFICER CONCERNED MUST BE REQUIRED BY LAW OR REGULATION TO RENDER ACCOUNTS TO THE INSULAR AUDITOR (NOW COMMISSION ON AUDIT)"?

IV.

THE HONORABLE SANDIGANBAYAN HAVING "CONCEDED THAT THE APPLICABLE REGULATION IN THIS CASE IS COA CIRCULAR NO. 90-331," IS IT NOT OBVIOUS, BY A MERE READING OF THE SAID COA CIRCULAR, THAT "THE AO (ACCOUNTABLE OFFICER) SHALL LIKEWISE BE HELD CRIMINALLY LIABLE FOR FAILURE TO SETTLE HIS ACCOUNTS," "IF 30 DAYS HAVE ELAPSED AFTER THE DEMAND LETTER IS SERVED AND NO LIQUIDATION OR EXPLANATION IS RECEIVED, OR THE EXPLANATION RECEIVED IS NOT SATISFACTORY"?

V.

IT BEING AN ESTABLISHED FACT THAT NO PRIOR DEMAND, OR DEMAND LETTER HAD BEEN SERVED ON HEREIN PETITIONER, WILL HIS LIQUIDATION REPORT OF JULY 12, 2000 (EXHIBIT "1"), CERTIFIED TO AS SUBSTANTIAL COMPLIANCE, NOT RENDER THE INSTANT CASE MOOT AND ACADEMIC?[11]

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[11] *Id*. at 33-34.

In sum, we are asked to resolve whether demand is necessary for a conviction of a violation of Article 218 of the Revised Penal Code.

Citing *United States v. Saberon*,[12] petitioner contends that Article 218 punishes the refusal of a public employee to render an account of funds in his charge when duly required by a competent officer. He argues that he cannot be convicted of the crime unless the prosecution has proven that there was a demand for him to render an account. Petitioner asserts that COA Circular No. 90-331 provides that the public officer shall be criminally liable for failure to settle his accounts after demand had been made. Moreover, petitioner asserts that the case had become moot and academic since he already submitted his liquidation report.

For the People, the Office of the Special Prosecutor (OSP) counters that demand is not an element of the offense and that it is sufficient that there is a law or regulation requiring the public officer to render an account. The OSP insists that Executive Order No. 292,[13] Presidential Decree No. 1445,[14] the COA Laws and Regulations, and even the Constitution[15] mandate that public officers render an account of funds in their charge. It maintains that the instant case differs from *Saberon* which involved a violation of Act No. 1740[16] where prior demand

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[12] 19 Phil. 391 (1911).

[13] Administrative Code of 1987.

[14] Government Auditing Code of the Philippines.

[15] ARTICLE XI

ACCOUNTABILITY OF PUBLIC OFFICERS

Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

x x x x x x x x x

[16] An Act providing for the punishment of public officers and employees who fail or refuse to account for public funds or property or who make personal use of such funds or property, or any part thereof, or who misappropriate the

was required. In this case involving a violation of Article 218, prior demand is not required. Moreover, the OSP points out that petitioner even admitted his failure to liquidate the funds within the prescribed period, hence, he should be convicted of the crime.

We shall now resolve the issue at hand.

Article 218 consists of the following elements:

1. that the offender is a public officer, whether in the service or separated therefrom;
2. that he must be an accountable officer for public funds or property;
3. that he is required by law or regulation to render accounts to the Commission on Audit, or to a provincial auditor; and
4. that he fails to do so for a period of two months after such accounts should be rendered.

Nowhere in the provision does it require that there first be a demand before an accountable officer is held liable for a violation of the crime. The law is very clear. Where none is provided, the court may not introduce exceptions or conditions, neither may it engraft into the law qualifications not contemplated.[17] Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed.[18] There is no room for interpretation, but only application.[19]

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same, or any part thereof, or who are guilty of any malversation with reference to such funds or property, or who through abandonment, fault, or negligence permit any other person to abstract, misappropriate, or make personal use of the same. Enacted on October 3, 1907.

[17] *Ramos v. Court of Appeals*, No. 53766, October 30, 1981, 108 SCRA 728, 733; see *University of the Phil. Board of Regents v. Auditor General*, No. L-19617, October 31, 1969, 30 SCRA 5, 17.

[18] *Abello v. Commissioner of Internal Revenue*, G.R. No. 120721, February 23, 2005, 452 SCRA 162, 169.

[19] *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005, 462 SCRA 197, 220.

Petitioner's reliance on *Saberon* is misplaced. As correctly pointed out by the OSP, *Saberon* involved a violation of Act No. 1740 whereas the present case involves a violation of Article 218 of the Revised Penal Code. Article 218 merely provides that the public officer be required by law and regulation to render account. Statutory construction tells us that in the revision or codification of laws, all parts and provisions of the old laws that are omitted in the revised statute or code are deemed repealed, unless the statute or code provides otherwise.[20]

Pertinent provisions of COA Circular No. 90-331 read as follows:

4.4 Field/Activity Current Operating Expenses (COE)

4.4.1 The special cash advance shall be used to pay the salaries and wages of the employees and the miscellaneous operating expenses of the activity...

x x x x x x x x x

5.1 The AO shall liquidate his cash advance as follows:

x x x x x x x x x

5.1.2 Petty Operating Expenses and Field Operating Expenses — within 20 days after the end of the year; subject to replenishment during the year.

x x x x x x x x x

5.8 All cash advances shall be fully liquidated at the end of each year...[21]

As shown by the foregoing provisions of COA Circular No. 90-331, petitioner was required to render an account of the fund disbursed for the Commission's Info-Media Activities within 20 days after the end of the year. In this case, he should have submitted his liquidation report not later than January 20, 1999 since the fund was issued on October 16, 1998. Article 218 penalizes the accountable officer's failure to render an account

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[20] *People v. Binuya*, 61 Phil. 208 (1935).

[21] *Rollo*, pp. 83-85.

within a period of two months after such accounts should be rendered. Clearly, petitioner's submission of his liquidation report on July 12, 2000 was beyond the two-month period allowed by the provision.

Indeed the Honorable Sandiganbayan did not err in finding petitioner guilty of violating Article 218 of the Revised Penal Code. But, there is a need to modify the penalty of one year imprisonment that it imposed on petitioner.

Article 218 of the Revised Penal Code provides that the felony is punishable by "*prision correccional* in its minimum period, or by a fine ranging from 200 to 6,000 pesos, or both." To determine the proper penalty the Code provides:

> Art. 64. *Rules for the application of penalties which contain three periods*. — In cases in which the penalties prescribed by law contain three periods, … the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:
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> 1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.
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> x x x x x x x x x
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> Art. 65. *Rule in cases in which the penalty is not composed of three periods.* — In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions the time included in the penalty prescribed, and forming one period of each of the three portions.

In the present case, there are no aggravating or mitigating circumstances proven. Hence, the penalty should be taken from the medium period of *prision correccional* minimum of one (1) year, one (1) month and eleven (11) days to one (1) year, eight (8) months and twenty (20) days. Under the circumstances, the application of the Indeterminate Sentence Law is called for. It provides that "the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view

of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense." The penalty next lower to *prision correccional* minimum is *arresto mayor* maximum the duration of which is four (4) months and one (1) day to six (6) months.

WHEREFORE, the petition is *DENIED*. The Decision dated February 27, 2003 and the Resolution dated April 24, 2003 of the Sandiganbayan in Criminal Case No. 26524 are hereby *AFFIRMED*, with the *MODIFICATION* that the accused is sentenced to an indeterminate prison term of four (4) months and one (1) day of *arresto mayor* as minimum to one (1) year, one (1) month and eleven (11) days of *prision correccional* as maximum.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 159149. August 28, 2007]

THE HONORABLE SECRETARY VINCENT S. PEREZ, in his capacity as the Secretary of the Department of Energy, *petitioner, vs.* **LPG REFILLERS ASSOCIATION OF THE PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; EFFECT AND APPLICATION OF LAWS; RELIANCE ON THE "VOID FOR VAGUENESS DOCTRINE" IS MISPLACED; A CRIMINAL STATUTE IS NOT RENDERED UNCERTAIN AND VOID BECAUSE GENERAL TERMS ARE USED THEREIN; LAWMAKERS

HAVE NO POSITIVE CONSTITUTIONAL OR STATUTORY DUTY TO DEFINE EACH AND EVERY WORD IN AN ENACTMENT, AS LONG AS THE LEGISLATIVE WILL IS CLEAR, OR AT LEAST CAN BE GATHERED FROM THE WHOLE ACT, WHICH IS DISTINCTLY EXPRESSED IN B.P. BLG. 33, AS AMENDED.— Respondent misconstrues our decision. A criminal statute is not rendered uncertain and void because general terms are used therein. The lawmakers have no positive constitutional or statutory duty to define each and every word in an enactment, as long as the legislative will is clear, or at least, can be gathered from the whole act, which is distinctly expressed in B.P. Blg. 33, as amended. Thus, respondent's reliance on the "void for vagueness" doctrine is misplaced. Demonstrably, the specific acts and omissions cited in the Circular are within the contemplation of the B.P. Blg. 33, as amended. The DOE, in issuing the Circular, merely filled up the details and the manner through which B.P. Blg. 33, as amended may be carried out. Nothing extraneous was provided in the Circular that could result in its invalidity.

2. ID.; ID.; DEPARTMENT OF ENERGY (DOE) CIRCULAR NO. 2000-06-10 IS NOT CONFISCATORY IN PROVIDING PENALTIES ON A PER CYLINDER BASIS.— The Circular is not confiscatory in providing penalties on a per cylinder basis. Those penalties do not exceed the ceiling prescribed in Section 4 of B.P. Blg. 33, as amended, which penalizes "*any person who commits* ***any act*** *[t]herein prohibited*." Thus, violation on a per cylinder basis falls within the phrase "*any act*" as mandated in Section 4. To provide the same penalty for one who violates a prohibited act in B.P. Blg. 33, as amended, regardless of the number of cylinders involved would result in an indiscriminate, oppressive and impractical operation of B.P. Blg. 33, as amended. The equal protection clause demands that "*all persons subject to such legislation shall be treated alike,* ***under like circumstances*** *and conditions, both in the privileges conferred and in the liabilities imposed*."

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Florentino & Esmaquel Law Office for respondent.

R E S O L U T I O N

QUISUMBING, *J.*:

In its Motion for Reconsideration,[1] respondent LPG Refillers Association of the Philippines, Inc. seeks the reversal of this Court's Decision[2] dated June 26, 2006, which upheld the validity of the assailed Department of Energy (DOE) Circular No. 2000-06-10.

In assailing the validity of the Circular, respondent argues that:

I. Circular No. 2000-06-010 (the "assailed Circular") listed prohibited acts and punishable offenses which are brand-new or which were not provided for by B.P. Blg. 33, as amended; and that B.P. Blg. 33 enumerated and specifically defined the prohibited/punishable acts under the law and that the punishable offenses in the assailed Circular are not included in the law.

II. The petitioner-appellant admitted that the assailed Circular listed prohibited acts and punishable offenses which are brand-new or which were not provided for by B.P. Blg. 33, as amended.

III. B.P. Blg. 33, as amended, is in the form of a penal statute that should be construed strictly against the State.

IV. The assailed Circular not only prescribed penalties for acts not prohibited/penalized under B.P. Blg. 33, as amended, but also prescribed penalties exceeding the ceiling prescribed by B.P. Blg. 33, as amended.

V. The Honorable Court failed to consider that the imposition by the assailed Circular of penalty on per cylinder basis made the imposable penalty under the assailed Circular exceed the limits prescribed by B.P. Blg. 33, as amended.

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[1] *Rollo*, pp. 553-584.

[2] *Id.* at 542-552.

VI. The Honorable Court failed to rule on the position of the respondent-appellee that the amount of imposable fine prescribed under the assailed Circular is excessive to the extent of being confiscatory and thus offends the Bill of Rights of the 1987 Constitution.

VII. The noble and laudable aim of the Government to protect the general consuming public against the nefarious practices of some [un]scrupulous individuals in the LPG industry should be achieved through means in accord with existing law.[3]

The assigned errors, being closely allied, will be discussed jointly.

On the *first, second and third* grounds, respondent argues that the Circular prohibited new acts not specified in Batas Pambansa Bilang 33, as amended. Respondent insists that since B.P. Blg. 33, as amended is a penal statute, it already criminalizes the specific acts involving petroleum products. Respondent invokes the "void for vagueness" doctrine in assailing our decision, quoted in this wise:

> The Circular satisfies the *first* requirement. B.P. Blg. 33, as amended, criminalizes illegal trading, adulteration, underfilling, hoarding, and overpricing of petroleum products. Under this **general description of what constitutes criminal acts involving petroleum products, the Circular merely lists the various modes by which the said criminal acts may be perpetrated**, namely: no price display board, no weighing scale, no tare weight or incorrect tare weight markings, no authorized LPG seal, no trade name, unbranded LPG cylinders, no serial number, no distinguishing color, no embossed identifying markings on cylinder, underfilling LPG cylinders, tampering LPG cylinders, and unauthorized decanting of LPG cylinders…[4] (Emphasis supplied.)

Respondent misconstrues our decision. A criminal statute is not rendered uncertain and void because general terms are used therein. The lawmakers have no positive constitutional or statutory

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[3] *Id*. at 554, 563, 567, 569, 575, 577, 580.

[4] *Perez v. LPG Refillers Association of the Philippines, Inc.*, G.R. No. 159149, June 26, 2006, 492 SCRA 638, 649-650.

duty to define each and every word in an enactment, as long as the legislative will is clear, or at least, can be gathered from the whole act, which is distinctly expressed in B.P. Blg. 33, as amended.[5] Thus, respondent's reliance on the "void for vagueness" doctrine is misplaced.

Demonstrably, the specific acts and omissions cited in the Circular are within the contemplation of the B.P. Blg. 33, as amended. The DOE, in issuing the Circular, merely filled up the details and the manner through which B.P. Blg. 33, as amended may be carried out. Nothing extraneous was provided in the Circular that could result in its invalidity.

On the *fourth, fifth and sixth* grounds, respondent avers that the penalties imposed in the Circular exceeded the ceiling prescribed by B.P. Blg. 33, as amended. Respondent contends that the Circular, in providing penalties on a per cylinder basis, is no longer regulatory, but already confiscatory in nature.

Respondent's position is untenable. The Circular is not confiscatory in providing penalties on a per cylinder basis. Those penalties do not exceed the ceiling prescribed in Section 4 of B.P. Blg. 33, as amended, which penalizes "*any person who commits* ***any act*** *[t]herein prohibited*." Thus, violation on a per cylinder basis falls within the phrase "*any act*" as mandated in Section 4. To provide the same penalty for one who violates a prohibited act in B.P. Blg. 33, as amended, regardless of the number of cylinders involved would result in an indiscriminate, oppressive and impractical operation of B.P. Blg. 33, as amended. The equal protection clause demands that "*all persons subject to such legislation shall be treated alike,* ***under like circumstances*** *and conditions, both in the privileges conferred and in the liabilities imposed*."

All other arguments of respondent having been passed upon in our June 26, 2006 Decision, we uphold the validity of DOE Circular No. 2000-06-010 sought to implement B.P. Blg. 33, as amended.

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[5] See *Estrada v. Sandiganbayan*, G.R. No. 148560, November 19, 2001, 369 SCRA 394, 435.

WHEREFORE, the Motion for Reconsideration by respondent is hereby *DENIED* with definite finality. No further pleadings will be entertained.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 162155. August 28, 2007]

COMMISSIONER OF INTERNAL REVENUE and ARTURO V. PARCERO in his official capacity as Revenue District Officer of Revenue District No. 049 (Makati), *petitioners, vs.* **PRIMETOWN PROPERTY GROUP, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; EFFECT AND APPLICATION LAWS; COMPUTATION OF PERIOD UNDER THE CIVIL CODE AND UNDER THE REVISED ADMINISTRATIVE CODE OF 1987.— The conclusion of the CA that respondent filed its petition for review in the CTA within the two-year prescriptive period provided in Section 229 of the NIRC is correct. Its basis, however, is not. The rule is that the two-year prescriptive period is reckoned from the filing of the final adjusted return. But how should the two-year prescriptive period be computed? As already quoted, Article 13 of the Civil Code provides that when the law speaks of a year, it is understood to be equivalent to 365 days. In *National Marketing Corporation v. Tecson,* we ruled that a year is equivalent to 365 days regardless of whether it is a regular year or a leap year. However, in 1987, EO 292 or the Administrative Code of 1987 was enacted. Section 31, Chapter VIII, Book I thereof

provides: Sec. 31. *Legal Periods.* — **"Year" shall be understood to be twelve calendar months;** "month" of thirty days, unless it refers to a specific calendar month in which case it shall be computed according to the number of days the specific month contains; "day," to a day of twenty-four hours and; "night" from sunrise to sunset. A calendar month is "a month designated in the calendar without regard to the number of days it may contain." It is the "period of time running from the beginning of a certain numbered day up to, but not including, the corresponding numbered day of the next month, and if there is not a sufficient number of days in the next month, then up to and including the last day of that month." To illustrate, one calendar month from December 31, 2007 will be from January 1, 2008 to January 31, 2008; one calendar month from January 31, 2008 will be from February 1, 2008 until February 29, 2008.

2. ID.; ID.; KINDS OF REPEALING CLAUSES; EFFECTS THEREOF.— A law may be repealed expressly (by a categorical declaration that the law is revoked and abrogated by another) or impliedly (when the provisions of a more recent law cannot be reasonably reconciled with the previous one). Section 27, Book VII (Final Provisions) of the Administrative Code of 1987 states: Sec. 27. *Repealing clause.* — All laws, decrees, orders, rules and regulation, or portions thereof, inconsistent with this Code are hereby repealed or modified accordingly. A repealing clause like Sec. 27 above is not an express repealing clause because it fails to identify or designate the laws to be abolished. Thus, the provision above only *impliedly repealed* all laws inconsistent with the Administrative Code of 1987. Implied repeals, however, are not favored. An implied repeal must have been clearly and unmistakably intended by the legislature. The test is whether the subsequent law encompasses entirely the subject matter of the former law and they cannot be logically or reasonably reconciled.

3. ID.; ID.; SINCE THERE EXIST A MANIFEST INCOMPATIBILITY IN THE MANNER OF COMPUTING LEGAL PERIODS UNDER THE CIVIL CODE AND THE ADMINISTRATIVE CODE OF 1987, THE PROVISIONS OF THE LATTER LAW SHALL PREVAIL BEING THE MORE RECENT LAW WHICH WILL GOVERN THE COMPUTATION OF LEGAL PERIODS IN CASE AT

BAR.— Both Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code of 1987 deal with the same subject matter — the computation of legal periods. Under the Civil Code, a year is equivalent to 365 days whether it be a regular year or a leap year. Under the Administrative Code of 1987, however, a year is composed of 12 calendar months. Needless to state, under the Administrative Code of 1987, the number of days is irrelevant. There obviously exists a manifest incompatibility in the manner of computing legal periods under the Civil Code and the Administrative Code of 1987. For this reason, we hold that Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods. *Lex posteriori derogat priori.*

4. ID.; ID.; CASE AT BAR.— Applying Section 31, Chapter VIII, Book I of the Administrative Code of 1987 to this case, the two-year prescriptive period (reckoned from the time respondent filed its final adjusted return on April 14, 1998) consisted of 24 calendar months. We therefore hold that respondent's petition (filed on April 14, 2000) was filed on the last day of the 24th calendar month from the day respondent filed its final adjusted return. Hence, it was filed within the reglementary period.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Mark Anthony B. Ploteña for respondent.

D E C I S I O N

CORONA, *J.*:

This petition for review on *certiorari*[1] seeks to set aside the August 1, 2003 decision[2] of the Court of Appeals (CA) in CA-

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Rebecca de Guia-Salvador and Jose C. Mendoza of the Special Fifteenth Division of the Court of Appeals. *Rollo*, pp. 21-25.

G.R. SP No. 64782 and its February 9, 2004 resolution denying reconsideration.[3]

On March 11, 1999, Gilbert Yap, vice chair of respondent Primetown Property Group, Inc., applied for the refund or credit of income tax respondent paid in 1997. In Yap's letter to petitioner revenue district officer Arturo V. Parcero of Revenue District No. 049 (Makati) of the Bureau of Internal Revenue (BIR),[4] he explained that the increase in the cost of labor and materials and difficulty in obtaining financing for projects and collecting receivables caused the real estate industry to slowdown.[5] As a consequence, while business was good during the first quarter of 1997, respondent suffered losses amounting to ₱71,879,228 that year.[6]

According to Yap, because respondent suffered losses, it was not liable for income taxes.[7] Nevertheless, respondent paid its quarterly corporate income tax and remitted creditable withholding tax from real estate sales to the BIR in the total amount of ₱26,318,398.32.[8] Therefore, respondent was entitled to tax refund or tax credit.[9]

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[3] Penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Rebecca de Guia-Salvador and Jose C. Mendoza of the Former Special Fifteenth Division of the Court of Appeals. *Id.*, pp. 26-28.

[4] *Id.*, pp. 37-42.

[5] *Id.*, pp. 39-40.

[6] *Id*. This was the period of economic slowdown known as the "Asian (Financial) Crisis" which started in mid-1997.

[7] *Id.*, p. 41.

[8] Summary of Tax/Payments for 1997:

Quarter	Corporate Income Tax	Creditable Withholding Tax	TOTAL
1st	₱ 3,440,082.00	₱ 687,783.00	₱ 4,127,865.00
2nd	15,694,502.00	633,175.00	16,327,677.00
3rd	2,419,868.81	3,154,506.51	5,574,375.32
4th		288,481.00	288,481.00
	₱ 21,554,452.81	₱ 4,763,945.51	₱ 26,318,398.32

Id., p. 40.

[9] *Id.*, p. 41.

On May 13, 1999, revenue officer Elizabeth Y. Santos required respondent to submit additional documents to support its claim.[10] Respondent complied but its claim was not acted upon. Thus, on April 14, 2000, it filed a petition for review[11] in the Court of Tax Appeals (CTA).

On December 15, 2000, the CTA dismissed the petition as it was filed beyond the two-year prescriptive period for filing a judicial claim for tax refund or tax credit.[12] It invoked Section 229 of the National Internal Revenue Code (NIRC):

> Sec. 229. *Recovery of Taxes Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, **no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without a claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (emphasis supplied)

The CTA found that respondent filed its final adjusted return on April 14, 1998. Thus, its right to claim a refund or credit commenced on that date.[13]

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[10] *Id.*, pp. 78-79.

[11] Docketed as C.T.A. Case No. 6113. *Id.*, pp. 192-199.

[12] Penned by Presiding Judge Ernesto D. Acosta and concurred in by Associate Judges Amancio Q. Saga (retired) and Ramon O. de Veyra (retired). Dated December 15, 2000. *Id.*, pp. 187-190.

[13] *CIR v. CA*, 361 Phil. 359, 364-365 (1999).

The tax court applied Article 13 of the Civil Code which states:

> Art. 13. When the law speaks of years, months, days or nights, it shall be understood that **years are of three hundred sixty-five days each**; months, of thirty days; days, of twenty-four hours, and nights from sunset to sunrise.
>
> If the months are designated by their name, they shall be computed by the number of days which they respectively have.
>
> In computing a period, the first day shall be excluded, and the last included. (emphasis supplied)

Thus, according to the CTA, the two-year prescriptive period under Section 229 of the NIRC for the filing of judicial claims was equivalent to 730 days. Because the year 2000 was a leap year, respondent's petition, which was filed 731 days[14] after respondent filed its final adjusted return, was filed beyond the reglementary period.[15]

Respondent moved for reconsideration but it was denied.[16] Hence, it filed an appeal in the CA.[17]

On August 1, 2003, the CA reversed and set aside the decision of the CTA.[18] It ruled that Article 13 of the Civil Code did not distinguish between a regular year and a leap year. According to the CA:

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[14] The computation was as follows:

April 15, 1998 to April 14, 1999 ----------	365 days
April 15, 1999 to April 14, 2000 (leap year) ----------	366 days
TOTAL	731 days

[15] *Rollo*, p. 190.

[16] *Id.*, p. 191.

[17] Docketed as CA-G.R. SP No. 64782. *Id.*, pp. 180-186. (This case observes the procedure in RA 1125 prior to the amendments of RA 9282.)

[18] *Id.*, pp. 21-25. Under RA 9282 which took effect on April 22, 2004, decisions of the CTA are now appealable to the Supreme Court.

The rule that a year has 365 days applies, notwithstanding the fact that a particular year is a leap year.[19]

In other words, even if the year 2000 was a leap year, the periods covered by April 15, 1998 to April 14, 1999 and April 15, 1999 to April 14, 2000 should still be counted as 365 days each or a total of 730 days. A statute which is clear and explicit shall be neither interpreted nor construed.[20]

Petitioners moved for reconsideration but it was denied.[21] Thus, this appeal.

Petitioners contend that tax refunds, being in the nature of an exemption, should be strictly construed against claimants.[22] Section 229 of the NIRC should be strictly applied against respondent inasmuch as it has been consistently held that the prescriptive period (for the filing of tax refunds and tax credits) begins to run on the day claimants file their final adjusted returns.[23] Hence, the claim should have been filed on or before April 13, 2000 or within 730 days, reckoned from the time respondent filed its final adjusted return.

The conclusion of the CA that respondent filed its petition for review in the CTA within the two-year prescriptive period provided in Section 229 of the NIRC is correct. Its basis, however, is not.

The rule is that the two-year prescriptive period is reckoned from the filing of the final adjusted return.[24] But how should the two-year prescriptive period be computed?

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

[20] *Id*.

[21] *Id*., pp. 26-28.

[22] *Id*., p. 13.

[23] *Id*., p. 15.

[24] TAX CODE, Sec. 229 and s*upra* note 12 at 367. *See also ACCRA Investments Corporation v. CA*, G.R. No. 96322, 20 December 1991, 204 SCRA 957. *See also CIR v. Philippine American Life Insurance Co.*, G.R. No. 105208, 29 May 1995, 244 SCRA 446.

As already quoted, Article 13 of the Civil Code provides that when the law speaks of a year, it is understood to be equivalent to 365 days. In *National Marketing Corporation v. Tecson*,[25] we ruled that a year is equivalent to 365 days regardless of whether it is a regular year or a leap year.[26]

However, in 1987, EO[27] 292 or the Administrative Code of 1987 was enacted. Section 31, Chapter VIII, Book I thereof provides:

> Sec. 31. *Legal Periods.* — **"Year" shall be understood to be twelve calendar months;** "month" of thirty days, unless it refers to a specific calendar month in which case it shall be computed according to the number of days the specific month contains; "day", to a day of twenty-four hours and; "night" from sunrise to sunset. (emphasis supplied)

A calendar month is "a month designated in the calendar without regard to the number of days it may contain."[28] It is the "period of time running from the beginning of a certain numbered day up to, but not including, the corresponding numbered day of the next month, and if there is not a sufficient number of days in the next month, then up to and including the last day of that month."[29] To illustrate, one calendar month from December 31, 2007 will be from January 1, 2008 to January 31, 2008; one calendar month from January 31, 2008 will be from February 1, 2008 until February 29, 2008.[30]

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[25] 139 Phil. 584 (1969).

[26] *Id*., pp. 588-589 citing *People v. del Rosario,* 97 Phil. 70, 71 (1955).

[27] Executive Order

[28] *Gutierrez v. Carpio,* 53 Phil. 334, 335-336 (1929).

[29] Section 9, Time, 74 AmJur 2d 593 citing *Re Lynch's Estate,* 123 Utah 57, 254 P2d 454.

[30] This is pursuant to Article 13(3) of the Civil Code which provides that "[i]n computing a period, the first day shall be excluded, and the last day included."

Cf. RULES OF COURT, Rule 22, Sec. 1. The section provides:

> Section 1. *How to compute time.* In computing any period of time prescribed or allowed by this Rules, or by the order of the court, or by any applicable

A law may be repealed expressly (by a categorical declaration that the law is revoked and abrogated by another) or impliedly (when the provisions of a more recent law cannot be reasonably reconciled with the previous one).[31] Section 27, Book VII (Final Provisions) of the Administrative Code of 1987 states:

> Sec. 27. *Repealing clause.* — All laws, decrees, orders, rules and regulation, or portions thereof, inconsistent with this Code are hereby repealed or modified accordingly.

A repealing clause like Sec. 27 above is not an express repealing clause because it fails to identify or designate the laws to be abolished.[32] Thus, the provision above only *impliedly repealed* all laws inconsistent with the Administrative Code of 1987.

Implied repeals, however, are not favored. An implied repeal must have been clearly and unmistakably intended by the legislature. The test is whether the subsequent law encompasses entirely the subject matter of the former law and they cannot be logically or reasonably reconciled.[33]

Both Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code of 1987 deal with the same subject matter — the computation of legal periods. Under the Civil Code, a year is equivalent to 365 days whether it be a regular year or a leap year. Under the Administrative Code of 1987, however, a year is composed of 12 calendar months. Needless to state, under the Administrative Code of 1987, the number of days is irrelevant.

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statute, **the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included.** If the last day of the period, as thus computed, falls on a Saturday, a Sunday or a legal holiday in the place where the court sits, the time shall not run until the next working day. (emphasis supplied)

[31] Jose Jesus G. Laurel, *STATUTORY CONSTRUCTION*: *CASES AND MATERIALS*, 1999 ed., 176 *citing* Black's Law Dictionary, 4th ed., 1463.

[32] *Agujetas v. Court of Appeals*, G.R. No. 106560, 23 August 1996, 261 SCRA 17, 32.

[33] *David v. Commission on Elections*, G.R. No. 127116, 08 April 1997, 271 SCRA 90, 103.

There obviously exists a manifest incompatibility in the manner of computing legal periods under the Civil Code and the Administrative Code of 1987. For this reason, we hold that Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods. *Lex posteriori derogat priori.*

Applying Section 31, Chapter VIII, Book I of the Administrative Code of 1987 to this case, the two-year prescriptive period (reckoned from the time respondent filed its final adjusted return[34] on April 14, 1998) consisted of 24 calendar months, computed as follows:

Year 1	1st calendar month	April 15, 1998	to	May 14, 1998
	2nd calendar month	May 15, 1998	to	June 14, 1998
	3rd calendar month	June 15, 1998	to	July 14, 1998
	4th calendar month	July 15, 1998	to	August 14, 1998
	5th calendar month	August 15, 1998	to	September 14, 1998
	6th calendar month	September 15, 1998	to	October 14, 1998
	7th calendar month	October 15, 1998	to	November 14, 1998
	8th calendar month	November 15, 1998	to	December 14, 1998
	9th calendar month	December 15, 1998	to	January 14, 1999
	10th calendar month	January 15, 1999	to	February 14, 1999
	11th calendar month	February 15, 1999	to	March 14, 1999
	12th calendar month	March 15, 1999	to	April 14, 1999
Year 2	13th calendar month	April 15, 1998	to	May 14, 1998
	14th calendar month	May 15, 1998	to	June 14, 1998
	15th calendar month	June 15, 1998	to	July 14, 1998
	16th calendar month	July 15, 1998	to	August 14, 1998
	17th calendar month	August 15, 1998	to	September 14, 1998
	18th calendar month	September 15, 1998	to	October 14, 1998
	19th calendar month	October 15, 1998	to	November 14, 1998
	20th calendar month	November 15, 1998	to	December 14, 1998
	21st calendar month	December 15, 1998	to	January 14, 1999
	22nd calendar month	January 15, 1999	to	February 14, 1999
	23rd calendar month	February 15, 1999	to	March 14, 1999
	24th calendar month	March 15, 1999	to	April 14, 1999

We therefore hold that respondent's petition (filed on April 14, 2000) was filed on the last day of the 24th calendar month from the day respondent filed its final adjusted return. Hence, it was filed within the reglementary period.

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[34] *Supra* note 25.

ACCORDINGLY, the petition is hereby *DENIED.* The case is *REMANDED* to the Court of Tax Appeals which is ordered to expeditiously proceed to hear C.T.A. Case No. 6113 entitled *Primetown Property Group, Inc. v. Commissioner of Internal Revenue and Arturo V. Parcero.*

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 167746. August 28, 2007]

RESTITUTO M. ALCANTARA, *petitioner*, *vs.* **ROSITA A. ALCANTARA and HON. COURT OF APPEALS,** *respondents.*

SYLLABUS

1. CIVIL LAW; MARRIAGE; REQUISITES OF MARRIAGE; MARRIAGE LICENSE; A VALID MARRIAGE LICENSE IS A REQUISITE OF MARRIAGE UNDER ARTICLE 53 OF THE CIVIL CODE, THE ABSENCE OF WHICH RENDERS THE MARRIAGE *VOID AB INITIO*.— The marriage involved herein having been solemnized on 8 December 1982, or prior to the effectivity of the Family Code, the applicable law to determine its validity is the Civil Code which was the law in effect at the time of its celebration. A valid marriage license is a requisite of marriage under Article 53 of the Civil Code, the absence of which renders the marriage *void ab initio* pursuant to Article 80(3) in relation to Article 58 of the same Code. Article 53 of the Civil Code which was

the law applicable at the time of the marriage of the parties states: Art. 53. No marriage shall be solemnized unless all these requisites are complied with: (1) Legal capacity of the contracting parties; (2) Their consent, freely given; (3) Authority of the person performing the marriage; and (4) A marriage license, except in a marriage of exceptional character. The requirement and issuance of a marriage license is the State's demonstration of its involvement and participation in every marriage, in the maintenance of which the general public is interested.

2. ID.; ID.; ID.; CASES WHERE THE COURT CONSIDERED THE ABSENCE OF A MARRIAGE LICENSE AS A GROUND FOR CONSIDERING THE MARRIAGE VOID.— Petitioner cannot insist on the absence of a marriage license to impugn the validity of his marriage. The cases where the court considered the absence of a marriage license as a ground for considering the marriage void are clear-cut. In *Republic of the Philippines v. Court of Appeals*, the Local Civil Registrar issued a certification of due search and inability to find a record or entry to the effect that Marriage License No. 3196182 was issued to the parties. The Court held that the certification of "due search and inability to find" a record or entry as to the purported marriage license, issued by the Civil Registrar of Pasig, enjoys probative value, he being the officer charged under the law to keep a record of all data relative to the issuance of a marriage license. Based on said certification, the Court held that there is absence of a marriage license that would render the marriage void *ab initio*. In *Cariño v. Cariño*, the Court considered the marriage of therein petitioner Susan Nicdao and the deceased Santiago S. Cariño as void *ab initio*. The records reveal that the marriage contract of petitioner and the deceased bears no marriage license number and, as certified by the Local Civil Registrar of San Juan, Metro Manila, their office has no record of such marriage license. The court held that the certification issued by the local civil registrar is adequate to prove the non-issuance of the marriage license. Their marriage having been solemnized without the necessary marriage license and not being one of the marriages exempt from the marriage license requirement, the marriage of the petitioner and the deceased is undoubtedly void *ab initio*. In *Sy v. Court of Appeals*, the marriage license was issued on

17 September 1974, almost one year after the ceremony took place on 15 November 1973. The Court held that the ineluctable conclusion is that the marriage was indeed contracted without a marriage license. In all these cases, there was clearly an absence of a marriage license which rendered the marriage void.

3. ID.; ID.; ID.; TO BE CONSIDERED VOID ON THE GROUND OF ABSENCE OF MARRIAGE LICENSE, THE LAW REQUIRES THAT THE ABSENCE OF SUCH MARRIAGE LICENSE MUST BE APPARENT ON THE MARRIAGE CONTRACT AND OR AT THE VERY LEAST, SUPPORTED BY A CERTIFICATION FROM THE LOCAL CIVIL REGISTRAR THAT NO SUCH MARRIAGE LICENSE WAS ISSUED TO THE PARTIES.— It can be deduced that to be considered void on the ground of absence of a marriage license, the law requires that the absence of such marriage license must be apparent on the marriage contract, or at the very least, supported by a certification from the local civil registrar that no such marriage license was issued to the parties. In this case, the marriage contract between the petitioner and respondent reflects a marriage license number. A certification to this effect was also issued by the local civil registrar of Carmona, Cavite. The certification moreover is precise in that it specifically identified the parties to whom the marriage license was issued, namely Restituto Alcantara and Rosita Almario, further validating the fact that a license was in fact issued to the parties herein. The certification of Municipal Civil Registrar Macrino L. Diaz of Carmona, Cavite, reads: This is to certify that as per the registry Records of Marriage filed in this office, Marriage License No. 7054133 was issued in favor of Mr. Restituto Alcantara and Miss Rosita Almario on December 8, 1982. This Certification is being issued upon the request of Mrs. Rosita A. Alcantara for whatever legal purpose or intents it may serve. This certification enjoys the presumption that official duty has been regularly performed and the issuance of the marriage license was done in the regular conduct of official business. The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. However, the presumption prevails until it is overcome by no less than clear and convincing evidence to the contrary. Thus, unless the presumption is rebutted, it becomes conclusive. Every

reasonable intendment will be made in support of the presumption and, in case of doubt as to an officer's act being lawful or unlawful, construction should be in favor of its lawfulness. Significantly, apart from these, petitioner, by counsel, admitted that a marriage license was, indeed, issued in Carmona, Cavite.

4. ID.; ID.; ID.; AN IRREGULARITY IN ANY OF THE FORMAL REQUISITES OF MARRIAGE DOES NOT AFFECT ITS VALIDITY BUT THE PARTY OR PARTIES RESPONSIBLE FOR THE IRREGULARITY ARE CIVILLY, CRIMINALLY AND ADMINISTRATIVELY LIABLE.— Petitioner, in a faint attempt to demolish the probative value of the marriage license, claims that neither he nor respondent is a resident of Carmona, Cavite. Even then, we still hold that there is no sufficient basis to annul petitioner and respondent's marriage. Issuance of a marriage license in a city or municipality, not the residence of either of the contracting parties, and issuance of a marriage license despite the absence of publication or prior to the completion of the 10-day period for publication are considered mere irregularities that do not affect the validity of the marriage. An irregularity in any of the formal requisites of marriage does not affect its validity but the party or parties responsible for the irregularity are civilly, criminally and administratively liable.

5. ID.; ID.; ID.; DISCREPANCY BETWEEN THE MARRIAGE LICENSE NUMBER IN THE CERTIFICATION OF THE MUNICIPAL CIVIL REGISTRAR AND LICENSE NUMBER IN THE MARRIAGE CONTRACT IS A MERE DISCREPANCY AND DOES NOT DETRACT FROM THE COURT'S CONCLUSION REGARDING THE EXISTENCE AND ISSUANCE OF THE MARRIAGE LICENSE TO THE PARTIES.— Again, petitioner harps on the discrepancy between the marriage license number in the certification of the Municipal Civil Registrar, which states that the marriage license issued to the parties is No. 7054133, while the marriage contract states that the marriage license number of the parties is number 7054033. Once more, this argument fails to sway us. It is not impossible to assume that the same is a mere a typographical error, as a closer scrutiny of the marriage contract reveals the overlapping of the numbers 0 and 1, such that the marriage license may read either as 7054133 or 7054033. It therefore

does not detract from our conclusion regarding the existence and issuance of said marriage license to the parties.

6. ID.; ID.; ID.; PETITIONER CANNOT BENEFIT FROM HIS ACTION AND BE ALLOWED TO EXTRICATE HIMSELF FROM THE MARRIAGE BOND AT HIS MERE SAY-SO WHEN THE SITUATION IS NO LONGER PALATABLE TO HIS TASTE OR HIS LIFESTYLE; THE COURT WILL NOT COUNTENANCE PETITIONER'S EFFRONTERY AND HIS ATTEMPT TO MAKE A MOCKERY OF THE INSTITUTION OF MARRIAGE BETRAYS HIS BAD FAITH.— Under the principle that he who comes to court must come with clean hands, petitioner cannot pretend that he was not responsible or a party to the marriage celebration which he now insists took place without the requisite marriage license. Petitioner admitted that the civil marriage took place because he "initiated it." Petitioner is an educated person. He is a mechanical engineer by profession. He knowingly and voluntarily went to the Manila City Hall and likewise, knowingly and voluntarily, went through a marriage ceremony. He cannot benefit from his action and be allowed to extricate himself from the marriage bond at his mere say-so when the situation is no longer palatable to his taste or suited to his lifestyle. We cannot countenance such effrontery. His attempt to make a mockery of the institution of marriage betrays his bad faith.

7. ID.; ID.; ID.; PETITIONER AND RESPONDENT WENT THROUGH A MARRIAGE CEREMONY TWICE IN A SPAN OF LESS THAN ONE YEAR UTILIZING THE SAME MARRIAGE LICENSE AND EVERYTHING WAS EXECUTED WITHOUT A NARY WHIMPER ON THE PART OF PETITIONER; THE CHURCH CEREMONY WAS CONFIRMATORY OF THEIR CIVIL MARRIAGE, THEREBY CLEANSING WHATEVER IRREGULARITY OR DEFECT THAT ATTENDED THE CIVIL WEDDING.— Petitioner and respondent went through a marriage ceremony twice in a span of less than one year utilizing the same marriage license. There is no claim that he went through the second wedding ceremony in church under duress or with a gun to his head. Everything was executed without nary a whimper on the part of the petitioner. In fact, for the second wedding of petitioner and respondent, they presented to the San Jose de Manuguit Church the marriage contract executed during the

previous wedding ceremony before the Manila City Hall. This is confirmed in petitioner's testimony. The logical conclusion is that petitioner was amenable and a willing participant to all that took place at that time. Obviously, the church ceremony was confirmatory of their civil marriage, thereby cleansing whatever irregularity or defect attended the civil wedding.

8. ID.; ID.; ID.; A SOLEMNIZING OFFICER IS NOT DUTY-BOUND TO INVESTIGATE WHETHER OR NOT A MARRIAGE LICENSE HAS BEEN DULY AND REGULARLY ISSUED BY THE LOCAL CIVIL REGISTRAR.— Likewise, the issue raised by petitioner — that they appeared before a "fixer" who arranged everything for them and who facilitated the ceremony before a certain Rev. Aquilino Navarro, a Minister of the Gospel of the CDCC Br Chapel — will not strengthen his posture. The authority of the officer or clergyman shown to have performed a marriage ceremony will be presumed in the absence of any showing to the contrary. Moreover, the solemnizing officer is not duty-bound to investigate whether or not a marriage license has been duly and regularly issued by the local civil registrar. All the solemnizing officer needs to know is that the license has been issued by the competent official, and it may be presumed from the issuance of the license that said official has fulfilled the duty to ascertain whether the contracting parties had fulfilled the requirements of law.

9. ID.; ID.; ID.; PRESUMPTION IS ALWAYS IN FAVOR OF THE VALIDITY OF THE MARRIAGE; THE COURTS LOOK UPON THE PRESUMPTION WITH GREAT WEIGHT AND FAVOR.— *Semper praesumitur pro matrimonio*. The presumption is always in favor of the validity of the marriage. Every intendment of the law or fact leans toward the validity of the marriage bonds. The Courts look upon this presumption with great favor. It is not to be lightly repelled; on the contrary, the presumption is of great weight.

APPEARANCES OF COUNSEL

Law Offices of Aguilar Salvador & Tria for petitioner.
Public Attorney's Office for private respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari* filed by petitioner Restituto Alcantara assailing the Decision[1] of the Court of Appeals dated 30 September 2004 in CA-G.R. CV No. 66724 denying petitioner's appeal and affirming the decision[2] of the Regional Trial Court (RTC) of Makati City, Branch 143, in Civil Case No. 97-1325 dated 14 February 2000, dismissing his petition for annulment of marriage.

The antecedent facts are:

A petition for annulment of marriage[3] was filed by petitioner against respondent Rosita A. Alcantara alleging that on 8 December 1982 he and respondent, without securing the required marriage license, went to the Manila City Hall for the purpose of looking for a person who could arrange a marriage for them. They met a person who, for a fee, arranged their wedding before a certain Rev. Aquilino Navarro, a Minister of the Gospel of the CDCC BR Chapel.[4] They got married on the same day, 8 December 1982. Petitioner and respondent went through another marriage ceremony at the San Jose de Manuguit Church in Tondo, Manila, on 26 March 1983. The marriage was likewise celebrated without the parties securing a marriage license. The alleged marriage license, procured in Carmona, Cavite, appearing on the marriage contract, is a sham, as neither party was a resident of Carmona, and they never went to Carmona to apply for a license with the local civil registrar of the said place. On 14 October 1985, respondent gave birth to their child Rose Ann Alcantara. In 1988, they parted ways and lived separate lives. Petitioner

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[1] Penned by Associate Justice Vicente S. E. Veloso with Associate Justices Roberto A. Barrios and Amelita G. Tolentino, concurring; *rollo,* pp. 25-32.

[2] Penned by Judge Salvador S. Abad Santos; CA *rollo,* pp. 257-258.

[3] Docketed as Civil Case No. 97-1325.

[4] Crusade of the Divine Church of Christ.

prayed that after due hearing, judgment be issued declaring their marriage void and ordering the Civil Registrar to cancel the corresponding marriage contract[5] and its entry on file.[6]

Answering petitioner's petition for annulment of marriage, respondent asserts the validity of their marriage and maintains that there was a marriage license issued as evidenced by a certification from the Office of the Civil Registry of Carmona, Cavite. Contrary to petitioner's representation, respondent gave birth to their first child named Rose Ann Alcantara on 14 October 1985 and to another daughter named Rachel Ann Alcantara on 27 October 1992.[7] Petitioner has a mistress with whom he has three children.[8] Petitioner only filed the annulment of their marriage to evade prosecution for concubinage.[9] Respondent, in fact, has filed a case for concubinage against petitioner before the Metropolitan Trial Court of Mandaluyong City, Branch 60.[10] Respondent prays that the petition for annulment of marriage be denied for lack of merit.

On 14 February 2000, the RTC of Makati City, Branch 143, rendered its Decision disposing as follows:

The foregoing considered, judgment is rendered as follows:

1. The Petition is dismissed for lack of merit;

2. Petitioner is ordered to pay respondent the sum of twenty thousand pesos (₱20,000.00) per month as support for their two (2) children on the first five (5) days of each month; and

3. To pay the costs.[11]

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[5] Annex A, Records, p. 5; Annexes B to C, Records, pp. 6-7.

[6] *Rollo*, pp. 33-36.

[7] *Id*. at 185.

[8] TSN, 14 October 1999, p. 34.

[9] *Rollo*, p. 39.

[10] *Id*. at 46.

[11] *Id*. at 68-69.

As earlier stated, the Court of Appeals rendered its Decision dismissing the petitioner's appeal. His Motion for Reconsideration was likewise denied in a resolution of the Court of Appeals dated 6 April 2005.[12]

The Court of Appeals held that the marriage license of the parties is presumed to be regularly issued and petitioner had not presented any evidence to overcome the presumption. Moreover, the parties' marriage contract being a public document is a *prima facie* proof of the questioned marriage under Section 44, Rule 130 of the Rules of Court.[13]

In his Petition before this Court, petitioner raises the following issues for resolution:

a. The Honorable Court of Appeals committed a reversible error when it ruled that the Petition for Annulment has no legal and factual basis despite the evidence on record that there was no marriage license at the precise moment of the solemnization of the marriage.

b. The Honorable Court of Appeals committed a reversible error when it gave weight to the Marriage License No. 7054133 despite the fact that the same was not identified and offered as evidence during the trial, and was not the Marriage license number appearing on the face of the marriage contract.

c. The Honorable Court of Appeals committed a reversible error when it failed to apply the ruling laid down by this Honorable Court in the case of *Sy vs. Court of Appeals*. (G.R. No. 127263, 12 April 2000 [330 SCRA 550]).

d. The Honorable Court of Appeals committed a reversible error when it failed to relax the observance of procedural rules to protect and promote the substantial rights of the party litigants.[14]

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[12] *Id*. at 21.

[13] Sec. 44. *Entries in official records*. — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

[14] *Rollo*, p. 206.

We deny the petition.

Petitioner submits that at the precise time that his marriage with the respondent was celebrated, there was no marriage license because he and respondent just went to the Manila City Hall and dealt with a "fixer" who arranged everything for them.[15] The wedding took place at the stairs in Manila City Hall and not in CDCC BR Chapel where Rev. Aquilino Navarro who solemnized the marriage belongs.[16] He and respondent did not go to Carmona, Cavite, to apply for a marriage license. Assuming a marriage license from Carmona, Cavite, was issued to them, neither he nor the respondent was a resident of the place. The certification of the Municipal Civil Registrar of Carmona, Cavite, cannot be given weight because the certification states that "Marriage License number 7054133 was issued in favor of Mr. Restituto Alcantara and Miss Rosita Almario"[17] but their marriage contract bears the number 7054033 for their marriage license number.

The marriage involved herein having been solemnized on 8 December 1982, or prior to the effectivity of the Family Code, the applicable law to determine its validity is the Civil Code which was the law in effect at the time of its celebration.

A valid marriage license is a requisite of marriage under Article 53 of the Civil Code, the absence of which renders the marriage void *ab initio* pursuant to Article 80(3)[18] in relation to Article 58 of the same Code.[19]

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[15] *Id*. at 209.

[16] Records p. 1.

[17] *Id*. at 15-a.

[18] (3) Those solemnized without a marriage license, save marriages of exceptional character.

[19] Art. 58. Save marriages of an exceptional character authorized in Chapter 2 of this Title, but not those under Article 75, no marriage shall be solemnized without a license first being issued by the local civil registrar of the municipality where either contracting party habitually resides.

Article 53 of the Civil Code[20] which was the law applicable at the time of the marriage of the parties states:

Art. 53. No marriage shall be solemnized unless all these requisites are complied with:

(1) Legal capacity of the contracting parties;

(2) Their consent, freely given;

(3) Authority of the person performing the marriage; and

(4) A marriage license, except in a marriage of exceptional character.

The requirement and issuance of a marriage license is the State's demonstration of its involvement and participation in every marriage, in the maintenance of which the general public is interested.[21]

Petitioner cannot insist on the absence of a marriage license to impugn the validity of his marriage. The cases where the court considered the absence of a marriage license as a ground for considering the marriage void are clear-cut.

In *Republic of the Philippines v. Court of Appeals*,[22] the Local Civil Registrar issued a certification of due search and

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[20] Now Article 3 of the Family Code.

Art. 3. The formal requisites of marriage are:

(1) Authority of the solemnizing officer;

(2) A valid marriage license except in the cases provided for in Chapter 2 of this Title; and

(3) A marriage ceremony which takes place with the appearance of the contracting parties before the solemnizing officer and their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age.

Art. 4. The absence of any of the essential or formal requisites shall render the marriage *void ab initio,* except as stated in Article 35.

A defect in any of the essential requisites shall render the marriage voidable as provided in Article 45.

[21] *Niñal v. Bayadog,* 384 Phil. 661, 667-668 (2000).

[22] G.R. No.103047, 2 September 1994, 236 SCRA 257, 262.

inability to find a record or entry to the effect that Marriage License No. 3196182 was issued to the parties. The Court held that the certification of "due search and inability to find" a record or entry as to the purported marriage license, issued by the Civil Registrar of Pasig, enjoys probative value, he being the officer charged under the law to keep a record of all data relative to the issuance of a marriage license. Based on said certification, the Court held that there is absence of a marriage license that would render the marriage void *ab initio.*

In *Cariño v. Cariño*,[23] the Court considered the marriage of therein petitioner Susan Nicdao and the deceased Santiago S. Carino as void *ab initio.* The records reveal that the marriage contract of petitioner and the deceased bears no marriage license number and, as certified by the Local Civil Registrar of San Juan, Metro Manila, their office has no record of such marriage license. The court held that the certification issued by the local civil registrar is adequate to prove the non-issuance of the marriage license. Their marriage having been solemnized without the necessary marriage license and not being one of the marriages exempt from the marriage license requirement, the marriage of the petitioner and the deceased is undoubtedly void *ab initio.*

In *Sy v. Court of Appeals*,[24] the marriage license was issued on 17 September 1974, almost one year after the ceremony took place on 15 November 1973. The Court held that the ineluctable conclusion is that the marriage was indeed contracted without a marriage license.

In all these cases, there was clearly an absence of a marriage license which rendered the marriage void.

Clearly, from these cases, it can be deduced that to be considered void on the ground of absence of a marriage license, the law requires that the absence of such marriage license must be apparent on the marriage contract, or at the very least, supported by a certification from the local civil registrar that no such marriage

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[23] G.R. No.132529, 2 February 2001, 351 SCRA 127, 133.

[24] 386 Phil. 760, 769 (2000).

license was issued to the parties. In this case, the marriage contract between the petitioner and respondent reflects a marriage license number. A certification to this effect was also issued by the local civil registrar of Carmona, Cavite.[25] The certification moreover is precise in that it specifically identified the parties to whom the marriage license was issued, namely Restituto Alcantara and Rosita Almario, further validating the fact that a license was in fact issued to the parties herein.

The certification of Municipal Civil Registrar Macrino L. Diaz of Carmona, Cavite, reads:

> This is to certify that as per the registry Records of Marriage filed in this office, Marriage License No. 7054133 was issued in favor of Mr. Restituto Alcantara and Miss Rosita Almario on December 8, 1982.
>
> This Certification is being issued upon the request of Mrs. Rosita A. Alcantara for whatever legal purpose or intents it may serve.[26]

This certification enjoys the presumption that official duty has been regularly performed and the issuance of the marriage license was done in the regular conduct of official business.[27] The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. However, the presumption prevails until it is overcome by no less than clear and convincing evidence to the contrary. Thus, unless the presumption is rebutted, it becomes conclusive.

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[25] Article 70 of the Civil Code, now Article 25 Family Code, provides:

> The local civil registrar concerned shall enter all applications for marriage licenses filed with him in a register book strictly in the order in which the same shall be received. He shall enter in said register the names of the applicants, the dates on which the marriage license was issued, and such other data as may be necessary.

[26] Records, p. 15-a.

[27] Sec. 3. *Disputable presumptions*. — x x x

x x x x x x x x x

(m) That official duty has been regularly performed. (Rule 131, Rules of Court.)

Every reasonable intendment will be made in support of the presumption and, in case of doubt as to an officer's act being lawful or unlawful, construction should be in favor of its lawfulness.[28] Significantly, apart from these, petitioner, by counsel, admitted that a marriage license was, indeed, issued in Carmona, Cavite.[29]

Petitioner, in a faint attempt to demolish the probative value of the marriage license, claims that neither he nor respondent is a resident of Carmona, Cavite. Even then, we still hold that there is no sufficient basis to annul petitioner and respondent's marriage. Issuance of a marriage license in a city or municipality, not the residence of either of the contracting parties, and issuance of a marriage license despite the absence of publication or prior to the completion of the 10-day period for publication are considered mere irregularities that do not affect the validity of the marriage.[30] An irregularity in any of the formal requisites of marriage does not affect its validity but the party or parties responsible for the irregularity are civilly, criminally and administratively liable.[31]

Again, petitioner harps on the discrepancy between the marriage license number in the certification of the Municipal Civil Registrar, which states that the marriage license issued to the parties is No. 7054133, while the marriage contract states that the marriage license number of the parties is number 7054033. Once more, this argument fails to sway us. It is not impossible to assume that the same is a mere a typographical error, as a closer scrutiny of the marriage contract reveals the overlapping of the numbers 0 and 1, such that the marriage license may read either as 7054133 or 7054033. It therefore does not detract from our conclusion regarding the existence and issuance of said marriage license to the parties.

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[28] *Magsucang v. Balgos,* 446 Phil. 217, 224-225 (2003).

[29] TSN. 23 November 1999, p. 4.

[30] Sta. Maria Jr., *Persons and Family Relations Law*, p. 125.

[31] Sempio-Diy, *Handbook on the Family Code*, p. 8; *Moreno v. Bernabe,* 316 Phil. 161, 168 (1995).

Under the principle that he who comes to court must come with clean hands,[32] petitioner cannot pretend that he was not responsible or a party to the marriage celebration which he now insists took place without the requisite marriage license. Petitioner admitted that the civil marriage took place because he "initiated it."[33] Petitioner is an educated person. He is a mechanical engineer by profession. He knowingly and voluntarily went to the Manila City Hall and likewise, knowingly and voluntarily, went through a marriage ceremony. He cannot benefit from his action and be allowed to extricate himself from the marriage bond at his mere say-so when the situation is no longer palatable to his taste or suited to his lifestyle. We cannot countenance such effrontery. His attempt to make a mockery of the institution of marriage betrays his bad faith.[34]

Petitioner and respondent went through a marriage ceremony twice in a span of less than one year utilizing the same marriage license. There is no claim that he went through the second wedding ceremony in church under duress or with a gun to his head. Everything was executed without nary a whimper on the part of the petitioner.

In fact, for the second wedding of petitioner and respondent, they presented to the San Jose de Manuguit Church the marriage contract executed during the previous wedding ceremony before the Manila City Hall. This is confirmed in petitioner's testimony as follows —

WITNESS

> As I remember your honor, they asked us to get the necessary document prior to the wedding.

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[32] *Abacus Securities Corporation v. Ampil*, G.R. No. 160016, 27 February 2006, 483 SCRA 315, 337.

[33] TSN, 1 October 1998, p. 96.

[34] *Atienza v. Judge Brilliantes, Jr.*, 312 Phil. 939, 944 (1995).

COURT

> What particular document did the church asked you to produce? I am referring to the San Jose de Manuguit church.

WITNESS

> I don't remember your honor.

COURT

> Were you asked by the church to present a Marriage License?

WITNESS

> I think they asked us for documents and I said we have already a Marriage Contract and I don't know if it is good enough for the marriage and they accepted it your honor.

COURT

> In other words, you represented to the San Jose de Manuguit church that you have with you already a Marriage Contract?

WITNESS

> Yes your honor.

COURT

> That is why the San Jose de Manuguit church copied the same marriage License in the Marriage Contract issued which Marriage License is Number 7054033.

WITNESS

> Yes your honor.[35]

The logical conclusion is that petitioner was amenable and a willing participant to all that took place at that time. Obviously, the church ceremony was confirmatory of their civil marriage, thereby cleansing whatever irregularity or defect attended the civil wedding.[36]

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[35] TSN, 1 October 1998, pp. 33-35.

[36] *Ty v. Court of Appeals*, 399 Phil. 647, 662 (2003).

Likewise, the issue raised by petitioner — that they appeared before a "fixer" who arranged everything for them and who facilitated the ceremony before a certain Rev. Aquilino Navarro, a Minister of the Gospel of the CDCC Br Chapel — will not strengthen his posture. The authority of the officer or clergyman shown to have performed a marriage ceremony will be presumed in the absence of any showing to the contrary.[37] Moreover, the solemnizing officer is not duty-bound to investigate whether or not a marriage license has been duly and regularly issued by the local civil registrar. All the solemnizing officer needs to know is that the license has been issued by the competent official, and it may be presumed from the issuance of the license that said official has fulfilled the duty to ascertain whether the contracting parties had fulfilled the requirements of law.[38]

Semper praesumitur pro matrimonio. The presumption is always in favor of the validity of the marriage.[39] Every intendment of the law or fact leans toward the validity of the marriage bonds. The Courts look upon this presumption with great favor. It is not to be lightly repelled; on the contrary, the presumption is of great weight.

WHEREFORE, premises considered, the instant Petition is *DENIED* for lack of merit. The decision of the Court of Appeals dated 30 September 2004 affirming the decision of the Regional Trial Court, Branch 143 of Makati City, dated 14 February 2000, are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.,* concur.

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[37] *Goshen v. New Orleans*, 18 US 950.

[38] *People v. Janssen*, 54 Phil. 176, 180 (1929).

[39] *Carating-Siayngco v. Siayngco*, G.R. No. 158896, 27 October 2004, 441 SCRA 422, 436; *Sevilla v. Cardenas*, G.R. No. 167684, 31 July 2006, 497 SCRA 428, 443.

THIRD DIVISION

[G.R. No. 168096. August 28, 2007]

ALEX B. CARLOS, ABC SECURITY SERVICES, INC., and HONEST CARE JANITORIAL SERVICES, INC., *petitioners, vs.* **COURT OF APPEALS, PERFECTO P. PIZARRO, JOEL B. DOCE, GUILLERMO F. SOLOMON, FRANCISCO U. CORPUS and RONILLO GALLEGO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; THE *ONUS* OF PROVING THAT THE EMPLOYEE WAS NOT DISMISSED OR IF DISMISSED, THAT THE DISMISSAL WAS NOT ILLEGAL, RESTS ON THE EMPLOYER AND FAILURE TO DISCHARGE THE SAME WOULD MEAN THAT THE DISMISSAL IS NOT JUSTIFIED AND THEREFORE ILLEGAL.— Time and again we have ruled that in illegal dismissal cases like the present one, the *onus* of proving that the employee was not dismissed or if dismissed, that the dismissal was not illegal, rests on the employer and failure to discharge the same would mean that the dismissal is not justified and therefore illegal. Thus, petitioners must not only rely on the weakness of private respondents' evidence, but must stand on the merits of their own defense. A party alleging a critical fact must support his allegation with substantial evidence, for any decision based on unsubstantiated allegation and unreliable documentary evidence cannot stand, as it will offend due process.

2. ID.; ID.; PETITIONERS' COMPLETE RELIANCE ON THE ALLEGED RESIGNATION LETTERS TO SUPPORT THEIR CLAIM THAT PRIVATE RESPONDENTS VOLUNTARILY RESIGNED IS UNAVAILING, AS THE FILING OF THE COMPLAINT FOR ILLEGAL DISMISSAL IS INCONSISTENT WITH RESIGNATION.— Petitioners' complete reliance on the alleged resignation letters to support their claim that private respondents voluntarily resigned is unavailing, as the filing of the complaint for illegal dismissal is inconsistent with resignation. Resignation is the voluntary

act of employees who are compelled by personal reasons to dissociate themselves from their employment. It must be done with the intention of relinquishing an office, accompanied by the act of abandonment. It is illogical for private respondents to resign and then file a complaint for illegal dismissal. We find it highly unlikely that private respondents would just quit their jobs because they refused to take new assignments or attempted to avoid any monetary liability for the purported loss of bowling equipment, after enduring long years of working for the petitioners, notwithstanding the meager salary they were receiving and the lack of the appropriate labor and social benefits. It would have been equally senseless for private respondents to file a complaint seeking payment of their salaries and benefits, as mandated by law, then abandon subsequently and immediately their work by resigning.

3. ID.; ID.; THE GENERAL PAYROLL SUBMITTED BY PETITIONERS CANNOT BE GIVEN THE STATURE OF SUBSTANTIAL EVIDENCE; REASONS.— We agree with the NLRC that the General Payrolls submitted by petitioners cannot be given the stature of substantial evidence, not only because of evident inconsistencies of the entries therein with the factual circumstances surrounding their preparation, but also because there is a high possibility that they could have been manipulated, given that the General Payrolls are within the complete control and custody of the petitioners. We thus quote with approval the findings of the NLRC: Not only were the [herein private respondents] one in testifying that they did not receive the salaries stated in the payrolls submitted by the [herein petitioners] — they were able to show that the payrolls in question were a sham because [private respondent] Doce, whose signature appears on the payroll for January 1-15, 1990, could not have signed the same, since at that time he was assigned, not in Greenvalley Country Club, but in Ajinomoto. *Falsus in unius, falsus in omnibus*. The payrolls may not be given any weight. As a result, full weight must be accorded to [private respondents'] testimonies to the effect that they worked twelve hours daily, and were not paid overtime pay, 13th month pay and premium pay for Sundays and holidays. The above-quoted NLRC Decision is anchored on the substantial evidence culled from the records that swayed the reasonable mind of this Court to adopt its conclusion. Surely, petitioners cannot

expect this Court to sustain its stance and accord full evidentiary weight to the documentary and testimonial evidence they adduced in the absence of clear, convincing and untarnished proof to discharge the allegations of the private respondents. Having failed in this regard, we are constrained to sustain the findings of the NLRC as affirmed by the Court of Appeals in light of the time-honored *dictum* that should doubt exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter.

4. ID.; ID.; RIGHTS OF ILLEGALLY DISMISSED EMPLOYEES; MONETARY AWARDS GRANTED, UPHELD.— This Court finds no reason to disturb the monetary awards for backwages, separation pay, overtime pay, 13th month pay, premium pay, holiday and service incentive leave pays ordered by the NLRC and the Court of Appeals. In addition to the monetary awards, we find that the grant of backwages was likewise proper, with some modification as to the computation of separation pay. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to full back wages, inclusive of allowances, and to other benefits or their monetary equivalents computed from the time compensation was withheld up to the time of actual reinstatement. In explaining the rationale of this rule, we thus held in *De la Cruz v. National Labor Relations Commission* that: The provision gives meaning to the laborer's constitutional guaranty of security of tenure and finds solid basis on the universal principles of justice and equity. The grant of back wages allows the unjustly and illegally dismissed employee to recover from the employer that which the former lost by way of wages as a result of his dismissal from employment. Undoubtedly, private respondents are entitled to the payment of full backwages, that is, without deducting their earnings elsewhere during the periods of their illegal dismissal. However, where, as in this case, reinstatement is no longer feasible due to strained relations between the parties, separation pay equivalent to one month's salary for every year of service shall be granted.

5. ID.; ID.; PERIOD FOR COMPUTATION OF BACKWAGES AND SEPARATION PAY.— The question now arises: when is the period for computation of backwages and separation pay supposed to end? This question was squarely addressed in *Gaco*

v. National Labor Relations Commission where it was held that in such circumstance, the computation shall be up to the time of finality of this Court's decision. Apparently, the justification is that along with the finality of this Court's decision, the issue of illegal dismissal is finally laid to rest. The petitioners' insistence that they cannot be held liable for backwages during the period of the pendency of this action for they cannot be faulted for the delay of the disposition of this case cannot take precedence over the long-standing and well-entrenched jurisprudential rule. Parenthetically, the award for separation pay equivalent to one-month pay for every year of service shall be computed from the time the private respondents were illegally separated from their employment up to the finality of this Court's Decision in the instant petition.

6. ID.; ID.; PRIVILEGE OF A CORPORATE VEIL MAY BE USED ONLY FOR LEGITIMATE PURPOSES AND SHOULD BE PIERCED OR DISREGARDED WHEN IT IS UTILIZED TO COMMIT FRAUD, ILLEGALITY OR INEQUITY; CASE AT BAR.— Basic in corporation law is the principle that a corporation has a separate personality distinct from its stockholders and from other corporations to which it may be connected. This feature flows from the legal theory that a corporate entity is separate and distinct from its stockholders. However, the statutorily granted privilege of a corporate veil may be used only for legitimate purposes. On equitable considerations, the veil can be disregarded when it is utilized as a shield to commit fraud, illegality or inequity; defeat public convenience; confuse legitimate issues; or serve as a mere alter ego or business conduit of a person or an instrumentality, agency or adjunct of another corporation. The legal fiction of a separate corporate personality in those cited instances, for reasons of public policy and in the interest of justice, will be justifiably set aside. Petitioner Carlos admitted that he is not only the stockholder of petitioners ABC Security and Honest Care Janitorial, but the General Manager of said corporations as well. Being the General Manager of these corporations, it is assumed that petitioner Carlos possessed complete control of their affairs including matters pertaining to personnel management, which includes the rates of pay, hours of work, selection or engagement of the employees, manner of accomplishing their work, and their hiring and dismissal. It is

highly plausible then that petitioner Carlos had a hand not only in unilaterally terminating the private respondents' employment, but also in paying private respondents' wages below minimum and denying them the benefits accorded by the Labor Standard Law which includes, but is not limited to, the payment of night-shift differential, overtime pay, premium pay and 13th month pay. We cannot allow petitioner Carlos to hide behind the cloak of corporate fiction in order to evade liability. It bears repeating that the corporate veil must be pierced and disregarded when it is utilized to commit fraud, illegality or inequity.

7. ID.; ID.; PRIVATE RESPONDENTS HAD A CLEAR RIGHT TO MOVE FOR THE EXECUTION OF THE MONETARY AWARD OF THE NATIONAL LABOR RELATIONS COMMISSION PENDING APPEAL; THE RULE IS IN HARMONY WITH THE SOCIAL JUSTICE PRINCIPLE THAT POOR EMPLOYEES WHO HAVE BEEN DEPRIVED OF THEIR ONLY SOURCE OF LIVELIHOOD SHOULD BE PROVIDED THE MEANS TO SUPPORT THEIR FAMILIES.— Petitioners' contention that the execution of the NLRC Decision pending review of this case is detrimental to their interest is equally unavailing. The pertinent provisions of the 2005 Revised Rules of Procedure of the National Labor Relations Commission provides: Rule VII Proceeding Before the Commission x x x Section 14. *Finality of Decision of the Commission and Entry of Judgment.* — a) Finality of the Decisions, Resolutions or Orders of the Commission. — Except as provided in Section 9 of Rule X, the decisions, resolutions or orders of the Commission shall become final and executory after ten (10) calendar days from receipt thereof by the parties. b) Entry of Judgment. — Upon the expiration of the ten (10) calendar day period provided in paragraph (a) of this Section, the decision, resolution, or order shall be entered in a book of entries of judgment. The Executive Clerk or Deputy Executive Clerk shall consider the decision, resolution or order as final and executory after sixty (60) calendar days from the date of mailing in the absence of return cards, certifications from the post office, or other proof of service to parties. SECTION 15. MOTIONS FOR RECONSIDERATION. — Motion for reconsideration of any decision, resolution or order of the Commission shall not be entertained except when based on palpable or patent errors; provided that the motion is under

> oath and filed within ten (10) calendar days from receipt of decision, resolution or order, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party; and provided further, that only such motion from the same party shall be entertained. Should a motion for reconsideration be entertained pursuant to this section, the resolution shall be executory after ten (10) calendar days from receipt thereof. RULE XI Execution Proceedings x x x SECTION 10. *Effect of Petition for Certiorari on Execution.* — A petition for *certiorari* with the Court of Appeals or the Supreme Court **shall not stay the execution of the assailed decision unless a restraining order is issued by said courts**. (Emphasis supplied.) Prescinding from the above, the private respondents had a clear right to move for the execution of the monetary award of the NLRC pending appeal. The rule is in harmony with the social justice principle that poor employees who have been deprived of their only source of livelihood should be provided the means to support their families.

APPEARANCES OF COUNSEL

Rolando M. Castro for petitioners.
Julio F. Andres, Jr. for private respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, filed by petitioners Alex B. Carlos (Carlos), ABC Security Services, Inc. (ABC Security), and Honest Care Janitorial Services, Inc. (Honest Care Janitorial), seeking to reverse and set aside the Decision,[1] dated 31 August 2004 and the Resolution,[2] dated 9 May 2005 of the Court of Appeals in CA-G.R. SP No. 74458. The appellate court, in its assailed Decision and Resolution affirmed the Decision

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[1] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Godardo A. Jacinto and Jose C. Mendoza, concurring. *Rollo,* pp. 5-10.

[2] *Rollo,* p. 11.

dated 19 July 2002 and Resolution dated 30 August 2002 of the National Labor Relations Commission (NLRC) in NLRC NCR-06-04079-93 finding the petitioners jointly and severally liable for illegal dismissal, and ordering them to pay the private respondents backwages, separation pay, overtime pay, 13th month pay, premium pay for rest days and holidays, and service incentive leave pay. The dispositive portion of the assailed appellate court's Decision thus reads:

> WHEREFORE, for lack of merit, the instant petition is DENIED due course and, accordingly DISMISSED. Consequently, the decision dated July 19, 2002 of the National Labor Relations Commission is AFFIRMED *in toto*.[3]

The factual and procedural antecedents of the instant petition are as follows:

Petitioner ABC Security is a domestic corporation engaged in the business of job contracting by providing security services to its clientele. Petitioner Honest Care Janitorial is a domestic corporation likewise engaged in job contracting janitorial services. It appears that Honest Care Janitorial was consolidated with ABC Security and the consolidated corporations are represented in this action by its president, Alex B. Carlos.

Private respondents Perfecto P. Pizzaro (Pizzaro), Joel B. Doce (Doce), Francisco U. Corpus (Corpus) and Ronillo Gallego (Gallego) were employed by petitioner ABC Security as security guards and were assigned to Greenvalley Country Club at the time they were allegedly separated from employment. Private respondent Pizzaro was already with petitioner ABC Security since 1975, while private respondent Corpus was employed in 1990. Private respondents Doce and Gallego were both hired in 1987.[4] Private respondent Solomon was employed by Honest Care Janitorial as janitor supervisor since 1975 and was posted to different offices.[5]

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[3] *Id*. at 10.

[4] Records, p. 3.

[5] *Id*.

On 22 July 1993, private respondents filed a Joint/Consolidated Complaint-Affidavit[6] against petitioners praying for the payment of minimum wage, 13th month pay, holiday pay, service incentive leave, cost of living allowance and clothing allowance.

As shown by the Registry Return Receipt,[7] petitioners received a copy of the complaint and the corresponding summons on 16 July 1993. On the following day, private respondents Pizzaro, Solomon and Doce were allegedly relieved from their posts and were not given new assignments. Subsequently, private respondents Gallego and Corpus were also allegedly dismissed from employment.[8]

Private respondents claimed that every time they received their salaries, they were made to sign two sets of pay slips, one was written in ink while the other was written in pencil. These two pay slips showed the amount of salaries they actually received, which was below the minimum; but since the entries written on one of the pay slips they signed were in pencil, there was a possibility that petitioners could alter the said entries to make it appear that they were compliant with the labor laws.

For its part, petitioners averred that private respondents were not dismissed but voluntarily resigned from their respective employments as evidenced by the resignation letters bearing their signatures. Petitioners claimed that after private respondents' assignment to Greenvalley Country Club ended, they were reassigned to other posts as an exercise of management prerogative, but they refused to transfer and opted to resign. In addition, petitioners alleged that private respondents' resignations were prompted by the loss of bowling equipment in their custody, which they were obliged to pay.

Petitioners further asseverated that the private respondents were paid the minimum wage in accordance with the standards prescribed by the labor laws and received benefits including

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[6] *Id*. at 3-9.

[7] *Id*. at 18-19.

[8] *Id*. at 58.

the overtime pay, cost of living allowance, night differential pay, premium pay and 13th month pay as evidenced by the General Payroll of the company. Private respondents' signatures appeared on the said General Payroll, signifying that they were able to receive the wages and benefits in accordance with the standard set by law.

On 31 August 1999, the Labor Arbiter found that petitioners submitted overwhelming documentary evidence to refute the bare allegations of the private respondents and thereby dismissed the complaint for lack of merit. The dispositive part of the Labor Arbiter's Decision[9] reads:

> WHEREFORE, premises all considered, the instant complaint is dismissed for lack of merit.

On appeal, the NLRC reversed the Labor Arbiter's findings by giving more evidentiary weight to private respondents' testimonies in light of the factual circumstances of the case and thus declared that there was illegal dismissal. It appears that petitioners received a copy of private respondents' complaint on 16 July 1993, and shortly thereafter, private respondents were dismissed from employment. The decretal portion of the NLRC Decision[10] reads:

> WHEREFORE, the decision appealed from is hereby REVERSED.
>
> The [herein petitioners], who are hereby declared to be jointly and severally liable for the monetary awards, are hereby ordered to pay the [herein private respondents] the following: (1) backwages (computed on the basis of the applicable minimum wage rate on July 17, 1990) from the said date up to the date of the promulgation of this decision; (2) separation pay equivalent to one month's salary for every year of service from the date of hiring to the date of the promulgation of this Decision; and (3) for the unexpired 3-year period, overtime pay of four (4) hours daily, 13th month pay, premium pay for restdays and holidays, and service incentive leave pay.

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[9] *Id.* at 450-457.

[10] *Id.* at 502-506.

Both petitioners and private respondents moved for the reconsideration of the above-quoted NLRC Decision. Petitioners prayed for the NLRC to vacate its previous ruling finding them liable for illegal dismissal and for the monetary claims of the private respondents. On the other hand, private respondents prayed that, in addition to monetary awards, attorney's fees be also awarded in their favor.

In a Resolution[11] dated 30 August 2002, the NLRC denied the Motions for Reconsideration filed by the parties for lack of cogent reason or palpable error to disturb its earlier findings.

Aggrieved, petitioners elevated the matter to the Court of Appeals by filing a Petition for *Certiorari*, alleging that the NLRC abused its discretion in giving more credence to the empty allegations advanced by private respondents as against the overwhelming documentary evidence on record which was fully substantiated by the testimonial evidence they submitted during the proceedings before the Labor Arbiter.

On 31 August 2004, the Court of Appeals rendered a Decision affirming *in toto* the NLRC Decision. The appellate court declared that there was no grave abuse of discretion on the part of the NLRC in giving more evidentiary weight to the evidence submitted by the private respondents.

In addition, the Court of Appeals found that the defense posed by petitioners that private respondents were not dismissed from employment but voluntarily resigned therefrom, is not plausible in light of the prompt filing of the complaint for illegal dismissal. Indeed, resignation is inconsistent with the filing of action for illegal dismissal.

Similarly ill-fated was petitioners' Motion for Reconsideration which was denied by the Court of Appeals in its Resolution dated 9 May 2005.

Hence, this instant Petition for Review on *Certiorari* filed by petitioners assailing the foregoing Court of Appeals Decision and Resolution and raising the following issues:

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[11] *Id*. at 543-547.

I.

WHETHER OR NOT THE PRIVATE PETITIONER ALEX B. CARLOS SHOULD BE INCLUDED IN THE JUDGMENT.

II.

WHETHER OR NOT THE [PRIVATE RESPONDENTS] WERE IMPROPERLY PAID OF THEIR SALARIES AND WAGES AS WELL AS BENEFITS UNDER THE LAW.

III.

WHETHER OR NOT [PRIVATE RESPONDENTS] WERE ILLEGALLY DISMISSED BY [PETITIONERS].

IV.

WHETHER OR NOT THE WRIT OF EXECUTION ISSUED BY THE LABOR ARBITER AND IMPLEMENTED BY THE NLRC SHERIFF IS IMPROPER.

V.

WHETHER OR NOT THE PETITIONERS [RESPONDENTS] SHOULD BE ADJUDGED OF BACK WAGES DURING THE PENDENCY OF THE CASE.[12]

At the outset, we must stress that this Court is not a trier of facts and does not routinely undertake the re-examination of the evidence presented by the contending parties considering that, as general rule, the findings of facts of the Court of Appeals are conclusive and binding on the Court.[13] We have likewise held that factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdiction are generally accorded not only respect, but even finality, as long as they are supported by substantial evidence.[14]

Notably, the question of whether or not the private respondents were illegally dismissed from employment or voluntarily resigned

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[12] *Id*. at 87-88.

[13] *The Philippine American Life and General Insurance Co. v. Gramaje*, G.R. No. 156963, 11 November 2004, 442 SCRA 275, 283.

[14] *Limketkai Sons Milling, Inc. v. Llamera*, G.R. No. 152514, 12 July 2005, 463 SCRA 254, 260-261.

therefrom, as well as the issue of whether or not they are entitled to the monetary awards they are claiming, are factual matters that should not be delved into by this Court.

As borne by the records, it appears that there is a divergence in the findings of facts of the Labor Arbiter on one hand, from those of the NLRC, as affirmed by the Court of Appeals, on the other. For the purpose of clarity and intelligibility therefore, this Court will make a scrunity of the decisions of the labor officials and appellate court and ascertain whose findings are supported by evidence on record.

The Labor Arbiter found that the private respondents voluntarily resigned from employment, since they refused to be assigned to another work station. The new assignment effected by petitioners was in valid exercise of their management prerogative which should not take precedence over private respondents' personal interests. The NLRC and the Court of Appeals found otherwise.

In finding that private respondents were illegally dismissed, the Court of Appeals declared that the alleged resignations of the private respondents were inconsistent with their filing of the complaint for illegal dismissal. It decreed that it is illogical for private respondents to resign and then file a complaint for illegal dismissal thereafter.

For its part, the NLRC found that the confluence of the factual circumstances as to the date of the receipt by the petitioners of the copy of the complaint filed by private respondents, which was in close succession to the time when private respondents were relieved from their posts, leads to the reasonable conclusion that petitioners were indeed illegally dismissed in retaliation for their filing of a complaint for money claims.

We see merit in the findings and conclusions drawn by the NLRC and the Court of Appeals. They are more in accord with prudence, logic, common sense and sound judgment.

Time and again we have ruled that in illegal dismissal cases like the present one, the *onus* of proving that the employee was

not dismissed or if dismissed, that the dismissal was not illegal, rests on the employer and failure to discharge the same would mean that the dismissal is not justified and therefore illegal.[15]

Thus, petitioners must not only rely on the weakness of private respondents' evidence, but must stand on the merits of their own defense. A party alleging a critical fact must support his allegation with substantial evidence, for any decision based on unsubstantiated allegation and unreliable documentary evidence cannot stand, as it will offend due process.

Petitioners failed to discharge this burden.

Petitioners' complete reliance on the alleged resignation letters to support their claim that private respondents voluntarily resigned is unavailing, as the filing of the complaint for illegal dismissal is inconsistent with resignation.[16] Resignation is the voluntary act of employees who are compelled by personal reasons to dissociate themselves from their employment. It must be done with the intention of relinquishing an office, accompanied by the act of abandonment.[17]

It is illogical for private respondents to resign and then file a complaint for illegal dismissal. We find it highly unlikely that private respondents would just quit their jobs because they refused to take new assignments or attempted to avoid any monetary liability for the purported loss of bowling equipment, after enduring long years of working for the petitioners, notwithstanding the meager salary they were receiving and the lack of the appropriate labor and social benefits. It would have been equally senseless for private respondents to file a complaint seeking payment of their salaries and benefits, as mandated by law, then abandon subsequently and immediately their work by resigning.

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[15] *Great Southern Maritime Services Corporation v. Acuña*, G.R. No. 140189, 28 February 2005, 452 SCRA 422, 437.

[16] *Kay Products, Inc. v. Court of Appeals*, G.R. No. 162472, 28 July 2005, 464 SCRA 544, 554-557.

[17] *Domondon v. National Labor Relations Commission*, G.R. No. 154376, 30 September 2005, 471 SCRA 559, 568-569.

In the same breath, we agree with the NLRC that the General Payrolls submitted by petitioners cannot be given the stature of substantial evidence, not only because of evident inconsistencies of the entries therein with the factual circumstances surrounding their preparation, but also because there is a high possibility that they could have been manipulated, given that the General Payrolls are within the complete control and custody of the petitioners. We thus quote with approval the findings of the NLRC:

> Not only were the [herein private respondents] one in testifying that they did not receive the salaries stated in the payrolls submitted by the [herein petitioners] — they were able to show that the payrolls in question were a sham because [private respondent] Doce, whose signature appears on the payroll for January 1-15, 1990, could not have signed the same, since at that time he was assigned, not in Greenvalley Country Club, but in Ajinomoto. *Falsus in unius, falsus in omnibus*. The payrolls may not be given any weight. As a result, full weight must be accorded to [private respondents'] testimonies to the effect that they worked twelve hours daily, and were not paid overtime pay, 13th month pay and premium pay for Sundays and holidays.[18]

The above-quoted NLRC Decision is anchored on the substantial evidence culled from the records that swayed the reasonable mind of this Court to adopt its conclusion. Surely, petitioners cannot expect this Court to sustain its stance and accord full evidentiary weight to the documentary and testimonial evidence they adduced in the absence of clear, convincing and untarnished proof to discharge the allegations of the private respondents. Having failed in this regard, we are constrained to sustain the findings of the NLRC as affirmed by the Court of Appeals in light of the time-honored *dictum* that should doubt exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter.[19]

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[18] Records, p. 505.

[19] *Gu-Miro v. Adorable*, G.R. No. 160952, 20 August 2004, 437 SCRA 162, 168.

Accordingly, this Court finds no reason to disturb the monetary awards for backwages, separation pay, overtime pay, 13th month pay, premium pay, holiday and service incentive leave pays ordered by the NLRC and the Court of Appeals. In addition to the monetary awards, we find that the grant of backwages was likewise proper, with some modification as to the computation of separation pay.

An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to full back wages, inclusive of allowances, and to other benefits or their monetary equivalents computed from the time compensation was withheld up to the time of actual reinstatement.[20]

In explaining the rationale of this rule, we thus held in *De la Cruz v. National Labor Relations Commission* that[21]:

> The provision gives meaning to the laborer's constitutional guaranty of security of tenure and finds solid basis on the universal principles of justice and equity. The grant of back wages allows the unjustly and illegally dismissed employee to recover from the employer that which the former lost by way of wages as a result of his dismissal from employment.

Undoubtedly, private respondents are entitled to the payment of full backwages, that is, without deducting their earnings elsewhere during the periods of their illegal dismissal. However, where, as in this case, reinstatement is no longer feasible due to strained relations between the parties, separation pay equivalent to one month's salary for every year of service shall be granted.[22]

The question now arises: when is the period for computation of backwages and separation pay supposed to end? This question was squarely addressed in *Gaco v. National Labor Relations*

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[20] Article 279, Labor Code of the Philippines.

[21] 359 Phil. 316, 329 (1998).

[22] *Atlas Farms v. National Labor Relations Commission*, 440 Phil. 620, 635-636 (2002).

Commission[23] where it was held that in such circumstance, the computation shall be up to the time of finality of this Court's decision. Apparently, the justification is that along with the finality of this Court's decision, the issue of illegal dismissal is finally laid to rest.[24]

The petitioners' insistence that they cannot be held liable for backwages during the period of the pendency of this action for they cannot be faulted for the delay of the disposition of this case cannot take precedence over the long-standing and well-entrenched jurisprudential rule.

Parenthetically, the award for separation pay equivalent to one-month pay for every year of service shall be computed from the time the private respondents were illegally separated from their employment up to the finality of this Court's Decision in the instant petition.

Furthermore, petitioners argue that the veil of corporate fiction of petitioners ABC Security and Honest Care Janitorial should not be pierced, because said corporations have personalities separate and distinct from their stockholders and from each other.

The petitioners must concede that they raised this issue belatedly, not having done so before the labor tribunals, but only before the appellate court. Fundamental is the rule that theories and arguments not brought to the attention of the trial court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time on appeal. However, even if this argument were to be addressed at this time, the Court still finds no reason to uphold it.[25]

Basic in corporation law is the principle that a corporation has a separate personality distinct from its stockholders and

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[23] G.R. No. 104690, 23 February 1994, 230 SCRA 260, 269.

[24] *Surima v. National Labor Relations Commission*, 353 Phil. 461, 471 (1998).

[25] *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals*, 357 Phil. 631, 648 (1998).

from other corporations to which it may be connected. This feature flows from the legal theory that a corporate entity is separate and distinct from its stockholders.[26]

However, the statutorily granted privilege of a corporate veil may be used only for legitimate purposes. On equitable considerations, the veil can be disregarded when it is utilized as a shield to commit fraud, illegality or inequity; defeat public convenience; confuse legitimate issues; or serve as a mere alter ego or business conduit of a person or an instrumentality, agency or adjunct of another corporation. The legal fiction of a separate corporate personality in those cited instances, for reasons of public policy and in the interest of justice, will be justifiably set aside.[27]

Petitioner Carlos admitted that he is not only the stockholder of petitioners ABC Security and Honest Care Janitorial, but the General Manager of said corporations as well. Being the General Manager of these corporations, it is assumed that petitioner Carlos possessed complete control of their affairs including matters pertaining to personnel management, which includes the rates of pay, hours of work, selection or engagement of the employees, manner of accomplishing their work, and their hiring and dismissal. It is highly plausible then that petitioner Carlos had a hand not only in unilaterally terminating the private respondents' employment, but also in paying private respondents' wages below minimum and denying them the benefits accorded by the Labor Standard Law which includes, but is not limited to, the payment of night-shift differential, overtime pay, premium pay and 13th month pay.

We cannot allow petitioner Carlos to hide behind the cloak of corporate fiction in order to evade liability. It bears repeating that the corporate veil must be pierced and disregarded when it is utilized to commit fraud, illegality or inequity.

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[26] *Id.* at 644.

[27] *Francisco Motors Corporation v. Court of Appeals*, 368 Phil. 374, 384-385 (1999).

Lastly, petitioners' contention that the execution of the NLRC Decision pending review of this case is detrimental to their interest is equally unavailing.

The pertinent provisions of the 2005 Revised Rules of Procedure of the National Labor Relations Commission provides:

Rule VII
Proceeding Before the Commission

x x x x x x x x x

Section 14. *Finality of Decision of the Commission and Entry of Judgment. —*

a) Finality of the Decisions, Resolutions or Orders of the Commission. — Except as provided in Section 9 of Rule X, the decisions, resolutions or orders of the Commission shall become final and executory after ten (10) calendar days from receipt thereof by the parties.

b) Entry of Judgment. — Upon the expiration of the ten (10) calendar day period provided in paragraph (a) of this Section, the decision, resolution, or order shall be entered in a book of entries of judgment.

The Executive Clerk or Deputy Executive Clerk shall consider the decision, resolution or order as final and executory after sixty (60) calendar days from the date of mailing in the absence of return cards, certifications from the post office, or other proof of service to parties.

SECTION 15. MOTIONS FOR RECONSIDERATION. — Motion for reconsideration of any decision, resolution or order of the Commission shall not be entertained except when based on palpable or patent errors; provided that the motion is under oath and filed within ten (10) calendar days from receipt of decision, resolution or order, with proof of service that a copy of the same has been furnished, within the reglementary period, the adverse party; and provided further, that only such motion from the same party shall be entertained.

Should a motion for reconsideration be entertained pursuant to this section, the resolution shall be executory after ten (10) calendar days from receipt thereof.

RULE XI

Execution Proceedings

x x x x x x x x x

SECTION 10. *Effect of Petition for Certiorari on Execution.* — A petition for *certiorari* with the Court of Appeals or the Supreme Court **shall not stay the execution of the assailed decision unless a restraining order is issued by said courts**. (Emphasis supplied.)

Prescinding from the above, the private respondents had a clear right to move for the execution of the monetary award of the NLRC pending appeal. The rule is in harmony with the social justice principle that poor employees who have been deprived of their only source of livelihood should be provided the means to support their families.

Having said that, we need not further press that the proposition of the petitioners assailing the order granting execution pending appeal of the NLRC Decision should fail.

WHEREFORE, premises considered, the instant Petition is *DENIED*. The Court of Appeals Decision dated 31 August 2004 and its Resolution dated 9 May 2005 in CA-G.R. SP No. 74458 are hereby *AFFIRMED* with *MODIFICATION* as to the amount of backwages which shall be computed from the date of the private respondents' dismissal up to the finality of this judgment. Costs against the petitioners.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 169079. August 28, 2007]

FRANCISCO RAYOS, *petitioner, vs.* **ATTY. PONCIANO G. HERNANDEZ,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; ADMINISTRATIVE COMPLAINTS AGAINST LAWYERS; THE COURT MAY REFRAIN FROM IMPOSING THE ACTUAL PENALTIES IN THE PRESENCE OF MITIGATING FACTORS; PENALTY OF SUSPENSION PREVIOUSLY METED MODIFIED TO IMPOSITION OF A FINE IN LIGHT OF RESPONDENT'S SINCERE PLEA FOR COMPASSION AND THE PRESENCE OF MITIGATING CIRCUMSTANCES WHICH PERSUADED THE COURT TO EXHIBIT A DEGREE OF LENIENCY.— In light of respondent's sincere plea for compassion from the Court, we take a second look at the penalty imposed. In several administrative cases, the Court has refrained from imposing the actual penalties in the presence of mitigating factors. Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the Court's determination of the imposable penalty. Applying the rationale in a catena of cases, it is appropriate for this Court, in the case at bar, to consider the following circumstances, to wit: a) respondent had spent 15 years in defending petitioner's cause from the trial court to the Supreme Court; b) his efforts at defending their cause were palpably real, complete, and total, with utmost devotion and zealousness; c) respondent's advanced age; d) this is the first time that respondent has been found administratively liable per available record; and e) respondent's good faith in retaining what he sincerely believed to be his contingent fee. As can be gleaned from the facts, petitioner and respondent entered into a contingent fee arrangement whereby the latter, as counsel, will be paid for the legal services only if he secures a judgment favorable for his client. When

respondent retained the amount of ₱557,961.21 and ₱159,120.00 out of the ₱1,219,920.00, he did so believing in good faith that it was a reasonable payment for the contingent fees which he was entitled to retain. It cannot be ignored that respondent indeed successfully defended petitioner's case in Civil Case No. SM-951. We are persuaded to exhibit a degree of leniency towards the respondent. We, thus, maintain a more compassionate approach.

APPEARANCES OF COUNSEL

Law Firm of Lapeña and Associates for petitioner.
Dela Merced Dela Merced and Dela Merced for respondent.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

Before Us is a Motion for Reconsideration dated 16 March 2007 filed by respondent Atty. Ponciano G. Hernandez, seeking a modification of the Decision dated 12 February 2007.

The dispositive portion of the Decision states:

WHEREFORE the Court Resolves that:

1. Respondent is guilty of violation of the attorney's oath and of serious professional misconduct and shall be **SUSPENDED** from the practice of law for six (6) months and **WARNED** that repetition of the same or similar offense will be dealt with more severely;

2. Respondent is entitled to attorney's fees in the amount equivalent to **THIRTY-FIVE PERCENT (35%)** of the total amount awarded[1] to petitioner in Civil Case No. SM-951; and

3. Respondent is to **return** the amount of Two Hundred Ninety Thousand One Hundred Nine Pesos and Twenty-One Centavos

[1] ₱1,060,800.00 as damages and ₱159,120.00 (15% of ₱1,060,800.00) as attorney's fees or a total of ₱1,219,920.00.

> (₱290,109.21),[2] which he retained in excess of what we herein declared as fair and reasonable attorney's fees, plus legal interest from date of finality of this judgment until full payment thereof.

Let copies of this Decision be entered in the personal record of respondent as member of the Bar and furnished the Office of the Bar Confidant, the IBP, and the Court Administrator for circulation to all courts of the country.

Respondent received a copy of the Decision on 5 March 2007. Hence, the Motion for Reconsideration was filed within the reglementary period provided under the Rules.

Respondent begs the compassionate understanding and magnanimity of the Honorable Court for some leniency regarding his unintentional transgression and prays that the penalty of suspension of six months imposed upon him be reduced to a fine, invoking his almost 15 years of patient, devoted, complete and successful professional services rendered to petitioner; for the bad faith of the latter in dismissing him as counsel without justifiable cause; and his good faith in retaining the money "contingently" with the view of winning petitioner's cause.

In light of respondent's sincere plea for compassion from the Court, we take a second look at the penalty imposed.

In several administrative cases, the Court has refrained from imposing the actual penalties in the presence of mitigating factors. Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the Court's determination of the imposable penalty.[3]

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[2] 35% of ₱1,219,920.00 is ₱426,972.00. Since respondent retained ₱557,961.21 and ₱159,120.00 and 35% of ₱1,219,920.00 is ₱ 426,972.00, respondent will return the difference of ₱290,109.21 to petitioner. The amount of ₱557,961.21 and ₱159,120.00 retained by respondent is actually 59% of the amount due to petitioner in Civil Case No. SM-951.

[3] In the case of *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division*, (A.M. No. 2001-7-SC & 2001-

Applying the rationale in the aforesaid catena of cases, it is appropriate for this Court, in the case at bar, to consider the following circumstances, to wit:

a) respondent had spent 15 years in defending petitioner's cause from the trial court to the Supreme Court;

8-SC, 22 July 2005, 464 SCRA 1) where therein respondents were found guilty of dishonesty, the Court, for humanitarian considerations, in addition to various mitigating circumstances in respondents' favor, meted out a penalty of six months suspension instead of imposing the most severe penalty of dismissal from service. In imposing a lower penalty, the court for humanitarian considerations, took note of various mitigating circumstances in respondent's favor, to wit: (1) for respondent ANGELITA C. ESMERIO: her continued long years of service in the judiciary amounting to 38 years; her faithful observance of office rules and regulations from the time she submitted her explanation-letter up to the present; her acknowledgment of her infractions and feelings of remorse; her retirement on 31 May 2005; and her family circumstances (*i.e.*, support of a 73-year old maiden aunt and a 7-year old adopted girl); and (2) for ELIZABETH L. TING: her continued long years of service in the judiciary amounting to 21 years; her acknowledgment of her infractions and feelings of remorse; the importance and complexity of the nature of her duties (*i.e.*, the preparation of the drafts of the Minutes of the Agenda); the fact that she stays well beyond office hours in order to finish her duties; and her Performance Rating has always been "Very Satisfactory" and her total score of 42 points is the highest among the employees of the Third Division of the Court.

In *Reyes-Domingo v. Morales* (396 Phil. 150,165-166), the branch clerk of court, Miguel C. Morales, who was found guilty of dishonesty in not reflecting the correct time in his Daily Time Record (DTR) was merely imposed a penalty of ₱5,000.00. In this case, respondent did not indicate his absences on 10 th and 13 th May 1996, although he was at Katarungan Village, interfering with the construction of the Sports Complex therein, and at the Department of Environment and Natural Resources-National Capital Region, pursuing his personal business.

In *Office of the Court Administrator v. Saa* (457 Phil. 25 [2003]) the clerk of court of the Municipal Circuit Trial Court of Camarines Norte, Rolando Saa, who made it appear in his DTR that he was present in court on the 5th and 6th June 1997, when all the while, he was attending hearings of his own case in Quezon City, was fined ₱5,000.00.

The Court in In *Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D.J. Razon, Cash Clerk Joel M. Magtuloy and Utility Worker Tiburcio Morales, MTC-OCC, Guagua, Pampanga* (A.M. No. P-06-2243, 26 September 2006, 503 SCRA 52, 62-63)

b) his efforts at defending their cause were palpably real, complete, and total, with utmost devotion and zealousness;

c) respondent's advanced age;

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deemed it proper to impose a fine of ₱2,000.00 on Raquel Razon for making it appear that she was present in the office on 7 September 2004. The Court further noted that Razon readily acknowledged her offense, offered sincere apologies, and promised not to do it again. The fact that it was only her second administrative case in her 27 years in government service was also in her favor. She was previously charged with discourtesy, insubordination and violation of office regulation and procedure in A.M. No. P-97-89, but the same was dismissed on 10 October 1989. In the case of *Floria v. Sunga* (420 Phil. 637, 651 [2001]), the Court tempered justice with mercy by imposing a fine of ₱10,000.00, considering the following circumstances: the administrative offense of immorality charged against Alda C. Floria took place many years ago; she has been employed in the Court of Appeals for a period of 29 years; it was the first time that she was being found administratively liable per available record; and her children were innocent victims, and dismissing or suspending their mother from the service would be a heavy toll on them, a punishment they did not deserve.

In the case of *Concerned Taxpayer v. Doblada, Jr.* (A.M. No. P-99-1342, 20 September 2005, 470 SCRA 218), the penalty of dismissal was reduced by the Court to six months suspension without pay for the attendant equitable and humanitarian considerations therein: Norberto V. Doblada, Jr. had spent 34 years of his life in government service and that he was about to retire; this was the first time that he was found administratively liable per available record; Doblada, Jr. and his wife were suffering from various illnesses that required constant medication, and that they were relying on Doblada's retirement benefits to augment their finances and to meet their medical bills and expenses.

In *Civil Service Commission v. Belagan* (G.R. No. 132164, 19 October 2004, 440 SCRA 578, 601), Allyson Belagan, who was charged with sexual harassment and found guilty of Grave Misconduct, was meted out the penalty of suspension from office without pay for one year, instead of the heavier penalty of dismissal, given his length of service, unblemished record in the past, and numerous awards.

In *Vidallon-Magtolis v. Salud* (A.M. No. CA-05-20-P, 9 September 2005, 469 SCRA 439, 469-470), Cielito M. Salud, a Court of Appeals personnel, was found guilty of inefficiency and gross misconduct, punishable by dismissal from service even for the first time offenses. However, considering that Salud had not been previously charged nor administratively sanctioned, the Court instead imposed the penalty of suspension for one year and six months.

d) this is the first time that respondent has been found administratively liable per available record; and

e) respondent's good faith in retaining what he sincerely believed to be his contingent fee. As can be gleaned from the facts, petitioner and respondent entered into a contingent fee arrangement whereby the latter, as counsel, will be paid for the legal services only if he secures a judgment favorable for his client. When respondent retained the amount of ₱557,961.21

In *De Guzman, Jr. v. Mendoza* (A.M. No. P-03-1693, 17 March 2005, 453 SCRA 545, 574), sheriff Antonio O. Mendoza was charged with conniving with another in causing the issuance of an *alias* writ of execution and profiting on the rentals collected from the tenants of the subject property. Mendoza was subsequently found guilty of Grave Misconduct, Dishonesty and Conduct Prejudicial to the Best Interest of the Service; but instead of imposing the penalty of dismissal, the Court meted out the penalty of suspension for one year without pay, it appearing that it was Mendoza's first offense.

In the case of *Buntag v. Pana* (G.R. No. 145564, 24 March 2006, 485 SCRA 302), the Court affirmed the findings of the Court of Appeals and the Ombudsman when they took into consideration Corazon G. Buntag's length of service in the government and the fact that this was her first infraction. Thus, the penalty of dismissal for Falsification of Official Document was reduced to merely one year suspension.

In *Geocadin v. Hon. Remigio Peña* (195 Phil. 344 [1981]), Judge Remigio Reña was found guilty of knowingly rendering manifestly unjust orders, partiality, and drunkenness. The Supreme Court agreed that respondent committed acts unbefitting an occupant of a judicial office. However, in view of his serious illness which prevented him from presenting evidence other than his comment/ answer to the complaint against him and the constitutional presumption of innocence in his favor Judge Remigio Peña was merely reprimanded and made to suffer the forfeiture of three months of his salary, to be deducted from whatever retirement benefits he may be entitled to under existing laws.

In *Re: Delayed Remittance of Collections of Teresita Lydia Odtuha* (445 Phil. 220 [2003]), a court legal researcher, Lydia Odtuha of the Regional Trial Court of Pasay City was found guilty of serious misconduct in office for failing to remit a ₱12,705.00 fund collection to the proper custodian for three years and doing so only after several demands or directives from the clerks of court and from the Office of the Court Administrator (OCA). For humanitarian reasons, the Court found dismissal from the service to be too harsh considering that Odtuhan subsequently remitted the entire amount and she was afflicted with ovarian cancer. She was imposed a fine ₱10,000.00, with a stern warning that a repetition of the same or a similar act will be dealt with more severely.

and ₱159,120.00 out of the ₱1,219,920.00, he did so believing in good faith that it was a reasonable payment for the contingent fees which he was entitled to retain. It cannot be ignored that

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In *Sarenas-Ochagabia v. Atty. Balmes Ocampos* (466 Phil. 1 [2004]), Atty. Balmes Ocampos failed to file for his clients an appellants' brief and the necessary Manifestation and Motion with the Court of Appeals. The Court noted that for the said offense, it had imposed penalties ranging from reprimand, warning with fine, suspension and, in aggravated cases, disbarment. **Owing to his advanced age,** the Court imposed on Atty. Balmes Ocampos the penalty of suspension for three months with a warning that a repetition thereof will be dealt with more severely.

In *Re: Misappropriation of the Judiciary Fund Collections By Ms. Juliet C. Banag* (465 Phil. 24 [2004]), Juliet C. Banag, the Clerk of Court of Municipal Trial Court of Plaridel, Bulacan, who was delayed in the remittance of her cash collections which constituting gross neglect of duty under the Civil Service Law. However, the Court took into consideration the lack of bad faith and the fact that Banag fully remitted all her collections and that she had no outstanding accountabilities. Because of these attendant circumstances and for humanitarian considerations, the Court merely imposed a fine of ₱20,000.00 and a stern warning that a repetition of the same or similar acts shall be dealt with more severely.

In Re: *Imposition of Corresponding Penalties For Habitual Tardiness Committed During the First and Second Semester of 2003 by the Following Employees of this Court: Gerardo H. Alumbro, et al.* (A.M. No. 00-06-09-SC, 16 March 2004, 425 SCRA 508, 515), Susan Belando, Human Resource Management Assistant of the Employees Welfare and Benefit Division, OCA, was found to be habitually tardy for the third time. A strict application of the rules would have justified her dismissal from the service. However, for humanitarian reasons, she was only meted the penalty of suspension for 30 days with a warning that she will be dismissed from the service if she will commit the same offense in the future. She, subsequently, then incurred habitual tardiness for the fourth time. However, again, for humanitarian reasons, the Court found the penalty of suspension for three months without pay to be appropriate.

In *Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the First and Second Semesters of 2003 by the following employees of this Court: Gerardo H. Alumbro, et al., Renato Labay, Utility Worker II, Medical and Dental Services and Albert Semilla, Clerk III, Office of the Chief Attorney,* they committed tardiness for the third time and, for which they were administratively held liable which should have caused them dismissal but instead a penalty of suspension for 10 days without pay, with a warning that a repetition of the same or a similar offense will warrant the imposition of a more severe penalty.

respondent indeed successfully defended petitioner's case in Civil Case No. SM-951.

We are persuaded to exhibit a degree of leniency towards the respondent. We, thus, maintain a more compassionate approach.

WHEREFORE, the respondent's Motion for Reconsideration is partly *GRANTED*. The Decision dated 12 February 2007 is *MODIFIED* in that the suspension of six months is *DELETED*, and in lieu thereof a fine of ₱20,000.00 is *IMPOSED*, effective from date of receipt of herein Resolution, with warning that repetition of the same or similar acts will be dealt with more severely. The said Decision is *AFFIRMED* in all other respects.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, and *Nachura, JJ.,* concur.

Reyes, J., no part. Did not participate in the original Decision.

THIRD DIVISION

[G.R. No. 169356. August 28, 2007]

CARMEN FANGONIL-HERRERA, *petitioner, vs.* **TOMAS FANGONIL, PURA FANGONIL TINO, MARINA FANGONIL, MARIANO FANGONIL, MILAGROS FANGONIL-LAYUG and VICTORIA FANGONIL ESTOQUE,**[1] *respondents.*

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[1] The Court of Appeals was removed from the original title of the case in compliance with the requirements under Rule 45 of the Revised Rules of Court.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; WHERE THE COURT OF APPEALS IS IMPLEADED AS RESPONDENT IN THE PETITION FOR REVIEW, AND THE PETITION CLEARLY INVOKES RULE 45, THE COURT OF APPEALS IS MERELY OMITTED FROM THE TITLE OF THE CASE PURSUANT TO SECTION 4(a) OF RULE 45 OF THE RULES OF COURT.— With respect to procedural matters, respondents argue that the petition is a combination of an appeal via a petition for review on *certiorari* under Rule 45 and an independent civil action of *certiorari* under Rule 65 of the Revised Rules of Court. This is based on the observation that petitioner impleaded the Court of Appeals as one of the respondents while at the same time raising issues of fact alone. Respondents posit that these are indicative of an "intention to categorize the petition to be under both Rules 65 and 45 of the Rules of Court" and should be dismissed outright. Although petitioner erroneously impleaded the Court of Appeals as one of the respondents, petitioner clearly and rightly invoked Rule 45 of the Revised Rules of Court as the remedy availed of. As we held in *National Irrigation Administration v. Court of Appeals*, the appeal from a final disposition of the Court of Appeals is a petition for review under Rule 45 and not a special civil action under Rule 65 of the Revised Rules of Court. Under Rule 45 of the Revised Rules of Court, decisions, final orders or resolutions of the Court of Appeals, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. The correct procedure is not to implead the Court of Appeals. This Court has ruled in several instances that where the Court of Appeals is impleaded as respondent in the Petition for Review, and the petition clearly invokes Rule 45, the Court of Appeals is merely omitted from the title of the case pursuant to Sec. 4(a) of Rule 45 of the Revised Rules of Court. The Court of Appeals is herein omitted from the title of the case, as a liberal interpretation of the rules on technicality, in pursuit of the ends of justice and equity.

2. ID.; ID.; ID.; ONLY QUESTIONS OF LAW MAY BE SET FORTH IN AN APPEAL BY *CERTIORARI* TO THE

SUPREME COURT; INSTANT PETITION CLEARLY RAISES ISSUES OF FACT.— Under Section 1, Rule 45, providing for appeals by *certiorari* before the Supreme Court, it is clearly enunciated that only questions of law may be set forth. Questions of fact may not be raised unless the case falls under any of the following exceptions: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record. In this particular instance, we are clearly faced with issues of fact. A question of fact is involved when the doubt or difference arises as to the truth or falsehood of alleged facts or when the query necessarily invites calibration of the whole evidence, considering mainly the credibility of witnesses, existence and relevance of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation. We find that the only questions to be resolved are the following: (a) whether or not the respondent court gravely erred in affirming the partition of parcel 1 in accordance with the findings of the trial court; and (b) whether or not the respondent court gravely erred in not finding that exclusive ownership of the properties in question has been vested in petitioner.

3. ID.; ID.; ID.; FACTUAL MATTERS ARE BEYOND THE JURISDICTION OF THE SUPREME COURT UNLESS THERE ARE EXCEPTING CIRCUMSTANCES.— In the exercise of the Supreme Court's power of review, this Court is not a trier of facts, and unless there are excepting circumstances, it does not routinely undertake the re-examination of the evidence presented by the contending parties

during the trial of the case. Factual matters are beyond the jurisdiction of this Court. In petitions for review on *certiorari* under Rule 45 of the Revised Rules of Court, this Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are devoid of support by the evidence on record or the assailed judgment is based on a misapprehension of facts. As held in *Philippine Airlines, Inc. v. Court of Appeals,* factual findings of the Court of Appeals are conclusive on the parties and carry even more weight when the said court affirms the factual findings of the trial court. Absent any palpable error or arbitrariness, the findings of fact of the lower court are conclusive. On this ground alone, the appeal warrants a dismissal.

4. ID.; EVIDENCE; JUDICIAL ADMISSIONS; PETITIONER'S CATEGORICAL ADMISSION THAT THE AMOUNT REFERRED TO IN THE EXTRAJUDICIAL SETTLEMENT REPRESENTS THE PERSONAL MONEY SHE USED FOR THE REDEMPTION OF PARCELS 6 AND 7 CLEARLY SHOWS THAT SHE IS A MERE CREDITOR OF THE ESTATE AND NOT THE OWNER OF THE SUBJECT PARCELS OF LAND.— Petitioner and respondents executed an extrajudicial settlement dated 14 November 1983, wherein it was stipulated that the Fangonil spouses died intestate, leaving 7 parcels of land in their names. Parcels 6 and 7 were included. It further stipulated that petitioner and her brother Tomas (now deceased) are the only creditors of the estate, categorically stating petitioner is a creditor of the estate in the amount of ₱8,700.00. This amount represents what was paid for by her for the repurchase and release from the mortgage lien of parcels 6 and 7 in the 1950s. Pertinent records of the case reveal that the amount actually advanced for the repurchase was ₱6,100.00. The aforementioned extrajudicial settlement, which was later on submitted to the RTC for consideration in the judicial partition, taken together with petitioner's comment in the same proceedings, are clear and categorical evidences that the transaction between petitioner and her parents was a mere loan. Under this extrajudicial settlement, respondents and petitioner included parcels 6 and 7 as part of the estate of their deceased parents. It is particularly stated therein that petitioner and her brother Tomas are the only creditors of the estate. Although petitioner's comment allegedly maintained her claims on parcels

6 and 7, she categorically admitted therein that the amount totaling ₱8,700.00 referred to in the extrajudicial settlement represents the personal money she used for the redemption of parcels 6 and 7. Thus, petitioner is a mere creditor of the estate and not an owner of parcels 6 and 7. An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake, or that no such admission was made. We find that petitioner's affidavit retracting her acquiescence to the stipulation on parcels 6 and 7 in the extrajudicial settlement deserves scant consideration for being self-serving. Absent positive proof that the earlier statements made by petitioner resulted from palpable mistake, retractions thereof, especially if unsupported by evidence, lack credence.

5. CIVIL LAW; PROPERTY; OWNERSHIP; CO-OWNERSHIP; PETITIONER'S POSSESSION AND ENJOYMENT OF THE FRUITS OF THE PROPERTY WAS BY MERE TOLERANCE OF THE CO-OWNERS; ALTHOUGH REAL ESTATE TAX RECEIPTS INDICATING PAYMENTS OF REALTY TAX AND POSSESSION OF THE PARCELS ARE INDICIA OF OWNERSHIP, SUCH ARE NOT CONCLUSIVE PROOF OF OWNERSHIP IN THE PRESENCE OF OTHER CIRCUMSTANCES AND EVIDENCE SHOWING OTHERWISE.— After a thorough examination of the cases cited by petitioner and a painstaking review of the case records, this Court cannot give credence to petitioner's stance. The scales of justice overwhelmingly tilt in favor of respondents and against petitioner's assertion that exclusive ownership of parcels 6 and 7 has vested in her. The fact that it was petitioner's money that was used for the repurchase of the properties does not make her the owner thereof, in the absence of convincing proof that would indicate such. This is more so if other evidence was adduced to show such is not the case. Neither will petitioner's exercise of acts of ownership over the properties bring us to that conclusion. It is evident that petitioner was allowed to maintain possession and enjoy the fruits of the property only by the mere tolerance of the other co-owners. Moreover, although we recognize that real estate tax receipts indicating payment of realty tax and possession of the parcels are *indicia* of ownership, such are not conclusive proof of ownership, in the presence of other

circumstances and evidence showing otherwise. As a matter of fact, although the receipts indicate that the real estate tax payments for parcels 6 and 7 for the years following their repurchase and release were made by petitioner, the receipts also state that the declared owner of the properties is still the decedent Fabian Fangonil.

6. ID.; ID.; PRESCRIPTION; PETITIONER CANNOT CLAIM ADVERSE POSSESSION IN THE CONCEPT OF AN OWNER WHERE SHE VOLUNTARILY EXECUTED DOCUMENTS STATING THAT SHE WAS A MERE CREDITOR AND/OR CO-OWNER; NO CLEAR AND EVIDENT REPUDIATION OF THE CO-OWNERSHIP WAS EFFECTED WHICH UNEQUIVOCABLY CONSTITUTED AN OUSTER OR DEPRIVATION OF THE RIGHTS OF THE OTHER CO-OWNERS.— As to the issue of prescription, petitioner's possession of parcels 6 and 7 did not ripen into sole and exclusive ownership thereof. First, prescription applies to adverse, open, continuous, and exclusive possession. In order that a co-owner's possession may be deemed adverse to the other co-owners, the following elements must concur: (1) that he has performed unequivocal acts of repudiation amounting to an ouster of the other co-owners; (2) that such positive acts of repudiation have been made known to the other co-owners; and (3) that the evidence thereon must be clear and convincing. Clearly, petitioner cannot claim adverse possession in the concept of an owner where she voluntarily executed documents stating that she was a mere creditor and/or co-owner. Mere silent possession by a co-owner; his receipt of rents, fruits or profits from the property; his erection of buildings and fences and the planting of trees thereon; and the payment of land taxes cannot serve as proofs of exclusive ownership, if it is not borne out by clear and convincing evidence that he exercised acts of possession which unequivocably constituted an ouster or deprivation of the rights of the other co-owners. In this case, we find that petitioner effected no clear and evident repudiation of the co-ownership. Petitioner's only act of repudiation of the co-ownership was when she refused to honor the extrajudicial settlement in 1994. Alternatively, possession by a co-owner is like that of a trustee and shall not be regarded as adverse to the other co-owners, but in fact as beneficial to all of them. A co-ownership is a form of trust, with each owner being a trustee for each other. Mere actual possession by one

will not give rise to the inference that the possession was adverse because a co-owner is, after all, entitled to possession of the property. Thus, as a rule, prescription does not run in favor of a co-heir or co-owner as long as he expressly or impliedly recognizes the co-ownership; and he cannot acquire by prescription the share of the other co-owners, absent a clear repudiation of the co-ownership. An action to demand partition among co-owners is imprescriptible, and each co-owner may demand at any time the partition of the common property.

7. ID.; ID.; ID.; PRINCIPLE OF LACHES; NOT APPLICABLE IN CASE AT BAR.— We find no sufficient cause to apply the principle of laches, it being a principle grounded on equity. Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it. Several circumstances must be present. First, there should exist conduct on the part of the defendant or one under whom he claims, giving rise to the situation of which complaint is made and for which the complainant seeks a remedy. Second, there is delay in asserting the complainant's right, the complainant having had knowledge or notice of defendant's conduct and having been afforded an opportunity to institute a suit. Third, defendant had no knowledge or notice that the complainant would assert the right on which he bases his claim. Fourth, the defendant will suffer injury or prejudice in the event relief is accorded the complainant, or the suit is not held barred. Petitioner failed to prove the presence of all four established requisites of laches. Moreover, there is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances, with the question of laches addressed to the sound discretion of the court. Because laches is an equitable doctrine, its application is controlled by equitable considerations and should not be used to defeat justice or to perpetuate fraud or injustice.

8. ID.; ID.; ID.; PROPER COMPUTATION OF THE MONEY BASED ON THE PRESENT PESO MONEY EQUIVALENT TO BE PAID TO PETITIONER AS REIMBURSEMENT FOR THE AMOUNT SHE ADVANCED TO REPURCHASE AND

RELEASE PARCELS 6 AND 7 FROM THE MORTGAGE DEBT.— Regarding the issue on the computation of the money to be paid to petitioner as reimbursement for the amount she advanced to repurchase and release parcels 6 and 7 from the mortgage debt, the Court of Appeals adopted the amount as computed by the RTC based on the present peso money equivalent. There is a discrepancy between the amount of indebtedness as quoted by the Court of Appeals from the RTC decision and the amount cited by the Court of Appeals in the latter part of its decision. However, the amount stated in the paragraph before the dispositive portion was ₱130,100.00, without any other indication that it intended to modify the amount determined by the RTC while the body of the Court of Appeals decision quoting the RTC decision indicated the amount of indebtedness as ₱138,100.00. There was obviously a typographical error, with the body of the decision stating that the Court of Appeals was affirming the RTC's manner of computation totaling ₱138,100.00. Moreover, in the body and dispositive portion, the Court of Appeals upheld the RTC's decision *in toto*. Even then, the amount found by the RTC on the basis of the formula it used in the Order dated 7 October 1998 was erroneous. Still applying the present peso-dollar exchange rate, a slight modification in the computation is hereby ordered. The present peso equivalent of the ₱6,100.00 indebtedness incurred on 13 November 1959 by the Fangonil spouses and payable to petitioner should be computed based on the following figures: The currency exchange rate of the Philippine Peso to the United States Dollar in the 1950s, which is ₱2.00:$1.00; Currency exchange rate of the Philippine Peso to the United States Dollar as of the date of finality of this judgment. Therefore, the present peso money equivalent of the ₱6,100.00 should be derived from the succeeding formula: [(Current exchange rate of the Philippine Peso to the United States Dollar as of the date of finality of this judgment divided by the exchange rate in the 1950s)] multiplied by ₱6,100.00.

APPEARANCES OF COUNSEL

Gacayan Paredes Agmata & Associates Law Offices for petitioner.

Napoleon B. Arenas, Jr. for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

In this instant Petition for Review under Rule 45 of the Revised Rules of Court, petitioner assails the (a) Decision issued by the Court of Appeals dated 30 January 2004 in CA-G.R. CV No. 61990, and (b) the Resolution of the same Court dated 15 July 2005 denying petitioner's Motion for Reconsideration. Petitioner urges this Court to modify the assailed Decision of the Court of Appeals which affirmed the Decision dated 9 October 1998 of the Regional Trial Court (RTC) of Agoo, La Union, Branch 31 in Special Proceedings Case No. A-806 for Judicial Partition. The petition prays that the two parcels of land, one located in Magsaysay, Tubao, La Union, more particularly described as:

> A parcel of rice land which the middle portion (15,364 sq. m) has been included and situated in Barrio Lloren, Tubao, La Union, declared under Tax Dec. Number 2889. Bounded on the North, by the property of Manuel Ordoña; on the East, by the property of Severino Padilla, Nicolas Caniero, and Heirs of V. Selga; on the South, by the properties of Manuel Ordoña and Francisco Padilla; and on the West, by a river; containing an area of more than two hectares; x x x.[2]

and the other in San Nicholas East, Agoo, La Union, designated as:

> A parcel of unirrigated rice land without permanent improvements, situated in Barrio San Nicolas, Agoo, La Union with an area of 10,777 sq. m. (1 Ha. 1,777 sq. m.) more or less, visible by signs of pilapiles around its perimeter, assessed at ₱400.00, declared for tax purposes in my name under Tax Declaration Number 6373, and bounded-on the North, by Donato Eslao; on the East, by the Heirs of Flaviano Fangonil, and others; on the South, by Eulalio Fangonil; and on the West, by the heirs of Remgio Boado; x x x.[3]

be adjudged solely to petitioner to the exclusion of respondents. In addition, petitioner requests that another parcel of land located

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[2] Hereinafter referred to as parcel 6. *Rollo,* p. 213.

[3] Hereinafter referred to as parcel 7. *Id*. at 212.

in Poblacion, Tubao, La Union, be divided in accordance with the manner she proposes.

The following are the antecedent facts:

Petitioner and respondents[4] are children of the late Fabian Fangonil and Maria Lloren Fangonil[5] of Tubao, La Union. The Fangonil spouses had 7 children: Tomas, Pura, Marina, Mariano, Milagros, Sinforoso, and Carmen. Fabian died on 1 June 1953, while Maria Lloren died on February 1976. The spouses died intestate, leaving an estate consisting of 7 parcels of land herein specified:

Parcel 1 – a 1,800 square meter residential land located at Poblacion, Tubao, La Union, which is facing the Town Plaza;

Parcel 2 – a 922 square meter residential lot located at Barangay Sta. Barbara, Agoo, La Union;

Parcel 3 – a 54,759 square meter agricultural land located at Francia West, Tubao, La Union;

Parcel 4 – an 84,737 square meter agricultural land located at Francia West, Tubao, La Union;

Parcel 5 – a 5,821 square meter parcel of agricultural land located at Francia Sur, Tubao, La Union;

Parcel 6 – a 17,958 square meter parcel of agricultural land located at Magsaysay, Tubao, La Union;

Parcel 7 – 9,127 square meter parcel of agricultural land located at San Nicolas East, Agoo, La Union.

The only remaining heirs are the 7 children. Prior to an extrajudicial settlement executed by the heirs in 1983, there was never any settlement of the estate. The parties do not dispute that the succeeding transactions involving parcels 6 and

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[4] Respondent Victoria Estoque is the daughter of a brother of the other respondents, the late Baguio Regional Trial Court Executive Judge Sinforoso Fangonil.

[5] Hereinafter referred to as the Fangonil spouses.

7 took place. Fabian Fangonil, with the consent of Maria Lloren Fangonil, obtained a loan secured by a mortgage over a 15,364 square meter middle portion of the sixth parcel of land for ₱1,450.00, executed under a Deed of Mortgage[6] in favor of Francisca Saguitan on 20 April 1949. A portion of the sixth parcel, with an area of 4,375 square meters, was sold with a right to repurchase to a certain Constantino Oribello for ₱1,450.00 on 15 December 1953. The transaction was under an agreement designated as a Deed of *Pacto de Retro Sale*[7] between Maria Lloren Fangonil, who was a widow by then, and Constantino Oribello. On the other hand, the seventh parcel of land was sold, with a right to repurchase, by Fabian Fangonil to Quirino Estacio under an agreement denominated as Deed of Sale with *Pacto de Retro*[8] on 12 December 1949 for ₱2,600.00. The total amount received by the Fangonil spouses for the properties was ₱5,500.00.

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[6] Under this Deed of Mortgage dated 20 April 1949, it is stated, among others:

> "That I reserve to myself, my heirs, and assigns the right and to redeem the above mentioned middle portion for the same amount of One Thousand Four Hundred Fifty (₱1,450.00) Pesos, Philippine Currency, without interest thereon except enjoying the fruits and products of said portion of land raised therefrom by the mortgagee until said property is redeemed, and failure of mortgagor to redeem said property shall remain in full force and effect and be inforceable (*sic*) in accordance with law." *Rollo,* p. 213.

[7] Under the pertinent provisions of the Deed of *Pacto de Retro* Sale dated 15 December 1953, it is stated, among others:

> "That we have agreed with the purchaser that I shall have the right to repurchase the land above described for the same amount of One Thousand Four Hundred Fifty (₱1,450.00) PESOS, Philippine currency in any time during the month of May of each year within the period of TEN (10) years effective from this date of execution of this instrument and that failure on my part to exercise my right as above stipulated will render this instrument the character of absolute and irrevocable sale without the necessity of executing my further deed to consolidate the ownership of the same unto the vendee." *Id*. at 214.

[8] Deed of Sale with *Pacto de Retro* dated 12 December 1949. Pertinent provisions of the contract state:

The parcels above-mentioned were never repurchased or redeemed by the Fangonil spouses. Prior to foreclosure, the portion of the sixth parcel covered by a Deed of Mortgage was released from the mortgage on 20 April 1956 upon petitioner's payment of ₱1,950.00 to Francisca Suguitan. The portion of the sixth parcel covered by the Deed of *Pacto de Retro* Sale was repurchased on 16 October 1956 upon petitioner's payment of ₱1,550.00 to Constantino Oribello. On the other hand, the seventh parcel subject of the Deed of Sale with *Pacto de Retro* was repurchased by petitioner on 13 November 1959 upon the payment of ₱2,600.00 to Quirino Estacio. Petitioner paid the total amount of ₱6,100.00 for the redemption of parcels 6 and 7.

On 14 November 1983, the parties executed an Extrajudicial Settlement and Partial Partition of the estate of the Fangonil spouses covering the seven parcels of land. Although petitioner signed the extrajudicial settlement, she refused to accede to the proposed manner of partition of parcel 1. Thereafter, all the heirs concerned, except petitioner, executed a joint affidavit dated 19 December 1994, stipulating on the partition of parcel 1. On 2 February 1995 or 11 years after the execution of the extrajudicial settlement, petitioner executed an affidavit[9] refuting

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"That I HEREBY RESERVE THE RIGHT to repurchase the said property within the period of TEN (10) years from and after the execution of this instrument by paying back to the vendee, his heirs or assigns, the same price of TWO THOUSAND SIX HUNDRED (₱2,600.00) PESOS, Philippine Currency; and on my, or my heirs' or assigns' failure to exercise the right of redemption within the period stipulated, this instrument shall automatically become an absolute deed of sale and absolute title to the property shall become irrevocably vested in the vendee, his heirs and assigns." *Id*. at 212.

[9] Paragraph 9 reads:

That, in all these years, such forbearance of my brothers and sisters on my acts of ownership and possession of the properties is in abiding with an oral agreement of partition with our parents who, having caused these properties to be the subject of sale with *pacto* de retro or mortgage (salda in the locality), enjoined their children that whoever redeems or repurchases any or all of these properties shall take possession of and own the property so redeemed or repurchased.

the portions pertaining to parcels 6 and 7, on the ground that her late brother Sinforoso Fangonil who was a Regional Trial Court (RTC) Judge then, committed misrepresentation and convinced her to sign the said settlement.

On 1 March 1995, six of the seven children of the Fangonil spouses, excluding herein petitioner, filed with the RTC a petition for judicial partition of the seven parcels of land, with prayer for appointment of Marina Fangonil as administratrix. The case was docketed as Special Proceedings Case No. A-806. Petitioner intervened before the trial court to oppose the petition. She likewise prayed that she be appointed administratrix, claiming exclusive ownership over parcels 6 and 7.

The parties agreed to submit the case for decision based on the pleadings, considering there was no disagreement as to the manner of sharing Parcels 2, 3, 4, and 5 of the estate. In addition, on 16 September 1996, the respondent heirs deposited in court ₱7,453.00[10] as payment to petitioner and her brother Tomas

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Paragraph 12 reads:

That x x x (b) because my signature on the Extrajudicial Settlement of Estate and Partial Partition have been procured against my better judgment; and (c) considering that the said properties cannot be the subject of agreement(s) other than the oral agreement which my brothers and sisters abided to in all these years, I hereby repudiate my agreement on the portion of the Extrajudicial Settlement of Estate and Partial Partition which states on page 5 thereof: "The properties described above as Sixth and Seventh Parcels shall be partitioned and settled in a separate agreement for the reason that they have not yet agreed on the manner of the disposal of the same. Records, p. 12.

[10] Records, pp. 95-96. Computed as:

A.	Estate Debt to Petitioner	₱ 8,700.00
	Add: Estate Debt to Tomas	₱ 1,500.00
	Total: Estate Debt	₱ 10,200.00
	Divide among seven heirs	/7
		₱ 1,457.00 per heir
B.	Estate Debt to Petitioner	₱ 8,700.00
Less: Share in Estate Debt		₱ 1,457.00
Amount to be reimbursed Petitioner		₱ 7,243.00

Fangonil as the only outstanding debtors of the estate as specified in the 14 November 1983 extrajudicial settlement. On 2 September 1998, respondents, through counsel, submitted a Manifestation/ Motion dated 31 August 1998, proposing a manner of computation for repayment to petitioner, the pertinent portions of which read:

3. That the currency rate of the Philippine Peso to the U.S. Dollar on November 13, 1959 is ₱3.90 to U.S. $1.00;

4. That the currency rate of the Philippine Peso to the U.S. Dollar as of this date August 31, 1998 is ₱42.00 to U.S. $1.00;

5. So that the amount of indebtedness of ₱6,100.00 on November 13, 1959 has now the equivalent of ₱65,790.00 as of 31 August 1998;

5.1 The equivalent amount of ₱65,790.00 shall be proportionately paid by all the heirs with each and every heir having a share in said indebtedness in the amount of ₱9,398.57;[11]

On 7 October 1998, the RTC issued an Order generally approving the manifestation/motion except for the computation, modifying the amount to ₱138,100.00 as the present equivalent of the amount of ₱6,100.00 previously paid by petitioner to redeem parcels 6 and 7. In its Decision[12] dated 9 October 1998, the RTC ruled in favor of respondents herein and declared parcels 6 and 7 as part of the estate of the spouses Fangonil to be partitioned and ordered the partition of parcel 1 based on the manner proposed by respondents. It ordered the payment of the estate debt to petitioner and her brother in the amount of ₱138,100.00, the money equivalent of the ₱6,100.00 paid by her at the time of redemption of parcels 6 and 7. The dispositive portion of the decision reads:

WHEREFORE, upon the foregoing premises, this court hereby adjudicates and partitions the inherited properties, including the controversial parcels 6 and 7, in accordance with the following:

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[11] Records, p. 342.

[12] Penned by Judge Clifton U. Ganay. *Id*. at 350-368.

FIRST PARCEL

x x x x x x x x x

This is divided into two (2) segments, the Eastern Portion and Western Portion.

The Eastern Portion shall belong to three (3) heirs, namely Tomas Fangonil, Sinforoso Fangonil represented by Victoria Estoque and Marina Fangonil. The Western Portion shall belong to two (2) heirs, the Southwestern part belongs to Pura F. Tino and the Northwestern part belongs to Carmen Fangonil Herrera x x x.

SECOND PARCEL

x x x x x x x x x

This parcel goes to Mariano Fangonil and Milagros Fangonil Layug.

THIRD PARCEL

x x x x x x x x x

A drawing of lots was conducted on April 25, 1997 with respect to parcel 3. Parcel 3 was divided into seven by Geodetic Engineer Gerardo Dacayanan. The result was the following (see also, Order dated April 25, 1997, page 166, Record of the case):

Lot 1 (A) – Milagros F. Layug
Lot 2 (B) – Tomas Fangonil
Lot 3 (C) – Mariano Fangonil
Lot 4 (D) – Pura F. Tino
Lot 5 (E) – Sinforoso Fangonil
Lot 6 (F) – Carmen F. Herrera
Lot 7 (G) – Marina Fangonil

x x x x x x x x x

FOURTH PARCEL

x x x x x x x x x

The same thing happened. There was a drawing of lots. The result was the following:

Lot 1 (A) – Marina Fangonil
Lot 2 (B) – Carmen F. Herrera
Lot 3 (C) – Tomas Fangonil
Lot 4 (D) – Sinforoso Fangonil

Lot 5 (E) – Milagros F. Layug
Lot 6 (F) – Pura F. Tino
Lot 7 (G) – Mariano Fangonil

x x x x x x x x x

FIFTH PARCEL

x x x x x x x x x

On May 2, 1997, the drawing of lots on Parcel 5 was conducted. The result was as follows:

Lot 1 – Pura F. Tino
Lot 2 – Marina Fangonil
Lot 3 – Milagros F. Layug
Lot 4 – Sinforoso Fangonil
Lot 5 – Carmen F. Herrera
Lot 6 – Mariano Fangonil
Lot 7 – Tomas Fangonil

SIXTH PARCEL

x x x x x x x x x

On August 27, 1998, the drawing of lots was conducted with respect to the controversial parcels, the SIXTH PARCEL and the SEVENTH PARCEL. The result on the sixth parcel was as follows:

Lot 1 – Pura F. Tino
Lot 2 – Sinforoso Fangonil
Lot 3 – Tomas Fangonil
Lot 4 – Marina Fangonil
Lot 5 – Carmen F. Herrera (boycotted the draw)
Lot 6 – Mariano Fangonil
Lot 7 – Milagros F. Layug

x x x x x x x x x

SEVENTH PARCEL

x x x x x x x x x

The draw was made on the same day, August 27, 1998. Just like in the drawing of lots for the Sixth Parcel, Carmen F. Herrera boycotted the draw. Hence, the Court ruled that since there are seven rolled papers for the seven heirs to draw, the last undrawn rolled-paper

containing the lot number shall be for Carmen Herrera. The result for the draw for the SEVENTH PARCEL was as follows:

Lot 1 – Carmen Herrera
Lot 2 – Tomas Fangonil
Lot 3 – Milagros F. Layug
Lot 4 – Marina Fangonil
Lot 5 – Sinforoso Fangonil
Lot 6 – Mariano Fangonil
Lot 7 – Pura F. Tino

It should be noted that after the draws on August 27, 1998, Atty. Baltazar, counsel for [respondents], manifested that he will file a motion as regards the accounting of the produce of the sixth and seventh parcels. However, what he filed was the Manifestation/Motion dated August 31, 1998.

The six heirs (excluding Carmen F. Herrera) shall reimburse the amount of ₱138,100.00, each one contributing the amount of ₱19,728.57, to Carmen F. Herrera. Since the other six heirs did not insist on the accounting of the produce with respect to parcels 6 and 7, Carmen F. Herrera does not have to render an accounting. As a matter of fact, this Court, in its Order dated October 7, 1998, considered the produce of the said two (2) parcels, which she appropriated from the '50s to the present as interest on her money.[13]

Petitioner appealed the above RTC Decision to the Court of Appeals, alleging the unfair and prejudicial manner of partition of parcel 1 and claiming exclusive ownership over parcels 6 and 7. The Court of Appeals denied the appeal in its Decision promulgated 30 January 2004, the dispositive portion of which reads:

WHEREFORE, the October 9, 1998 Decision of the Regional Trial Court of Agoo, La Union, Branch 31, in Special Proceeding Case No. A-806, is AFFIRMED *in toto*."[14]

Under said decision, the Court of Appeals affirmed *in toto* the findings of the trial court, pronouncing that petitioner failed

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[13] Records, pp. 361-368.

[14] Penned by Former Associate Justice Elvi John S. Asuncion with Associate Justices Lucas P. Bersamin and Godardo A. Jacinto, concurring; *rollo*, p. 39.

to adduce any evidence that would support her claim that the distribution was not equal and prejudicial to her interest. It concurred with the trial court in concluding that, at the most, she is only entitled to the reimbursement of the amount she spent for redemption of the questioned lots in an amount equivalent to what her money commanded then, stating that petitioner is simply holding the said property in trust for the other co-heirs. At the same time, it upheld the trial court's finding on the equivalent of the money which petitioner paid to redeem and repurchase parcels 6 and 7, but the dispositive portion merely indicated the amount of ₱130,100.00.

Petitioner filed a Motion for Reconsideration of the 30 January 2004 Decision which the Court of Appeals denied in a Resolution dated 15 July 2005. Dissatisfied with the final resolution of the Court of Appeals on the matter, petitioner now comes before this Court *via* a Petition for Review under Rule 45 of the Revised Rules of Court. Petitioner insists she is the exclusive owner of parcels 6 and 7 and rejects the partition of parcel 1 as being unequal and prejudicial, raising the following issues:

I.

THE RESPONDENT COURT GRAVELY ERRED IN SUSTAINING THE MANNER IN WHICH PARCEL 1 IS TO BE PARTITIONED BASED ON THE PRIVATE RESPONDENTS' POSITION WHICH IS CLEARLY UNEVEN AND UNFAIR TO THE PETITIONER WHOSE SHARE WILL THEN BE FOUND AT THE REAR PORTION OF THE SAID LOT.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT PARCELS 6 AND 7 SHALL BE OWNED SOLELY AND EXCLUSIVELY BY THE PETITIONER BEING THE ONLY ONE WHO REDEEMED AND REPURCHASED SAID PARCELS IN THE 1950'S EVEN WHILE THE PARENTS OF THE PARTIES WERE STILL ALIVE.

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE PRIVATE RESPONDENTS' RIGHT TO CLAIM A SHARE IN PARCELS 6 AND 7 HAD LONG PRESCRIBED

AS A RESULT OF THEIR INACTION FOR MORE THAN FORTY (40) YEARS WHERE THEY ALLOWED THE PETITIONER TO EXERCISE FULL OWNERSHIP OVER SAID PARCELS, EVEN ASSUMING WITHOUT ADMITTING THAT AT FIRST, THEY HAVE THE RIGHT TO REDEEM THE SAID PARCELS.

IV.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE PRIVATE RESPONDENTS' RIGHT TO CLAIM A SHARE IN PARCELS 6 AND 7 HAD LONG BEEN BARRED BY LACHES AS A RESULT OF THEIR INACTION FOR MORE THAN FORTY (40) YEARS WHERE THEY ALLOWED THE PETITIONER [TO] EXERCISE FULL OWNERSHIP OVER SAID PARCELS, EVEN ASSUMING WITHOUT ADMITTING THAT AT FIRST, THEY HAVE THE RIGHT TO REDEEM THE SAID PARCELS.

V.

THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT THE MONEY EQUIVALENT OF THE MONEY OF THE OPPOSITOR-APPELLANT WHICH SHE USED TO REPURCHASE AND REDEEM PARCELS 6 AND 7 IN THE 1950'S WOULD ONLY BE ₱138,100.00 IN TODAY'S MONEY, EVEN ASSUMING WITHOUT ADMITTING THAT THE SAID PARCELS COULD BE REDEEMED BY THE ESTATE OF FABIAN AND MARIA LLOREN.[15]

Petitioner's arguments are fallacious.

With respect to procedural matters, respondents argue that the petition is a combination of an appeal via a petition for review on *certiorari* under Rule 45 and an independent civil action of *certiorari* under Rule 65 of the Revised Rules of Court. This is based on the observation that petitioner impleaded the Court of Appeals as one of the respondents while at the same time raising issues of fact alone. Respondents posit that these are indicative of an "intention to categorize the petition to be under both Rules 65 and 45 of the Rules of Court" and should be dismissed outright. Although petitioner erroneously impleaded the Court of Appeals as one of the respondents,

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[15] *Rollo,* pp. 17-19.

petitioner clearly and rightly invoked Rule 45 of the Revised Rules of Court as the remedy availed of. As we held in *National Irrigation Administration v. Court of Appeals*,[16] the appeal from a final disposition of the Court of Appeals is a petition for review under Rule 45 and not a special civil action under Rule 65 of the Revised Rules of Court. Under Rule 45 of the Revised Rules of Court, decisions, final orders or resolutions of the Court of Appeals, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case.[17] The correct procedure is not to implead the Court of Appeals. This Court has ruled in several instances that where the Court of Appeals is impleaded as respondent in the Petition for Review, and the petition clearly invokes Rule 45, the Court of Appeals is merely omitted from the title of the case pursuant to Sec. 4(a) of Rule 45 of the Revised Rules of Court.[18] The Court of Appeals is herein omitted from the title of the case, as a liberal interpretation of the rules on technicality, in pursuit of the ends of justice and equity.[19]

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[16] 376 Phil. 362, 372-373 (1999), as cited in *Macasasa v. Sicad*, G.R. No. 146547, 20 June 2006, 491 SCRA 368, 376.

[17] *Mercado v. Court of Appeals*, G.R. No. 150241, 4 November 2004, 441 SCRA 463, 469.

[18] *Selegna Management and Development Corporation v. United Coconut Planters Bank*, G.R. No. 165662, 3 May 2006, 489 SCRA 125.

[19] Anent the procedural defects raised by respondent, the Court agrees that the correct procedure, as mandated by Section 4, Rule 45 of the 1997 Rules of Civil Procedure, is not to implead the lower court which rendered the assailed decision. However, impleading the lower court as respondent in the petition for review on *certiorari* does not automatically mean the dismissal of the appeal but merely authorizes the dismissal of the petition. Besides, formal defects in petitions are not uncommon. The Court has encountered previous petitions for review on *certiorari* that erroneously impleaded [the Court of Appeals.] In those cases, the Court merely called the petitioners' attention to the defects and proceeded to resolve the case on their merits.

The Court finds no reason why it should not afford the same liberal treatment in this case. While unquestionably, the Court has the discretion to dismiss the appeal for being defective, sound policy dictates that it is far better to

We now discuss respondents' contention that only factual issues have been brought to this Court.

Under Section 1, Rule 45, providing for appeals by *certiorari* before the Supreme Court, it is clearly enunciated that only questions of law may be set forth.[20] Questions of fact may not be raised unless the case falls under any of the following exceptions[21]:

(1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the

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dispose of cases on the merits, rather than on technicality as the latter approach may result in injustice. This is in accordance with Section 6, Rule 1 of the 1997 Rules of Civil Procedure which encourages a reading of the procedural requirements in a manner that will help secure and not defeat justice.

Simon v. Canlas, G.R. No. 148273, 19 April 2006, 487 SCRA 433, 444-446.

[20] Section 1. Filing of petition with Supreme Court. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

[21] It should be stressed that under the 1997 Rules of Civil Procedure, as amended, only questions of law may be raised in a petition for review before this Court. However, this Rule is not absolute, it admits of the exceptions, as provided in the text.

Pamplona Plantation Company, Inc. v. Tinghil, G.R. No. 159121, 3 February 2005, 450 SCRA 421, 427-428; *Maglucot-aw v. Maglucot*, 385 Phil. 720, 729-730 (2000); *Philippine Rabbit Bus Lines, Inc. v. Macalinao*, G.R. No. 141856, 11 February 2005, 451 SCRA 63, 68-69; *Halili v. Court of Appeals*, 350 Phil. 906, 912 (1998); *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1168-1169 (1997); *Geronimo v. Court of Appeals*, G.R. No. 105540, 5 July 1993, 224 SCRA 494, 498-499; *Lacanilao v. Court of Appeals*, 330 Phil. 1074, 1079-1080 (1996).

trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

In this particular instance, we are clearly faced with issues of fact. A question of fact is involved when the doubt or difference arises as to the truth or falsehood of alleged facts or when the query necessarily invites calibration of the whole evidence, considering mainly the credibility of witnesses, existence and relevance of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation.[22] We find that the only questions to be resolved are the following: (a) whether or not the respondent court gravely erred in affirming the partition of parcel 1 in accordance with the findings of the trial court; and (b) whether or not the respondent court gravely erred in not finding that exclusive ownership of the properties in question has been vested in petitioner.

In the exercise of the Supreme Court's power of review, this Court is not a trier of facts, and unless there are excepting circumstances, it does not routinely undertake the re-examination of the evidence presented by the contending parties during the trial of the case.[23] Factual matters are beyond the jurisdiction of this Court.[24] In petitions for review on *certiorari* under Rule 45 of the Revised Rules of Court, this Court is limited to

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[22] *Manzano v. Court of Appeal*, 344 Phil. 240, 252-253 (1997).

[23] *The Philippine American Life and General Insurance Co. v. Gramaje*, G.R. No. 156963, 11 November 2004, 442 SCRA 274, 283, citing *Insular Life Assurance Co., Ltd. v. Court of Appeals*, G.R. No. 126850, 28 April 2004, 428 SCRA 79, 85-86; *New City Builders, Inc. v. National Labor Relations Commission*, G.R. No. 149281, 15 June 2005, 460 SCRA 220, 227; *Security Bank & Trust Co. v. Gan*, G.R. No. 150464, 27 June 2006, 493 SCRA 239, 242-243; *Pleyto v. Lomboy*, G.R. No. 148737, 16 June 2004, 432 SCRA 329, 336.

[24] *Barcenas v. Tomas*, G.R. No. 150321, 31 March 2005, 454 SCRA 593.

reviewing only errors of law, not of fact, unless the factual findings complained of are devoid of support by the evidence on record or the assailed judgment is based on a misapprehension of facts. As held in *Philippine Airlines, Inc. v. Court of Appeals*,[25] factual findings of the Court of Appeals are conclusive[26] on the parties and carry even more weight when the said court affirms the factual findings of the trial court.[27] Absent any palpable error or arbitrariness, the findings of fact of the lower court are conclusive. On this ground alone, the appeal warrants a dismissal.

Setting aside the procedural defects, the appeal must fail based on the merits. Upon perusal of the records of the case, it is evident to this Court that no cogent reason exists to disturb the decision of the Court of Appeals.

Petitioner contends that the manner of partition of parcel 1 by the RTC, as affirmed by the Court of Appeals, is unfair and prejudicial to her interest. However, she was not able to adduce substantial evidence *aliunde* to support her allegations. Respondents stress that the Fangonil spouses appropriated portions of Parcel 1 to Carmen, Pura, Tomas, Marina, and Sinforoso, by pointing out specific areas pertaining to each. Carmen, Tomas, and Marina built their houses on parcel 1. Prior to the order of partition, an ocular inspection of parcel 1 was conducted by the RTC to determine which manner of partition it would approve. During said ocular inspection, however, the RTC saw existing structures upon which the homes of Carmen, Tomas, Marina, and a store of Carmen were situated. The arrangement was allegedly based on their oral agreement. This same arrangement allotting an equal area of 362 square meters to each of the heirs

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[25] 274 Phil. 624 (1997).

[26] *Agasen v. Court of Appeals*, 382 Phil. 391, 398-399 (2000); *Ancog v. Court of Appeals*, G.R. No. 112260, 30 June 1997, 274 SCRA 676, 681, citing *Meneses v. Court of Appeals*, G.R. No. 82220, 14 July 1995, 246 SCRA 162, 171; *Heirs of Jose Olviga v. Court of Appeals*, G.R. No. 104813, 21 October 1993, 227 SCRA 330, 336.

[27] *Usero v. Court of Appeals*, G.R. No. 152115, 26 January 2005, 449 SCRA 357, 358.

was made the basis of the manner of partition proposed by respondents and later on approved by both the RTC and Court of Appeals.

Anent the rights of the parties pertaining to parcels 6 and 7, petitioner insists that her act of paying for the repurchase and release from mortgage of parcels 6 and 7 was on the understanding with her parents that she would thereafter be the owner thereof. She asserts that her exercise of acts of ownership over parcels 6 and 7, to the exclusion of her parents and siblings, reveals she is the exclusive owner of these lots. She cites several circumstances in support of her contention that respondents never considered parcels 6 and 7 part of the estate of their parents and are not co-owners thereof. First, petitioner presented real estate tax receipts indicating that she had been the one paying for the realty taxes of the property. Secondly, petitioner asserts she has been the only one hiring tenants for and benefiting from the produce of parcels 6 and 7. Lastly, the non-attempt of respondents to partition parcels 6 and 7 within 10 years from the death of the Fangonil spouses, as well as to reimburse her if indeed such was the agreement, demonstrates that they never considered the said parcels part of the estate of their parents.

After a thorough examination of the cases cited by petitioner and a painstaking review of the case records, this Court cannot give credence to petitioner's stance. The scales of justice overwhelmingly tilt in favor of respondents and against petitioner's assertion that exclusive ownership of parcels 6 and 7 has vested in her. The fact that it was petitioner's money that was used for the repurchase of the properties does not make her the owner thereof, in the absence of convincing proof that would indicate such. This is more so if other evidence was adduced to show such is not the case. Neither will petitioner's exercise of acts of ownership over the properties bring us to that conclusion. It is evident that petitioner was allowed to maintain possession and enjoy the fruits of the property only by the mere tolerance of the other co-owners.[28] Moreover, although we recognize

[28] *Santos v. Santos*, 396 Phil. 928, 946-947 (2000).

that real estate tax receipts indicating payment of realty tax and possession of the parcels are *indicia* of ownership, such are not conclusive proof of ownership, in the presence of other circumstances and evidence showing otherwise.[29] As a matter of fact, although the receipts indicate that the real estate tax payments for parcels 6 and 7 for the years following their repurchase and release were made by petitioner, the receipts also state that the declared owner of the properties is still the decedent Fabian Fangonil.

Petitioner and respondents executed an extrajudicial settlement dated 14 November 1983, wherein it was stipulated that the Fangonil spouses died intestate, leaving 7 parcels of land in their names. Parcels 6 and 7 were included. It further stipulated that petitioner and her brother Tomas (now deceased) are the only creditors of the estate, categorically stating petitioner is a creditor of the estate in the amount of ₱8,700.00. This amount represents what was paid for by her for the repurchase and release from the mortgage lien of parcels 6 and 7 in the 1950s. Pertinent records of the case reveal that the amount actually advanced for the repurchase was ₱6,100.00. The aforementioned extrajudicial settlement, which was later on submitted to the RTC for consideration in the judicial partition, taken together with petitioner's comment[30] in the same proceedings, are clear

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[29] *Director of Lands v. Intermediate Appellate Court*, G.R. No. 70825, 11 March 1991, 195 SCRA 38, 44; *Ferrer-Lopez v. Court of Appeals*, G.R. No. 50420, 29 May 1987, 150 SCRA 393, 402; *De Guzman v. Court of Appeals*, G.R. No. L-47378, 27 February 1987, 148 SCRA 75, 81.

[30] Petitioner, in her comment as intervenor in the aforementioned judicial partition case, admitted the following:

> "That she likewise ADMITS the allegations in paragraph 4 of the petition but hereby adds that it was her personal money which was used to pay the mortgage indebtedness of the late **FABIAN FANGONIL** to **FRANCISCA SAGUITAN** in a document covered by Deed of Mortgage (sixth parcel) executed on April 20, 1949; that she was the only one among the heirs who paid the repurchase price in the Deed of *Pacto de Retro* (sixth parcel) executed by the late **MARIA LLOREN *VDA. DE* FANGONIL** in favor of **CONSTANTINO ORIBELLO** dated December 15, 1953; that it was only the herein intervenor who

and categorical evidences that the transaction between petitioner and her parents was a mere loan. Under this extrajudicial settlement, respondents and petitioner included parcels 6 and 7 as part of the estate of their deceased parents. It is particularly stated therein that petitioner and her brother Tomas are the only creditors of the estate. Although petitioner's comment allegedly maintained her claims on parcels 6 and 7, she categorically admitted therein that the amount totaling ₱8,700.00 referred to in the extrajudicial settlement represents the personal money she used for the redemption of parcels 6 and 7.

Thus, petitioner is a mere creditor of the estate and not an owner of parcels 6 and 7. An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake, or that no such admission was made.[31] We find that petitioner's affidavit retracting her acquiescence to the stipulation on parcels 6 and 7 in the extrajudicial settlement deserves scant consideration for being self-serving. Absent positive proof that the earlier statements made by petitioner resulted from palpable mistake, retractions thereof, especially if unsupported by evidence, lack credence.[32]

As to the issue of prescription, petitioner's possession of parcels 6 and 7 did not ripen into sole and exclusive ownership thereof. First, prescription applies to adverse, open, continuous, and exclusive possession. In order that a co-owner's possession may be deemed adverse to the other co-owners, the following elements[33] must concur: (1) that he has performed unequivocal

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paid the repurchase price in the Deed of Sale under *Pacto de Retro* executed by **FABIAN FANGONIL** in favor of **QUIRINO ESTACIO** dated December 12, 1949 involving the Seventh Parcel. *Rollo*, p. 54.

[31] Taken from the provision on judicial admissions, Section 4, Rule 129, Revised Rules of Court.

[32] *Id*.

[33] *Salvador v. Court of Appeals*, G.R. No. 109910, 5 April 1995, 243 SCRA 239, 251; *Robles v. Court of Appeals*, 384 Phil. 635, 649-650 (2000); *Deiparine v. Court of Appeals*, 360 Phil. 51, 63 (1998); *Adile v. Court of*

acts of repudiation amounting to an ouster of the other co-owners; (2) that such positive acts of repudiation have been made known to the other co-owners; and (3) that the evidence thereon must be clear and convincing. Clearly, petitioner cannot claim adverse possession in the concept of an owner where she voluntarily executed documents stating that she was a mere creditor and/or co-owner. Mere silent possession by a co-owner; his receipt of rents, fruits or profits from the property; his erection of buildings and fences and the planting of trees thereon; and the payment of land taxes cannot serve as proofs of exclusive ownership, if it is not borne out by clear and convincing evidence that he exercised acts of possession which unequivocably constituted an ouster or deprivation of the rights of the other co-owners.[34] In this case, we find that petitioner effected no clear and evident repudiation of the co-ownership. Petitioner's only act of repudiation of the co-ownership was when she refused to honor the extrajudicial settlement in 1994. Alternatively, possession by a co-owner is like that of a trustee and shall not be regarded as adverse to the other co-owners, but in fact as beneficial to all of them.[35] A co-ownership is a form of trust, with each owner being a trustee for each other.[36] Mere actual possession by one will not give rise to the inference that the possession was adverse because a co-owner is, after all, entitled to possession of the property.[37] Thus, as a rule, prescription does not run in favor of a co-heir or co-owner as long as he expressly or impliedly recognizes the co-ownership; and he cannot acquire by prescription the share of the other co-owners, absent a clear repudiation of the co-ownership.[38] An action to demand

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Appeals, G.R. No. L-44546, 29 January 1988, 157 SCRA 455, 461; *Aguirre v. Court of Appeals*, G.R. No. 122249, 29 January 2004, 421 SCRA 310, 322.

[34] *Salvador v. Court of Appeals*, *id*. at 251.

[35] *Id*.

[36] *Mallilin, Jr. v. Castillo*, 389 Phil. 153, 164 (2000).

[37] *Heirs of Salud Dizon Salamat v. Tamayo*, 358 Phil. 797, 803-804 (1998).

[38] *Robles v. Court of Appeals*, 384 Phil. 635, 649 (2000); *Trinidad v. Court of Appeals*, 352 Phil. 12, 37 (1998).

partition among co-owners is imprescriptible, and each co-owner may demand at any time the partition of the common property.[39]

On the matter of laches, we find no sufficient cause to apply the principle of laches, it being a principle grounded on equity. Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it.[40] Several circumstances must be present. First, there should exist conduct on the part of the defendant or one under whom he claims, giving rise to the situation of which complaint is made and for which the complainant seeks a remedy. Second, there is delay in asserting the complainant's right, the complainant having had knowledge or notice of defendant's conduct and having been afforded an opportunity to institute a suit. Third, defendant had no knowledge or notice that the complainant would assert the right on which he bases his claim. Fourth, the defendant will suffer injury or prejudice in the event relief is accorded the complainant, or the suit is not held barred. Petitioner failed to prove the presence of all four established requisites of laches. Moreover, there is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances, with the question of laches addressed to the sound discretion of the court.[41] Because laches is an equitable doctrine, its application is controlled by equitable considerations and should not be used to defeat justice or to perpetuate fraud or injustice.[42]

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[39] Article 494, Civil Code of the Philippines.

[40] *Eduarte v. Court of Appeals*, 370 Phil. 18, 27 (1999); *Catholic Bishop of Balanga v. Court of Appeals*, 332 Phil. 206, 218-219 (1996).

[41] *Agra v. Philippine National Bank*, 368 Phil. 829, 842-843 (1999), citing *Jimenez v. Fernandez*, G.R. No. L-46364, 6 April 1990, 184 SCRA 190, 197.

[42] *Jimenez v. Fernandez, id*., cited in *Cometa v. Court of Appeals*, 404 Phil. 107, 120-121 (2001).

Regarding the issue on the computation of the money to be paid to petitioner as reimbursement for the amount she advanced to repurchase and release parcels 6 and 7 from the mortgage debt, the Court of Appeals adopted the amount as computed by the RTC based on the present peso money equivalent.[43] There is a discrepancy between the amount of indebtedness as quoted by the Court of Appeals from the RTC decision and the amount cited by the Court of Appeals in the latter part of its decision. However, the amount stated in the paragraph before the dispositive portion was ₱130,100.00, without any other indication that it intended to modify the amount determined by the RTC while the body of the Court of Appeals decision quoting the RTC decision indicated the amount of indebtedness as ₱138,100.00. There was obviously a typographical error, with the body of the decision stating that the Court of Appeals was affirming the RTC's manner of computation totaling ₱138,100.00. Moreover, in the body and dispositive portion, the Court of Appeals upheld the RTC's decision *in toto*. Even then, the amount found by the RTC on the basis of the formula it used in the Order dated 7 October 1998 was erroneous.[44]

Still applying the present peso-dollar exchange rate, a slight modification in the computation is hereby ordered. The present peso equivalent of the ₱6,100.00 indebtedness incurred on 13 November 1959 by the Fangonil spouses and payable to petitioner should be computed based on the following figures:

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[43] The RTC applied the present peso money equivalent based on the proposal of respondents in their Manifestation/Motion dated 31 August 1998, wherein it clearly stipulated that the amount of indebtedness to be judicially determined is to be based on its present equivalent. The RTC modified the stipulated 1950s currency exchange rate between the Philippine Peso and United States Dollar.

[44] Relevant provisions of the aforementioned order read:

"The Philippine Peso should have a rate of exchange with the United States dollar computed at 2:1 because the transactions were in the 1950s. Hence, if the present exchange rate is ₱42.00:$1.00, then the amount of ₱6,100.00 in the 1950s has its equivalence at present in the amount of ₱138,100.00." Records, p. 347.

The currency exchange rate of the Philippine Peso to the United States Dollar in the 1950s, which is ₱2.00:$1.00;

Currency exchange rate of the Philippine Peso to the United States Dollar as of the date of finality of this judgment.

Therefore, the present peso money equivalent of the ₱6,100.00 should be derived from the succeeding formula:

[(Current exchange rate of the Philippine Peso to the United States Dollar as of the date of finality of this judgment divided by the exchange rate in the 1950s)] multiplied by ₱6,100.00

WHEREFORE, premises considered, the instant Petition for Review is *DENIED*. The (a) Decision issued by the Court of Appeals dated 30 January 2004 and (b) its Resolution dated 15 July 2005 denying petitioner's Motion for Reconsideration dated 23 February 2004 are hereby *AFFIRMED*, with *MODIFICATION* as to the amount to be reimbursed to petitioner. The present peso equivalent of the ₱6,100.00 indebtedness is hereby ordered reimbursed to petitioner which amount shall be computed based on current peso-dollar exchange rates at the time of finality of judgment, applying the formula below:

[(Current exchange rate of the Philippine Peso to the United States Dollar as of the date of finality of this judgment divided by the exchange rate in the 1950s)] multiplied by ₱6,100.00

The equivalent amount shall be proportionately paid by all the heirs with each and every heir having a share in the said indebtedness. No Costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 170215. August 28, 2007]

SPS. ESMERALDO and ELIZABETH SUICO, *petitioners, vs.* **PHILIPPINE NATIONAL BANK and HON. COURT OF APPEALS,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; MORTGAGE; EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE; DISCREPANCY BETWEEN THE AMOUNT OF PETITIONER'S OBLIGATION AS REFLECTED IN THE NOTICE OF SALE AND THE AMOUNT ACTUALLY DUE AND COLLECTED FROM PETITIONERS AT THE TIME OF THE AUCTION SALE DOES NOT CONSTITUTE FRAUD WHICH RENDERS THE EXTRAJUDICIAL FORECLOSURE SALE NULL AND VOID CONSIDERING THE PURPOSE BEHIND THE NOTICE OF SHERIFF'S SALE.— It is true that statutory provisions governing publication of notice of mortgage foreclosure sales must be strictly complied with, and that even slight deviations therefrom will invalidate the notice and render the sale at least voidable. Nonetheless, we must not also lose sight of the fact that the purpose of the publication of the Notice of Sheriff's Sale is to inform all interested parties of the **date**, **time** and **place** of the foreclosure sale of the real property subject thereof. Logically, this not only requires that the correct date, time and place of the foreclosure sale appear in the notice, but also that any and all interested parties be able to **determine** that what is about to be sold at the foreclosure sale is the **real property** in which they have an interest. Considering the purpose behind the Notice of Sheriff's Sale, we disagree with the finding of the RTC that the discrepancy between the amount of petitioners' obligation as reflected in the Notice of Sale and the amount actually due and collected from the petitioners at the time of the auction sale constitute fraud which renders the extrajudicial foreclosure sale null and void. Notices are given for the purpose of securing bidders and to prevent a sacrifice of the property. If these objects are attained, immaterial errors and mistakes will not affect the sufficiency of the notice; but

if mistakes or omissions occur in the notices of sale, which are calculated to deter or mislead bidders, to depreciate the value of the property, or to prevent it from bringing a fair price, such mistakes or omissions will be fatal to the validity of the notice, and also to the sale made pursuant thereto. All these considered, we are of the view that the Notice of Sale in this case is valid. Petitioners failed to convince this Court that the difference between the amount stated in the Notice of Sale and the amount of PNB's bid resulted in discouraging or misleading bidders, depreciated the value of the property or prevented it from commanding a fair price.

2. ID.; ID.; ID.; ID.; DISPOSITION OF PROCEEDS OF SALE; BASIC PRINCIPLES.— After payment of the costs of suit and satisfaction of the claim of the first mortgagee/senior mortgagee, the claim of the second mortgagee/junior mortgagee may be satisfied from the surplus proceeds. The application of the proceeds from the sale of the mortgaged property to the mortgagor's obligation is an act of payment, not payment by *dacion*; hence, it is the mortgagee's duty to return any surplus in the selling price to the mortgagor. Perforce, a mortgagee who exercises the power of sale contained in a mortgage is considered a custodian of the fund and, being bound to apply it properly, is liable to the persons entitled thereto if he fails to do so. And even though the mortgagee is not strictly considered a trustee in a purely equitable sense, but as far as concerns the unconsumed balance, the mortgagee is deemed a trustee for the mortgagor or owner of the equity of redemption. Thus it has been held that if the mortgagee is retaining more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but simply give the mortgagor a cause of action to recover such surplus.

3. ID.; ID.; ID.; ID.; RESPONDENT BANK'S CLAIM THAT PETITIONER'S PRINCIPAL OBLIGATION PLUS PENALTIES, INTERESTS, ATTORNEY'S FEES AND OTHER CHARGES WERE ALREADY BEYOND THE AMOUNT OF ITS BID WILL NOT SUFFICE TO OVERCOME THE COMPUTATION OF THE LOAN OBLIGATIONS AS PRESENTED IN THE STATEMENT OF ACCOUNT.— In the case before us, PNB claims that petitioners' loan obligations on the date of the auction sale were already more than the amount of ₱1,991,770.38 in the Notice of Sale.

In fact, PNB claims that on the date of the auction sale, petitioners' principal obligation, plus penalties, interests, attorney's fees and other charges were already beyond the amount of its bid of ₱8,511,000.00. After a careful review of the evidence on record, we find that the same is insufficient to support PNB's claim. Instead, what is available on record is petitioner's Statement of Account as prepared by PNB and attached as Annex A to its Answer with counterclaim. In this Statement of Account, petitioners' principal obligation with interest/penalty and attorney's fees as of 30 October 1992 already amounted to ₱6,409,814.92. Although petitioners denied the amounts reflected in the Statement of Account from PNB, they did not interpose any defense to refute the computations therein. Petitioners' mere denials, far from being compelling, had nothing to offer by way of evidence. This then enfeebles the foundation of petitioners' protestation and will not suffice to overcome the computation of their loan obligations as presented in the Statement of Account submitted by PNB. Noticeably, this Statement of Account is the only piece of evidence available before us from which we can determine the outstanding obligations of petitioners to PNB as of the date of the auction sale on 10 October 1992.

4. ID.; ID.; ID.; ID.; RESPONDENT BANK'S STATEMENT OF ACCOUNT, THE ONLY EXISTING DOCUMENTARY EVIDENCE, SHOWS THAT THERE IS CLEARLY AN EXCESS IN THE BID PRICE WHICH THE BANK MUST RETURN, TOGETHER WITH THE INTEREST COMPUTED IN ACCORDANCE WITH THE GUIDELINES LAID DOWN IN *EASTERN SHIPPING LINES V. COURT OF APPEALS*.— It did not escape the attention of this Court that petitioners wrote a number of letters to PNB almost two years after the auction sale, in which they offered to redeem the property. In their last letter, petitioners offered to redeem their foreclosed properties for ₱9,500,000.00. However, these letters by themselves cannot be used as bases to support PNB's claim that petitioners' obligation is more than its bid of ₱8,500,000.00, without any other evidence. There was no computation presented to show how petitioners' obligation already reached ₱9,500,000.00. Petitioners could very well have offered such an amount on the basis of the value of the foreclosed properties rather than their total obligation to PNB.

We cannot take petitioners' offer to redeem their properties in the amount of ₱9,500,000.00 on its face as an admission of the amount of their obligation to PNB without any supporting evidence. Given that the Statement of Account from PNB, being the only existing documentary evidence to support its claim, shows that petitioners' loan obligations to PNB as of 30 October 1992 amounted to ₱6,409,814.92, and considering that the amount of PNB's bid is ₱8,511,000.00, there is clearly an excess in the bid price which PNB must return, together with the interest computed in accordance with the guidelines laid down by the court in *Eastern Shipping Lines v. Court of Appeals*, regarding the manner of computing legal interest.

5. ID.; ID.; ID.; ID.; THE RATE OF 12% *PER ANNUM* SHOULD BE IMPOSED, TO BE COMPUTED FROM THE TIME THE JUDGMENT BECOMES FINAL AND EXECUTORY UNTIL FULLY SATISFIED IN ACCORDANCE WITH *EASTERN SHIPPING LINES V. COURT OF APPEALS*.— Using the rule in *Eastern Shipping Lines vs. Court of Appeals* as yardstick, since the responsibility of PNB arises not from a loan or forbearance of money which bears an interest rate of 12%, the proper rate of interest for the amount which PNB must return to the petitioners is only 6%. This interest according to *Eastern Shipping* shall be computed from the time of the filing of the complaint. However, once the judgment becomes final and executory, the "interim period from the finality of judgment awarding a monetary claim and until payment thereof, is deemed to be equivalent to a forbearance of credit." Thus, in accordance with the pronouncement in *Eastern Shipping*, the rate of 12% *per annum* should be imposed, to be computed from the time the judgment becomes final and executory until fully satisfied. It must be emphasized, however, that our holding in this case does not preclude PNB from proving and recovering in a proper proceeding any deficiency in the amount of petitioners' loan obligation that may have accrued after the date of the auction sale.

APPEARANCES OF COUNSEL

Manuel F. Ong and *J.P. Villanueva & Associates* for petitioners.

Teofilo C. Armado, Jr. for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Herein petitioners, Spouses Esmeraldo and Elizabeth Suico, obtained a loan from the Philippine National Bank (PNB) secured by a real estate mortgage[1] on real properties in the name of the former. The petitioners were unable to pay their obligation prompting the PNB to extrajudicially foreclose the mortgage over the subject properties before the City Sheriff of Mandaue City under EJF Case No. 92-5-15.

The petitioners thereafter filed a Complaint against the PNB before the Regional Trial Court (RTC) of Mandaue City, Branch 55, docketed as Civil Case No. MAN-2793 for Declaration of Nullity of Extrajudicial Foreclosure of Mortgage.[2]

The Complaint alleged that on 6 May 1992, PNB filed with the Office of the Mandaue City Sheriff a petition for the extrajudicial foreclosure of mortgage constituted on the petitioners' properties (subject properties) for an outstanding loan obligation amounting to ₱1,991,770.38 as of 10 March 1992. The foreclosure case before the Office of the Mandaue City Sheriff, which was docketed as EJF Case No. 92-5-15, covered the following properties:

TCT NO. 13196

"A parcel of land (Lot 701, plan 11-5121 Amd-2) situated at Mandaue City, bounded on the NE., and SE., by lot no. 700; on the SW. by lots nos. 688 and 702; on the NW. by lot no. 714, containing an area of 2,078 sq. m. more or less."

TAX DECL. NO. 00553

"A parcel of land situated at Tabok, Mandaue City, Cad. Lot No. 700-C-1; bounded on the North by Lot No. 701 & 700-B; on the South by Lot No. 700-C-3; on the East by lot no. 700-C-3 and on the West by Lot no. 688, containing an area of 200 square meters, more or less."

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[1] *Rollo,* p. 93.

[2] Records, pp. 1-6.

TAX DECL. NO. 00721

"Two (2) parcels of land situated at Tabok, Mandaue City, Cad. lot nos. 700-C-3 and 700-C-2; bounded on the North by Lot Nos. 700-C-1 and 700-B; on the South by Lot No. 700-D; on the East by Lot Nos. 695 and 694; and on the West by Lot Nos. 688 and 700-C-1, containing an aggregate area of 1,683 sq. m. more or less."

TAX DECL. NO. 0237

"A parcel of land situated at Tabok, Mandaue City, Cad. Lot no. 700-B. Bounded on the NE. by (Lot 699) 109, (Lot No. 69) 110, on the SE (Lot 700-C) 115, on the NW. (Lot 700-A) 112 and on the SW. (Lot 701) 113; containing an area of 1785 HA more or less."

TAX DECL. NO. 9267

"A parcel of land situated at Tabok, Mandaue City, Cad. Lot no. 700-A. Bounded on the NE. by (Lot 699) 109, on the South West by (Lot 701) 113, on the SE. by (Lot 700-B) 111, and on the NW. by (lot 714) 040039; containing an area of .1785 HA more or less."[3]

Petitioners claimed that during the foreclosure sale of the subject properties held on 30 October 1992, PNB, as the lone bidder, offered a bid in the amount of ₱8,511,000.00. By virtue of the said bid, a Certificate of Sale of the subject properties was issued by the Mandaue City Sheriff in favor of PNB. PNB did not pay to the Sheriff who conducted the auction sale the amount of its bid which was ₱8,511,000.00 or give an accounting of how said amount was applied against petitioners' outstanding loan, which, as of 10 March 1992, amounted only to ₱1,991,770.38. Since the amount of the bid grossly exceeded the amount of petitioners' outstanding obligation as stated in the extrajudicial foreclosure of mortgage, it was the legal duty of the winning bidder, PNB, to deliver to the Mandaue City Sheriff the bid price or what was left thereof after deducting the amount of petitioners' outstanding obligation. PNB failed to deliver the amount of their bid to the Mandaue City Sheriff or, at the very least, the amount of such bid in excess of petitioners' outstanding obligation.

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[3] *Id*. at 2.

One year after the issuance of the Certificate of Sale, PNB secured a Certificate of Final Sale from the Mandaue City Sheriff and, as a result, PNB transferred registration of all the subject properties to its name.

Owing to the failure of PNB as the winning bidder to deliver to the petitioners the amount of its bid or even just the amount in excess of petitioners' obligation, the latter averred that the extrajudicial foreclosure conducted over the subject properties by the Mandaue City Sheriff, as well as the Certificate of Sale and the Certificate of Finality of Sale of the subject properties issued by the Mandaue City Sheriff, in favor of PNB, were all null and void.

Petitioners, in their Complaint in Civil Case No. MAN-2793, prayed for:

> a) Declaring the Nullity of Extra-judicial Foreclosure of Mortgage under EJF Case No. 92-5-15 including the certificate of sale and the final deed of sale of the properties affected;
>
> b) Order[ing] the cancellation of the certificates of titles and tax declaration already in the name of [herein respondent] PNB and revert the same back to herein [petitioners'] name;
>
> c) Ordering the [PNB] to pay [petitioners] moral damages amounting to more than ₱1,000,000,00; Exemplary damages of ₱500,000.00; Litigation expenses of ₱100,000.00 and attorney's fees of ₱300,000.00.[4]

PNB filed a Motion to Dismiss[5] Civil Case No. MAN-2793 citing the pendency of another action between the same parties, specifically Civil Case No. CEB-15236 before the RTC of Cebu City entitled, *PNB v. Sps. Esmeraldo and Elizabeth Suico* where PNB was seeking the payment of the balance of petitioners' obligation not covered by the proceeds of the auction sale held on 30 October 1992. PNB argued that these two cases involve the same parties. Petitioners opposed the Motion to Dismiss

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[4] *Id*. at 5.

[5] *Id*. at 14.

filed by PNB.[6] Subsequently, the Motion to Dismiss Civil Case No. MAN-2793 was denied in the Order of the RTC dated 15 July 1997;[7] thus, PNB was constrained to file its Answer.[8]

PNB disputed petitioners' factual narration. PNB asserted that petitioners had other loans which had likewise become due. Petitioners' outstanding obligation of ₱1,991,770.38 as of 10 March 1992 was exclusive of attorney's fees, and other export related obligations which it did not consider due and demandable as of said date. PNB maintained that the outstanding obligation of the petitioners under their regular and export-related loans was already more than the bid price of ₱8,511,000.00, contradicting the claim of surplus proceeds due the petitioners. Petitioners were well aware that their total principal outstanding obligation on the date of the auction sale was ₱5,503,293.21.

PNB admitted the non-delivery of the bid price to the sheriff and the execution of the final deed of sale, but claimed that it had not transferred in its name all the foreclosed properties because the petition to register in its name Transfer Certificates of Title (TCT) No. 37029 and No. 13196 were still pending.

On 2 February 1999, the RTC rendered its Decision[9] in Civil Case No. MAN-2793 for the declaration of nullity of the extrajudicial foreclosure of mortgage, the dispositive portion of which states:

> WHEREFORE, based on the foregoing, judgment is rendered in favor of [herein petitioners] Sps. Esmeraldo & Elizabeth Suico and against [herein respondent], Philippine National Bank (PNB), declaring the nullity of Extrajudicial Foreclosure of Mortgage under EJF Case No. 92-5-15, including the certificate of sale and the final deed of sale of the subject properties; ordering the cancellation of the certificates of titles and tax declaration already in the name of [respondent] PNB, if any, and revert the same back to the [petitioners']

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[6] *Id*. at 19.

[7] *Id*. at 31.

[8] *Id*. at 65.

[9] Penned by Judge Ulric R. Cañete.

name; ordering [respondent] PNB to cause a new foreclosure proceeding, either judicially or extra-judicially.

Furnish parties thru counsels copy of this order.[10]

In granting the nullification of the extrajudicial foreclosure of mortgage, the RTC reasoned that given that petitioners had other loan obligations which had not yet matured on 10 March 1992 but became due by the date of the auction sale on 30 October 1992, it does not justify the shortcut taken by PNB and will not excuse it from paying to the Sheriff who conducted the auction sale the excess bid in the foreclosure sale. To allow PNB to do so would constitute fraud, for not only is the filing fee in the said foreclosure inadequate but, worse, the same constitutes a misrepresentation regarding the amount of the indebtedness to be paid in the foreclosure sale as posted and published in the notice of sale.[11] Such misrepresentation is fatal because in an extrajudicial foreclosure of mortgage, notice of sale is jurisdictional. Any error in the notice of sale is fatal and invalidates the notice.[12]

When the PNB appealed its case to the Court of Appeals,[13] the appellate court rendered a Decision[14] dated 12 April 2005, the *fallo* of which provides:

WHEREFORE, premises considered, the instant appeal is GRANTED. The questioned decision of the Regional Trial Court of Mandaue City, Branch 55 dated February 2, 1999 is hereby REVERSED and SET ASIDE. Accordingly, the extra judicial foreclosure of mortgage under EJF 92-5-15 including the certificate of sale and final deed of sale executed appurtenant thereto are hereby declared to be valid and binding.[15]

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[10] Records, p. 182.

[11] *Id.* at 146.

[12] *Rollo,* p. 15.

[13] Docketed as CA-G.R. CV No. 65905.

[14] Penned by Associate Justice Vicente L. Yap with Associate Justices Isaias P. Dicdican and Enrico A. Lanzanas, concurring; *rollo,* pp. 18-26.

[15] *Rollo,* p. 25.

In justifying reversal, the Court of Appeals held:

A careful scrutiny of the evidence extant on record would show that in a letter dated January 12, 1994, [petitioners] expressly admitted that their outstanding principal obligation amounted to ₱5.4 Million and in fact offered to redeem the properties at ₱6.5 Million. They eventually increased their offer at ₱7.5 Million as evidenced by that letter dated February 4, 1994. And finally on May 16, 1994, they offered to redeem the foreclosed properties by paying the whole amount of the obligation by installment in a period of six years. All those offers made by the [petitioners] not only contradicted their very assertion that their obligation is merely that amount appearing on the petition for foreclosure but are also indicative of the fact that they have admitted the validity of the extra judicial foreclosure proceedings and in effect have cured the impugned defect. Thus, for the [petitioners] to insist that their obligation is only over a million is unworthy of belief. Oddly enough, it is evident from their acts that they themselves likewise believe otherwise.

Even assuming that indeed there was a surplus and the [PNB] is retaining more than the proceeds of the sale than it is entitled, this fact alone will not affect the validity of the sale but simply gives the [petitioners] a cause of action to recover such surplus. In fine, the failure of the [PNB] to remit the surplus, if any, is not tantamount to a non-compliance of statutory requisites that could constitute a jurisdictional defect invalidating the sale. This situation only gives rise to a cause of action on the part of the [petitioners] to recover the alleged surplus from the [PNB]. This ruling is in harmony with the decisional rule that in suing for the return of the surplus proceeds, the mortgagor is deemed to have affirmed the validity of the sale since nothing is due if no valid sale has been made.[16]

Petitioners filed a Motion for Reconsideration[17] of the foregoing Decision, but the Court of Appeals was not persuaded. It maintained the validity of the foreclosure sale and, in its Amended Decision dated 28 September 2005, it merely directed PNB to pay the deficiency in the filing fees, holding thus:

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[16] *Id*. at 23-24.

[17] *Id*. at 27.

WHEREFORE, Our decision dated April 12, 2005 is hereby AMENDED. [Herein respondent PNB] is hereby required to pay the deficiency in the filing fees due on the petition for extra judicial foreclosure sale to be based on the actual amount of mortgage debts at the time of filing thereof. In all other respects, Our decision subject of herein petitioners'] motion for reconsideration is hereby AFFIRMED.[18]

Unflinching, petitioners elevated the case before this Court *via* the present Petition for Review essentially seeking the nullification of the extrajudicial foreclosure of the mortgage constituted on the subject properties. Petitioners forward two reasons for declaring null and void the said extrajudicial foreclosure: (1) the alleged defect or misrepresentation in the notice of sheriff's sale; and/or (2) failure of PNB to pay and tender the price of its bid or the surplus thereof to the sheriff.

Petitioners argue that since the Notice of Sheriff's Sale stated that their obligation was only ₱1,991,770.38 and PNB bidded ₱8,511,000.00, the said Notice as well as the consequent sale of the subject properties were null and void.

It is true that statutory provisions governing publication of notice of mortgage foreclosure sales must be strictly complied with, and that even slight deviations therefrom will invalidate the notice and render the sale at least voidable.[19] Nonetheless, we must not also lose sight of the fact that the purpose of the publication of the Notice of Sheriff's Sale is to inform all interested parties of the **date**, **time** and **place** of the foreclosure sale of the real property subject thereof. Logically, this not only requires that the correct date, time and place of the foreclosure sale appear in the notice, but also that any and all interested parties be able to **determine** that what is about to be sold at the foreclosure sale is the **real property** in which they have an interest.[20]

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[18] *Id*. at 41-42.

[19] *Tambunting v. Court of Appeals*, G.R. No. L-48278, 8 November 1988, 167 SCRA 16, 23.

[20] *San Jose v. Court of Appeals*, G.R. No. 106953, 19 August 1993, 225 SCRA 450, 454.

Considering the purpose behind the Notice of Sheriff's Sale, we disagree with the finding of the RTC that the discrepancy between the amount of petitioners' obligation as reflected in the Notice of Sale and the amount actually due and collected from the petitioners at the time of the auction sale constitute fraud which renders the extrajudicial foreclosure sale null and void.

Notices are given for the purpose of securing bidders and to prevent a sacrifice of the property. If these objects are attained, immaterial errors and mistakes will not affect the sufficiency of the notice; but if mistakes or omissions occur in the notices of sale, which are calculated to deter or mislead bidders, to depreciate the value of the property, or to prevent it from bringing a fair price, such mistakes or omissions will be fatal to the validity of the notice, and also to the sale made pursuant thereto.[21]

All these considered, we are of the view that the Notice of Sale in this case is valid. Petitioners failed to convince this Court that the difference between the amount stated in the Notice of Sale and the amount of PNB's bid resulted in discouraging or misleading bidders, depreciated the value of the property or prevented it from commanding a fair price.

The cases cited by the RTC in its Decision do not apply herein. *San Jose v. Court of Appeals*[22] refers to a Notice of Sheriff's Sale which did not state the correct number of the transfer certificates of title of the property to be sold. This Court considered the oversight as a substantial and fatal error which resulted in invalidating the entire notice. The case of *Community Savings and Loan Association, Inc. v. Court of Appeals*[23] is also inapplicable, because the said case refers to an extrajudicial foreclosure tainted with fraud committed by therein petitioners, which denied therein respondents the right

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[21] *Olizon v. Court of Appeals,* G.R. No. 107075, 1 September 1994, 236 SCRA 148, 156.

[22] *Supra* note 20 at 454.

[23] G.R. No. 75786, 31 August 1987, 153 SCRA 564, 572.

to redeem the property. It actually has no reference to a Notice of Sale.

We now proceed to the effect of the non-delivery by PNB of the bid price or the surplus to the petitioners.

The following antecedents are not disputed:

For failure to pay their loan obligation secured by a real estate mortgage on the subject properties, PNB foreclosed the said mortgage. In its petition for foreclosure sale under ACT No. 3135 filed before the Mandaue City Sheriff, PNB stated therein that petitioners' total outstanding obligation amounted to ₱1,991,770.38.[24] PNB bidded the amount of ₱8,511,000.00. Admittedly, PNB did not pay its bid in cash or deliver the excess either to the City Sheriff who conducted the bid or to the petitioners after deducting the difference between the amount of its bid and the amount of petitioners' obligation in the Notice of Sale. The petitioners then sought to declare the nullity of the foreclosure, alleging that their loan obligation amounted only to ₱1,991,770.38 in the Notice of Sale, and that PNB did not pay its bid in cash or deliver to petitioner the surplus, which is required under the law.[25]

On the other hand, PNB claims that petitioners' loan obligation reflected in the Notice of Sale dated 10 March 1992 did not include their other obligations, which became due at the date of the auction sale on 10 October 1992; as well as interests, penalties, other charges, and attorney's fees due on the said obligation.[26]

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[24] Records, p. 146.

[25] *Id*. at 149.

[26] PNB further brings to the attention of this Court that during the pendency of this case, the RTC of Cebu City, Branch 6, promulgated its Decision dated 5 July 2005 in Civil Case No. CEB-15236. According to the RTC of Cebu City which rendered the decision in Civil Case No. CEB-15236, petitioners owed PNB two kinds of loan, namely a Time Loan Commercial in the amount of ₱1,750,000 and an export advance loan of ₱3,360,293.21. The RTC of Cebu City, Branch 6, took note as well of EJF Case No. 92-5-15, before the Mandaue City Sheriff's Office which is the extrajudicial foreclosure of mortgage now subject of the present Petition, where PNB bidded the amount of ₱8,511,000.00. The RTC of Cebu City, in Civil Case No. CEB-15236, found

Pertinent provisions under Rule 39 of the Rules of Court on extrajudicial foreclosure sale provide:

SEC. 21. *Judgment obligee as purchaser*. — When the purchaser is the judgment obligee, and no third-party claim has been filed, **he need not pay the amount of the bid if it does not exceed the amount of his judgment. If it does, he shall pay only the excess**. (Emphasis supplied.)

SEC. 39. *Obligor may pay execution against obligee*. — After a writ of execution against property has been issued, a person indebted to the judgment obligor may pay to the sheriff holding the writ of execution the amount of his debt or so much thereof as may be necessary to satisfy the judgment, in the manner prescribed in section 9 of this Rule, and the sheriff's receipt shall be a sufficient discharge for the amount so paid or directed to be credited by the judgment obligee on the execution.

Conspicously emphasized under Section 21 of Rule 39 is that if the amount of the loan is equal to the amount of the bid, there is no need to pay the amount in cash. Same provision

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that since the petitioners' overdue obligation already reached ₱9,118,481.85 and the proceeds of the extrajudicial foreclosure of mortgage in EJF Case No. 92-5-15 amounted only to ₱8,511,000.00, clearly, petitioners still had a loan balance in the amount of ₱607,481.85. The RTC of Cebu City thus declared that petitioners are liable to PNB for its deficiency claim.

The dispositive portion of Civil Case No. CEB-15236 provides:

WHEREFORE, this Court renders judgment in favor of plaintiff and against the defendants, as follows:

1) Ordering defendants, jointly and severally, to pay plaintiff ₱607,481.85 plus interest thereon of 12% per year beginning October 30, 1992 until it is fully paid;

2) Ordering defendants to pay plaintiff, jointly and severally a penalty of 12% per year on that deficiency beginning October 30, 1992 until it is fully paid;

3) Ordering defendants, jointly and severally, to pay plaintiff attorney's fees in the amount equivalent to 10% of that deficiency;

Ordering defendants to pay the costs. (*Rollo,* p. 149.)

Per verification with RTC, Cebu City, Branch 6, on the status of Civil Case No. CEB-15236, the same was subject of a Notice of Appeal filed by PNB which the RTC granted on 28 October 2005.

mandates that in the absence of a third-party claim, the purchaser in an execution sale need not pay his bid if it does not exceed the amount of the judgment; otherwise, he shall pay only the excess.[27]

The *raison de etre* is that it would obviously be senseless for the Sheriff or the Notary Public conducting the foreclosure sale to go through the idle ceremony of receiving the money and paying it back to the creditor, under the truism that the lawmaking body did not contemplate such a pointless application of the law in requiring that the creditor must bid under the same conditions as any other bidder. It bears stressing that the rule holds true only where the amount of the bid represents the total amount of the mortgage debt.[28]

The question that needs to be addressed in this case is: considering the amount of PNB's bid of ₱8,511,000.00 as against the amount of the petitioners' obligation of ₱1,991,770.38 in the Notice of Sale, is the PNB obliged to deliver the excess?

Petitioners insist that the PNB should deliver the excess. On the other hand PNB counters that on the date of the auction sale on 30 October 1992, petitioners' other loan obligation already exceeded the amount of ₱1,991,770.38 in the Notice of Sale.

Rule 68, Section 4 of the Rules of Court provides:

SEC. 4. *Disposition of proceeds of sale.*— The amount realized from the foreclosure sale of the mortgaged property shall, after deducting the costs of the sale, be paid to the person foreclosing the mortgage, and when there shall be any balance or residue, after paying off the mortgage debt due, the same shall be paid to junior encumbrancers in the order of their priority, to be ascertained by the court, or if there be no such encumbrancers or there be a balance or residue after payment to them, then to the mortgagor or his duly authorized agent, or to the person entitled to it.

Under the above rule, the disposition of the proceeds of the sale in foreclosure shall be as follows:

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[27] *Villavicencio v. Mojares*, 446 Phil. 421, 429 (2003).

[28] *Ruiz v. Sheriff of Manila*, 145 Phil. 111, 115 (1970).

(a) first, pay the costs

(b) secondly, pay off the mortgage debt

(c) thirdly, pay the junior encumbrancers, if any in the order of priority

(d) fourthly, give the balance to the mortgagor, his agent or the person entitled to it.[29]

Based on the foregoing, after payment of the costs of suit and satisfaction of the claim of the first mortgagee/senior mortgagee, the claim of the second mortgagee/junior mortgagee may be satisfied from the surplus proceeds. The application of the proceeds from the sale of the mortgaged property to the mortgagor's obligation is an act of payment, not payment by *dacion*; hence, it is the mortgagee's duty to return any surplus in the selling price to the mortgagor. Perforce, a mortgagee who exercises the power of sale contained in a mortgage is considered a custodian of the fund and, being bound to apply it properly, is liable to the persons entitled thereto if he fails to do so. And even though the mortgagee is not strictly considered a trustee in a purely equitable sense, but as far as concerns the unconsumed balance, the mortgagee is deemed a trustee for the mortgagor or owner of the equity of redemption.[30]

Thus it has been held that if the mortgagee is retaining more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but simply give the mortgagor a cause of action to recover such surplus.[31]

In the case before us, PNB claims that petitioners' loan obligations on the date of the auction sale were already more than the amount of ₱1,991,770.38 in the Notice of Sale. In fact, PNB claims that on the date of the auction sale, petitioners' principal obligation, plus penalties, interests, attorney's fees and other charges were already beyond the amount of its bid of ₱8,511,000.00.

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[29] Paras, *Rules of Court,* Vol. 2 (1990 ed.), p. 141.

[30] *Sulit v. Court of Appeals,* 335 Phil. 914, 931 (1997).

[31] *Id.* at 457.

After a careful review of the evidence on record, we find that the same is insufficient to support PNB's claim. Instead, what is available on record is petitioner's Statement of Account as prepared by PNB and attached as Annex A[32] to its Answer with counterclaim.[33] In this Statement of Account, petitioners' principal obligation with interest/penalty and attorney's fees as of 30 October 1992 already amounted to ₱6,409,814.92.

Although petitioners denied the amounts reflected in the Statement of Account from PNB, they did not interpose any defense to refute the computations therein. Petitioners' mere denials, far from being compelling, had nothing to offer by way of evidence. This then enfeebles the foundation of petitioners' protestation and will not suffice to overcome the computation of their loan obligations as presented in the Statement of Account submitted by PNB.[34]

Noticeably, this Statement of Account is the only piece of evidence available before us from which we can determine the outstanding obligations of petitioners to PNB as of the date of the auction sale on 10 October 1992.

It did not escape the attention of this Court that petitioners wrote a number of letters to PNB almost two years after the auction sale,[35] in which they offered to redeem the property. In their last letter, petitioners offered to redeem their foreclosed properties for ₱9,500,000.00. However, these letters by themselves cannot be used as bases to support PNB's claim that petitioners' obligation is more than its bid of ₱8,500,000.00, without any other evidence. There was no computation presented to show how petitioners' obligation already reached ₱9,500,000.00. Petitioners could very well have offered such an amount on the basis of the value of the foreclosed properties rather than their

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[32] Records, p. 71.

[33] *Id*. at 65.

[34] *Ladignon v. Court of Appeals*, 390 Phil. 1161, 1170 (2000).

[35] Dated 12 January 1994, Annex B, records, p. 74; dated 4 February 1994, Annex B-4, records, p. 79.

total obligation to PNB. We cannot take petitioners' offer to redeem their properties in the amount of ₱9,500,000.00 on its face as an admission of the amount of their obligation to PNB without any supporting evidence.

Given that the Statement of Account from PNB, being the only existing documentary evidence to support its claim, shows that petitioners' loan obligations to PNB as of 30 October 1992 amounted to ₱6,409,814.92, and considering that the amount of PNB's bid is ₱8,511,000.00, there is clearly an excess in the bid price which PNB must return, together with the interest computed in accordance with the guidelines laid down by the court in *Eastern Shipping Lines v. Court of Appeals*,[36] regarding the manner of computing legal interest, *viz*:

> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>
> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of *6% per annum*. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been

[36] G.R. No. 97412, 12 July 1994, 234 SCRA 78, 95-97.

reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

In *Philippine National Bank v. Court of Appeals*,[37] it was held that:

The rate of 12% interest referred to in Cir. 416 applies only to:

Loan or forbearance of money, or to cases where money is transferred from one person to another and the obligation to return the same or a portion thereof is adjudged. Any other monetary judgment which does not involve or which has nothing to do with loans or forbearance of any, money, goods or credit does not fall within its coverage for such imposition is not within the ambit of the authority granted to the Central Bank. When an obligation not constituting a loan or forbearance of money is breached then an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum in accordance with Art. 2209 of the Civil Code. Indeed, the monetary judgment in favor of private respondent does not involve a loan or forbearance of money, hence the proper imposable rate of interest is six (6%) per cent.

Using the above rule as yardstick, since the responsibility of PNB arises not from a loan or forbearance of money which bears an interest rate of 12%, the proper rate of interest for the amount which PNB must return to the petitioners is only 6%. This interest according to *Eastern Shipping* shall be computed from the time of the filing of the complaint. However, once the judgment becomes final and executory, the "interim period from the finality of judgment awarding a monetary claim and until payment thereof, is deemed to be equivalent to a forbearance of credit." Thus, in accordance with the pronouncement in *Eastern Shipping*, the rate of 12% *per annum* should be imposed,

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[37] 331 Phil. 1079, 1083-1084 (1996).

to be computed from the time the judgment becomes final and executory until fully satisfied.

It must be emphasized, however, that our holding in this case does not preclude PNB from proving and recovering in a proper proceeding any deficiency in the amount of petitioners' loan obligation that may have accrued after the date of the auction sale.

WHEREFORE, premises considered, the Decision of the Court of Appeals dated 12 April 2005 is *MODIFIED* in that the PNB is directed to return to the petitioners the amount of ₱2,101,185.08 with interest computed at 6% *per annum* from the time of the filing of the complaint until its full payment before finality of judgment. Thereafter, if the amount adjudged remains unpaid, the interest rate shall be 12% *per annum* computed from the time the judgment became final and executory until fully satisfied. Costs against private respondent.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.*, concur.

SECOND DIVISION

[G.R. No. 172315. August 28, 2007]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ANDRES L. AFRICA, VICTOR AFRICA, LOURDES A. AFRICA, NATHALIE A. AFRICA-VERCELES, JOSE ENRIQUE A. AFRICA, PAUL DELFIN A. AFRICA, ROSARIO N. ARELLANO, JUAN DE OCAMPO, RACQUEL S. DINGLASAN, VICTORIA N. LEGARDA, ANGELA N. LOBREGAT, PABLO LOBREGAT, BENITO V. NIETO, CARLOS V. NIETO, MANUEL V. NIETO III,**

RAMON V. NIETO, MA. RITA N. DELOS REYES, EVELYN A. ROMERO, ROSARIO A. SONGCO, CARMEN N. TUAZON, RAFAEL C. VALDEZ and SANDIGANBAYAN (FOURTH DIVISION), *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; AMENDMENT AS A MATTER OF RIGHT; AS THE PROPOSED AMENDMENTS PERTAIN ONLY TO THE NON-ANSWERING PRIVATE RESPONDENTS, THEY MAY STILL BE MADE AS A MATTER OF RIGHT; BEING A MATTER OF RIGHT, ITS EXERCISE DOES NOT DEPEND UPON THE DISCRETION OR LIBERALITY OF THE SANDIGANBAYAN.— Under Section 2 of Rule 10, a party may amend his pleading once as a matter of right at any time before a responsive pleading is served, and thereafter, only upon leave of court. It is true that when the Republic filed its Motion for Leave to File Amended Complaint most of the private respondents had already filed their respective answers. This does not bar the Republic from amending its original Complaint once, however, **as a matter of right**, against Andres L. Africa, Racquel S. Dinglasan, Evelyn A. Romero, and Rosario Songco, the non-answering private respondents. As this Court ruled in *Siasoco, et al. v. Court of Appeals, et al.:* It is clear that plaintiff x x x can amend its complaint once, as a matter of right, before a responsive pleading is filed. Contrary to the petitioners' contention, the fact that Carissa had already filed its Answer did not bar private respondent from amending its original Complaint once, as a matter of right, against herein petitioners. **Indeed, where some but not all the defendants have answered, plaintiffs may amend their Complaint once, as a matter of right, in respect to claims asserted solely against the non-answering defendants**, but not as to claims asserted against the other defendants. As the proposed amendments pertain only to the non-answering private respondents, they may still be made as a matter of right. Being a matter of right, its exercise does not depend upon the discretion or liberality of the Sandiganbayan. In fine, the Sandiganbayan gravely abused its discretion when it denied the Republic's Motion for Leave to File Amended Complaint.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Manuel M. Lazaro and *Baldomero S.P. Gatbanton, Jr.* for M. Nieto Family/Rafael C. Valdez.

Quisumbing Fernando & Javellana Law Offices for L. Africa, *et al.*

D E C I S I O N

CARPIO MORALES, *J.*:

Challenged in the present petition for *certiorari* and prohibition are the Sandiganbayan's Resolution of November 15, 2005[1] denying the Motion for Leave to File Amended Complaint filed by the Republic of the Philippines (the Republic) and Resolution of March 6, 2006[2] denying the Republic's Motion for Reconsideration.

The Complaint in Civil Case No. 0178, "*Republic of the Philippines v. Andres L. Africa, et al.,*" was filed before the Sandiganbayan on October 29, 1997[3] by the Republic through the Presidential Commission on Good Government against private respondents, for the recovery of 3,305 shares of stock in the Eastern Telecommunications Philippines, Inc.[4] The shares, alleged to be held in trust for former President Ferdinand E. Marcos

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[1] Records, Vol. 2, pp. 495-501. Penned by Justice Jose R. Hernandez with the concurrence of Justices Gregory S. Ong and Rodolfo A. Ponferrada.

[2] *Id.* at 547-551. Also penned by Justice Jose R. Hernandez with the concurrence of Justices Gregory S. Ong and Rodolfo A. Ponferrada.

[3] Records, Vol. 1, pp. 1-11.

[4] The case was filed after this Court in *Republic v. Sandiganbayan* (334 Phil. 472, 477 [1997]) ruled that the Republic's attempt to recover these shares of stock in Civil Case No. 0009, without impleading private respondents as defendants therein, was "highly irregular and seriously flawed" and directed the Republic, "[if it] is really interested in claiming the shares of stock x x x," to "implead [private respondents] in a complaint for the recovery of [these] shares."

and Mrs. Imelda R. Marcos, are registered in the names of private respondents as follows:[5]

		Number of Shares
1.	Rosario N. Arellano	165
2.	Victoria N. Legarda	165
3.	Angela N. Lobregat	165
4.	Pablo Lobregat (in trust for Rafael Valdez)	165
5.	Benito V. Nieto	165
6.	Carlos V. Nieto	165
7.	Manuel V. Nieto III	165
8.	Ramon V. Nieto	165
9.	Ma. Rita N. Delos Reyes	165
10.	Carmen N. Tuazon	165
11.	Rafael C. Valdez	165
12.	Andres L. Africa (in trust for Rosario Songco)	1
13.	Lourdes A. Africa (in trust for Nathalie A. Africa)	165
14.	Lourdes A. Africa (in trust for Jose Enrique A. Africa)	165
15.	Lourdes A. Africa (in trust for Paul Delfin A. Africa)	165
16.	Victor Africa	332
17.	Juan De Ocampo (in trust for Rosario A. Songco)	332
18.	Raquel S. Dinglasan	330
19.	Evelyn A. Romero	
20.	Rosario Songco	

The Republic alleged in the Complaint that private respondents' addresses were unknown but that private respondents Rosario N. Arellano, Victoria N. Legarda, Angela N. Lobregat, Pablo Lobregat, Benito V. Nieto, Carlos V. Nieto, Manuel V. Nieto III, Ramon V. Nieto, Ma. Rita N. Delos Reyes, Carmen N. Tuazon, and Rafael C. Valdez may be served summons "through their relatives Manuel H. Nieto, Jr. and/or Victoria N. Legarda at 22 Acacia Road, Quezon City"; while private respondents Andres L. Africa, Lourdes A. Africa, Victor Africa,

[5] *Rollo*, p. 16.

Nathalie A. Africa, Jose Enrique A. Africa, Paul Delfin A. Africa, Juan De Ocampo,[6] Raquel S. Dinglasan, Evelyn A. Romero, and Rosario Songco may be served summons "through Atty. Victor Africa and/or Atty. Juan de Ocampo at 12/F Telecoms Plaza, Sen. Gil J. Puyat Avenue, Makati City."[7]

Eventually, all of private respondents answered the Complaint, except for **Andres L. Africa, Racquel S. Dinglasan, Evelyn A. Romero, and Rosario Songco**, there being no valid service of summons upon them.[8] In the meantime, private respondents Andres L. Africa and Rosario A. Songco passed away.

On January 27, 2005, the Republic filed a Motion for Leave to File Amended Complaint[9] to "implead the heirs of Andres L. Africa and Rosario A. Songco, and to properly summon Racquel S. Dinglasan and Evelyn A. Romero." To the motion, it attached the Amended Complaint bearing the following, among other things, information:

> Defendant Andres L. Africa is now deceased. His heirs, all non-residents, are Perla Africa, Rolando Africa and Ronaldo "Ronnie" Africa. Their last known address is at No. 95-A Melchor Street, Loyola Heights, Quezon City.
>
> Defendant Rosario A. Songco is now deceased. Her heirs and their addresses are the following:
>
> 1) Enrico A. Songco
> No. 77 Kaimito Street, Phase 2,
> Town and Country Executive
> Village, Antipolo City
>
> 2) Rosanna S. Salak
> No. 8 Eagle Street, Capitol Hills,
> Quezon City, or

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[6] The complaint against Juan de Ocampo was dismissed by May 29, 1998 Order of the Sandiganbayan (records, Vol. 1, pp. 154-155).

[7] Records, Vol. 1, p. 2.

[8] *Rollo,* pp. 20-21.

[9] Records, Vol. 2, pp. 282-286.

Mekong Department
Asian Development Bank,
No. 6 ADB Avenue,
Mandaluyong City; and

3) Epitacio A. Songco, Jr.
10th Floor, Telecoms Plaza Bldg.
Makati City

Defendant Racquel S. Dinglasan is a non-resident and holds an American passport. Her last known address is at #8 Eagle Street, Capitol Hills, Quezon City.

Defendant Evelyn A. Romero is a non-resident and holds a Canadian passport. Her last known address is at #106 10th Avenue, Quezon City.[10]

By Resolution of February 2, 2005,[11] the Sandiganbayan denied the Republic's Motion for Leave to File Amended Complaint for failure to properly set it for hearing.[12] The Republic's motion for reconsideration of the said resolution was denied by Resolution of May 3, 2005.[13]

The Republic thus filed on July 4, 2005[14] another Motion for Leave to File Amended Complaint, to which it attached an Amended Complaint[15] dated July 1, 2005, this time setting the motion for hearing on July 8, 2005 at 8:30 in the morning and alleging therein, *inter alia*, that:

5. [The Republic] is aware of the leniency bestowed by [the Sandiganbayan] in granting [it] four (4) extensions of time in order

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[10] *Id*. at 289 to 290.

[11] *Id*. at 308.

[12] The Notice of Hearing reads: "Please take notice that the foregoing MOTION FOR LEAVE TO FILE AMENDED COMPLAINT is submitted for the consideration of the Honorable Court immediately upon receipt thereof in view of its nature." (*Id*. at 286)

[13] *Id*. at. 345-351.

[14] *Id*. at 372-379.

[15] *Id*. at 380-398.

to be able to properly file the Motion for Leave to file the Amended Complaint.

6. With sincere apologies we again beseech [the Sandiganbayan] to grant [it] leave to file the Amended Complaint. [The Republic] insists on the inclusion of the additional defendants for they are considered as necessary parties without whom no complete relief can be afforded to the [Republic].

x x x x x x x x x

8. Section 11, Rule 3 of the Rules of Court further states that: x x x [p]arties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. x x x[16] (Underscoring supplied)

By Resolution of November 15, 2005,[17] the Sandiganbayan denied the Republic's Motion for Leave to File Amended Complaint as follows:

This present Motion was denied when it was first filed on 27 January 2005 because it was not set for hearing; the motion for reconsideration of the resolution denying it was also denied.

Although parties may be dropped or added by order of the court, this can only be made in accordance with the Rules of Court. This brings us to the question of whether there is compliance with the procedures on how this is done. And while technicalities are brushed aside, this policy is not equivalent to allowing neglect or abuse of the rules by party litigants. Specifically on the single point of impleading the proper defendants for its case, plaintiff has managed to drag the case far too long as will be shown below.

x x x x x x x x x

Plaintiff's first task of identifying the proper defending parties for its cause of action dates as far back as **July of 1987** when it filed Civil Case No. 0009, but it failed to include the present defendants; up to **28 October 1997** when it filed the present complaint docketed as Civil Case No. 0178 again without properly including the proper parties; up to **28 October 2004** when it was given an

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[16] *Id*. at 374 to 375.

[17] *Supra*, note 1.

extension of time to file its Motion for Leave to Amend Complaint to implead the proper parties; up to **10 November 2004** when another extension of time was given for the same purpose; up to **16 December 2004** for yet another extension of time, and up to **5 January 2005** for the last extension of time accorded by this Court. When it finally filed the Motion for Leave on **27 January 2005**, it was still not in conformity with the requirements of the Rules of Court.

Legal proceedings are directional in time advancing from the commencement of the action toward its conclusion and by no means going backwards. For those instances where modifications or corrections are allowed and liberality on technical rules is sanctioned, the Rules of Court still define the parameters under which these should be undertaken. Adherence to these guidelines is imperative, otherwise the proceedings could very well be taken for granted or be at the mercy of the party litigants.

The grant of leave to file amended pleadings is a matter peculiarly within the sound discretion of the court. With the lame effort of the plaintiff in carrying out its task, the liberality with which this Court accommodated the same request a number of times, and this Court's earlier resolution already denying the same motion, plaintiff cannot now be heard on the same plea all over again. (Emphasis and underscoring supplied)

The Republic's December 6, 2005 Motion for Reconsideration *Ad Cautelam*[18] having been denied by Resolution of March 6, 2006,[19] it filed the present petition for *certiorari* and prohibition.

It bears pointing out, at the outset, that the parties, as well as the Sandiganbayan, are mistaken in their assumption that this case falls under Section 3 of Rule 10 of the Rules of Court (amendments by leave of court). For it falls under Section 2 of said Rule (amendments as a matter of right).

Under Section 2 of Rule 10, a party may amend his pleading once as a matter of right at any time before a responsive pleading is served, and thereafter, only upon leave of court. It is true that when the Republic filed its Motion for Leave to File Amended

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[18] Records, Vol. 2, pp. 509-516.

[19] *Supra* note 2.

Complaint most of the private respondents had already filed their respective answers. This does not bar the Republic from amending its original Complaint once, however, **as a matter of right**, against Andres L. Africa, Racquel S. Dinglasan, Evelyn A. Romero, and Rosario Songco, the non-answering private respondents. As this Court ruled in *Siasoco, et al. v. Court of Appeals, et al.:*[20]

> It is clear that plaintiff x x x can amend its complaint once, as a matter of right, before a responsive pleading is filed. Contrary to the petitioners' contention, the fact that Carissa had already filed its Answer did not bar private respondent from amending its original Complaint once, as a matter of right, against herein petitioners. **Indeed, where some but not all the defendants have answered, plaintiffs may amend their Complaint once, as a matter of right, in respect to claims asserted solely against the non-answering defendants**, but not as to claims asserted against the other defendants. (Emphasis and underscoring supplied)

As the proposed amendments pertain only to the non-answering private respondents, they may still be made as a matter of right. Being a matter of right, its exercise does not depend upon the discretion or liberality of the Sandiganbayan.

In fine, the Sandiganbayan gravely abused its discretion when it denied the Republic's Motion for Leave to File Amended Complaint.

WHEREFORE, the November 15, 2005 and March 6, 2006 Resolutions of the Sandiganbayan in Civil Case No. 0178 are *REVERSED and SET ASIDE*. The Sandiganbayan is *ORDERED* to admit the July 1, 2005 Amended Complaint of petitioner, the Republic of the Philippines.

SO ORDERED.

Carpio, Tinga, and *Velasco, Jr., JJ.,* concur.

Quisumbing, J. (Chairperson), no part. (Close relation to counsel of a party.)

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[20] 362 Phil. 525, 533 (1999).

EN BANC

[G.R. No. 174392. August 28, 2007]

NELSON CUNDANGAN, *petitioner, vs.* **THE COMMISSION ON ELECTIONS and CELESTINO V. CHUA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTIONS; COMMISSION ON ELECTIONS; APPRECIATION OF CONTESTED BALLOTS AND ELECTION DOCUMENTS INVOLVES A QUESTION OF FACT BEST LEFT TO THE DETERMINATION OF THE COMMISSION ON ELECTIONS, A SPECIALIZED AGENCY TASKED WITH THE SUPERVISION OF ELECTIONS ALL OVER THE COUNTRY; CASE AT BAR.— We hold that the COMELEC *En Banc* did not abuse its discretion in invalidating all of the aforesaid contested ballots. In *Idulza v. Commission on Elections,* we ruled that where the factual findings of a division of the COMELEC, as affirmed by the COMELEC *En Banc*, are supported by substantial evidence, they are beyond the ken of review by this Court. In the present petition, we have more reason to respect the findings of the COMELEC *En Banc* with regard to the questioned ballots, considering that the same is consistent not only with the findings of the COMELEC First Division, but also those of the trial court. It must be stressed that the appreciation of contested ballots and election documents involves a question of fact best left to the determination of the COMELEC, a specialized agency tasked with the supervision of elections all over the country. It is the constitutional commission vested with the exclusive original jurisdiction over election contests involving regional, provincial and city officials, as well as appellate jurisdiction over election protests involving elective municipal and *barangay* officials. Consequently, in the absence of grave abuse of discretion or any jurisdictional infirmity or error of law, the factual findings, conclusions, rulings and decisions rendered by the said Commission on matters falling within its competence shall not be interfered with by this Court. It is worth pointing out that the invalidation of the four above-mentioned marked ballots is in accord with

our ruling in *Ong v. Commission on Elections*, in which we held that big bold letters that occupy all the spaces for the specific position should be invalidated, inasmuch as this evinces an evident intent to mark the ballot.

2. ID.; ID.; ID.; APPRECIATION OF CONTESTED BALLOTS; VALIDITY OF QUESTIONED BALLOTS, UPHELD; THE 89 CONTESTED BALLOTS COULD NOT HAVE BEEN "WRITTEN BY ONE PERSON" (WBOP), CONSIDERING THAT THERE ARE DIFFERENCES IN HOW PARTICULAR LETTERS ARE WRITTEN; MERE PRESENCE OF THE WORDS *PAPAG, KALABASA* AND *BANGUS* IN THE FOUR CONTESTED BALLOTS DOES NOT INSTANTANEOUSLY MAKE THEM MARKED BALLOTS; TO BE CONSIDERED MARKED BALLOTS, IT MUST CLEARLY APPEAR THAT THE WORDS WERE DELIBERATELY PLACED THEREON TO SERVE AS IDENTIFICATION MARKS.— In our view, the validity of the questioned ballots should be upheld. As found after the scrutiny of the COMELEC, the 89 contested ballots could not have been WBOP, considering that there were differences in how particular letters in each of the said ballots were written. The four ballots are likewise not marked ballots because the mere presence of the words *papag*, *kalabasa* and *bangus* in the said ballots does not instantaneously make them marked ballots. For the said ballots to be considered marked ballots, it must clearly appear that the said words were deliberately placed thereon to serve as identification marks. In this case, there was no showing of the said malicious intent. The COMELEC likewise correctly counted the two claimed ballots in favor of Chua by reason of the neighborhood rule, considering that the name of Chua was written on the first space for *Kagawads* and that the space for *Punong Barangay* was left blank.

3. ID.; ID.; ID.; ALLEGATION THAT THE COMMISSION ON ELECTIONS *EN BANC* DID NOT SQUARELY RULE ON THE ISSUE REGARDING THE EXISTENCE OF THE SPURIOUS AND FAKE BALLOTS THAT WERE FOUND DURING THE REVISION OF THE BALLOTS IN THE TRIAL COURT IS WITHOUT BASIS.— We find that Cundangan's allegation, that the COMELEC *En Banc* did not squarely rule on the issue regarding the existence of spurious and fake ballots that were found during the revision of ballots

in the trial court, is clearly without basis. As explicitly stated in the assailed COMELEC *En Banc* Resolution, the ballot boxes of Precincts Nos. 498A/500A, 505A/506A, 507A/507A1, 510A, and 510A1/512A1 contained some tampered ballots; while the ballot box of Precinct No. 503A/504A does not contain any tampered, fake or spurious ballots, or ballots with forged Board of Election Inspector initials.

APPEARANCES OF COUNSEL

Sibayan & Associates Law Office for petitioner.
The Solicitor General for public respondent.
Roque B. Bello for private respondent.

D E C I S I O N

QUISUMBING, *J.*:

This petition for *certiorari* assails the Resolution[1] dated October 25, 2005 of the Commission on Elections (COMELEC) First Division and the Resolution[2] dated August 18, 2006 of the COMELEC *En Banc* in EAC No. 174-2003. The Resolution dated October 25, 2005 reversed the trial court's Decision dated September 26, 2003, while the Resolution dated August 18, 2006 denied Cundangan's Motion for Reconsideration and affirmed with modification the challenged Resolution dated October 25, 2005.

The antecedent facts are as follows:

Cundangan and Chua were candidates for *Punong Barangay* for *Barangay* Sumilang, Pasig City in the July 15, 2002 Synchronized *Barangay* and *Sangguniang Kabataan* Elections. After the canvass of votes, Cundangan was proclaimed as the duly elected *Punong Barangay*.

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[1] *Rollo*, pp. 50-118.

[2] *Id.* at 119-134.

On July 23, 2002, Chua filed an election protest which impugned the results of the canvass in all the 19 precincts of said *barangay*.

After the revision proceedings were concluded, the trial court rendered a Decision dated September 26, 2003, affirming the proclamation of Cundangan.

Unsatisfied with the decision of the trial court, Chua filed on October 14, 2003, an appeal with the COMELEC First Division. In its Resolution dated October 25, 2005, the COMELEC First Division reversed the trial court's Decision dated September 26, 2003, and accordingly declared Chua as the duly elected *Punong Barangay* of Barangay Sumilang, Pasig City.

On November 2, 2005, Cundangan moved for a reconsideration of the said Resolution. However, the COMELEC *En Banc*, in its Resolution dated August 18, 2006, denied Cundangan's Motion for Reconsideration and affirmed the challenged Resolution of the COMELEC First Division.

Hence, the instant petition raising issues on the following grounds:

I.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF AND EXCESS OF JURISDICTION IN PROMULGATING ITS ASSAILED RESOLUTION *(EN BANC)* WHEN THE TOTAL NUMBER OF VOTES FROM **UNCONTESTED BALLOTS IS ENTIRELY DIFFERENT AND CONTRARY TO THE DECISION OF THE TRIAL COURT AND IN THE RESOLUTION OF THE FIRST DIVISION ITSELF.**

II.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF AND EXCESS OF JURISDICTION IN PROMULGATING ITS ASSAILED RESOLUTION [*(EN BANC)*] WHEN THE COMELEC **INVALIDATED VALID BALLOTS OF CUNDANGAN** AS FOLLOWS:

a) GROUPS/SETS OF BALLOTS TOTALLING EIGHTY SEVEN (87) VALID BALLOTS OF CUNDANGAN

ALLEGEDLY AS **WRITTEN BY ONE PERSON (WBOP)** IN THE FOLLOWING PRECINCTS AND EXHIBITS NUMBERS, TO WIT:

a.1. Precinct No. 499A/499A-1 — C-1 to C-3 (2 ballots);
a.2. Precinct No. 503A/504A — C-15 to C-16, C-30 to C-33 (4 ballots);
a.3. Precinct 504A-1/508A — C-4 to C-7 (4 ballots);
a.4. Precinct No. 505A/506A — C-1 to C-15 (15 ballots);
a.5. Precinct No. 507A/507A-1 — C-1 to C-13 (13 ballots);
a.6. Precinct No. 510A — C-1 to C-25 (25 ballots);
a.7. Precinct No. 510A-1/512A — C-1 to C-16 (16 ballots);
a.8. Precinct No. 514A-1/515A — C-1 to C-4, C-13 to C-14 (6 ballots);
a.9. Precinct No. 518A/518A-1 — E and F (2 ballots).

b) SINGLE BALLOTS TOTALLING NINETEEN (19) VALID BALLOTS OF CUNDANGAN ALLEGEDLY AS **WRITTEN BY TWO PERSONS (WBTP)** IN THE FOLLOWING PRECINCTS AND EXHIBITS NUMBERS, TO WIT:

b.1. Precinct No. 498A/500A — C-3 to C-15, C-17 to C-19 (16 ballots);
b.2. Precinct No. 504A/508A — C-1 (1 ballot);
b.3. Precinct No. 510A — C-45 and C-46 (2 ballots).

c) THREE (3) VALID BALLOTS OF CUNDANGAN ALLEGEDLY AS **MARKED BALLOTS (MB)** IN THE FOLLOWING PRECINCTS AND EXHIBITS [NUMBERS], TO WIT:

c.1. Precinct No. 510A — C-47 (1 ballot);
c.2. Precinct No. 510A-1/512A — C-24 and C-25 (2 ballots).

III.

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF AND EXCESS OF JURISDICTION IN PROMULGATING ITS ASSAILED RESOLUTION

(EN BANC) WHEN IT **VALIDATED INVALID BALLOTS OF CHUA** AS FOLLOWS:

a) GROUPS/SETS OF BALLOTS [TOTALLING] **EIGHTY-NINE (89) INVALID** BALLOTS OF CHUA AS **WRITTEN BY ONE PERSON (WBOP),** IN THE FOLLOWING PRECINCTS AND EXHIBIT [NUMBERS]:

a.1. Precinct No. 498A/500A — N-1 & N-2, N-3 & N-4, N-6 & N-7, N-14 & N-15, N-26 to N-28, N-31 to N-34, N-36 & N-37, N-45, N-46, N-50 & N-51 (21 ballots);
a.2. Precinct No. 499A/499A-1 — N-1 to N-4, N-9, N-10, N-13, N-14, N-21 and N-22 (10 ballots);
a.3. [Precinct No.] 503A/504A — N-55 and N-56 (2 ballots);
a.4. [Precinct No.] 504A-1/508A — N-1 to N-3, N-4 & N-5, N-20, N-23, N-27, to N-29, N-51 & N-52 (12 ballots);
a.5. [Precinct No.] 507A/507A-1 — N-2 to N-5, N-8 to N-13 (10 ballots);
a.6. [Precinct No.] 509A — N-3 to N-5 (3 ballots);
a.7. [Precinct No.] 510A — N-27, N-28, N-35 to N-37 (5 ballots);
a.8. [Precinct No.] 516A — N-20 to N-22 (3 ballots);
a.[9]. [Precinct No.] 517A — N-29 & N-30 (2 ballots);
a.[10]. [Precinct No.] 518A/518A-1 — N-1 to N-6, N-11 to N-16, N-19 to N-23 (17 ballots);
a.[11]. [Precinct No.] 519A/520A — N-30 & N-31 (2 ballots);
a.[12]. [Precinct No.] 521A/522A — N-12 & N-13 (2 ballots).

b) FOUR (4) **INVALID** BALLOTS AS **MARKED BALLOTS (MB)**, IN THE FOLLOWING PRECINCT AND EXHIBIT [NUMBERS]:

b.1. [Precinct No.] 510A-1/512A — N-43 to N-45 and N-49 (4 ballots)[.]

c) TWO (2) BALLOTS ADJUDICATED BY [THE] TRIAL COURT AS VALID FOR CUNDANGAN, WHICH HOWEVER, VALIDATED AS CLAIMED BALLOTS FOR CHUA BY THE HONORABLE COMMISSION (FIRST

DIVISION), IN THE FOLLOWING PRECINCTS AND EXHIBIT NUMBERS:

c.1. [Precinct No.] 507A/507A-1 — Exh. 44 (1 ballot); and
c.2. [Precinct No.] 521A/522A — C-30 (1 ballot).

IV.

THE COMELEC GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK AND EXCESS OF JURISDICTION WHEN IT **DID NOT SQUARELY RULE** ON THE SERIOUS ISSUE RAISED BY CUNDANGAN REGARDING THE EXISTENCE OF SPURIOUS AND FAKE BALLOTS THAT WERE FOUND DURING THE REVISION OF BALLOTS IN THE TRIAL COURT.[3]

Essentially, the issue is whether there was grave abuse of discretion amounting to lack or excess of jurisdiction on the part of COMELEC *En Banc* when it affirmed the October 25, 2005 Resolution of the COMELEC First Division.

Anent the first ground, Cundangan contends that there is a difference between the number of uncontested ballots stated in the COMELEC *En Banc* Resolution and that stated in both the COMELEC First Division Resolution and the Decision of the trial court. But as correctly explained by Chua, there was no error in the number of uncontested ballots stated in the impugned COMELEC *En Banc* Resolution because it accounted for only 17 precincts, unlike in the COMELEC First Division Resolution and the trial court's Decision which accounted for 19 precincts. The COMELEC *En Banc* excluded from its count the ballots in two precincts, namely, 505A/506A[4] and 510A,[5] after it had determined that a number of ballots in said precincts were tampered.[6]

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[3] *Id*. at 12-16.

[4] *Id*. at 128; 15 ballots of precinct 505A/506A were found by the COMELEC *En Banc* to have been written by one person.

[5] *Id*. at 129; 24 ballots of precinct 510A were found by the COMELEC *En Banc* to have been written by one person.

[6] *Id*. at 216-217.

As for the second ground, Cundangan alleges that the COMELEC erred when it invalidated 87 ballots in his favor for being WBOP; 19 ballots in his favor for being WBTP; and 4 ballots in his favor for being marked ballots.

Cundangan argues that the aforementioned 87 ballots were not WBOP considering that each of them bears a distinctive handwriting and does not appear to be objectionable.[7] For his part, Chua insists that the said ballots were WBOP, pointing out that his revisors had been able to identify the said ballots to have been clearly written by only one hand during the revision proceedings.[8] Citing *Erni v. Commission on Elections*,[9] Chua likewise avers that evidence *aliunde* is not necessary for the COMELEC to determine whether the questioned ballots were written by one hand.[10]

Arguing that the aforesaid 19 ballots were not WBTP, Cundangan cites Section 211 (22)[11] of the Omnibus Election Code and *Ong v. Commission on Elections*,[12] in which we ruled that "the appearance of print and script writings in a single ballot does not necessarily imply that two persons wrote the ballot. The strokes of print and script handwriting would naturally differ but would not automatically mean that two persons prepared the same . . . . In the absence of any deliberate intention to put an identification mark, the ballots must not be rejected."[13]

Chua counters by saying that his revisors identified that the questioned ballots had been written by two persons during the revision proceedings.[14] He likewise cites Section 211

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[7] *Id.* at 25-26.

[8] *Id.* at 220.

[9] G.R. No. 116246, April 27, 1995, 243 SCRA 706.

[10] *Id.* at 712. *Rollo*, pp. 220-221.

[11] Unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks, . . . the use of two or more kinds of writing . . . shall not invalidate the ballot.

[12] G.R. No. 144197, December 13, 2000, 347 SCRA 681.

[13] *Id.* at 687.

[14] *Rollo*, pp. 222-223.

(23)[15] of the Omnibus Election Code and *Protacio v. De Leon*,[16] in which we invalidated a ballot for having been written by two hands, because the writing of the names of some of the candidates therein bore distinct and marked dissimilarities from the rest of the handwritings used.[17]

As to the four ballots[18] which were considered marked, Cundangan contends that the COMELEC's ruling below was erroneous.

PRECINCT NO.	EXHIBIT NO.	RULING
510A	C-47 (1 ballot)	The name "Boboy Benito" which was written and repeated in lines 1 to 7 for *Kagawads*, is a distinguishing mark meant to identify the voter.
510A-1/512-A	C-24 and C-25 (2 ballots)	The name "Oyit Santos" written in lines 2-7 for *Kagawads* and the word "BO" serves as an identification mark.
521-A/522-A	C-29 (1 ballot)	The word "Boyer Quijano" written in big letters in such a way that it occupies lines 1 to 7 for *Kagawads* is evidently intended to identify or mark this ballot.

[15] Any ballot which clearly appears to have been filled by two distinct persons before it was deposited in the ballot box during the voting is totally null and void.

[16] No. L-21135, November 8, 1963, 9 SCRA 472.

[17] *Id*. at 479.

[18] *Rollo*, pp. 74-77.

Cundangan contends that the above ballots are not marked ballots because writing the name of a candidate in big bold letters spanning several lines merely signifies desistance from voting for other candidates and was only for emphasis.[19]

Chua, for his part, maintains that the said ballots were marked and adds that the face of the ballot itself contains a caution to the voter not to place any distinguishing mark that will invalidate the ballot.[20]

We hold that the COMELEC *En Banc* did not abuse its discretion in invalidating all of the aforesaid contested ballots. In *Idulza v. Commission on Elections*,[21] we ruled that where the factual findings of a division of the COMELEC, as affirmed by the COMELEC *En Banc*, are supported by substantial evidence, they are beyond the ken of review by this Court.[22] In the present petition, we have more reason to respect the findings of the COMELEC *En Banc* with regard to the questioned ballots, considering that the same is consistent not only with the findings of the COMELEC First Division, but also those of the trial court.

It must be stressed that the appreciation of contested ballots and election documents involves a question of fact best left to the determination of the COMELEC, a specialized agency tasked with the supervision of elections all over the country. It is the constitutional commission vested with the exclusive original jurisdiction over election contests involving regional, provincial and city officials, as well as appellate jurisdiction over election protests involving elective municipal and *barangay* officials. Consequently, in the absence of grave abuse of discretion or any jurisdictional infirmity or error of law, the factual findings, conclusions, rulings and decisions rendered by the said

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[19] *Id*. at 28.

[20] *Id*. at 223.

[21] G.R. No. 160130, April 14, 2004, 427 SCRA 701.

[22] *Id*. at 708.

Commission on matters falling within its competence shall not be interfered with by this Court.[23]

It is worth pointing out that the invalidation of the four above-mentioned marked ballots is in accord with our ruling in *Ong v. Commission on Elections*,[24] in which we held that big bold letters that occupy all the spaces for the specific position should be invalidated, inasmuch as this evinces an evident intent to mark the ballot.[25]

Anent the third ground, Cundangan argues that the COMELEC *En Banc* gravely abused its discretion when it validated allegedly invalid ballots in favor of Chua as follows: (1) 89 ballots because they were WBOP; and (2) four ballots because the same were marked ballots. Cundangan likewise assails the alleged validation of two claimed ballots counted in favor of Chua.[26]

As for the 89 ballots allegedly WBOP, Cundangan argues that the same are WBOP because upon perusal of the ballots, the handwritings on these ballots are clearly identical.[27]

As for the four allegedly marked ballots, he contends that the same are indeed marked ballots, considering that the words *papag*, *bangus*, and *kalabasa* were written amidst the names of different candidates for *Kagawads*, and that the said words are irrelevant, impertinent and unnecessary.[28] He further argues that writing these irrelevant words or expressions after or amidst the names of candidates voids the ballot for being marked.[29] He adds that a ballot bearing an irrelevant epithet after the name of a candidate should also be invalidated.[30]

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[23] *Punzalan v. Commission on Elections*, G.R. No. 126669, April 27, 1998, 289 SCRA 702, 716.

[24] *Supra* note 12.

[25] *Id*. at 691.

[26] *Rollo*, pp. 32-34.

[27] *Id*. at 32.

[28] *Id*. at 34.

[29] *Fausto v. Villarta*, 53 Phil. 166, 168 (1929).

[30] *Protacio v. De Leon, supra* note 16, at 481.

Cundangan likewise assails the alleged validation of two ballots which Chua had claimed. He said that the two ballots should not have been considered in Chua's favor, because a perusal of both ballots would show that his name was more clearly written than that of Chua.[31]

For his part, Chua argues that the said ballots were validated by COMELEC *En Banc*, because they are valid ballots in the first place, there being no grounds to invalidate them. He likewise points out that Cundangan even admitted in his petition that the COMELEC has the required expertise and authority for determining the validity of votes.[32]

In our view, the validity of the questioned ballots should be upheld. As found after the scrutiny of the COMELEC, the 89 contested ballots could not have been WBOP, considering that there were differences in how particular letters in each of the said ballots were written.[33] The four ballots are likewise not marked ballots because the mere presence of the words *papag*, *kalabasa* and *bangus* in the said ballots does not instantaneously make them marked ballots. For the said ballots to be considered marked ballots, it must clearly appear that the said words were deliberately placed thereon to serve as identification marks. In this case, there was no showing of the said malicious intent.[34]

The COMELEC likewise correctly counted the two claimed ballots in favor of Chua by reason of the neighborhood rule,[35] considering that the name of Chua was written on the first space for *Kagawads* and that the space for *Punong Barangay* was left blank.[36]

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[31] *Rollo*, p. 35.

[32] *Id*. at 224.

[33] *Id*. at 77-95.

[34] *Id*. at 103.

[35] *Id*. at 108; A vote for a position written near the line/space for such position which is left vacant is valid for such candidate.

[36] *Id*. at 108 and 112. See also *Ferrer v. Commission on Elections*, G.R. No. 139489, April 10, 2000, 330 SCRA 229, 234.

Anent the final ground, we find that Cundangan's allegation, that the COMELEC *En Banc* did not squarely rule on the issue regarding the existence of spurious and fake ballots that were found during the revision of ballots in the trial court, is clearly without basis. As explicitly stated in the assailed COMELEC *En Banc* Resolution, the ballot boxes of Precincts Nos. 498A/500A, 505A/506A, 507A/507A1, 510A, and 510A1/512A1 contained some tampered ballots; while the ballot box of Precinct No. 503A/504A does not contain any tampered, fake or spurious ballots, or ballots with forged Board of Election Inspector initials.[37]

WHEREFORE, the petition is *DENIED* for lack of merit. The assailed Resolutions of the COMELEC are hereby *AFFIRMED*. Costs against the petitioner.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., Nachura, and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 175881. August 28, 2007]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARMANDO RODAS**[1] **and JOSE RODAS, SR.,**[2] *accused-appellants.*

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[37] *Id.* at 126-131.

[1] Middle name is Martinez.

[2] Middle name is Marinduque.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S ASSESSMENT DESERVES GREAT WEIGHT, AND IS EVEN CONCLUSIVE AND BINDING, IF NOT TAINTED WITH ARBITRARINESS OR OVERSIGHT OF SOME FACT OR CIRCUMSTANCE OF WEIGHT AND INFLUENCE.— After a careful and meticulous review of the records of the case, we find no reason to reverse the findings of the trial court, as affirmed by the Court of Appeals. We affirm appellants' conviction. We find the evidence of the prosecution to be more credible than that adduced by appellants. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate properly testimonial evidence. It is to be noted that the Court of Appeals affirmed the findings of the RTC. In this regard, it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court. We find no compelling reason to deviate from their findings.

2. ID.; ID.; ID.; TESTIMONIES OF TWO EYEWITNESSES, WHICH THE COURT FOUND TO BE CREDIBLE, ARE SUFFICIENT TO PROVE THE CRIME AND THE PERPETRATORS.— The Court finds that Alberto Asonda and Ernie Anggot witnessed the killing of Titing Asenda by Charlito Rodas, Armando Rodas, Jose Rodas, Jr. and Jose Rodas, Sr. When Titing was killed, Asonda and Anggot were near him. Contrary to the claim of the defense that the place where the killing occurred was not lighted enough for the assailants to be identified, the place was sufficiently lighted by a *Petromax* as testified to by Vilma Rodas. Appellants make a big issue about the absence of a medical examination. Should they be exonerated because of this? The answer is no. A medical examination or a medical certificate is not indispensable in the case at bar. Its absence will not prove that appellants did not commit the crime charged. They can still be convicted by

mere testimonial evidence, if the same is convincing. In the case at bar, the testimonies of the two eyewitnesses, which the Court found to be credible, are sufficient to prove the crime and its perpetrators.

3. ID.; ID.; ID.; DEFENSE OF DENIAL; INTRINSICALLY WEAK, NEGATIVE AND SELF-SERVING EVIDENCE WHICH CANNOT PREVAIL OVER THE POSITIVE TESTIMONIES OF WITNESSES WHO WERE NOT SHOWN TO HAVE ILL MOTIVE AGAINST THE APPELLANTS.— Appellants' defense of denial and alibi must likewise fail. Mere denial, if unsubstantiated by clear and convincing evidence, has no weight in law and cannot be given greater evidentiary value than the positive testimony of a victim. Denial is intrinsically weak, being a negative and self-serving assertion. Denial cannot prevail over the positive testimonies of prosecution witnesses who were not shown to have any ill motive to testify against appellants. Absence of improper motive makes the testimony worthy of full faith and credence. In this case, appellants, who were positively identified, testified that Asonda and Anggot had no ill motive to testify against them. Moreover, ill motive has no bearing when accused were positively identified by credible eyewitnesses. Motive gains importance only when the identity of the culprit is doubtful.

4. ID.; ID.; ID.; DEFENSE OF ALIBI; REQUIREMENTS OF TIME AND PLACE, NOT ESTABLISHED.— Appellants also interposed the defense of alibi. No jurisprudence in criminal law is more settled than that alibi is the weakest of all defenses for it is easy to contrive and difficult to disprove, and for which reason it is generally rejected. For the defense of alibi to prosper, it is imperative that the accused establish two elements: (1) he was not at the *locus criminis* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission. Appellants failed to do so. In the case at bar, both appellants claimed that on the night Titing Asenda was killed, they were one kilometer away. Thus, it was not possible for them to have been at the scene of the crime when the crime was committed. The defense witnesses, however, gave conflicting testimonies. Appellant Armando said his residence was more or less one kilometer away from the crime scene but Jose Sr. said it was only 50 meters away. Jose Sr. said the house of Charlito was only 50

meters away from the crime scene but Armando said it was one kilometer away. Armando said his wife was in Dipolog City when the killing happened, but his wife said she witnessed the killing. Armando said he and all the other accused lived in separate houses, but his wife revealed that Charlito lives with Jose Sr. Vilma Rodas said after the killing, she immediately went home and told Armando that his brothers killed somebody but her husband said he only learned of it the next morning. What is more incredible is the fact that despite the testimony of Vilma Rodas that she informed Armando of the killing, the latter never testified to this effect. All these negate appellants' claim that they were not at the crime scene when the killing took place.

5. ID.; CRIMINAL PROCEDURE; COMPLAINT OR INFORMATION; THE QUALIFYING CIRCUMSTANCES NEED NOT BE PRECEDED BY DESCRIPTIVE WORDS SUCH AS "QUALIFYING" OR "QUALIFIED BY" TO PROPERLY QUALIFY AN OFFENSE.— In *People v. Aquino*, we have held that even after the recent amendments to the Rules of Criminal Procedure, qualifying circumstances need not be preceded by descriptive words such as "qualifying" or "qualified by" to properly qualify an offense. We explained: Section 8 of Rule 110 requires that the Information shall "state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances." Section 8 merely requires the Information to specify the circumstances. Section 8 does not require the use of the words "qualifying" or "qualified by" to refer to the circumstances which raise the category of an offense. It is not the use of the words "qualifying" or "qualified by" that raises a crime to a higher category, but the specific allegation of an attendant circumstance which adds the essential element raising the crime to a higher category. In the instant case, the attendant circumstances of minority and relationship were specifically alleged in the Information precisely to qualify the offense of simple rape to qualified rape. The absence of the words "qualifying" or "qualified by" cannot prevent the rape from qualifying as a heinous crime provided these two circumstances are specifically alleged in the Information and proved beyond reasonable doubt. We therefore reiterate that Sections 8 and 9 of Rule 110 merely

require that the Information allege, specify or enumerate the attendant circumstances mentioned in the law to qualify the offense. These circumstances need not be preceded by the words "aggravating/qualifying," "qualifying," or "qualified by" to be considered as qualifying circumstances. It is sufficient that these circumstances be specified in the Information to apprise the accused of the charges against him to enable him to prepare fully for his defense, thus precluding surprises during the trial. When the prosecution specifically alleges in the Information the circumstances mentioned in the law as qualifying the crime, and succeeds in proving them beyond reasonable doubt, the Court is constrained to impose the higher penalty mandated by law. This includes the death penalty in proper cases. x x x To guide the bench and the bar, this Resolution clarifies and resolves the issue of how to allege or specify qualifying or aggravating circumstances in the Information. The words "aggravating/qualifying," "qualifying," "qualified by," "aggravating," or "aggravated by" need not be expressly stated as long as the particular attendant circumstances are specified in the Information.

6. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; CONSPIRACY; PROVEN BY THE FACT THAT ALL THE ACCUSED HAD THE SAME PURPOSE AND ACTED IN UNISON WHEN THEY ASSAULTED THE VICTIM.— The information alleged that appellants, together with Charlito and Jose Jr., conspired in killing Titing Asenda. Article 8 of the Revised Penal Code provides that there is conspiracy when two or more persons agree to commit a crime and decide to commit it. It is hornbook doctrine that conspiracy must be proved by positive and convincing evidence, the same quantum of evidence as the crime itself. Indeed, proof of previous agreement among the malefactors to commit the crime is not essential to prove conspiracy. It is not necessary to show that all the conspirators actually hit and killed the victim; what is primordial is that all the participants performed specific acts with such closeness and coordination as to indicate a common purpose or design to bring about the victim's death. Once conspiracy is established, all the conspirators are answerable as co-principals regardless of their degree of participation. In the contemplation of the law, the act of one becomes the act of all, and it matters not

who among the accused inflicted the fatal blow on the victim. In this case, conspiracy was convincingly proven beyond reasonable doubt. All the accused had the same purpose and acted in unison when they assaulted the victim. Surrounding the victim, Charlito stabbed Titing Asenda at the back with a hunting knife. Armando next clubbed the victim with a *chako,* hitting him on the left side of the nape, causing him to fall to the ground. Jose Sr. then handed a bolo to Jose Jr. who used it in hacking the victim.

7. ID.; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; ATTENDED THE KILLING IN CASE AT BAR; VICTIM WAS NOT FOREWARNED OF ANY DANGER TO HIMSELF AS THERE WAS NO ALTERCATION OR DISAGREEMENT BETWEEN THE ACCUSED AND THE VICTIM WHO WAS COMPLETELY UNAWARE THAT HE WAS GOING TO BE ATTACKED.— The qualifying circumstance of treachery attended the killing. The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim. In *People v. Villonez*, we ruled that treachery may still be appreciated even when the victim was forewarned of danger to his person. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate. In the case under review, the victim was completely unaware that he was going to be attacked. He was not forewarned of any danger to himself as there was no altercation or disagreement between the accused and the victim. If treachery may be appreciated even when the victim was forewarned, more so should it be appreciated when the victim was not, as in the case at bar. The suddenness of the attack, the number of the accused and their use of weapons against the unarmed victim prevent the possibility of any defense or retaliation by the victim. The fact that the victim was already sprawled on the ground and still Jose Jr. hacked him with a bolo clearly constitutes treachery.

8. ID.; ID.; ID.; EVIDENT PREMEDITATION; ELEMENTS; NOT ESTABLISHED IN CASE AT BAR.— For evident premeditation to be appreciated, the following elements must be established: (1) the time when the accused decided to commit

the crime; (2) an overt act manifestly indicating that he has clung to his determination; and (3) sufficient lapse of time between decision and execution to allow the accused to reflect upon the consequences of his act. Like any other circumstance that qualifies a killing as murder, evident premeditation must be established by clear and positive proof; that is, by proof beyond reasonable doubt. The essence of premeditation is that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment. In the case at bar, the prosecution failed to show the presence of any of these elements.

9. ID.; AGGRAVATING CIRCUMSTANCES; NOCTURNITY; NOT APPLICABLE; PROSECUTION FAILED TO SHOW THAT NIGHTTIME FACILITATED THE COMMISSION OF THE CRIME OR WAS ESPECIALLY SOUGHT OR TAKEN ADVANTAGE OF BY THE ACCUSED FOR THE PURPOSE OF IMPUNITY.— The aggravating circumstance of nocturnity cannot be considered against appellants. This circumstance is considered aggravating only when it facilitated the commission of the crime, or was especially sought or taken advantage of by the accused for the purpose of impunity. The essence of this aggravating circumstance is the *obscuridad* afforded by, and not merely the chronological onset of, nighttime. Although the offense was committed at night, nocturnity does not become a modifying factor when the place is adequately lighted and, thus, could no longer insure the offender's immunity from identification or capture. In the instant case, the prosecution failed to show that nighttime facilitated the commission of the crime, or was especially sought or taken advantage of by the accused for the purpose of impunity. The crime scene was sufficiently lighted by a *Petromax* which led to the identification of all the accused.

10. ID.; ID.; ABUSE OF SUPERIOR STRENGTH; SHOWN BY THE GLARING DISPARITY OF STRENGTH BETWEEN THE VICTIM AND THE FOUR ACCUSED.— The aggravating circumstance of abuse of superior strength attended the killing. There was glaring disparity of strength between the victim and the four accused. The victim was unarmed while the accused were armed with a hunting knife, *chako* and *bolo*. It is evident that the accused took advantage of their combined strength to

consummate the offense. This aggravating circumstance, though, cannot be separately appreciated because it is absorbed in treachery. In *People v. Parreno*, we decreed: As regards the aggravating circumstance of abuse of superior strength, what should be considered is not that there were three, four, or more assailants as against one victim, but whether the aggressors took advantage of their combined strength in order to consummate the offense. While it is true that superiority in number does not *per se* mean superiority in strength, the appellants in this case did not only enjoy superiority in number, but were armed with a weapon, while the victim had no means with which to defend himself. Thus, there was obvious physical disparity between the protagonists and abuse of superior strength on the part of the appellants. Abuse of superior strength attended the killing when the offenders took advantage of their combined strength in order to consummate the offense. However, the circumstance of abuse of superior strength cannot be appreciated separately, it being necessarily absorbed in treachery.

11. ID.; ID,; PENALTY FOR MURDER THERE BEING NEITHER MITIGATING NOR AGGRAVATING CIRCUMSTANCE IN ITS COMMISSION.— Under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, murder is punishable by *reclusion perpetua* to death. There being neither mitigating nor aggravating circumstance in the commission of the felony, appellants should be sentenced to *reclusion perpetua*, conformably to Article 63(2) of the Revised Penal Code.

12. ID.; CIVIL LIABILITY; DAMAGES THAT MAY BE AWARDED WHEN DEATH OCCURS DUE TO A CRIME.— We now go to the award of damages. When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages. Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. We affirm the award of civil indemnity given by the trial court and the Court of Appeals. Under prevailing jurisprudence, the award of ₱50,000.00 to the heirs of the victim as civil indemnity is in order. Both the trial court and the Court of Appeals awarded ₱25,000.00 as civil indemnity because the two accused who

pleaded guilty to the lower offense of homicide were ordered to pay ₱25,000.00 or half of the ₱50,000.00 civil indemnity. Considering that half of the ₱50,000.00 was already paid, appellants should therefore pay only the difference. As to actual damages, the heirs of the victim are not entitled thereto because said damages were not duly proved with reasonable degree of certainty. However, the award of ₱25,000.00 in temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court. Under Article 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved. Anent moral damages, the same is mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim. The award of ₱50,000.00 as moral damages is in order. The heirs of the victim are likewise entitled to exemplary damages in the amount of ₱25,000.00 since the qualifying circumstance of treachery was firmly established.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Assailed before Us is the Decision[3] of the Court of Appeals in CA-G.R. CR-HC No. 00289 which affirmed *in toto* the decision[4] of the Regional Trial Court (RTC) of Sindangan, Zamboanga del Norte, Branch XI, convicting accused-appellants Armando Rodas and Jose Rodas, Sr. of the crime of Murder.

For the death of one Titing Asenda, accused-appellant Jose Rodas, Sr., together with his sons Charlito, Armando, and Jose

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[3] *Rollo*, pp. 141-152; penned by Associate Justice Sixto Marella, Jr. with Associate Justices Teresita Dy-Liacco Flores and Rodrigo F. Lim, Jr., concurring.

[4] Records, pp. 85-104.

Jr., all surnamed Rodas, were charged with murder in an information which reads:

> That, in the evening, on or about the 9th day of August, 1996, in the municipality of Siayan, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the above-named accused, armed with a hunting knife, firearm, *chako* and bolo, conspiring, confederating together and mutually helping one another, with intent to kill, by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, beat, stab and hack one TITING ASENDA, thereby inflicting upon him multiple wounds on the vital parts of his body which caused his death shortly thereafter; that as a result of the commission of the said crime the heirs of the herein victim suffered the following damages, *viz*:
>
> a) Indemnity for victim's death . . . ₱50,000.00
> b) Loss of earning capacity . . . . . ₱30,000.00
> ₱80,000.00
>
> CONTRARY TO LAW (Viol. of Art. 248, Revised Penal Code), with the aggravating circumstances of nocturnity and abuse of superior strength.[5]

When arraigned on 22 November 1996, the four accused, assisted by counsel *de oficio,* pleaded not guilty to the crime charged.[6]

By agreement of the parties, pre-trial conference was terminated on 6 December 1996.[7] Thereafter, trial on the merits commenced.

The prosecution presented five witnesses, namely: Alberto Asonda, Danilo Asenda, Ernie Anggot, Blessie Antiquina and PO1 Pablo Yosores.

Before the prosecution could rest its case, accused Charlito Rodas[8] and Jose Rodas, Jr. [9] withdrew their previous pleas of

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[5] Records, p. 13.

[6] *Id*. at 20.

[7] *Id*. at 22.

[8] Entered plea of guilty to the lesser crime of Homicide on 17 October 1997.

[9] Entered plea of guilty to the lesser crime of Homicide on 29 May 1998.

"NOT GUILTY" and entered their respective pleas of "GUILTY" for the lesser crime of Homicide. Both were sentenced to suffer the indeterminate penalty of 17 years, 4 months and 1 day to 20 years and were each ordered to indemnify the heirs of the victim in the amount of ₱12,500.00 as damages.[10]

The prosecution formally offered Exhibits "A" to "H", inclusive, with sub-markings.[11]

From the evidence adduced, the prosecution's version of the killing is as follows:

On 9 August 1996, Titing Asenda, a resident of Boyos, Sindangan, Zamboanga del Norte, was at Milaub, Denoyan, Zamboanga del Norte, to help his brother, Danilo Asenda, in the harvesting of the latter's corn.

On the same day, at around 8:00 in the evening, a benefit dance at Milaub, which was sponsored by Boboy Raquilme,[12] was being held. Among those roaming in the vicinity of the dance hall were Alberto Asonda and Ernie Anggot. They stopped and hung out near the fence to watch the affair. Titing Asenda was standing near them. They saw Charlito Rodas, Armando Rodas, Jose Rodas, Jr., and Jose Rodas, Sr. surround Titing Asenda. Suddenly, without a word, Charlito Rodas, armed with a hunting knife, stabbed Titing at the back. Armando Rodas then clubbed Titing with a *chako* hitting him at the left side of the nape causing him to fall. Thereafter, Jose Rodas, Sr. handed to Jose Rodas, Jr. a *bolo* which the latter used in hacking Titing, hitting him on the left elbow. Alberto Asonda and Ernie Anggot tried to help Titing but Armando Rodas prevented them by pointing a gun at them and firing it towards the sky.

After the assailants left, Alberto Asonda and Ernie Anggot approached Titing Asenda who was already dead. They informed Danilo Asenda that his brother was killed. The police arrived the following day after being informed of the incident.

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[10] Records, pp. 39-40 and 55-56.

[11] *Id*. at 60-66.

[12] Sometimes spelled as "Requilme."

On the part of the defense, accused-appellants Armando Rodas and Jose Rodas, Sr., and Vilma Rodas, the former's wife, took the witness stand. The defense rested its case without marking and offering any documentary evidence.

Defense evidence showed that only Charlito Rodas and Jose Rodas, Jr. killed Titing Asenda. Appellant Jose Rodas, Sr. denied any participation in the killing of Titing Asenda claiming he was not present in the benefit dance and that he was in his home with his wife and infant granddaughter when the killing happened. He revealed that on the night of the killing, his son, Charlito Rodas, who was carrying a hunting knife, arrived and told him he killed somebody. He then brought his son to the municipal building of Siayan to surrender him to the police authorities.

Appellant Armando Rodas likewise denied he was one of those who killed Titing Asenda. He claimed that at the time of the killing, he was in his house sleeping with his children. He denied using a *chako* and firing a gun. He insisted it was his brothers, Charlito and Jose Jr., who killed Titing Asenda because they pleaded guilty.

To bolster the testimony of the appellants, Vilma Rodas testified that she was at the benefit dance when the killing happened. Armando and Jose Sr., she claimed, did not participate in the killing. She said Charlito stabbed Titing while Jose Jr. merely punched the victim.

On 9 July 1998, the trial court promulgated its decision finding accused-appellants Armando Rodas and Jose Rodas, Sr. guilty of the crime of Murder. The decretal portion of the decision reads:

> WHEREFORE, the Court finds the accused Jose Rodas, Sr. and Armando Rodas guilty beyond reasonable doubt of MURDER as defined and penalized under the Revised Penal Code, as amended under Section 6 of Republic Act No. 7659 and hereby sentenced them to *RECLUSION PERPETUA* each and to indemnify the heirs of the deceased, Titing Asenda, ₱12,500.00 each or a total of ₱25,000.00.

COST (sic) *de oficio*.[13]

In finding accused-appellants guilty, the trial court gave credence to the testimonies of eyewitnesses Alberto Asonda and Ernie Anggot. It found accused-appellants and the other two accused conspired in the killing of the victim and that treachery attended the same. It gave no weight to accused-appellants' defense of alibi and denial arguing that they were positively identified as the perpetrators and that they failed to adduce evidence that it was physically impossible for them to be present at the crime scene when the killing happened. It added that their unsubstantiated denial will not be given greater evidentiary value over the testimonies of credible witnesses who testified on affirmative matters.

With a Notice of Appeal[14] filed by accused-appellants, the trial court forwarded the entire records of the case to this Court.[15] However, pursuant to our ruling in *People v. Mateo*,[16] the case was remanded to the Court of Appeals for appropriate action and disposition.

In its decision dated 28 July 2006, the Court of Appeals affirmed *in toto* the RTC's decision.[17]

With the Court of Appeals' affirmance of their convictions, accused-appellants are now before this Court *via* a notice of appeal. With the appeal being timely filed, the records of the case were elevated to this Court.

In our Resolution[18] dated 19 February 2007, the parties were required to file their respective supplemental briefs, if they so desired, within 30 days from notice. Accused-appellants manifested that since they had already filed the Appellants'

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[13] Records, pp. 103-104.

[14] *Id*. at 105.

[15] *Id*. at 106.

[16] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[17] *Rollo*, p. 151.

[18] *Id*. at 18.

Brief, as well as Reply and Supplemental Reply Brief, they are dispensing with the filing of the Supplemental Brief because the latter will merely contain a reiteration of the arguments substantially discussed in the former.[19] On the part of the Office of the Solicitor General, it manifested that considering that the guilt of the appellants had already been discussed in the Appellee's Brief, it was waiving its right to file a Supplemental Brief.[20]

Accused-Appellants assign as errors the following:

I

THE TRIAL COURT ERRED IN FINDING THAT ACCUSED-APPELLANTS WERE ALSO PRESENT AT THE DANCE AND PARTICIPATED IN ATTACKING THE VICTIM.

II

ASSUMING *ARGUENDO* THAT THE ACCUSED ARE GUILTY, THEY ARE ONLY LIABLE FOR THE CRIME OF HOMICIDE.

On the first assigned error, appellants contend that the testimonies of prosecution witnesses Alberto Asonda and Ernie Anggot should not be believed because they did not see the start of the assault on Titing, and all they saw was him injured and lying down on the floor. They insist that Asonda and Anggot could not have seen the killing because only a *Petromax* lighted the place.

After a careful and meticulous review of the records of the case, we find no reason to reverse the findings of the trial court, as affirmed by the Court of Appeals. We affirm appellants' conviction.

We find the evidence of the prosecution to be more credible than that adduced by appellants. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The

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[19] *Id*. at 19-20.

[20] *Id*. at 21-22.

reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate properly testimonial evidence.[21]

It is to be noted that the Court of Appeals affirmed the findings of the RTC. In this regard, it is settled that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court.[22] We find no compelling reason to deviate from their findings.

The Court finds that Alberto Asonda and Ernie Anggot witnessed the killing of Titing Asenda by Charlito Rodas, Armando Rodas, Jose Rodas, Jr. and Jose Rodas, Sr. When Titing was killed, Asonda and Anggot were near him. Contrary to the claim of the defense that the place where the killing occurred was not lighted enough for the assailants to be identified, the place was sufficiently lighted by a *Petromax* as testified to by Vilma Rodas.[23]

Appellants make a big issue about the absence of a medical examination. Should they be exonerated because of this? The answer is no.

A medical examination or a medical certificate is not indispensable in the case at bar. Its absence will not prove that appellants did not commit the crime charged. They can still be convicted by mere testimonial evidence, if the same is convincing. In the case at bar, the testimonies of the two eyewitnesses, which the Court found to be credible, are sufficient to prove the crime and its perpetrators.

Appellants' defense of denial and alibi must likewise fail. Mere denial, if unsubstantiated by clear and convincing evidence, has no weight in law and cannot be given greater evidentiary

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[21] *People v. Escultor*, G.R. Nos. 149366-67, 27 May 2004, 429 SCRA 651, 661.

[22] *People v. Aguila*, G.R. No. 171017, 6 December 2006, 510 SCRA 642, 661; *Rebucan v. People*, G.R. No. 164545, 20 November 2006, 507 SCRA 332, 347.

[23] TSN, 30 April 1999, p. 9.

value than the positive testimony of a victim.[24] Denial is intrinsically weak, being a negative and self-serving assertion.[25]

Denial cannot prevail over the positive testimonies of prosecution witnesses who were not shown to have any ill motive to testify against appellants. Absence of improper motive makes the testimony worthy of full faith and credence.[26] In this case, appellants, who were positively identified, testified that Asonda and Anggot had no ill motive to testify against them.[27] Moreover, ill motive has no bearing when accused were positively identified by credible eyewitnesses. Motive gains importance only when the identity of the culprit is doubtful.[28]

Appellants also interposed the defense of alibi. No jurisprudence in criminal law is more settled than that alibi is the weakest of all defenses for it is easy to contrive and difficult to disprove, and for which reason it is generally rejected.[29] For the defense of alibi to prosper, it is imperative that the accused establish two elements: (1) he was not at the *locus criminis* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission.[30] Appellants failed to do so.

In the case at bar, both appellants claimed that on the night Titing Asenda was killed, they were one kilometer away. Thus, it was not possible for them to have been at the scene of the crime when the crime was committed. The defense witnesses,

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[24] *People v. Esperas*, 461 Phil. 700, 713 (2003).

[25] *People v. Agsaoay, Jr.*, G.R. Nos. 132125-26, 3 June 2004, 430 SCRA 450, 466.

[26] *People v. Brecinio*, G.R. No. 138534, 17 March 2004, 425 SCRA 616, 625.

[27] TSN, 7 August 1998, pp. 6-7, 11 December 1998, pp. 11-12.

[28] *People v. Orpilla*, 425 Phil. 419, 428 (2002); *People v. Sicad*, 439 Phil. 610, 626 (2002).

[29] *People v. Sanchez*, 426 Phil. 19, 31 (2002).

[30] *People v. Flora*, 389 Phil. 601, 611 (2000).

however, gave conflicting testimonies. Appellant Armando said his residence was more or less one kilometer away from the crime scene[31] but Jose Sr. said it was only 50 meters away.[32] Jose Sr.[33] said the house of Charlito was only 50 meters away from the crime scene but Armando said it was one kilometer away.[34] Armando said his wife was in Dipolog City when the killing happened,[35] but his wife said she witnessed the killing.[36] Armando said he and all the other accused lived in separate houses,[37] but his wife revealed that Charlito lives with Jose Sr.[38] Vilma Rodas said after the killing, she immediately went home and told Armando that his brothers killed somebody[39] but her husband said he only learned of it the next morning.[40] What is more incredible is the fact that despite the testimony of Vilma Rodas that she informed Armando of the killing, the latter never testified to this effect. All these negate appellants' claim that they were not at the crime scene when the killing took place.

The information alleged that appellants, together with Charlito and Jose Jr., conspired in killing Titing Asenda. Article 8 of the Revised Penal Code provides that there is conspiracy when two or more persons agree to commit a crime and decide to commit it. It is hornbook doctrine that conspiracy must be proved by positive and convincing evidence, the same quantum of evidence as the crime itself.[41] Indeed, proof of previous

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[31] TSN, 11 December 1998, p. 4.

[32] TSN, 7 August 1998, p. 9.

[33] *Id*.

[34] TSN, 11 December 1998, p. 8.

[35] *Id*. at 11.

[36] TSN, 30 April 1999, p. 3.

[37] TSN, 11 December 1998, p. 4.

[38] TSN, 30 April 1999, p. 6.

[39] *Id*. at 4.

[40] TSN, 11 December 1998, p. 8.

[41] *People v. Montenegro*, G.R. No. 157933, 10 August 2004, 436 SCRA 33, 41.

agreement among the malefactors to commit the crime is not essential to prove conspiracy. It is not necessary to show that all the conspirators actually hit and killed the victim; what is primordial is that all the participants performed specific acts with such closeness and coordination as to indicate a common purpose or design to bring about the victim's death.[42] Once conspiracy is established, all the conspirators are answerable as co-principals regardless of their degree of participation. In the contemplation of the law, the act of one becomes the act of all, and it matters not who among the accused inflicted the fatal blow on the victim.[43]

In this case, conspiracy was convincingly proven beyond reasonable doubt. All the accused had the same purpose and acted in unison when they assaulted the victim. Surrounding the victim, Charlito stabbed Titing Asenda at the back with a hunting knife. Armando next clubbed the victim with a *chako,* hitting him on the left side of the nape, causing him to fall to the ground. Jose Sr. then handed a bolo to Jose Jr. who used it in hacking the victim.

On the second assigned error, appellants argue that assuming *arguendo* they are guilty, they are liable only for the crime of homicide, not murder. They contend that treachery was absent since they, together with Charlito and Jose Jr., met the victim casually in the dance hall.

The qualifying circumstance of treachery attended the killing. The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victim.[44] In *People v.*

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[42] *People v. Amazan*, G.R. Nos. 136251, 138606 & 138607, 16 January 2001, 349 SCRA 218, 234.

[43] *People v. Tagana*, G.R. No. 133027, 4 March 2004, 424 SCRA 620, 642.

[44] *People v. Botona*, G.R. No. 161291, 27 September 2004, 439 SCRA 294, 301.

Villonez,[45] we ruled that treachery may still be appreciated even when the victim was forewarned of danger to his person. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.

In the case under review, the victim was completely unaware that he was going to be attacked.[46] He was not forewarned of any danger to himself as there was no altercation or disagreement between the accused and the victim. If treachery may be appreciated even when the victim was forewarned, more so should it be appreciated when the victim was not, as in the case at bar. The suddenness of the attack, the number of the accused and their use of weapons against the unarmed victim prevent the possibility of any defense or retaliation by the victim. The fact that the victim was already sprawled on the ground and still Jose Jr. hacked him with a bolo clearly constitutes treachery.

The information also alleged that evident premeditation, nocturnity and abuse of superior strength attended the killing.

For evident premeditation to be appreciated, the following elements must be established: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly indicating that he has clung to his determination; and (3) sufficient lapse of time between decision and execution to allow the accused to reflect upon the consequences of his act.[47] Like any other circumstance that qualifies a killing as murder, evident premeditation must be established by clear and positive proof; that is, by proof beyond reasonable doubt.[48] The essence of premeditation is that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[49] In the case at bar, the prosecution failed to show the presence of any of these elements.

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[45] 359 Phil. 95, 112 (1998).

[46] TSN, 31 January 1997, p. 8.

[47] *People v. Tan*, 411 Phil. 813, 836-837 (2001).

[48] *People v. Manes*, 362 Phil. 569, 579 (1999).

[49] *People v. Rivera*, 458 Phil. 856, 879 (2003).

The aggravating circumstance of nocturnity cannot be considered against appellants. This circumstance is considered aggravating only when it facilitated the commission of the crime, or was especially sought or taken advantage of by the accused for the purpose of impunity. The essence of this aggravating circumstance is the *obscuridad* afforded by, and not merely the chronological onset of, nighttime. Although the offense was committed at night, nocturnity does not become a modifying factor when the place is adequately lighted and, thus, could no longer insure the offender's immunity from identification or capture.[50] In the instant case, the prosecution failed to show that nighttime facilitated the commission of the crime, or was especially sought or taken advantage of by the accused for the purpose of impunity. The crime scene was sufficiently lighted by a *Petromax* which led to the identification of all the accused.

The aggravating circumstance of abuse of superior strength attended the killing. There was glaring disparity of strength between the victim and the four accused. The victim was unarmed while the accused were armed with a hunting knife, *chako* and *bolo*. It is evident that the accused took advantage of their combined strength to consummate the offense. **This aggravating circumstance, though, cannot be separately appreciated because it is absorbed in treachery**. In *People v. Parreno*,[51] we decreed:

> As regards the aggravating circumstance of abuse of superior strength, what should be considered is not that there were three, four, or more assailants as against one victim, but whether the aggressors took advantage of their combined strength in order to consummate the offense. While it is true that superiority in number does not *per se* mean superiority in strength, the appellants in this case did not only enjoy superiority in number, but were armed with a weapon, while the victim had no means with which to defend himself. Thus, there was obvious physical disparity between the protagonists and abuse of superior strength on the part of the appellants. Abuse of superior strength attended the killing when the offenders took

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[50] *People v. Cariño*, G.R. No. 131117, 15 June 2004, 432 SCRA 57, 84.

[51] G.R. No. 144343, 7 July 2004, 433 SCRA 591, 608.

advantage of their combined strength in order to consummate the offense. However, the circumstance of abuse of superior strength cannot be appreciated separately, it being necessarily absorbed in treachery.

As a final attempt to lower their conviction to Homicide, appellants, citing *People v. Alba*,[52] argue that although treachery was alleged in the Information and proven according to the trial court, the same was not specified as a qualifying circumstance. Such argument fails.

In *People v. Aquino*,[53] we have held that even after the recent amendments to the Rules of Criminal Procedure, qualifying circumstances need not be preceded by descriptive words such as "qualifying" or "qualified by" to properly qualify an offense. We explained:

> Section 8 of Rule 110 requires that the Information shall "state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances." Section 8 merely requires the Information to specify the circumstances. Section 8 does not require the use of the words "qualifying" or "qualified by" to refer to the circumstances which raise the category of an offense. It is not the use of the words "qualifying" or "qualified by" that raises a crime to a higher category, but the specific allegation of an attendant circumstance which adds the essential element raising the crime to a higher category.
>
> In the instant case, the attendant circumstances of minority and relationship were specifically alleged in the Information precisely to qualify the offense of simple rape to qualified rape. The absence of the words "qualifying" or "qualified by" cannot prevent the rape from qualifying as a heinous crime provided these two circumstances are specifically alleged in the Information and proved beyond reasonable doubt.
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> We therefore reiterate that Sections 8 and 9 of Rule 110 merely require that the Information allege, specify or enumerate the attendant

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[52] 425 Phil. 666, 677-678 (2002).

[53] 435 Phil. 417 (2002).

circumstances mentioned in the law to qualify the offense. These circumstances need not be preceded by the words "aggravating/ qualifying," "qualifying," or "qualified by" to be considered as qualifying circumstances. It is sufficient that these circumstances be specified in the Information to apprise the accused of the charges against him to enable him to prepare fully for his defense, thus precluding surprises during the trial. When the prosecution specifically alleges in the Information the circumstances mentioned in the law as qualifying the crime, and succeeds in proving them beyond reasonable doubt, the Court is constrained to impose the higher penalty mandated by law. This includes the death penalty in proper cases.

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To guide the bench and the bar, this Resolution clarifies and resolves the issue of how to allege or specify qualifying or aggravating circumstances in the Information. The words "aggravating/qualifying," "qualifying," "qualified by," "aggravating," or "aggravated by" need not be expressly stated as long as the particular attendant circumstances are specified in the Information.[54]

Under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659,[55] murder is punishable by *reclusion perpetua* to death. There being neither mitigating nor aggravating circumstance in the commission of the felony, appellants should be sentenced to *reclusion perpetua,* conformably to Article 63(2) of the Revised Penal Code.

We now go to the award of damages. When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[56]

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[54] *Id.* at 426-427.

[55] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as amended, other Special Laws, and for other Purposes. Took effect on 31 December 1993.

[56] *People v. Beltran, Jr.,* G.R. No. 168051, 27 September 2006, 503 SCRA 715, 740.

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[57] We affirm the award of civil indemnity given by the trial court and the Court of Appeals. Under prevailing jurisprudence,[58] the award of ₱50,000.00 to the heirs of the victim as civil indemnity is in order. Both the trial court and the Court of Appeals awarded ₱25,000.00 as civil indemnity because the two accused who pleaded guilty to the lower offense of homicide were ordered to pay ₱25,000.00 or half of the ₱50,000.00 civil indemnity. Considering that half of the ₱50,000.00 was already paid, appellants should therefore pay only the difference.

As to actual damages, the heirs of the victim are not entitled thereto because said damages were not duly proved with reasonable degree of certainty.[59] However, the award of ₱25,000.00 in temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court.[60] Under Article 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved.[61]

Anent moral damages, the same is mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim.[62] The award of ₱50,000.00 as moral damages is in order.

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[57] *People v. Tubongbanua*, G.R. No. 171271, 31 August 2006, 500 SCRA 727, 742.

[58] *People v. Pascual*, G.R. No. 173309, 23 January 2007; *People v. Cabinan*, G.R. No. 176158, 27 March 2007; *People v. De Guzman*, G.R. No. 176158, 27 March 2007.

[59] *People v. Tubongbanua*, *supra* note 57.

[60] *People v. Dacillo*, G.R. No. 149368, 14 April 2004, 427 SCRA 528, 538.

[61] *People v. Surongon*, G.R. No. 173478, 12 July 2007.

[62] *People v. Bajar*, 460 Phil. 683, 700 (2003).

The heirs of the victim are likewise entitled to exemplary damages in the amount of ₱25,000.00 since the qualifying circumstance of treachery was firmly established.[63]

WHEREFORE, all the foregoing considered, the decision of the Court of Appeals in CA-G.R. CR-HC No. 00289 is *AFFIRMED WITH MODIFICATION*. Appellants Armando Rodas and Jose Rodas, Sr. are found *GUILTY* beyond reasonable doubt of murder as defined in Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, qualified by treachery. There being no aggravating or mitigating circumstance in the commission of the crime, they are hereby sentenced to suffer the penalty of *reclusion perpetua*. The appellants are *ORDERED* to pay, jointly and severally, the heirs of Titing Asenda the amount of ₱25,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages and ₱25,000.00 as exemplary damages. Costs against the appellants.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.*, concur.

SECOND DIVISION

[G.R. No. 164856. August 29, 2007]

JUANITO A. GARCIA and ALBERTO J. DUMAGO, *petitioners, vs.* **PHILIPPINE AIRLINES, INC.,** *respondent.*

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[63] *People v. Beltran, Jr., supra* note 56.

SYLLABUS

1. MERCANTILE LAW; REVISED SECURITIES ACT (P.D. 902-A, AS AMENDED); UPON APPOINTMENT BY THE SECURITIES AND EXCHANGE COMMISSION OF A REHABILITATION RECEIVER, ALL ACTIONS FOR CLAIMS AGAINST THE CORPORATION PENDING BEFORE ANY COURT, TRIBUNAL OR BOARD SHALL BE *IPSO JURE* BE SUSPENDED; NO EXCEPTION IN FAVOR OF LABOR CLAIMS IS MENTIONED IN THE LAW.— Upon appointment by the SEC of a rehabilitation receiver, all actions for claims against the corporation pending before any court, tribunal or board shall *ipso jure* be suspended. The purpose of the automatic stay of all pending actions for claims is to enable the rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the rescue of the corporation. More importantly, the suspension of all actions for claims against the corporation embraces all phases of the suit, be it before the trial court or any tribunal or before this Court. No other action may be taken, including the rendition of judgment during the state of suspension. It must be stressed that what are automatically stayed or suspended are the proceedings of a suit and not just the payment of claims during the execution stage after the case had become final and executory. Furthermore, the actions that are suspended cover all claims against the corporation whether for damages founded on a breach of contract of carriage, labor cases, collection suits or any other claims of a pecuniary nature. No exception in favor of labor claims is mentioned in the law. This Court's adherence to the above-stated rule has been resolute and steadfast as evidenced by its oft-repeated application in a plethora of cases involving PAL, the most recent of which is *Philippine Airlines, Inc. v. Zamora*.

2. ID.; ID.; ID.; SINCE PETITIONER'S CLAIM AGAINST RESPONDENT COMPANY IS A MONEY CLAIM FOR WAGES, THE SAME SHOULD HAVE BEEN SUSPENDED PENDING THE REHABILITATION PROCEEDINGS.— Since petitioners' claim against PAL is a money claim for their wages during the pendency of PAL's appeal to the NLRC, the same should have been suspended pending the rehabilitation

proceedings. The Labor Arbiter, the NLRC, as well as the Court of Appeals should have abstained from resolving petitioners' case for illegal dismissal and should instead have directed them to lodge their claim before PAL's receiver. However, to still require petitioners at this time to re-file their labor claim against PAL under the peculiar circumstances of the case — that their dismissal was eventually held valid with only the matter of reinstatement pending appeal being the issue — this Court deems it legally expedient to suspend the proceedings in this case.

APPEARANCES OF COUNSEL

R. Go, Jr. Law Office for petitioners.
Bienvenido T. Jamoralin, Jr. for PAL, Inc.

D E C I S I O N

QUISUMBING, *J.*:

This petition for review assails both the Decision[1] dated December 5, 2003 and the Resolution[2] dated April 16, 2004 of the Court of Appeals in CA-G.R. SP No. 69540, which had annulled the Resolutions[3] dated November 26, 2001 and January 28, 2002 of the National Labor Relations Commission (NLRC) in NLRC Injunction Case No. 0001038-01, and also denied the motion for reconsideration, respectively.

The antecedent facts of the case are as follows:

Petitioners Alberto J. Dumago and Juanito A. Garcia were employed by respondent Philippine Airlines, Inc. (PAL) as Aircraft Furnishers Master "C" and Aircraft Inspector, respectively. They were assigned in the PAL Technical Center.

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[1] *Rollo*, pp. 38-48. Penned by Associate Justice Sergio L. Pestaño, with Associate Justices Marina L. Buzon and Jose C. Mendoza concurring.

[2] *Id*. at 49.

[3] CA *rollo*, pp. 15-21 and 24-26.

On July 24, 1995, a combined team of the PAL Security and National Bureau of Investigation (NBI) Narcotics Operatives raided the Toolroom Section — Plant Equipment Maintenance Division (PEMD) of the PAL Technical Center. They found petitioners, with four others, near the said section at that time. When the PAL Security searched the section, they found shabu paraphernalia inside the company-issued locker of Ronaldo Broas who was also within the vicinity. The six employees were later brought to the NBI for booking and proper investigation.

On July 26, 1995, a Notice of Administrative Charge[4] was served on petitioners. They were allegedly "caught in the act of sniffing shabu inside the Toolroom Section," then placed under preventive suspension and required to submit their written explanation within ten days from receipt of the notice.

Petitioners vehemently denied the allegations and challenged PAL to show proof that they were indeed "caught in the act of sniffing shabu." Dumago claimed that he was in the Toolroom Section to request for an allen wrench to fix the needles of the sewing and zigzagger machines. Garcia averred he was in the Toolroom Section to inquire where he could take the Trackster's tire for vulcanizing.

On October 9, 1995, petitioners were dismissed for violation of Chapter II, Section 6, Article 46 (Violation of Law/Government Regulations) and Chapter II, Section 6, Article 48 (Prohibited Drugs) of the PAL Code of Discipline.[5] Both simultaneously filed a case for illegal dismissal and damages.

In the meantime, the Securities and Exchange Commission (SEC) placed PAL under an Interim Rehabilitation Receiver due to severe financial losses.

On January 11, 1999, the Labor Arbiter rendered a decision[6] in petitioners' favor:

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[4] Records, Vol. I, pp. 30-31.

[5] *Id.* at 32-33.

[6] *Id.* at 160-167.

WHEREFORE, conformably with the foregoing, judgment is hereby rendered finding the respondents guilty of illegal suspension and illegal dismissal and ordering them to reinstate complainants to their former position without loss of seniority rights and other privileges. Respondents are hereby further ordered to pay jointly and severally unto the complainants the following:

Alberto J. Dumago - ₱409,500.00 backwages as of 1/10/99
34,125.00 for 13th month pay

Juanito A. Garcia - ₱1,290,744.00 backwages as of 1/10/99
107,562.00 for 13th month pay

The amounts of ₱100,000.00 and ₱50,000.00 to each complainant as and by way of moral and exemplary damages; and

The sum equivalent to ten percent (10%) of the total award as and for attorneys fees.

Respondents are directed to immediately comply with the reinstatement aspect of this Decision. However, in the event that reinstatement is no longer feasible, respondent[s] are hereby ordered, in lieu thereof, to pay unto the complainants their separation pay computed at one month for [e]very year of service.

SO ORDERED.[7]

Meanwhile, the SEC replaced the Interim Rehabilitation Receiver with a Permanent Rehabilitation Receiver.

On appeal, the NLRC reversed the Labor Arbiter's decision and dismissed the case for lack of merit.[8] Reconsideration having been denied, an Entry of Judgment[9] was issued on July 13, 2000.

On October 5, 2000, the Labor Arbiter issued a Writ of Execution[10] commanding the sheriff to proceed:

x x x x x x x x x

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[7] *Id*. at 167.

[8] *Id*. at 174-186.

[9] *Id*. at 209-210.

[10] CA *rollo*, pp. 57-61.

1. To the Office of respondent PAL Building I, Legaspi St., Legaspi Village, Makati City or to any of its Offices in the Philippines and cause reinstatement of complainants to their former position and to cause the collection of the amount of [₱]549,309.60 from respondent PAL representing the backwages of said complainants on the reinstatement aspect;

2. In case you cannot collect from respondent PAL for any reason, you shall levy on the office equipment and other movables and garnish its deposits with any bank in the Philippines, subject to the limitation that equivalent amount of such levied movables and/or the amount garnished in your own judgment, shall be equivalent to [₱]549,309.60. If still insufficient, levy against immovable properties of PAL not otherwise exempt from execution.

x x x x x x x x x[11]

Although PAL filed an Urgent Motion to Quash Writ of Execution, the Labor Arbiter issued a Notice of Garnishment[12] addressed to the President/Manager of the Allied Bank Head Office in Makati City for the amount of ₱549,309.60.

PAL moved to lift the Notice of Garnishment while petitioners moved for the release of the garnished amount. PAL opposed petitioners' motion. It also filed an Urgent Petition for Injunction which the NLRC resolved as follows:

WHEREFORE, premises considered, the Petition is partially GRANTED. Accordingly, the Writ of Execution dated October 5, 2000 and related [N]otice of Garnishment [dated October 25, 2000] are DECLARED valid. However, the instant action is SUSPENDED and REFERRED to the Receiver of Petitioner PAL for appropriate action.

SO ORDERED.[13]

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[11] *Id*. at 60-61.

[12] *Id*. at 71.

[13] *Id*. at 21.

PAL appealed to the Court of Appeals on the grounds that: (1) by declaring the writ of execution and the notice of garnishment valid, the NLRC gave petitioners undue advantage and preference over PAL's other creditors and hampered the task of the Permanent Rehabilitation Receiver; and (2) there was no longer any legal or factual basis to reinstate petitioners as a result of the reversal by the NLRC of the Labor Arbiter's decision.

The appellate court ruled that the Labor Arbiter issued the writ of execution and the notice of garnishment without jurisdiction. Hence, the NLRC erred in upholding its validity. Since PAL was under receivership, it could not have possibly reinstated petitioners due to retrenchment and cash-flow constraints. The appellate court declared that a stay of execution may be warranted by the fact that PAL was under rehabilitation receivership. The dispositive portion of the decision reads:

> WHEREFORE, premises considered and in view of the foregoing, the instant petition is hereby **GIVEN DUE COURSE**. The assailed November 26, 2001 Resolution, as well as the January 28, 2002 Resolution of public respondent National Labor Relations Commission is hereby **ANNULLED** and **SET ASIDE** for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Consequently, the Writ of Execution and the Notice of Garnishment issued by the Labor Arbiter are hereby likewise **ANNULLED** and **SET ASIDE**.
>
> SO ORDERED.[14]

Hence, the instant petition raising a single issue as follows:

> WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE PETITIONERS ARE ENTITLED TO THEIR ACCRUED WAGES DURING THE PENDENCY OF PAL'S APPEAL.[15]

Simply put, however, there are really two issues for our consideration: (1) Are petitioners entitled to their wages during the pendency of PAL's appeal to the NLRC? and (2) In the

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[14] *Rollo*, pp. 47-48.

[15] *Id*. at 219.

light of new developments concerning PAL's rehabilitation, are petitioners entitled to execution of the Labor Arbiter's order of reinstatement even if PAL is under receivership?

We shall first resolve the issue of whether the execution of the Labor Arbiter's order is legally possible even if PAL is under receivership.

We note that during the pendency of this case, PAL was placed by the SEC first, under an Interim Rehabilitation Receiver and finally, under a Permanent Rehabilitation Receiver. The pertinent law on this matter, Section 5(d) of Presidential Decree (P.D.) No. 902-A, as amended, provides that:

SECTION 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

x x x x x x x x x

d) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses property to cover all of its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the [management of a rehabilitation receiver or] Management Committee created pursuant to this Decree.

The same P.D., in Section 6(c) provides that:

SECTION 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

x x x x x x x x x

c) To appoint one or more receivers of the property, real or personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors:...*Provided, finally,* That upon

appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly.

x x x x x x x x x

Worth stressing, upon appointment by the SEC of a rehabilitation receiver, all actions for claims against the corporation pending before any court, tribunal or board shall *ipso jure* be suspended. The purpose of the automatic stay of all pending actions for claims is to enable the rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the rescue of the corporation.[16]

More importantly, the suspension of all actions for claims against the corporation embraces all phases of the suit, be it before the trial court or any tribunal or before this Court.[17] No other action may be taken, including the rendition of judgment during the state of suspension. It must be stressed that what are automatically stayed or suspended are the proceedings of a suit and not just the payment of claims during the execution stage after the case had become final and executory.[18]

Furthermore, the actions that are suspended cover all claims against the corporation whether for damages founded on a breach of contract of carriage, labor cases, collection suits or any other claims of a pecuniary nature.[19] No exception in favor of labor claims is mentioned in the law.[20]

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[16] *Rubberworld (Phils.), Inc. v. NLRC*, G.R. No. 126773, April 14, 1999, 305 SCRA 721, 728.

[17] *Philippine Airlines, Inc. v. Zamora*, G.R. No. 166996, February 6, 2007, p. 20.

[18] *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 123238, July 11, 2005, p. 11.

[19] *Philippine Airlines, Inc. v. Zamora*, *supra* note 17.

[20] *Rubberworld (Phils.), Inc. v. NLRC*, *supra* at 729.

This Court's adherence to the above-stated rule has been resolute and steadfast as evidenced by its oft-repeated application in a plethora of cases involving PAL, the most recent of which is *Philippine Airlines, Inc. v. Zamora*.[21]

Since petitioners' claim against PAL is a money claim for their wages during the pendency of PAL's appeal to the NLRC, the same should have been suspended pending the rehabilitation proceedings. The Labor Arbiter, the NLRC, as well as the Court of Appeals should have abstained from resolving petitioners' case for illegal dismissal and should instead have directed them to lodge their claim before PAL's receiver.[22]

However, to still require petitioners at this time to re-file their labor claim against PAL under the peculiar circumstances of the case — that their dismissal was eventually held valid with only the matter of reinstatement pending appeal being the issue — this Court deems it legally expedient to suspend the proceedings in this case.

WHEREFORE, the instant petition is *PARTIALLY GRANTED* in that the instant proceedings herein are *SUSPENDED until further notice from this Court*. Accordingly, respondent Philippine Airlines, Inc. is hereby *DIRECTED* to quarterly update the Court as to the status of its ongoing rehabilitation. No costs.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

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[21] *Supra* note 17.

[22] *Clarion Printing House, Inc. v. National Labor Relations Commission,* G.R. No. 148372, June 27, 2005, 461 SCRA 272, 296.

EN BANC

[G.R. No. 166052. August 29, 2007]

ANAK MINDANAO PARTY-LIST GROUP, as represented by Rep. Mujiv S. Hataman, and MAMALO DESCENDANTS ORGANIZATION, INC., as represented by its Chairman Romy Pardi, *petitioners, vs.* **THE EXECUTIVE SECRETARY, THE HON. EDUARDO R. ERMITA, and THE SECRETARY OF AGRARIAN/LAND REFORM, THE HON. RENE C. VILLA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; REQUIREMENTS BEFORE A COURT MAY DECLARE A LAW UNCONSTITUTIONAL; *LOCUS STANDI* OR LEGAL STANDING; A MEMBER OF THE HOUSE OF REPRESENTATIVES HAS STANDING TO MAINTAIN INVIOLATE THE PREROGATIVES, POWERS AND PRIVILEGES VESTED BY THE CONSTITUTION IN HIS OFFICE.— The Office of the Solicitor General (OSG), on behalf of respondents, concedes that AMIN has the requisite legal standing to file this suit as member of Congress. Petitioners find it impermissible for the Executive to intrude into the domain of the Legislature. They posit that an act of the Executive which injures the institution of Congress causes a derivative but nonetheless substantial injury, which can be questioned by a member of Congress. They add that to the extent that the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution. Indeed, a member of the House of Representatives has standing to maintain inviolate the prerogatives, powers and privileges vested by the Constitution in his office.

2. ID.; ID.; ID.; ID.; ID.; A PARTY WHO ASSAILS THE CONSTITUTIONALITY OF A STATUTE MUST HAVE A DIRECT AND PERSONAL INTEREST; IT MUST SHOW

NOT ONLY THAT THE LAW OR ANY GOVERNMENTAL ACT IS INVALID, BUT ALSO THAT IT SUSTAINED OR IS IN IMMEDIATE DANGER OF SUSTAINING SOME DIRECT INJURY AS A RESULT OF ITS ENFORCEMENT, AND NOT MERELY THAT IT SUFFERS THEREBY IN SOME INDEFINITE WAY.— *Locus standi* or legal standing has been defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions. It has been held that a party who assails the constitutionality of a statute must have a direct and personal interest. It must show not only that the law or any governmental act is invalid, but also that it sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement, and not merely that it suffers thereby in some indefinite way. It must show that it has been or is about to be denied some right or privilege to which it is lawfully entitled or that it is about to be subjected to some burdens or penalties by reason of the statute or act complained of. For a concerned party to be allowed to raise a constitutional question, it must show that (1) it has personally suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government, (2) the injury is fairly traceable to the challenged action, and (3) the injury is likely to be redressed by a favorable action.

3. ID.; ID.; ID.; ID.; ID.; NEBULOUS CLAIMS OF "NEGATIVE IMPACT" AND "PROBABLE SETBACKS" ARE TOO ABSTRACT TO BE CONSIDERED JUDICIALLY COGNIZABLE.— An examination of MDOI's nebulous claims of "negative impact" and "probable setbacks" shows that they are too abstract to be considered judicially cognizable. And the line of causation it proffers between the challenged action and alleged injury is too attenuated. Vague propositions that the implementation of the assailed orders will work injustice and violate the rights of its members cannot clothe MDOI with the requisite standing. Neither would its status as a "people's organization" vest it with the legal standing to assail the validity of the executive orders. *La Bugal-B'laan Tribal Association*,

Inc. v. Ramos, which MDOI cites in support of its claim to legal standing, is inapplicable as it is not similarly situated with the therein petitioners who alleged personal and substantial injury resulting from the mining activities permitted by the assailed statute. And so is *Cruz v. Secretary of Environment and Natural Resources,* for the indigenous peoples' leaders and organizations were not the petitioners therein, who necessarily had to satisfy the *locus standi* requirement, but were intervenors who sought and were allowed to be impleaded, not to assail but to defend the constitutionality of the statute. Moreover, MDOI raises no issue of transcendental importance to justify a relaxation of the rule on legal standing. To be accorded standing on the ground of transcendental importance, *Senate of the Philippines v. Ermita* requires that the following elements must be established: (1) the public character of the funds or other assets involved in the case, (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of government, and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised. The presence of these elements MDOI failed to establish, much less allege. *Francisco, Jr. v. Fernando* more specifically declares that the transcendental importance of the issues raised must relate to the merits of the petition. This Court, not being a venue for the ventilation of generalized grievances, must thus deny adjudication of the matters raised by MDOI.

4. ID.; ID.; ID.; ID; ID.; PETITIONER'S CONCEPT OF "ORDERING THE LAW" INTERPRETATION CANNOT BE MADE A BASIS FOR DECLARING A LAW OR GOVERNMENTAL ACT UNCONSTITUTIONAL.— The interplay of various areas of reform in the promotion of social justice is not something implausible or unlikely. Their interlocking nature cuts across labels and works against a rigid pigeonholing of executive tasks among the members of the President's official family. Notably, the Constitution inhibited from identifying and compartmentalizing the composition of the Cabinet. In vesting executive power in one person rather than in a plural executive, the evident intention was to invest the power holder with energy. AMIN takes premium on the severed treatment of these reform areas in marked provisions of the Constitution. It is a precept, however, that inferences drawn from title, chapter or section headings are entitled to

very little weight. And so must reliance on sub-headings, or the lack thereof, to support a strained deduction be given the weight of helium. Secondary aids may be consulted to remove, not to create doubt. AMIN's thesis unsettles, more than settles the order of things in construing the Constitution. Its interpretation fails to clearly establish that the so-called "ordering" or arrangement of provisions in the Constitution was consciously adopted to imply a signification in terms of government hierarchy from where a constitutional mandate can *per se* be derived or asserted. It fails to demonstrate that the "ordering" or layout was not simply a matter of style in constitutional drafting but one of intention in government structuring. With its inherent ambiguity, the proposed interpretation cannot be made a basis for declaring a law or governmental act unconstitutional.

5. ID.; ID.; ID.; ID.; ID.; A LAW HAS IN ITS FAVOR THE PRESUMPTION OF CONSTITUTIONALITY AND FOR IT TO BE NULLIFIED, THE GROUND FOR NULLITY MUST BE CLEAR AND BEYOND REASONABLE DOUBT; CASE AT BAR.— A law has in its favor the presumption of constitutionality. For it to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution. The ground for nullity must be clear and beyond reasonable doubt. Any reasonable doubt should, following the universal rule of legal hermeneutics, be resolved in favor of the constitutionality of a law. *Ople v. Torres* on which AMIN relies is unavailing. In that case, an administrative order involved a system of identification that required a "delicate adjustment of various contending state policies" properly lodged in the legislative arena. It was declared unconstitutional for dealing with a subject that should be covered by law and for violating the right to privacy. In the present case, AMIN glaringly failed to show how the reorganization by executive fiat would hamper the exercise of citizen's rights and privileges. It rested on the ambiguous conclusion that the reorganization jeopardizes economic, social and cultural rights. It intimated, without expounding, that the agendum behind the issuances is to weaken the indigenous peoples' rights in favor of the mining industry. And it raised concerns about the possible retrogression in DAR's performance as the added workload may impede the implementation of the comprehensive agrarian reform program. AMIN has not shown, however, that by placing the NCIP as an

attached agency of the DAR, the President altered the nature and dynamics of the jurisdiction and adjudicatory functions of the NCIP concerning all claims and disputes involving rights of indigenous cultural communities and indigenous peoples. Nor has it been shown, nay alleged, that the reorganization was made in bad faith.

6. ID.; ID.; ID.; ID.; ID.; COURTS HAVE NO JUDICIAL POWER TO REVIEW CASES INVOLVING POLITICAL QUESTIONS AND AS A RULE, WILL DESIST FROM TAKING COGNIZANCE OF SPECULATIVE OR HYPOTHETICAL, ADVISORY OPINIONS AND CASES THAT HAVE BECOME MOOT.— As for the other arguments raised by AMIN which pertain to the wisdom or soundness of the executive decision, the Court finds it unnecessary to pass upon them. The raging debate on the most fitting framework in the delivery of social services is endless in the political arena. It is not the business of this Court to join in the fray. Courts have no judicial power to review cases involving political questions and, as a rule, will desist from taking cognizance of speculative or hypothetical cases, advisory opinions and cases that have become moot.

7. ID.; ID.; ID.; ID.; ID.; THE PENALTY FOR FAILURE ON THE PART OF THE GOVERNMENT TO CONSULT THE PEOPLE IN DECISION-MAKING THROUGH ADEQUATE CONSULTATION MECHANISMS COULD ONLY BE REFLECTED IN THE BALLOT BOX AND WOULD NOT NULLIFY GOVERNMENT ACTION.— A word on the last ground proffered for declaring the unconstitutionality of the assailed issuances — that they violate Section 16, Article XIII of the Constitution on the people's right to participate in decision-making through adequate consultation mechanisms. The framers of the Constitution recognized that the consultation mechanisms were already operating without the State's action by law, such that the role of the State would be mere facilitation, not necessarily creation of these consultation mechanisms. The State provides the support, but eventually it is the people, properly organized in their associations, who can assert the right and pursue the objective. Penalty for failure on the part of the government to consult could only be reflected in the ballot box and would not nullify government action.

8. ID.; EXECUTIVE DEPARTMENT; POWER OF CONTROL BY THE PRESIDENT OVER EXECUTIVE

DEPARTMENTS, BUREAUS AND OFFICES; THE CONSTITUTION'S EXPRESS GRANT OF THE POWER OF CONTROL IN THE PRESIDENT JUSTIFIES AN EXECUTIVE ACTION TO CARRY OUT REORGANIZATION MEASURES UNDER A BROAD AUTHORITY OF LAW.— The Constitution confers, by express provision, the power of control over executive departments, bureaus and offices in the President alone. And it lays down a limitation on the legislative power. The line that delineates the Legislative and Executive power is not indistinct. Legislative power is "the authority, under the Constitution, to make laws, and to alter and repeal them." The Constitution, as the will of the people in their original, sovereign and unlimited capacity, has vested this power in the Congress of the Philippines. The grant of legislative power to Congress is broad, general and comprehensive. The legislative body possesses plenary power for all purposes of civil government. Any power, deemed to be legislative by usage and tradition, is necessarily possessed by Congress, unless the Constitution has lodged it elsewhere. In fine, except as limited by the Constitution, either expressly or impliedly, legislative power embraces all subjects and extends to matters of general concern or common interest. While Congress is vested with the power to enact laws, the President executes the laws. The executive power is vested in the President. It is generally defined as the power to enforce and administer the laws. It is the power of carrying the laws into practical operation and enforcing their due observance. As head of the Executive Department, the President is the Chief Executive. He represents the government as a whole and sees to it that all laws are enforced by the officials and employees of his department. He has control over the executive department, bureaus and offices. This means that he has the authority to assume directly the functions of the executive department, bureau and office, or interfere with the discretion of its officials. Corollary to the power of control, the President also has the duty of supervising and enforcement of laws for the maintenance of general peace and public order. Thus, he is granted administrative power over bureaus and offices under his control to enable him to discharge his duties effectively. The Constitution's express grant of the power of control in the President justifies an executive action to carry out reorganization measures under a broad authority of law.

9. ID.; ID.; ID.; THE CHALLENGED EXECUTIVE ORDERS MAY NOT BE SAID TO HAVE BEEN ISSUED WITH GRAVE ABUSE OF DISCRETION OR IN VIOLATION OF THE RULE OF LAW; THE PRESIDENT MAY TRANSFER ANY AGENCY UNDER THE PRESIDENT TO ANY OTHER DEPARTMENT OR AGENCY, SUBJECT TO THE POLICY IN THE EXECUTIVE OFFICE.— In enacting a statute, the legislature is presumed to have deliberated with full knowledge of all existing laws and jurisprudence on the subject. It is thus reasonable to conclude that in passing a statute which places an agency under the President, it was in accordance with existing laws and jurisprudence on the President's power to reorganize. In establishing an executive department, bureau or office, the legislature necessarily ordains an executive agency's position in the scheme of administrative structure. Such determination is primary, but subject to the President's continuing authority to reorganize the administrative structure. As far as bureaus, agencies or offices in the executive department are concerned, the power of control may justify the President to deactivate the functions of a particular office. Or a law may expressly grant the President the broad authority to carry out reorganization measures. The Administrative Code of 1987 is one such law: In carrying out the laws into practical operation, the President is best equipped to assess whether an executive agency ought to continue operating in accordance with its charter or the law creating it. This is not to say that the legislature is incapable of making a similar assessment and appropriate action within its plenary power. The Administrative Code of 1987 merely underscores the need to provide the President with suitable solutions to situations on hand to meet the exigencies of the service that may call for the exercise of the power of control. The Office of the President consists of the office of the President proper and the agencies under it. It is not disputed that PCUP and NCIP were formed as agencies under the President. The "Agencies under the President" refer to those offices placed under the chairmanship of the President, those under the supervision and control of the President, those under the administrative supervision of the President, those attached to the Office for policy and program coordination, and those that are not placed by law or order creating them under any special department. As thus provided by law, the President may transfer any agency under the office of the President to

any other department or agency, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency. Gauged against these guidelines, the challenged executive orders may not be said to have been issued with grave abuse of discretion or in violation of the rule of law.

10. ID.; ID.; ID.; ID.; ID.; IN TRANSFERRING THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES (NCIP) TO THE DEPARTMENT OF AGRARIAN REFORM (DAR) AS AN ATTACHED AGENCY, THE PRESIDENT EFFECTIVELY TEMPERED THE EXERCISE OF PRESIDENTIAL AUTHORITY AND CONSIDERABLY RECOGNIZED THAT DEGREE OF INDEPENDENCE.— The references in E.O. 364 to asset reform as an anti-poverty measure for social justice and to rationalization of the bureaucracy in furtherance of good government encapsulate a portion of the existing "policy in the Executive Office." As averred by the OSG, the President saw it fit to streamline the agencies so as not to hinder the delivery of crucial social reforms. The consolidation of functions in E.O. 364 aims to attain the objectives of "simplicity, economy and efficiency" as gathered from the provision granting PCUP and NCIP access to the range of services provided by the DAR's technical offices and support systems. The characterization of the NCIP as an independent agency under the President does not remove said body from the President's control and supervision with respect to its performance of administrative functions. So it has been opined: That Congress did not intend to place the NCIP under the control of the President in all instances is evident in the IPRA itself, which provides that the decisions of the NCIP in the exercise of its quasi-judicial functions shall be appealable to the Court of Appeals, like those of the National Labor Relations Commission (NLRC) and the Securities and Exchange Commission (SEC). Nevertheless, the NCIP, although independent to a certain degree, was placed by Congress "under the President" and, as such, is still subject to the President's power of control and supervision granted under Section 17, Article VII of the Constitution with respect to its performance of administrative functions[.] In transferring the NCIP to the DAR as an attached agency, the President effectively tempered the exercise of presidential authority and considerably recognized that degree of independence.

APPEARANCES OF COUNSEL

Soliman M. Santos, Jr. for petitioners.
The Solicitor General for respondents.
Delfin B. Samson for DAR.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioners *Anak* Mindanao Party-List Group (AMIN) and Mamalo Descendants Organization, Inc. (MDOI) assail the constitutionality of Executive Order (E.O.) Nos. 364 and 379, both issued in 2004, *via* the present Petition for *Certiorari* and Prohibition with prayer for injunctive relief.

E.O. No. 364, which President Gloria Macapagal-Arroyo issued on September 27, 2004, reads:

EXECUTIVE ORDER NO. 364

TRANSFORMING THE DEPARTMENT OF AGRARIAN REFORM INTO THE DEPARTMENT OF LAND REFORM

WHEREAS, one of the five reform packages of the Arroyo administration is Social Justice and Basic [N]eeds;

WHEREAS, one of the five anti-poverty measures for social justice is asset reform;

WHEREAS, asset reforms covers [*sic*] agrarian reform, urban land reform, and ancestral domain reform;

WHEREAS, urban land reform is a concern of the Presidential Commission [for] the Urban Poor (PCUP) and ancestral domain reform is a concern of the National Commission on Indigenous Peoples (NCIP);

WHEREAS, another of the five reform packages of the Arroyo administration is Anti-Corruption and Good Government;

WHEREAS, one of the Good Government reforms of the Arroyo administration is rationalizing the bureaucracy by consolidating related functions into one department;

WHEREAS, under law and jurisprudence, the President of the Philippines has broad powers to reorganize the offices under her supervision and control;

NOW[,] THEREFORE[,] I, Gloria Macapagal-Arroyo, by the powers vested in me as President of the Republic of the Philippines, do hereby order:

SECTION 1. **The Department of Agrarian Reform** is hereby **transformed** into the **Department of Land Reform**. It shall be responsible for all land reform in the country, including agrarian reform, urban land reform, and ancestral domain reform.

SECTION 2. The **PCUP** is hereby placed **under the supervision and control of the Department of Land Reform**. The Chairman of the PCUP shall be *ex-officio* Undersecretary of the Department of Land Reform for Urban Land Reform.

SECTION 3. The NCIP is hereby placed under the supervision and control of the Department of Land Reform. The Chairman of the NCIP shall be *ex-officio* Undersecretary of the Department of Land Reform for Ancestral Domain Reform.

SECTION 4. The PCUP and the NCIP shall have access to the services provided by the Department's Finance, Management and Administrative Office; Policy, Planning and Legal Affairs Office, Field Operations and Support Services Office, and all other offices of the Department of Land Reform.

SECTION 5. All previous issuances that conflict with this Executive Order are hereby repealed or modified accordingly.

SECTION 6. This Executive Order takes effect immediately. (Emphasis and underscoring supplied)

E.O. No. 379, which amended E.O. No. 364 a month later or on October 26, 2004, reads:

EXECUTIVE ORDER NO. 379

AMENDING EXECUTIVE ORDER NO. 364 ENTITLED TRANSFORMING THE DEPARTMENT OF AGRARIAN REFORM INTO THE DEPARTMENT OF LAND REFORM

WHEREAS, Republic Act No. 8371 created the National Commission on Indigenous Peoples;

WHEREAS, pursuant to the Administrative Code of 1987, the President has the continuing authority to reorganize the administrative structure of the National Government.

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution and existing laws, do hereby order:

Section 1. *Amending Section 3 of Executive Order No. 364*. Section 3 of Executive Order No. 364, dated September 27, 2004 shall now read as follows:

> "Section 3. The **National Commission on Indigenous Peoples** (NCIP) shall be an **attached agency of the Department of Land Reform**."

Section 2. *Compensation*. The Chairperson shall suffer no diminution in rank and salary.

Section 3. *Repealing Clause*. All executive issuances, rules and regulations or parts thereof which are inconsistent with this Executive Order are hereby revoked, amended or modified accordingly.

Section 4. *Effectivity*. This Executive Order shall take effect immediately. (Emphasis and underscoring in the original)

Petitioners contend that the two presidential issuances are unconstitutional for violating:

- THE CONSTITUTIONAL PRINCIPLES OF SEPARATION OF POWERS AND OF THE RULE OF LAW[;]
- THE CONSTITUTIONAL SCHEME AND POLICIES FOR AGRARIAN REFORM, URBAN LAND REFORM, INDIGENOUS PEOPLES' RIGHTS AND ANCESTRAL DOMAIN[; AND]
- THE CONSTITUTIONAL RIGHT OF THE PEOPLE AND THEIR ORGANIZATIONS TO EFFECTIVE AND REASONABLE PARTICIPATION IN DECISION-MAKING, INCLUDING THROUGH ADEQUATE CONSULTATION[.][1]

By Resolution of December 6, 2005, this Court gave due course to the Petition and required the submission of memoranda,

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[1] *Rollo*, p. 6.

with which petitioners and respondents complied on March 24, 2006 and April 11, 2006, respectively.

The issue on the transformation of the Department of Agrarian Reform (DAR) into the Department of Land Reform (DLR) became moot and academic, however, the department having reverted to its former name by virtue of E.O. No. 456[2] which was issued on August 23, 2005.

The Court is thus left with the sole issue of the legality of placing the Presidential Commission[3] for the Urban Poor (PCUP) under the supervision and control of the DAR, and the National Commission on Indigenous Peoples (NCIP) under the DAR as an attached agency.

Before inquiring into the validity of the reorganization, petitioners' *locus standi* or legal standing, *inter alia*,[4] becomes a preliminary question.

The Office of the Solicitor General (OSG), on behalf of respondents, concedes that AMIN[5] has the requisite legal standing to file this suit as member[6] of Congress.

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[2] Entitled "RENAMING THE DEPARTMENT OF LAND REFORM BACK TO DEPARTMENT OF AGRARIAN REFORM" which declared that agrarian reform "goes beyond just land reform but includes the totality of all factors and support services designed to lift the economic status of the beneficiaries."

[3] Formerly "Committee" until modified by MEMORANDUM ORDER No. 68 issued on January 22, 1987.

[4] As there is no disagreement between the parties over the rest of the requisites for a valid exercise of judicial review, discussion on the same shall be unnecessary, as deemed by the Court. Vide *Pimentel, Jr. v. Aguirre*, G.R. No. 132988, July 19, 2000, 336 SCRA 201, 213.

[5] *Anak* Mindanao is a registered party-list group with one seat in the House of Representatives occupied by Rep. Mujiv S. Hataman whose constituency includes indigenous peoples (*Lumads*), peasants and urban poor in Mindanao.

[6] Vide discussion in *Senate of the Philippines v. Ermita,* G.R. No. 169777, July 14, 2006, 495 SCRA 170, for a discussion on the entitlement of a party-list organization to participate in the legislative process *vis-à-vis* the intertwining rights of its representative/s.

Petitioners find it impermissible for the Executive to intrude into the domain of the Legislature. They posit that an act of the Executive which injures the institution of Congress causes a derivative but nonetheless substantial injury, which can be questioned by a member of Congress.[7] They add that to the extent that the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution.[8]

Indeed, a member of the House of Representatives has standing to maintain inviolate the prerogatives, powers and privileges vested by the Constitution in his office.[9]

The OSG questions, however, the standing of MDOI, a registered people's organization of *Teduray* and *Lambangian* tribesfolk of (North) Upi and South Upi in the province of Maguindanao.

As co-petitioner, MDOI alleges that it is concerned with the negative impact of NCIP's becoming an attached agency of the DAR on the processing of ancestral domain claims. It fears that transferring the NCIP to the DAR would affect the processing of ancestral domain claims filed by its members.

Locus standi or legal standing has been defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.[10]

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[7] *Philconsa v. Enriquez*, G.R. No. 113105, August 19, 1994, 235 SCRA 506.

[8] *Pimentel, Jr. v. Office of the Executive Secretary*, G.R. No. 158088, July 6, 2005, 462 SCRA 622.

[9] *Del Mar v. Phil. Amusement and Gaming Corp.*, 400 Phil. 307 (2000).

[10] *Francisco, Jr. v. The House of Representatives*, 460 Phil. 830, 893 (2003).

It has been held that a party who assails the constitutionality of a statute must have a direct and personal interest. It must show not only that the law or any governmental act is invalid, but also that it sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement, and not merely that it suffers thereby in some indefinite way. It must show that it has been or is about to be denied some right or privilege to which it is lawfully entitled or that it is about to be subjected to some burdens or penalties by reason of the statute or act complained of.[11]

For a concerned party to be allowed to raise a constitutional question, it must show that (1) it has personally suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government, (2) the injury is fairly traceable to the challenged action, and (3) the injury is likely to be redressed by a favorable action.[12]

An examination of MDOI's nebulous claims of "negative impact" and "probable setbacks"[13] shows that they are too abstract to be considered judicially cognizable. And the line of causation it proffers between the challenged action and alleged injury is too attenuated.

Vague propositions that the implementation of the assailed orders will work injustice and violate the rights of its members cannot clothe MDOI with the requisite standing. Neither would its status as a "people's organization" vest it with the legal standing to assail the validity of the executive orders.[14]

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[11] Vide *Agan, Jr. v. Phil.International Air Terminals Co., Inc.*, 450 Phil. 744 (2003).

[12] Vide *Telecom and Broadcast Attys. of the Phils., Inc. v. COMELEC*, 352 Phil. 153, 168 (1998); vide also *Lozada v. Comelec*, 205 Phil. 283 (1983) on the need to establish concrete injury.

[13] *Rollo*, pp. 5-6.

[14] Vide *Sanlakas v. Executive Secretary*, 466 Phil. 482, 508 (2004) citing *Kilosbayan v. Morato*, G.R. No. 118910, November 16, 1995, 250 SCRA 130.

La Bugal-B'laan Tribal Association, Inc. v. Ramos,[15] which MDOI cites in support of its claim to legal standing, is inapplicable as it is not similarly situated with the therein petitioners who alleged personal and substantial injury resulting from the mining activities permitted by the assailed statute. And so is *Cruz v. Secretary of Environment and Natural Resources*,[16] for the indigenous peoples' leaders and organizations were not the petitioners therein, who necessarily had to satisfy the *locus standi* requirement, but were intervenors who sought and were allowed to be impleaded, not to assail but to defend the constitutionality of the statute.

Moreover, MDOI raises no issue of transcendental importance to justify a relaxation of the rule on legal standing. To be accorded standing on the ground of transcendental importance, *Senate of the Philippines v. Ermita*[17] requires that the following elements must be established: (1) the public character of the funds or other assets involved in the case, (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of government, and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised. The presence of these elements MDOI failed to establish, much less allege.

Francisco, Jr. v. Fernando[18] more specifically declares that the transcendental importance of the issues raised must relate to the merits of the petition.

This Court, not being a venue for the ventilation of generalized grievances, must thus deny adjudication of the matters raised by MDOI.

Now, on AMIN's position. AMIN charges the Executive Department with transgression of the principle of separation of powers.

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[15] 465 Phil. 860 (2004).

[16] 400 Phil. 904 (2000).

[17] G.R. No. 169777, April 20, 2006, 488 SCRA 1.

[18] G.R. No. 166501, November 16, 2006, 507 SCRA 173.

Under the principle of separation of powers, Congress, the President, and the Judiciary may not encroach on fields allocated to each of them. The legislature is generally limited to the enactment of laws, the executive to the enforcement of laws, and the judiciary to their interpretation and application to cases and controversies. The principle presupposes mutual respect by and between the executive, legislative and judicial departments of the government and calls for them to be left alone to discharge their duties as they see fit.[19]

AMIN contends that since the DAR, PCUP and NCIP were created by statutes,[20] they can only be transformed, merged or attached by statutes, not by mere executive orders.

While AMIN concedes that the executive power is vested in the President[21] who, as Chief Executive, holds the power of control of all the executive departments, bureaus, and offices,[22] it posits that this broad power of control including the power to reorganize is qualified and limited, for it cannot be exercised in a manner contrary to law, citing the constitutional duty[23] of the President to ensure that the laws, including those creating the agencies, be faithfully executed.

AMIN cites the naming of the PCUP as a presidential commission to be clearly an extension of the President, and the creation of the NCIP as an "independent agency under the Office of the President."[24] It thus argues that since the legislature had

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[19] *Vide Atitiw v. Zamora*, G.R. No. 143374, September 30, 2005, 471 SCRA 329, 345-346.

[20] The DAR was created by REPUBLIC ACT No. 6389 (1971); the PCUP by EXECUTIVE ORDER No. 82 (1986) as modified by MEMORANDUM ORDER No. 68 (1987) in Pres. Aquino's exercise of legislative powers under PROCLAMATION No. 3, and REPUBLIC ACT No. 7279 (1992); the NCIP by REPUBLIC ACT No. 8371 (1997).

[21] CONSTITUTION, Art. VII, Sec. 1.

[22] *Id.*, Art. VII, Sec. 17.

[23] *Ibid*.

[24] REPUBLIC ACT No. 8371 (1997), *vide* Sec. 40.

seen fit to create these agencies at separate times and with distinct mandates, the President should respect that legislative disposition.

In fine, AMIN contends that any reorganization of these administrative agencies should be the subject of a statute.

AMIN's position fails to impress.

The Constitution confers, by express provision, the power of control over executive departments, bureaus and offices in the President alone. And it lays down a limitation on the legislative power.

> The line that delineates the Legislative and Executive power is not indistinct. Legislative power is "the authority, under the Constitution, to make laws, and to alter and repeal them." The Constitution, as the will of the people in their original, sovereign and unlimited capacity, has vested this power in the Congress of the Philippines. The grant of legislative power to Congress is broad, general and comprehensive. The legislative body possesses plenary power for all purposes of civil government. Any power, deemed to be legislative by usage and tradition, is necessarily possessed by Congress, unless the Constitution has lodged it elsewhere. In fine, except as limited by the Constitution, either expressly or impliedly, legislative power embraces all subjects and extends to matters of general concern or common interest.
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> While Congress is vested with the power to enact laws, the President executes the laws. The executive power is vested in the President. It is generally defined as the power to enforce and administer the laws. It is the power of carrying the laws into practical operation and enforcing their due observance.
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> As head of the Executive Department, the President is the Chief Executive. He represents the government as a whole and sees to it that all laws are enforced by the officials and employees of his department. He has control over the executive department, bureaus and offices. This means that he has the authority to assume directly the functions of the executive department, bureau and office, or interfere with the discretion of its officials. Corollary to the power of control, the President also has the duty of supervising and enforcement of laws for the maintenance of general peace and public

order. Thus, he is granted administrative power over bureaus and offices under his control to enable him to discharge his duties effectively.[25] (Italics omitted, underscoring supplied)

The Constitution's express grant of the power of control in the President justifies an executive action to carry out reorganization measures under a broad authority of law.[26]

In enacting a statute, the legislature is presumed to have deliberated with full knowledge of all existing laws and jurisprudence on the subject. [27] It is thus reasonable to conclude that in passing a statute which places an agency under the Office of the President, it was in accordance with existing laws and jurisprudence on the President's power to reorganize.

In establishing an executive department, bureau or office, the legislature necessarily ordains an executive agency's position in the scheme of administrative structure. Such determination is primary,[28] but subject to the President's continuing authority to reorganize the administrative structure. As far as bureaus, agencies or offices in the executive department are concerned, the power of control may justify the President to deactivate the functions of a particular office. Or a law may expressly grant the President the broad authority to carry out reorganization measures.[29] The Administrative Code of 1987 is one such law:[30]

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[25] *Ople v. Torres*, 354 Phil. 948, 966-968 (1998).

[26] *Bagaoisan v. National Tobacco Administration*, 455 Phil. 761 (2003).

[27] *Didipio Earth-Savers' Multi-Purpose Association, Inc. (DESAMA) v. Gozun*, G.R. No. 157882, March 30, 2006, 485 SCRA 586.

[28] Vide *Eugenio v. Civil Service Commission*, 312 Phil. 1145, 1152 (1995) which quotes AM JUR 2d on Public Officers and Employees, *viz:* "Except for such offices as are created by the Constitution, the creation of public offices is primarily a legislative function. In so far [*sic*] as the legislative power in this respect is not restricted by constitutional provisions, it is supreme, and the legislature may decide for itself what offices are suitable, necessary or convenient."

[29] Vide *Buklod ng Kawaning EIIB v. Hon. Sec. Zamora*, 413 Phil. 281, 291 (2001).

[30] *Id.* at 294.

SEC. 30. *Functions of Agencies under the Office of the President*.— Agencies under the Office of the President shall continue to operate and function in accordance with their respective charters or laws creating them, **except as otherwise provided in this Code or by law**.

SEC. 31. *Continuing Authority of the President to Reorganize his Office*.— The President, **subject to the policy in the Executive Office** and in order **to achieve simplicity, economy and efficiency**, shall have continuing authority to reorganize the administrative structure of the Office of the President. For this purpose, he may take any of the following actions:

(1) Restructure the internal organization of the Office of the President Proper, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common Staff Support System, by abolishing, consolidating, or merging units thereof or transferring functions from one unit to another;

(2) Transfer any function under the Office of the President to any other Department or Agency as well as transfer functions to the Office of the President from other Departments and Agencies; and

(3) Transfer any agency under the Office of the President to any other department or agency as well as transfer agencies to the Office of the President from other departments or agencies.[31] (Italics in the original; emphasis and underscoring supplied)

In carrying out the laws into practical operation, the President is best equipped to assess whether an executive agency ought to continue operating in accordance with its charter or the law creating it. This is not to say that the legislature is incapable of making a similar assessment and appropriate action within its plenary power. The Administrative Code of 1987 merely underscores the need to provide the President with suitable solutions to situations on hand to meet the exigencies of the service that may call for the exercise of the power of control.

x x x The law grants the President this power in recognition of the recurring need of every President to reorganize his office "to achieve simplicity, economy and efficiency." The Office of the

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[31] EXECUTIVE ORDER No. 292 (1987), Book III, Chapter 10.

President is the nerve center of the Executive Branch. To remain effective and efficient, the Office of the President must be capable of being shaped and reshaped by the President in the manner he deems fit to carry out his directives and policies. After all, the Office of the President is the command post of the President. This is the rationale behind the President's continuing authority to reorganize the administrative structure of the Office of the President.[32]

The Office of the President consists of the Office of the President proper and the agencies under it.[33] It is not disputed that PCUP and NCIP were formed as agencies under the Office of the President.[34] The "Agencies under the Office of the President" refer to those offices placed under the chairmanship of the President, those under the supervision and control of the President, those under the administrative supervision of the Office of the President, those attached to the Office for policy and program coordination, and those that are not placed by law or order creating them under any special department.[35]

As thus provided by law, the President may transfer any agency under the Office of the President to any other department or agency, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency. Gauged against these guidelines,[36] the challenged executive orders may not be said to have been issued with grave abuse of discretion or in violation of the rule of law.

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[32] *Domingo v. Hon. Zamora*, 445 Phil. 7, 13 (2003).

[33] EXECUTIVE ORDER No. 292 (1987), Book III, Chapter 8, Sec. 21.

[34] *Vide* EXECUTIVE ORDER No. 82 (1986), Sec. 1; REPUBLIC ACT No. 8371 (1997), Sec. 40.

[35] EXECUTIVE ORDER No. 292 (1987), Book III, Chapter 8, Sec. 23. The President shall, by executive order, assign offices and agencies not otherwise assigned by law to any department, or indicate to which department a government corporation or board may be attached. (*Id*., Book IV, Chapter 1. Sec. 5)

[36] *Bagaoisan v. National Tobacco Administration, supra* at 776, adds that the numbered paragraphs are not in the nature of provisos that unduly limit the aim and scope of the grant to the President of the power to reorganize but are to be viewed in consonance therewith.

The references in E.O. 364 to asset reform as an anti-poverty measure for social justice and to rationalization of the bureaucracy in furtherance of good government[37] encapsulate a portion of the existing "policy in the Executive Office." As averred by the OSG, the President saw it fit to streamline the agencies so as not to hinder the delivery of crucial social reforms.[38]

The consolidation of functions in E.O. 364 aims to attain the objectives of "simplicity, economy and efficiency" as gathered from the provision granting PCUP and NCIP access to the range of services provided by the DAR's technical offices and support systems.[39]

The characterization of the NCIP as an independent agency under the Office of the President does not remove said body from the President's control and supervision with respect to its performance of administrative functions. So it has been opined:

> That Congress did not intend to place the NCIP under the control of the President in all instances is evident in the IPRA itself, which provides that the decisions of the NCIP in the exercise of its quasi-judicial functions shall be appealable to the Court of Appeals, like those of the National Labor Relations Commission (NLRC) and the Securities and Exchange Commission (SEC). Nevertheless, the NCIP, although independent to a certain degree, was placed by Congress "under the office of the President" and, as such, is still subject to the President's power of control and supervision granted under Section 17, Article VII of the Constitution with respect to its performance of administrative functions[.][40] (Underscoring supplied)

In transferring the NCIP to the DAR as an attached agency, the President effectively tempered the exercise of presidential authority and considerably recognized that degree of independence.

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[37] EXECUTIVE ORDER No. 364 (2004), perambulatory clauses.

[38] *Rollo*, p. 130.

[39] EXECUTIVE ORDER No. 364 (2004), Sec. 4 & perambulatory clauses.

[40] Separate Opinion of Justice Santiago M. Kapunan in *Cruz v. Secretary of Environment and Natural Resources, supra* at 1087-1088.

The Administrative Code of 1987 categorizes administrative relationships into (1) supervision and control, (2) administrative supervision, and (3) attachment.[41] With respect to the third category, it has been held that an attached agency has a larger measure of independence from the Department to which it is attached than one which is under departmental supervision and control or administrative supervision. This is borne out by the "lateral relationship" between the Department and the attached agency. The attachment is merely for "policy and program coordination."[42] Indeed, the essential autonomous character of a board is not negated by its attachment to a commission.[43]

AMIN argues, however, that there is an anachronism of sorts because there can be no policy and program coordination between conceptually different areas of reform. It claims that the new framework subsuming agrarian reform, urban land reform and ancestral domain reform is fundamentally incoherent in view of the widely different contexts.[44] And it posits that it is a substantive transformation or reorientation that runs contrary to the constitutional scheme and policies.

AMIN goes on to proffer the concept of "ordering the law"[45] which, so it alleges, can be said of the Constitution's distinct

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[41] EXECUTIVE ORDER No. 292 (1987), Book IV, Chapter 7, Sec. 38.

[42] *Beja, Sr. v. Court of Appeals*, G.R. No. 97149, March 31, 1992, 207 SCRA 689.

[43] *Eugenio v. Civil Service Commission*, *supra* at 1155.

[44] *Rollo*, Memorandum for Petitioners, pp. 85, 99. Particularly between agrarian reform and ancestral domain, (rural-based) on the one hand, and urban land reform (urban-based), on the other hand; and between agricultural land (DAR's concern) and non-agricultural land (concern of PCUP and NCIP, the latter dealing mostly with timber & forest), citing *Luz Farms v. Secretary of the Department of Agrarian Reform*, G.R. No. 86889, December 4, 1990, 192 SCRA 51.

[45] *Id*. at 99-100 citing Waller, AO, *An Introduction to Law*, 7th Ed. (1995), p. 57. Petitioners attributed the elaboration of the concept to Louis Waller who stated that the modern system of ordering involves an understanding of certain "thought devices" with their appropriate names, which lawyers manufactured in the process of creating the law. The function of all legal

treatment of these three areas, as reflected in separate provisions in different parts of the Constitution.[46] It argues that the Constitution did not intend an over-arching concept of agrarian reform to encompass the two other areas, and that how the law is ordered in a certain way should not be undermined by mere executive orders in the guise of administrative efficiency.

The Court is not persuaded.

The interplay of various areas of reform in the promotion of social justice is not something implausible or unlikely.[47] Their interlocking nature cuts across labels and works against a rigid pigeonholing of executive tasks among the members of the President's official family. Notably, the Constitution inhibited from identifying and compartmentalizing the composition of the Cabinet. In vesting executive power in one person rather than in a plural executive, the evident intention was to invest the power holder with energy.[48]

AMIN takes premium on the severed treatment of these reform areas in marked provisions of the Constitution. It is a precept, however, that inferences drawn from title, chapter or section

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concepts is to enable discussion about the regulation of human behavior to be carried on in a sensible fashion. And new thinking may produce new classifications of legal rules to replace wholly or in part those which today seem so firmly established. (Underscoring supplied).

[46] On Agrarian Reform — Art. XIII, Secs. 4-8. On Urban Land Reform — Art. XIII, Secs. 9-10; On Indigenous People's Rights — Art. XIII, Sec. 6; Art. II, Sec. 22; Art. XII, Sec. 5; Art. XIV, Sec. 17; Art. XVI, Sec. 12. Also, Art. VI, Sec. 5 (2) on the erstwhile system of sectoral representation providing for separate representation of peasant, urban poor and indigenous cultural communities.

[47] *E.g.*, CONSTITUTION, Art. XIII, Sec. 6 which reads: "The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands."

[48] Bernas, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES*: *A COMMENTARY* 793 (2003).

headings are entitled to very little weight.[49] And so must reliance on sub-headings,[50] or the lack thereof, to support a strained deduction be given the weight of helium.

Secondary aids may be consulted to remove, not to create doubt.[51] AMIN's thesis unsettles, more than settles the order of things in construing the Constitution. Its interpretation fails to clearly establish that the so-called "ordering" or arrangement of provisions in the Constitution was consciously adopted to imply a signification in terms of government hierarchy from where a constitutional mandate can *per se* be derived or asserted. It fails to demonstrate that the "ordering" or layout was not simply a matter of style in constitutional drafting but one of intention in government structuring. With its inherent ambiguity, the proposed interpretation cannot be made a basis for declaring a law or governmental act unconstitutional.

A law has in its favor the presumption of constitutionality. For it to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution. The ground for nullity must be clear and beyond reasonable doubt.[52] Any reasonable doubt should, following the universal rule of legal hermeneutics, be resolved in favor of the constitutionality of a law.[53]

Ople v. Torres[54] on which AMIN relies is unavailing. In that case, an administrative order involved a system of identification

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[49] Black, *HANDBOOK ON THE CONSTRUCTION AND INTERPRETATION OF THE LAWS* 258-259 (1911); Crawford, *THE CONSTRUCTION OF STATUTES* 359-360 (1940); *vide* the Concurring and Dissenting Opinion of Justice (now Chief Justice) Reynato S. Puno in *Santiago v. Comelec*, 336 Phil. 848, 911 (1997).

[50] Found particularly in Article XIII of the Constitution.

[51] *People v. Yabut*, 58 Phil. 499 (1933).

[52] *Beltran v. Secretary of Health*, G.R. No. 133640, November 25, 2005, 476 SCRA 168, 199-200.

[53] *Garcia v. Commission on Elections*, G.R. No. 111511, October 5, 1993, 227 SCRA 100, 107-108.

[54] *Supra* note 25.

that required a "delicate adjustment of various contending state policies" properly lodged in the legislative arena. It was declared unconstitutional for dealing with a subject that should be covered by law and for violating the right to privacy.

In the present case, AMIN glaringly failed to show how the reorganization by executive fiat would hamper the exercise of citizen's rights and privileges. It rested on the ambiguous conclusion that the reorganization jeopardizes economic, social and cultural rights. It intimated, without expounding, that the agendum behind the issuances is to weaken the indigenous peoples' rights in favor of the mining industry. And it raised concerns about the possible retrogression in DAR's performance as the added workload may impede the implementation of the comprehensive agrarian reform program.

AMIN has not shown, however, that by placing the NCIP as an attached agency of the DAR, the President altered the nature and dynamics of the jurisdiction and adjudicatory functions of the NCIP concerning all claims and disputes involving rights of indigenous cultural communities and indigenous peoples. Nor has it been shown, nay alleged, that the reorganization was made in bad faith.[55]

As for the other arguments raised by AMIN which pertain to the wisdom or soundness of the executive decision, the Court finds it unnecessary to pass upon them. The raging debate on the most fitting framework in the delivery of social services is endless in the political arena. It is not the business of this Court to join in the fray. Courts have no judicial power to review cases involving political questions and, as a rule, will desist from taking cognizance of speculative or hypothetical cases, advisory opinions and cases that have become moot.[56]

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[55] *Cf. Canonizado v. Hon. Aguirre*, 380 Phil. 280, 296 (2000); *Larin v. Executive Secretary*, 345 Phil. 962, 980 (1997) wherein it was held that reorganization is regarded as valid provided it is pursued in good faith and, as a general rule, a reorganization is carried out in "good faith" if it is for the purpose of economy or to make bureaucracy more efficient.

[56] *Cutaran v. DENR*, 403 Phil. 654, 662-663 (2001).

Finally, a word on the last ground proffered for declaring the unconstitutionality of the assailed issuances — that they violate Section 16, Article XIII of the Constitution[57] on the people's right to participate in decision-making through adequate consultation mechanisms.

The framers of the Constitution recognized that the consultation mechanisms were already operating without the State's action by law, such that the role of the State would be mere facilitation, not necessarily creation of these consultation mechanisms. The State provides the support, but eventually it is the people, properly organized in their associations, who can assert the right and pursue the objective. Penalty for failure on the part of the government to consult could only be reflected in the ballot box and would not nullify government action.[58]

WHEREFORE, the petition is *DISMISSED.* Executive Order Nos. 364 and 379 issued on September 27, 2004 and October 26, 2004, respectively, are declared not unconstitutional.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., and *Reyes, JJ.,* concur.

Nachura, J., no part. Filed pleading as Sol Gen.

Quisumbing, J., on leave.

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[57] "The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms."

[58] *Vide* Bernas, *THE INTENT OF THE 1986 CONSTITUTION WRITERS* 999, 1003-1005 (1995).

SECOND DIVISION

[G.R. No. 170015. August 29, 2007]

CRISOLOGO C. DOMINGO, *petitioner, vs.* **SEVERINO AND RAYMUNDO LANDICHO, JULIAN ABELLO, MARTA DE SAGUN and EDITHA G. SARMIENTO,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; REQUSITES FOR REGISTRATION OF LAND; LAND MUST BE DISPOSABLE AND ALIENABLE AGRICULTURAL LANDS OF THE PUBLIC DOMAIN; APPLICANT MUST CONCLUSIVELY ESTABLISH THE EXISTENCE OF A POSITIVE ACT OF THE GOVERNMENT, SUCH AS A PRESIDENTIAL PROCLAMATION OR AN EXECUTIVE ORDER, OR ADMINISTRATIVE ACTION, INVESTIGATION REPORTS OF THE BUREAU OF LANDS INVESTIGATOR OR A LEGISLATIVE ACT OR STATUTE.— To thus be entitled to registration of a land, the applicant must prove that (a) the land applied for forms part of the disposable and alienable agricultural lands of the public domain; and (b) he has been in open, continuous, exclusive, and notorious possession and occupation of the same under a *bona fide* claim of ownership either since time immemorial or since June 12, 1945. All lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State, and unless it has been shown that they have been reclassified by the State as alienable or disposable to a private person, they remain part of the inalienable public domain. To prove that a land is alienable, an applicant must conclusively establish the existence of a positive act of the government, such as a presidential proclamation or an executive order, or administrative action, investigation reports of the Bureau of Lands investigator or a legislative act or statute.

2. ID.; ID.; ID.; PETITIONER FAILED TO ADDUCE INCONTROVERTIBLE EVIDENCE SHOWING THAT THE SUBJECT LOTS HAVE BEEN DECLARED ALIENABLE AND ARE THUS PRESUMED TO BELONG TO THE

PUBLIC DOMAIN, BEYOND THE COMMERCE OF MAN, AND ARE NOT SUSCEPTIBLE OF PRIVATE APPROPRIATION AND ACQUISITIVE PRESCRIPTION.— While petitioner presented a document denominated as "2nd Indorsement" issued by Land Management Inspector Amadeo Mediran that the lots are "within the alienable and disposable zone under Project No. 3 LSC-3113 issued on April 5, 1978 as certified by the Director of the Forest Development," the genuineness of the document cannot be ascertained, it being a mere photocopy. Besides, the truth of its contends cannot be ascertained, Mediran having failed to take the witness stand to identify and testify thereon. In fine, Domingo failed to adduce incontrovertible evidence showing that the lots have been declared alienable. They are thus presumed to belong to the public domain, beyond the commerce of man, and are not susceptible of private appropriation and acquisitive prescription. But even assuming *arguendo* that the lots are alienable, Domingo failed to comply with the requirement on the period of possession. While he alleged in his petition that he bought the lots from Genoveva in 1948, he failed, as the appellate court correctly noted, to adduce the deed of sale executed for the purpose, or to explain the reason behind the failure and to present sufficient evidence to prove the fact of sale. Again, even assuming *arguendo* that the lots were indeed sold to him by Genoveva, Domingo failed to adduce proof that Genoveva, from whom he seeks to tack his possession, acquired registrable title over them on June 12, 1945 or earlier. Under the same assumption, Domingo's claim that he has been in actual, continuous, adverse and open possession of the lots in the concept of an owner since 1948 is a conclusion of law which must be substantiated with proof of specific acts of ownership and factual evidence of possession. An examination of the tax receipts presented by Domingo shows that they are of recent vintage, the earliest being dated January 8, 1993. Tax Declaration Nos. 0298, GR-019-0884, and GR-019-0885, which appear to have been issued in 1947 [*sic*], 1964, and 1968, respectively, contain the declaration "Filed under Presidential Decree No. 464" below the title "Declaration of Real Property." P.D. No. 464, "THE REAL PROPERTY TAX CODE," took effect, however, only on June 1, 1974. Specifically with respect to the first tax declaration, it even shows that Domingo subscribed and swore to it on August 1, 1947 at which time he had not bought the lot yet, in 1948 by his claim.

3. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; DEATH OF PARTY; DUTY OF COUNSEL; FAILURE OF COUNSEL TO INFORM THE COURT WITHIN THIRTY (30) DAYS AFTER SUCH DEATH OF THE FACT THEREOF SHALL BE A GROUND FOR DISCIPLINARY ACTION; CASE AT BAR.— A note on Domingo's death during the pendency of his application at the RTC. Indeed, the records do not show that his death on March 9, 1996 was brought to the RTC's attention, which is not in accordance with Sections 16 and 17, Rule 3 of the 1994 Rules of Court. When a party dies in an action that survives and no order is issued by the court for the appearance of the legal representative or of the heirs of the deceased in substitution of the deceased, and as a matter of fact no substitution has ever been effected, the proceedings held by the court without such legal representatives or heirs and the judgment rendered after such trial are null and void because the court acquired no jurisdiction over the person of the legal representative or of the heirs upon whom the trial and judgment would be binding. Unlike, however, jurisdiction over the subject matter which is conferred by law, jurisdiction over the person of the parties to the case may, however, be waived either expressly or impliedly. In the case at bar, the surviving heirs voluntarily submitted themselves to the jurisdiction of this Court, albeit belatedly, by participating in the present petition. Under the now amended Section 16, Rule 3 of the 1997 Rules of Court, failure of a counsel to comply with the provision thereof is a ground for disciplinary action. The failure of Domingo's former counsel, Atty. Irineo A. Anarna of No. 4 Madlansacay St., Poblacion Lilang 4118 Cavite, to comply with the immediately quoted provisions of the Rules, is compounded by his misrepresentation, before the CA, that Domingo was well and alive when he stated in his Motion to Withdraw Appearance as Counsel dated July 8, 2004 that the "motion for withdrawal [was] conformed to by Mrs. Rosemarie Manlapit Zamora, representative of the applicant as shown by her signature . . . and that Mrs. Rosemarie Zamora also undertakes to personally seek the conformity of the Applicant" and by his retaining of the name of Domingo in the title of his pleadings before the appellate court. Canon 10 of the Code of Professional Responsibility provides that "a lawyer owes candor, fairness and good faith to the court." Rule 10.01 likewise provides

that "a lawyer shall do no falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the court to be mislead by any artifice." And Rule 10.03 provides that "a lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice." This Court thus takes this occasion to warn Atty. Anarna that a repetition of a similar violation of the Rules of Court and the Code of Professional Responsibility will be dealt with strictly.

APPEARANCES OF COUNSEL

Larry M. Barcelo and *Gaudencio A. Mendoza, Jr.* for petitioner.

Dominguez & Associates Law Office for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Crisologo C. Domingo (Domingo) filed on April 20, 1993 with the Regional Trial Court (RTC) of Tagaytay City an application for registration,[1] docketed as LRC No. TG-451, of five parcels of land delineated as Lot Nos. 7513, 7515, 7516, 7517 and 7518, Cad. 355 under Approved Survey Plan AS-04-002475[2] (the lots).

The lots, which are located at Barangay Tolentino, Tagaytay, have a total land area of 38,975 square meters.

In his application, Domingo claimed that he bought the lots from Genoveva Manlapit (Genoveva) in 1948 and has since been in continuous, open, public, adverse and uninterrupted possession thereof in the concept of an owner.

Domingo further claimed that prior to his purchase of the lots, Genoveva had been in possession thereof in the concept of an owner for more than 30 years.[3]

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[1] Records, pp. 1-10.

[2] *Id*. at 11.

[3] *Id*. at 7.

To Domingo's application the following documents were attached:

1. Tracing Cloth of Approved Plan AS-04-002475 (surveyed from September 24, 1963 to February 13, 1964 and approved on December 12, 1990).[4]
2. Photocopy of the Technical Description of Lot Nos. 7513, 7515, 7516, 7517, and 7518.[5]
3. Photocopy of the Geodetic Engineer's Certificate.[6]
4. Owner's Copy of Tax Declaration Nos. GR-019-0893-R (covering Lot 7513), GR-019-0894-R (covering Lot 7515), GR-019-0895-R (covering Lot 7516), GR-019-0896-R (covering Lot 7517), GR-019-0897-R (covering Lot 7518), all dated January 7, 1993 and in the name of Crisologo C. Domingo.[7]
5. Land Management Inspector's 2nd Indorsement dated October 22, 1990 recommending approval of AS-Plan.[8]

The Land Registration Authority (LRA), which filed before the RTC its Report[9] dated September 27, 1993, stated that after plotting Plan AS-04-002475 in the Municipal Index Sheet thru its tie lines, a discrepancy was noted. The RTC thus referred the matter to the Lands Management Sector, Region IV for verification and correction.

Acting on the directive of the RTC, the Director of Lands filed a Report that "per records of the Lands Management Bureau in Manila, the land involved in said case was not covered by

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[4] *Id*. at 11.

[5] *Id*. at 12-16.

[6] *Id*. at 22.

[7] *Id*. at 17-21.

[8] *Id*. at 23. The document however refers to Advance Survey Plan of Lot Nos. 7510, 7511, 7512 and 7519, Cad-355 and not to subject lots.

[9] *Id*. at 48-49.

any land patent or by public land application pending issuance of patent."[10]

The LRA later filed a Supplementary Report[11] dated December 22, 1993 stating that:

x x x x x x x x x

2. The Regional Technical Director, Region Office IV, thru the Chief, Surveys Division, Robert C. Pangyarihan in his letter dated November 22, 1993, a copy is attached hereto as Annex "A", informed that per records on file in that Office, the correct adjoining survey along line 8-9 of Lot 7516 and along lines 3-4-5 of Lot 7515 should be Lot 9237 Cad-355, covered by As-04-000091 and that the parcel of land covered by As-04-002475 are not portions of or identical to any previously approved isolated survey; and

3. When the above-furnished correction was applied on plan As-04-002475 no more discrepancy exists.

x x x x x x x x x

On November 26, 1993, herein respondents Severino and Raymundo Landicho, Julian Abello, Marta de Sagun, and Editha G. Sarmiento filed an Answer/Opposition[12] to Domingo's application, claiming that they have been in open, continuous, adverse and actual possession and cultivation of the lots in the concept of an owner and have been paying real estate taxes thereon;[13] and that Survey Plan AS-04-002475 was lifted from the cadastral survey of the government which was surveyed for them and other individual owners.[14]

During the pendency of his application or on March 9, 1996, Domingo died. His counsel, Atty. Irineo Anarna, did not, however, inform the RTC of his death.

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[10] *Id*. at 70.

[11] *Id*. at 76.

[12] *Id*. at 55-58.

[13] *Id*. at 57.

[14] *Id*. at 56-57.

By Decision[15] of December 22, 1997, the RTC approved Domingo's application for registration, the dispositive portion of which reads:

> WHEREFORE, in the light of the foregoing premises and considerations, this Court hereby renders judgment approving the instant application for registration and thus places under the operation of Act 141, Act 496 and/or P.D. 1529, otherwise known as the Property Registration Law, the lands described in Plan AS-04-002475 as Lots 7513, 7515, 7516, 7517 and 7518, Cad-355, Tagaytay Cadastre, containing an area of 10,519 square meters, 3,956 square meters, 18,921 square meters, 3, 985 square meters and 1,594 square meters, respectively, as supported by their technical descriptions now forming parts of the records of this case, in addition to other proofs adduced, in the name of CRISOLOGO C. DOMINGO, Filipino, of legal age, married to Corazon A. Domingo, and with residence at No. 34 Dao St., Project 3, Quezon City, Metro Manila.
>
> Once this decision becomes final and executory, the corresponding decree of registration shall forthwith issue.
>
> SO ORDERED.[16]

Respondents appealed to the Court of Appeals, contending that contrary to Domingo's claim that he and his predecessors-in-interest have been in actual, continuous and uninterrupted possession of the lots, Domingo has always been a resident of No. 34 Dao St., Project 3, Quezon City; that despite Domingo's claim that he has a caretaker overseeing the lots, he could not even give the name of the caretaker; and that Domingo admittedly declared the lots in his name only in 1993.

By Decision[17] of June 30, 2005, the Court of Appeals reversed and set aside the RTC decision and dismissed Domingo's application for registration of land title.

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[15] *Id.* at 221-228.

[16] *Id.* at 228.

[17] CA *rollo*, pp. 114-129. The decision was penned by Associate Justice Conrado M. Vasquez, Jr., and concurred by Associate Justices Rebecca De Guia-Salvador and Aurora Santiago Lagman.

The appellate court ruled that while Domingo sought judicial confirmation of his imperfect title under the Public Land Act and Section 14 (1) of Presidential Decree (P.D.) No. 1529, "THE PROPERTY REGISTRATION DECREE," he failed to prove that he and his predecessors-in-interest had been in possession and occupation of the lots under a *bona fide* claim of ownership since June 12, 1945 or earlier.[18]

And the appellate court noted that Domingo failed to present the alleged deed of sale executed by Genoveva[19] and "could only prove through his Tax Declaration No. 0298 (new) that his possession in the concept of an owner started only in 1948 (Exhibit 'L', Records, p. 117)."

Domingo's Motion for Reconsideration having been denied by the appellate court, the present petition was lodged, faulting the appellate court:

I

. . . x x x WHEN IT LIMITED CONSIDERATION OF THE MATTERS ESTABLISHED IN THE APPLICATION TO SECTION 48 (B) OF THE PUBLIC LAND ACT AND SECTION 14 (1) OF PD 1529.

II

. . . x x x WHEN IT HELD THAT PETITIONER IS NOT ENTITLED FOR REGISTRATION OF TITLE OVER THE SUBJECT LAND, NOTWITHSTANDING THE FACT THAT THE EVIDENCE ON RECORD CLEARLY ESTABLISHED HIS ENTITLEMENT [TO] REGISTRATION OF TITLE OVER THE LAND UNDER SECTION 14 (1) AND (4) OF PD 1529.[20] (Underscoring supplied)

Domingo's present counsel argues that assuming that Domingo failed to establish his possession from June 12, 1945 or earlier in accordance with Section 14(1) of P.D. No. 1529, he is still

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[18] *Id.* at 121-123.

[19] *Id.* at 123.

[20] *Rollo*, p. 15.

entitled to registration of title under Article 1113[21] in relation to Article 1137[22] of the Civil Code.[23]

In their Comment[24] to the present petition, respondents pray for its denial for being substantially defective, Domingo's death not having been alleged, albeit the Verification and Certification against Forum Shopping was signed by Domingo's alleged "Surviving Spouse and Heirs."[25]

To respondents' Comment, Domingo's counsel filed a Reply[26] stating that there is no clearer manifestation of the death of Domingo than the statement under oath of his surviving spouse and heirs "in substitution of deceased CRISOLOGO C. DOMINGO" contained in the Verification and Certification against Forum Shopping which forms part of the present petition.[27] Nonetheless, the counsel presented a certified true copy of Domingo's death certificate[28] showing that he died on March 9, 1996 (during the pendency of his application before the RTC as earlier stated).

The petition is bereft of merit.

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[21] Article 1113 of the Civil Code reads:

Art. 1113. All things which are within the commerce of men are susceptible of prescription, unless otherwise provided. Property of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription.

[22] Article 1137 of the Civil Code reads:

Art. 1137. Ownership and other real rights over immovables shall prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.

[23] *Rollo*, pp. 22-23.

[24] *Id*. at 55-57.

[25] *Id*. at 42.

[26] *Id*. at 65-69.

[27] *Id*. at 65.

[28] *Id*. at 70.

Section 14 (1) of P.D. No. 1529 provides:

Sec. 14. Who may apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier. (Underscoring supplied)[29]

To thus be entitled to registration of a land, the applicant must prove that (a) the land applied for forms part of the

[29] Section 48(b) of Commonwealth Act No. 141 (Public Land Act), as amended by R.A. No. 1942, reads:

Section 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, nay apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

x x x x x x x x x

(b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

This provision was further amended by P.D. No. 1073 by substituting the phrase "for at least thirty years" with "since June 12, 1945"; thus:

Sec. 4. The provisions of Section 48(b) and Section 48(c), Chapter VIII, of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession, and occupation by the applicant himself or through his predecessor-in-interest, under a *bona fide* claim of acquisition of ownership, since June 12, 1945.

disposable and alienable agricultural lands of the public domain; and (b) he has been in open, continuous, exclusive, and notorious possession and occupation of the same under a *bona fide* claim of ownership either since time immemorial or since June 12, 1945.[30]

All lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State, and unless it has been shown that they have been reclassified by the State as alienable or disposable to a private person, they remain part of the inalienable public domain.[31]

To prove that a land is alienable, an applicant must conclusively establish the existence of a positive act of the government, such as a presidential proclamation or an executive order, or administrative action, investigation reports of the Bureau of Lands investigator or a legislative act or statute.[32]

While petitioner presented a document denominated as "2nd Indorsement"[33] issued by Land Management Inspector Amadeo Mediran that the lots are "within the alienable and disposable zone under Project No. 3 LSC-3113 issued on April 5, 1978 as certified by the Director of the Forest Development," the genuineness of the document cannot be ascertained, it being a mere photocopy. Besides, the truth of its contents cannot be ascertained, Mediran having failed to take the witness stand to identify and testify thereon.

In fine, Domingo failed to adduce incontrovertible evidence[34] showing that the lots have been declared alienable. They are thus presumed to belong to the public domain, beyond the commerce of man, and are not susceptible of private appropriation and acquisitive prescription.

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[30] *Republic v. Candy Maker, Inc*., G.R. No. 163766, June 22, 2006, 492 SCRA 272, 290.

[31] *Id*. at 291.

[32] *Id*. at 292.

[33] Records, p. 23.

[34] *Menguito v. Republic,* 401 Phil. 274, 287 (2000).

But even assuming *arguendo* that the lots are alienable, Domingo failed to comply with the requirement on the period of possession. While he alleged in his petition that he bought the lots from Genoveva in 1948, he failed, as the appellate court correctly noted, to adduce the deed of sale executed for the purpose, or to explain the reason behind the failure and to present sufficient evidence to prove the fact of sale.

Again, even assuming *arguendo* that the lots were indeed sold to him by Genoveva, Domingo failed to adduce proof that Genoveva, from whom he seeks to tack his possession, acquired registrable title over them on June 12, 1945 or earlier. Under the same assumption, Domingo's claim that he has been in actual, continuous, adverse and open possession of the lots in the concept of an owner since 1948 is a conclusion of law which must be substantiated with proof of specific acts of ownership and factual evidence of possession.[35]

An examination of the tax receipts[36] presented by Domingo shows that they are of recent vintage, the earliest being dated January 8, 1993.

Tax Declaration Nos. 0298, GR-019-0884, and GR-019-0885,[37] which appear to have been issued in 1947 [*sic*], 1964, and 1968, respectively, contain the declaration "Filed under Presidential Decree No. 464" below the title "Declaration of Real Property." P.D. No. 464, "THE REAL PROPERTY TAX CODE," took effect, however, only on June 1, 1974. Specifically with respect to the first tax declaration, it even shows that Domingo subscribed and swore to it on August 1, 1947 at which time he had not bought the lot yet, in 1948 by his claim.

A note on Domingo's death during the pendency of his application at the RTC. Indeed, the records do not show that his death on March 9, 1996 was brought to the RTC's attention,

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[35] *Republic of the Philippines v. Carrasco*, G.R. No. 143491, December 6, 2006, 510 SCRA 150, 160.

[36] Records, Exhibits "Z-1" to "Z-5" inclusive, pp. 132-135.

[37] Records, Exhibits "L", "M" and "N", pp. 117-119.

which is not in accordance with Sections 16 and 17, Rule 3 of the 1994 Rules of Court, *viz:*

> SEC. 16. *Duty of attorney upon death, incapacity, or incompetency of party*. — Whenever a party to a pending case dies, becomes incapacitated or incompetent, it shall be the duty of his attorney to inform the court promptly of such death, incapacity or incompetency, and to give the name and residence of his executor, administrator, guardian or other legal representative. (Italics in the original; underscoring supplied)
>
> SEC. 17. *Death of party*. — After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian *ad litem* for the minor heirs. (Italics in the original; underscoring supplied)

When a party dies in an action that survives and no order is issued by the court for the appearance of the legal representative or of the heirs of the deceased in substitution of the deceased, and as a matter of fact no substitution has ever been effected, the proceedings held by the court without such legal representatives or heirs and the judgment rendered after such trial are null and void because the court acquired no jurisdiction over the person of the legal representative or of the heirs upon whom the trial and judgment would be binding.[38]

Unlike, however, jurisdiction over the subject matter which is conferred by law, jurisdiction over the person of the parties

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[38] *Carandang v. Heirs of De Guzman*, G.R. No. 160347, November 29, 2006, 508 SCRA 469, 479-480.

to the case may, however, be waived either expressly or impliedly.[39] In the case at bar, the surviving heirs voluntarily submitted themselves to the jurisdiction of this Court, albeit belatedly, by participating in the present petition.

Under the now amended Section 16, Rule 3 of the 1997 Rules of Court, failure of a counsel to comply with the provision thereof is a ground for disciplinary action, *viz:*

> SEC. 16. *Death of party; duty of counsel*. — Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.
>
> The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.
>
> The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.
>
> If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. (Italics in the original; underscoring supplied)

The failure of Domingo's former counsel, Atty. Irineo A. Anarna of No. 4 Madlansacay St., Poblacion Lilang 4118, Cavite, to comply with the immediately quoted provisions of the Rules, is compounded by his misrepresentation, before the CA, that Domingo was well and alive when he stated in his Motion to

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[39] *Id.* at 479.

Withdraw Appearance as Counsel[40] dated July 8, 2004 that the "motion for withdrawal [was] conformed to by Mrs. Rosemarie Manlapit Zamora, representative of the applicant as shown by her signature . . . and that Mrs. Rosemarie Zamora also undertakes to personally seek the conformity of the Applicant." (Underscoring supplied); and by his retaining of the name of Domingo in the title of his pleadings before the appellate court.

Canon 10 of the Code of Professional Responsibility provides that "a lawyer owes candor, fairness and good faith to the court." Rule 10.01 likewise provides that "a lawyer shall do no falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the court to be mislead by any artifice." And Rule 10.03 provides that "a lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice."

This Court thus takes this occasion to warn Atty. Anarna that a repetition of a similar violation of the Rules of Court and the Code of Professional Responsibility will be dealt with strictly.

WHEREFORE, the petition is, in light of the foregoing discussion, *DENIED*.

Let a copy of this Decision be furnished Atty. Irineo A. Anarna of No. 4 Madlansacay St., Poblacion Lilang, 4118 Cavite.

SO ORDERED.

Quisumbing (Chairperson), *Carpio*, *Tinga*, and *Velasco, Jr.*, *JJ.*, concur.

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[40] CA *rollo*, pp. 108-109.

SECOND DIVISION

[G.R. No. 172109. August 29, 2007]

MARIANO DAO-AYAN and MARJUN DAO-AYAN, *petitioners, vs.* **THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB), ARANETA LANDLESS AGRARIAN REFORM FARMERS ASSOCIATION, Rep. by CLAUDIO A. FUENTES, THE PROVINCIAL AGRARIAN REFORM OFFICER (PARO) and the REGISTER OF DEEDS OF BUKIDNON,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB); HAS JURISDICTION IN CASES INVOLVING THE ISSUANCE, CORRECTION OR CANCELLATION OF CERTIFICATE OF LAND OWNERSHIP AWARD (CLOA) OR EMANCIPATION PATENTS (EP's) WHICH HAVE BEEN REGISTERED IN THE REGISTER OF DEEDS; CASE AT BAR.— It is settled that jurisdiction over the subject matter is conferred by law. R.A. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988, vests the DAR with primary jurisdiction on agrarian reform matters and clothes it with *quasi-judicial* powers. Section 49 of the same law confers rule-making powers upon the DAR. In accordance with its rule-making power, the DAR issued rules to govern proceedings before the DARAB. Since petitioners' complaint for annulment was filed with the DARAB Regional Agrarian Reform Adjudicator on June 22, 1998, the DARAB New Rules of Procedure (1994 DARAB Rules) adopted in 1994 applies to the present case. Section 1, Rule II of the 1994 DARAB Rules enumerates the cases over which the DARAB has exclusive original jurisdiction: x x x (f) Those involving the **issuance, correction and cancellation of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents**

(EPs) which are registered with the Land Registration Authority; x x x Matters involving strictly the administrative implementation of Republic Act. No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988 and other agrarian laws as enunciated by pertinent rules shall be the exclusive prerogative of and cognizable by the Secretary of the DAR. Section 2 of DAR Administrative Order No. 06-00 enumerates the cases over which the DAR Secretary has exclusive jurisdiction: Cases Covered. — These Rules shall govern cases falling within the exclusive jurisdiction of the DAR Secretary which shall include the following: x x x (a) Classification and identification of landholdings for coverage under the Comprehensive Agrarian Reform Program (CARP), including protests or oppositions thereto and petitions for lifting of coverage; (b) Identification, qualification or disqualification of potential farmer-beneficiaries; (c) Subdivision surveys of lands under CARP; (d) **Issuance, recall or cancellation of Certificates of Land Transfer (CLTs) and CARP Beneficiary Certificates (CBCs) in cases outside the purview of Presidential Decree (PD) No. 816, including the issuance, recall or cancellation of Emancipation Patents (EPs) or Certificates of Land Ownership Awards (CLOAs) not yet registered with the Register of Deeds;** In *Padunan v. DARAB* which involved Emancipation Patents, this Court, passing on these sets of rules, held that **prior** to registration with the Register of Deeds, cases involving the issuance, recall or cancellation of CLOAs or EPs are within the jurisdiction of the DAR and that, corollarily, cases involving the issuance, correction or cancellation of CLOAs or EPs which have **been registered** with the Register of Deeds are within the jurisdiction of the DARAB. Since the complaint subject of the present petition and filed by petitioners before the DARAB was for cancellation of a CLOA which had already been registered, the DARAB correctly assumed jurisdiction over it.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; ADJUDICATION; FINALITY OF ORDER; DECISION OF AGENCY SHALL BECOME FINAL AND EXECUTORY FIFTEEN (15) DAYS AFTER RECEIPT OF A COPY THEREOF BY THE PARTY ADVERSELY AFFECTED UNLESS WITHIN THAT PERIOD

AN ADMINISTRATIVE APPEAL HAS BEEN PERFECTED; ASSAILED RESOLUTION HAD BECOME FINAL AND EXECUTORY LONG BEFORE PETITIONERS FILED THE COMPLAINT FOR ANNULMENT OF THE CLOA.— A survey of the administrative issuances of the DAR which were in effect at the time the case for disqualification was resolved by the DAR Regional Director fails to show the existence of any administrative issuance specifically providing for the finality of decisions of DAR Regional Directors. Resort may then be made to the Administrative Code of 1987 which provides: BOOK VII ADMINISTRATIVE PROCEDURE x x x Chapter 3 — ADJUDICATION x x x SEC. 15. *Finality of Order*. — **The decision of the agency shall become final and executory fifteen (15) days after the receipt of a copy thereof by the party adversely affected unless within that period an administrative appeal or judicial review, if proper, has been perfected.** One motion for reconsideration may be filed, which shall suspend the running of the said period. The records, however, show that beyond the mere assertions of ALARFA and the DARAB, there is no proof that petitioners were given notice of the proceedings before the DAR Regional Director. Thus, the counting of the 15-day prescriptive period commenced upon the registration of the CLOA on October 28, 1997 with the Register of Deeds, which is considered constructive notice as against the whole world, or on December 12, 1997, the date petitioners filed a motion to stay execution of the DAR Regional Director's resolution granting the CLOA to ALARFA. No appeal having been taken by petitioners within the 15-day prescriptive period counted from any of said two dates, the assailed DAR Regional Director's resolution had become final and executory long before petitioners filed on June 22, 1998 the complaint for Annulment and Cancellation of the CLOA.

APPEARANCES OF COUNSEL

Hollis C. Monsanto for petitioners.

The Solicitor General for public respondents.

Roco April L. Mandawe and *Normita V. Batula* for private respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Assailed *via* petition for review on *certiorari* is the December 15, 2005 decision of the Court of Appeals[1] affirming the November 12, 2002 Decision of the Department of Agrarian Reform Adjudication Board[2] (DARAB) which affirmed the decision dated October 5, 1998 of the Regional Agrarian Reform Adjudicator of the DARAB, Region X, Malaybalay City[3] dismissing the complaint of herein petitioners-father and son Mariano Dao-ayan (Mariano) and Marjun Dao-ayan (Marjun) against respondents Araneta Landless Agrarian Reform Farmers Association (ALARFA), the Provincial Agrarian Reform Officer of Bukidnon, and the Register of Deeds of Bukidnon, for Annulment and Cancellation of Certificate of Title of Land Ownership Award (CLOA) No. 00371923 and TCT No. AT-9035.

After Lot No. 209 (the lot), which is located at Kahaponan, Valencia City, Bukidnon belonging to the Agricultural Research Farm Incorporated, was placed under the Comprehensive Agrarian Reform Program (CARP), Marjun filed an application before the Department of Agrarian Reform (DAR) Regional Office No. 10 as a farmer-beneficiary thereof. It appears, however, that Marjun's name as applicant was later delisted.

It turned out that ALARFA had filed a Petition for Disqualification of Mariano as Farmer-Beneficiary under the CARP on the ground that he already possessed substantial real properties to thus bar him from being a farmer-beneficiary with regard to the lot;[4] and that acting on the petition for disqualification,

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[1] Penned by Justice Myrna Dimaranan-Vidal and concurred in by Justice Romulo V. Borja and Justice Ricardo R. Rosario; CA-G.R. SP No. 81916, *rollo*, pp. 41-51.

[2] *Rollo*, pp. 24-34.

[3] *Id.* at 19-21.

[4] *Id.* at 67.

DAR Regional Director Rogelio Tamin disqualified Mariano as farmer-beneficiary, he having been found to be, among other things, already a beneficiary under Operation Land Transfer of P.D. No. 27 of at least three parcels of land totaling 2.2938 hectares.[5]

The DAR Regional Director subsequently issued to ALARFA on October 20, 1997 the CLOA bearing No. 00371923, on account of which TCT No. AT-9035 was issued in ALARFA's name, represented by Claudio A. Fuentes.[6]

Petitioners filed a motion to stay execution of the award of the CLOA to ALARFA, claiming that they were not given notice of the Petition for Disqualification and of the Decision of the DAR Regional Director thereon.[7]

In the meantime, the Provincial Agrarian Reform Officer (PARO), by Installation Order of May 29, 1998, directed the Municipal Agrarian Reform Officer of Valencia, Bukidnon to install ALARFA on the lot and to order the occupants-non beneficiaries including herein petitioners to vacate the same.

Petitioners thus filed on June 22, 1998 the complaint subject of the present petition, for Annulment and Cancellation of ALARFA's CLOA against ALARFA, the PARO, and the Register of Deeds of Bukidnon.[8]

As stated early on, the DARAB Regional Agrarian Reform Adjudicator dismissed petitioners' complaint. Held the DARAB Regional Agrarian Reform Adjudicator:

> [T]he matter of identification of farmer-beneficiaries had in fact been finally determined by the DAR. What is put at issue is the alleged error committed by the DAR Regional Director in disqualifying herein plaintiff Mariano Dao-ayan, and the alleged denial of due process in the course of the administrative proceedings.

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[5] Records, pp. 35-38.

[6] *Id.* at 10-11.

[7] *Rollo*, p. 66.

[8] Records, pp. 1-4.

Records will show however that even as plaintiffs' motion for reconsideration in the administrative proceedings was denied, he could have raised the matter to the office of the DAR Secretary, being the ultimate arbiter in such administrative proceedings. As it is, the resolution of the DAR Regional Director has already become final and executory. It must be impressed at this juncture, that both the law and the DARAB procedures deny this Board the authority to determine the identification and qualification of would be CARP beneficiaries. It is an undertaking assigned to the DAR as an administrative agency, and where its resolutions and orders are assailed, the same must be ventilated according to hierarchical ladder up to the DAR Secretary.

On the other hand, even as co-plaintiff Marjun Dao-ayan postulates himself to be the real potential-beneficiary being the alleged actual tillers of the land, his right to such a claim is considered to have been waived or abandoned as he could have intervened in said administrative proceedings or questioned its resolution being the alleged actual tiller, but he did not but [*sic*] chose to be identified by this Board which as aforesaid cannot without affront to the primary authority of the DAR to so identify.

In fine, co-plaintiff Marjun Dao-ayan who by his own admission was only entrusted to the land by his father, cannot have a better right than his father who was already officially disqualified.[9] (Underscoring supplied)

And the DARAB affirmed the dismissal as did the Court of Appeals.

In affirming the decision of the DARAB, the appellate court held:

. . . [T]he matter of identification of farmer-beneficiaries with respect to the subject land was already resolved by the Regional Director, which **resolution had already become final and executory when Petitioners failed to appeal the same** to the Office of the Secretary of Agrarian Reform. Section 22 of Administrative Order. 6, Series of 2000 explicitly provides:

[9] *Id*. at 56-57.

> SECTION 22. *Finality.* — Unless an appeal is perfected, the decision or order of the R[egional] D[irector] or approving authority shall become final and executory after the lapse of fifteen {15} days from receipt of a copy thereof by the parties or their counsels or duly authorized representatives. In all cases, the parties and their counsels shall be furnished with a copy of the decision or order.

A fortiori the Regional Director DARAB[*sic*]-Region 10 had already ruled that MARIANO is disqualified from becoming a farmer-beneficiary in the resolution he issued which granted the petition for disqualification filed by ALARFA against MARIANO.

Anent the 2nd assigned error, Petitioners claim that the DARAB Central Office wrongfully ruled that it did not have jurisdiction over instant case because the action filed by them is for cancellation of the CLOA which falls within the jurisdiction of the DARAB under Section 1, Rule II of the 2003 DARAB Rules of Procedure.

x x x x x x x x x

. . . The Regional Director, who is vested with jurisdiction over cases concerning identification of farmer-beneficiaries, had correctly ruled on said issues by granting the CLOA in favor of ALARFA. However, **Petitioners, instead of appealing the Regional Director's resolution** granting the CLOA to ALARFA, filed a complaint for annulment and cancellation of the CLOA, *supra*, before the DARAB-Region 10 on 22 June 1998, which, as ruled by the DARAB Central Office, was **more than a year following the issuance of the resolution, when the same has already become final and executory**.[10] (Emphasis and underscoring supplied)

In their present petition, petitioners raise two issues, *viz:*

I WHETHER OR NOT THE DARAB REGIONAL ADJUDICATOR HAS JURISDICTION OVER THE ANNULMENT OF REGISTERED CLOAS.

II WHETHER OR NOT THE DECISION OF THE DAR REGIONAL DIRECTOR DISQUALIFYING PETITIONERS AND THE AWARDING OF THE CLOA TO RESPONDENT ALARFA HAS ALREADY BECOME FINAL AND

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[10] *Rollo,* pp. 71-73.

EXECUTORY SUCH THAT IT MAY NO LONGER BE QUESTIONED IN FURTHER PROCEEDINGS.

It is settled that jurisdiction over the subject matter is conferred by law. R.A. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988, vests the DAR with primary jurisdiction on agrarian reform matters and clothes it with *quasi-judicial* powers as follows:

SEC. 50. *Quasi-Judicial Powers of the DAR.* — The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).

It shall not be bound by technical rules of procedure and evidence but shall proceed to hear and decide all cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with justice and equity and the merits of the case. Toward this end, it shall adopt a uniform rule of procedure to achieve a just, expeditious and inexpensive determination of every action or proceeding before it.

x x x x x x x x x
(Underscoring supplied)

Section 49 of the same law confers rule-making powers upon the DAR, *viz:*

Rules and Regulations. — The PARC and the DAR shall have the power to issue rules and regulations whether substantive or procedural, to carry out the objects and purposes of this Act. . . .

In accordance with its rule-making power, the DAR issued rules to govern proceedings before the DARAB.

Since petitioners' complaint for annulment was filed with the DARAB Regional Agrarian Reform Adjudicator on June

22, 1998, the DARAB New Rules of Procedure (1994 DARAB Rules) adopted in 1994 applies to the present case.

Section 1, Rule II of the 1994 DARAB Rules enumerates the cases over which the DARAB has exclusive original jurisdiction:

x x x x x x x x x

(f) Those involving the **issuance, correction and cancellation of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;**

x x x x x x x x x

Matters involving strictly the administrative implementation of Republic Act. No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988 and other agrarian laws as enunciated by pertinent rules shall be the exclusive prerogative of and cognizable by the Secretary of the DAR. (Emphasis and underscoring added)

Section 2 of DAR Administrative Order No. 06-00 enumerates the cases over which the DAR Secretary has exclusive jurisdiction:

Cases Covered. — These Rules shall govern cases falling within the exclusive jurisdiction of the DAR Secretary which shall include the following:

(a) Classification and identification of landholdings for coverage under the Comprehensive Agrarian Reform Program (CARP), including protests or oppositions thereto and petitions for lifting of coverage;
(b) Identification, qualification or disqualification of potential farmer-beneficiaries;
(c) Subdivision surveys of lands under CARP;
(d) **Issuance, recall or cancellation of Certificates of Land Transfer (CLTs) and CARP Beneficiary Certificates (CBCs) in cases outside the purview of Presidential Decree (PD) No. 816, including the issuance, recall or cancellation of Emancipation Patents (EPs) or Certificates of Land Ownership Awards (CLOAs) not yet registered with the Register of Deeds;** (Emphasis and underscoring added)

In *Padunan v. DARAB* [11] which involved Emancipation Patents, this Court, passing on these sets of rules, held that **prior** to registration with the Register of Deeds, cases involving the issuance, recall or cancellation of CLOAs or EPs are within the jurisdiction of the DAR and that, corollarily, cases involving the issuance, correction or cancellation of CLOAs or EPs which have **been registered** with the Register of Deeds are within the jurisdiction of the DARAB.

Since the complaint subject of the present petition and filed by petitioners before the DARAB was for cancellation of a CLOA which had already been registered, the DARAB correctly assumed jurisdiction over it.

With regard to the second issue on the finality of the decision of the DAR disqualifying petitioners as farmer-beneficiaries of the lot, the Court of Appeals, citing the earlier quoted provision of Section 22 of DAR Administrative Order No. 06-00, Series of 2000, held that no appeal having been taken by petitioners within the 15-day reglementary period, the DAR decision had become final and executory.

DAR Administrative Order No. 06-00, Series of 2000 does not apply to the present case, however, because all the incidents bearing on petitioners' complaint occurred prior to the issuance in 2000 of the immediately-quoted provision of Administrative Order No. 06-00, Series of 2000. Thus, ALARFA filed the petition for disqualification as farmer-beneficiaries against petitioner Mariano on April 2, 1994; the DAR granted ALARFA the CLOA on October 20, 1997; and the CLOA was registered with the Register of Deeds on October 28, 1997. And petitioners filed their complaint before the DARAB on June 22, 1998.

A survey of the administrative issuances of the DAR which were in effect at the time the case for disqualification was resolved by the DAR Regional Director fails to show the existence of any administrative issuance specifically providing for the finality of decisions of DAR Regional Directors.

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[11] 444 Phil. 213 (2003).

Resort may then be made to the Administrative Code of 1987 which provides:

BOOK VII

ADMINISTRATIVE PROCEDURE

x x x x x x x x x

Chapter 3 – ADJUDICATION

x x x x x x x x x

SEC. 15. *Finality of Order. —* **The decision of the agency shall become final and executory fifteen (15) days after the receipt of a copy thereof by the party adversely affected unless within that period an administrative appeal or judicial review, if proper, has been perfected.** One motion for reconsideration may be filed, which shall suspend the running of the said period. (Emphasis and underscoring supplied)

The records, however, show that beyond the mere assertions of ALARFA and the DARAB, there is no proof that petitioners were given notice of the proceedings before the DAR Regional Director. Thus, the counting of the 15-day prescriptive period commenced upon the registration of the CLOA on October 28, 1997 with the Register of Deeds, which is considered constructive notice as against the whole world,[12] or on December 12, 1997, the date petitioners filed a motion to stay execution of the DAR Regional Director's resolution granting the CLOA to ALARFA.[13] No appeal having been taken by petitioners within the 15-day prescriptive period counted from any of said two dates, the assailed DAR Regional Director's resolution had become final and excutory long before petitioners filed on June 22, 1998 the complaint for Annulment and Cancellation of the CLOA.

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[12] *Heirs of Ayuste v. Court of Appeals*, 372 Phil. 370 (1999); *MWSS v. Court of Appeals*, 357 Phil. 966 (1998); *Marcopper v. Garcia*, 227 Phil. 166 (1986); *Pascua v. Florentino*, 220 Phil. 588 (1985); *Guerrero v. Court of Appeals*, 211 Phil. 295 (1983).

[13] Petitioners admitted to filing this motion in the instant petition. *Rollo*, p. 11.

WHEREFORE, the Petition is, in light of the foregoing disquisition, *DENIED*.

SO ORDERED.

Quisumbing (Chairperson), Carpio, Tinga, and *Velasco, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 174067. August 29, 2007]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DANTE JOSE DIVINA,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; LEGALITY OF ARREST, UPHELD.— Appellant's belated questioning of the legality of his arrest does not lie. x x x [A]n accused is estopped from assailing the legality of his arrest if he failed to move to quash the information against him before his arraignment. Any objection involving the arrest or the procedure in the acquisition by the court of jurisdiction over the person must be made before he enters his plea, otherwise, the objection is deemed waived. Even in instances not allowed by law, a warrantless arrest is not a jurisdictional defect, and objection thereto is waived when a person arrested submits to arraignment without objection. The subsequent filing of the charges and the issuance of the corresponding warrant of arrest against a person illegally detained will cure the defect of that detention. The records of the case show appellant was subjected to an inquest proceeding after his arrest. And upon arraignment, appellant entered his plea without raising any objection to the manner of his arrest. In any event, it bears stressing that the prosecution established that appellant was arrested *in flagrante delicto* during a buy-bust operation. Unless there is clear and convincing evidence that PO1 Mapula was inspired by any

improper motive or was not properly performing his duty, and none has been adduced by the defense, his testimony with respect to the buy-bust operation deserves full faith and credit.

2. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 1972, AS AMENDED; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; ILLEGAL SALE OF DANGEROUS DRUGS; PROOF OF TRANSACTION; ESTABLISHED IN CASE AT BAR.— What is crucial to a prosecution for illegal sale of dangerous drugs is proof that the transaction or sale actually took place, coupled with the presentation in court of the object evidence. In the case at bar, the testimony of poseur-buyer PO1 Mapula proves beyond reasonable doubt that the transaction took place. The testimony of PO1 Mapula has not been dented by the defense. The object evidence – sachet of *shabu* was presented. Appellant's son Rodante who testified that one of the policemen told him at the site of the buy-bust operation that "*nakabili kami ng shabu sa kanya"* even admitted having been shown the *shabu.* As for the version of the defense, appellant's and Rodante's testimonies are even conflicting as the earlier underlined portions of their respective accounts show. And, under the proven facts and circumstances attendant to the case, appellant's defense of frame-up does not inspire belief. That no complaint was filed against the police officers, whose arrest of appellant admittedly created a commotion and who allegedly attempted to extort money from appellant, runs counter to the normal conduct and behavior of one who feels truly aggrieved by the act complained of.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

CARPIO MORALES, *J.*:

Dante Jose Divina *alias* "Ponggay" (appellant) was, by Information dated March 11, 2003 which was filed on March 13, 2003, indicted before the Regional Trial Court (RTC) of

Pasig for violation of Section 5, Article II of Republic Act No. 9165, the accusatory portion of which reads:

> On or about March 10, 2003 in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Alan Mapula, a police poseur buyer, one (1) heat-sealed transparent plastic sachet containing two (2) centigrams (0.02 gram) of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.[1] (Underscoring supplied)

From the evidence for the prosecution, the following version is culled:

On account of a series of reports received as early as February 2003 about appellant being engaged in peddling *shabu*, which reports were validated by a confidential informant and a surveillance operation, a team of policemen of the Pasig City Drug Enforcement Unit, together with the informant, repaired to Dr. Sixto Avenue, Barangay Rosario, Pasig City on March 10, 2003 to conduct a buy-bust operation. On reaching the place at about 10:00 p.m., the informant at once spotted appellant across the street.

PO1 Allan V. Mapula (PO1 Mapula), who was tasked to be the poseur-buyer, and the informant approached appellant who inquired if they would buy from him. The informant replied that PO1 Mapula wanted to buy for his own consumption. Appellant asked how much, to which PO1 Mapula replied "*piso lang*," meaning ₱100 worth of *shabu*.

PO1 Mapula readily gave the buy-bust ₱100.00 bill previously marked with "AVM," his initials, to appellant who brought out from his pocket a plastic sachet containing suspected *shabu* and handed it to PO1 Mapula.

PO1 Mapula immediately grabbed appellant, introduced himself as a police officer, informed him his constitutional rights, frisked him and recovered the ₱100 bill buy-bust money. The other

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[1] Records, p. 1.

members of the buy-bust team rushed in and helped apprehend appellant. When subjected to laboratory examination, the substance in the plastic sachet — Exhibit "D" on which PO1 Mapula marked his initials "AVM," appellant's initials "DJD," and "03-01-03" (the date of appellant's apprehension) — was found positive for methamphetamine hydrochloride.[2]

Appellant gave his side of the case as follows:[3]

While he was standing at an alley in his compound "trying to wear [his] polo shirt and about to cross the street," a car stopped from which two men, who introduced themselves as policemen, alighted. He was brought to the police station where the policemen demanded ₱15,000.00 in exchange for his release. He thus contacted by telephone one Linda Mateo,[4] who is a *kumare* of a police officer, from whom he sought to borrow ₱2,000. The amount of ₱2,000 was not acceptable to the policemen, however, hence, he was detained and subjected to inquest proceedings on or about March 12, 2003.

On cross-examination, when questioned if he asked for his wife from his son Rodante Divina (Rodante) who allegedly witnessed his arrest, appellant replied that she was abroad in Egypt.

In an attempt to corroborate appellant's testimony, appellant's son Rodante gave the following account at the witness stand:

While he was at Dr. Sixto Avenue at around 8:00 p.m. conversing with his friends, he saw his father go out of their house "when suddenly a blue car stopped." From the car alighted three persons who grabbed his father "who was just sitting in front of their house." He thus approached his father and asked the policemen what was the violation. One replied "*nakabili kami ng shabu sa kanya"* and showed the *shabu* to him.[5]

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[2] *Id*. at 7.

[3] TSN, October 2, 2003, pp. 2-5.

[4] *Id*. at 5.

[5] TSN, January 8, 2004, p. 3.

Rodante went on to relate that the three men asked his father to stand up and frisked him and "they were able to see a watch and a ₱20.00 from my father which they also returned." After his father was accosted, they boarded him (appellant) into the car and asked him (Rodante) to follow them. He did not, however; instead, his uncle Daniel Divina followed appellant and the policemen at the "Pariancillo" precinct. When he later inquired from his uncle following the latter's return from the police station what happened to his father, his uncle replied "*nagpa*-drug test . . . *siya.*"[6]

When Rodante was asked what the reaction of his mother was on learning his father's arrest, he answered, "she was at the Pineda at my grandfather's house at that time."

Branch 154 of the Pasig RTC found appellant guilty beyond reasonable doubt as charged and sentenced him to life imprisonment and to pay a fine of ₱500,000.[7]

On appellant's appeal to this Court,[8] the case was referred for appropriate action to the Court of Appeals following the ruling in *People v. Mateo*[9] which calls for intermediate review of cases imposing the penalty of death, life imprisonment, or *reclusion perpetua*.[10]

In his Brief filed before the appellate court, appellant questioned the legality of his arrest, given that when he was arrested, he was standing in front of his house without acting in a manner suggesting that he was violating the law.[11] And he contended that his guilt had not been proven beyond reasonable doubt.[12]

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[6] *Id.* at 6.

[7] Records, p. 61.

[8] *Id.* at 66-67.

[9] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[10] *Id.* at 656-658.

[11] CA *rollo*, p. 59.

[12] *Id.* at 58-59.

By Decision[13] dated April 25, 2006, the Court of Appeals affirmed the trial court's decision.

The case is now before this Court for final review.[14] Both parties to the case manifested that they are no longer filing supplemental briefs.[15]

The appeal fails.

Appellant's belated questioning of the legality of his arrest does not lie.

> x x x [A]n accused is estopped from assailing the legality of his arrest if he failed to move to quash the information against him before his arraignment. Any objection involving the arrest or the procedure in the acquisition by the court of jurisdiction over the person must be made before he enters his plea, otherwise, the objection is deemed waived. Even in instances not allowed by law, a warrantless arrest is not a jurisdictional defect, and objection thereto is waived when a person arrested submits to arraignment without objection. The subsequent filing of the charges and the issuance of the corresponding warrant of arrest against a person illegally detained will cure the defect of that detention.[16] (Underscoring supplied)

The records of the case show appellant was subjected to an inquest proceeding after his arrest.[17] And upon arraignment, appellant entered his plea without raising any objection to the manner of his arrest.[18]

In any event, it bears stressing that the prosecution established that appellant was arrested *in flagrante delicto* during a buy-bust operation.

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[13] Penned by Court of Appeals Associate Justice Vicente Q. Roxas, with the concurrence of Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr. *Id.* at 115-124.

[14] *Id.* at 125-126.

[15] *Rollo*, pp. 14-16, 18-19.

[16] *People v. Bongalon*, 425 Phil. 96, 119-120 (2002).

[17] Records, p. 4.

[18] *Id.* at 11-13.

Unless there is clear and convincing evidence that PO1 Mapula was inspired by any improper motive or was not properly performing his duty, and none has been adduced by the defense, his testimony with respect to the buy-bust operation deserves full faith and credit.[19]

What is crucial to a prosecution for illegal sale of dangerous drugs is proof that the transaction or sale actually took place, coupled with the presentation in court of the object evidence. In the case at bar, the testimony of poseur-buyer PO1 Mapula proves beyond reasonable doubt that the transaction took place.

[FISCAL:]

Q: And after you approached Pong[g]ay, what happened?
[PO1 MAPULA]
A: When the accused saw our informant while we were approaching him, the accused asked our informant if he will get from us.

Q: What was the reply given by the informant if there is any?
A: My companion wanted to buy for his use.

Q: And after the informant told that to the accused, what was the reply of the accused?
A: He asked how much.

Q: And what was your reply?
A: I said "*piso lang*."

Q: When you said "*piso lang*" what do you mean?
A: I mean ₱100 worth of *shabu*, sir.

Q: After that, what happened?
A: He got the buy-bust money and then he got from his pocket one plastic sachet containing suspected *shabu* and he gave it to me.

Q: At that time, what [was] the accused x x x wearing?
A: T-shirt and *maong* pants, sir.

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[19] *People v. Saludes*, 451 Phil. 719, 726 (2003).

Q: Where is this *alias* Ponggay if here is here in this courtroom?
A: He is here, sir. (Witness pointing to a man wearing a yellow t-shirt who when asked answered by the name "Dante Divina").[20]

The testimony of PO1 Mapula has not been dented by the defense. The object evidence — sachet of *shabu* was presented.[21] Appellant's son Rodante who testified that one of the policemen told him at the site of the buy-bust operation that "*nakabili kami ng shabu sa kanya"* even admitted having been shown the *shabu.*

As for the version of the defense, appellant's and Rodante's testimonies are even conflicting as the earlier underlined portions of their respective accounts show. And, under the proven facts and circumstances attendant to the case, appellant's defense of frame-up does not inspire belief. That no complaint was filed against the police officers, whose arrest of appellant admittedly created a commotion and who allegedly attempted to extort money from appellant,[22] runs counter to the normal conduct and behavior of one who feels truly aggrieved by the act complained of.[23]

WHEREFORE, the challenged decision of the Court of Appeals is *AFFIRMED*.

SO ORDERED.

Quisumbing (Chairperson), Carpio, Tinga, and *Velasco, Jr., JJ.,* concur.

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[20] TSN, July 17, 2003, p. 8.

[21] *Id.* at 9-12, 17-18; Records, pp. 6-7.

[22] TSN, October 2, 2003, pp. 7-10.

[23] Vide *People v. Sy,* 438 Phil. 383, 405-406 (2002).

EN BANC

[Adm. Case No. 2984. August 31, 2007]

RODOLFO M. BERNARDO, *complainant, vs.* **ATTY. ISMAEL F. MEJIA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT; APPLICATION FOR REINSTATEMENT IN THE ROLL OF ATTORNEYS RESTS TO A GREAT EXTENT ON THE SOUND DISCRETION OF THE COURT; THE APPLICANT MUST, LIKE A CANDIDATE FOR ADMISSION TO THE BAR, SATISFY THE COURT THAT HE IS A PERSON OF GOOD MORAL CHARACTER, A FIT AND PROPER PERSON TO PRACTICE LAW.— Whether the applicant shall be reinstated in the Roll of Attorneys rests to a great extent on the sound discretion of the Court. The action will depend on whether or not the Court decides that the public interest in the orderly and impartial administration of justice will continue to be preserved even with the applicant's reentry as a counselor at law. The applicant must, like a candidate for admission to the bar, satisfy the Court that he is a person of good moral character, a fit and proper person to practice law. The Court will take into consideration the applicant's character and standing prior to the disbarment, the nature and character of the charge/s for which he was disbarred, his conduct subsequent to the disbarment, and the time that has elapsed between the disbarment and the application for reinstatement.

2. ID.; ID.; ID.; PLEA FOR REINSTATEMENT, GRANTED; THE COURT CONSIDERED THE REHABILITATION OF RESPONDENT SINCE HIS DISBARMENT WHICH CLEARLY SHOWS THAT HE HAS LEARNED HIS LESSON FROM THE EXPERIENCE AND HIS PUNISHMENT HAS LASTED LONG ENOUGH.— The Court is inclined to grant the present petition. Fifteen years has passed since Mejia was punished with the severe penalty of disbarment. Although the Court does not lightly take the bases for Mejia's disbarment, it also cannot close its eyes to the fact that Mejia is already

of advanced years. While the age of the petitioner and the length of time during which he has endured the ignominy of disbarment are not the sole measure in allowing a petition for reinstatement, the Court takes cognizance of the rehabilitation of Mejia. Since his disbarment in 1992, no other transgression has been attributed to him, and he has shown remorse. Obviously, he has learned his lesson from this experience, and his punishment has lasted long enough. Thus, while the Court is ever mindful of its duty to discipline its erring officers, it also knows how to show compassion when the penalty imposed has already served its purpose. After all, penalties, such as disbarment, are imposed not to punish but to correct offenders. We reiterate, however, and remind petitioner that the practice of law is a privilege burdened with conditions. Adherence to the rigid standards of mental fitness, maintenance of the highest degree of morality and faithful compliance with the rules of the legal profession are the continuing requirements for enjoying the privilege to practice law.

APPEARANCES OF COUNSEL

Jaime S. Del Rosario for respondent.

R E S O L U T I O N

NACHURA, *J.*:

Before the Court is a petition for review of Administrative Case No. 2984 with plea for reinstatement in the practice of law filed by Ismael F. Mejia (Mejia) who is already seventy-one years old and barred from the practice of law for fifteen years.

The antecedent facts that led to Mejia's disbarment are as follows.

On January 23, 1987, Rodolfo M. Bernardo, Jr. accused his retained attorney, Ismael F. Mejia, of the following administrative offenses:

1) misappropriating and converting to his personal use:

a) part of the sum of ₱27,710.00 entrusted to him for payment of real estate taxes on property belonging to Bernardo, situated in a subdivision known as Valle Verde I; and

b) part of another sum of ₱40,000.00 entrusted to him for payment of taxes and expenses in connection with the registration of title of Bernardo to another property in a subdivision known as Valle Verde V;

2) falsification of certain documents, to wit:

a) a special power of attorney dated March 16, 1985, purportedly executed in his favor by Bernardo (Annex P, par. 51, complainant's affidavit dates October 4, 1989);

b) a deed of sale dated October 22, 1982 (Annex O, par. 48, *id*.); and

c) a deed of assignment purportedly executed by the spouses Tomas and Remedios Pastor, in Bernardo's favor (Annex Q, par. 52, *id*.);

3) issuing a check, knowing that he was without funds in the bank, in payment of a loan obtained from Bernardo in the amount of ₱50,000.00, and thereafter, replacing said check with others known also to be insufficiently funded.[1]

On July 29, 1992, the Supreme Court *En Banc* rendered a Decision *Per Curiam*, the dispositive portion of which reads:

WHEREFORE, the Court DECLARES the [sic] respondent, Atty. Ismael F. Mejia, guilty of all the charges against him and hereby imposes on him the penalty of DISBARMENT. Pending finality of this judgment, and effective immediately, Atty. Ismael F. Mejia is hereby SUSPENDED from the practice of law. Let a copy of this Decision be spread in his record in the Bar Confidant's Office, and notice thereof furnished the Integrated Bar of the Philippines, as well as the Court Administrator who is DIRECTED to inform all the Courts concerned of this Decision.

SO ORDERED.

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[1] Contained in the Decision of this Court dated July 29, 1992 in Administrative Case No. 2984, entitled "*Rodolfo M. Bernardo, Jr. v. Atty. Ismael F. Mejia*."

On June 1, 1999, Mejia filed a Petition praying that he be allowed to reengage in the practice of law. On July 6, 1999, the Supreme Court *En Banc* issued a Resolution denying the petition for reinstatement.

On January 23, 2007, Mejia filed the present petition for review of Administrative Case No. 2984 with a plea for reinstatement in the practice of law. No comment or opposition was filed against the petition.[2]

Whether the applicant shall be reinstated in the Roll of Attorneys rests to a great extent on the sound discretion of the Court. The action will depend on whether or not the Court decides that the public interest in the orderly and impartial administration of justice will continue to be preserved even with the applicant's reentry as a counselor at law. The applicant must, like a candidate for admission to the bar, satisfy the Court that he is a person of good moral character, a fit and proper person to practice law. The Court will take into consideration the applicant's character and standing prior to the disbarment, the nature and character of the charge/s for which he was disbarred, his conduct subsequent to the disbarment, and the time that has elapsed between the disbarment and the application for reinstatement.[3]

In the petition, Mejia acknowledged his indiscretions in the law profession. Fifteen years had already elapsed since Mejia's name was dropped from the Roll of Attorneys. At the age of seventy-one, he is begging for forgiveness and pleading for reinstatement. According to him, he has long repented and he has suffered enough. Through his reinstatement, he wants to

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[2] In a Resolution dated February 13, 2007, the Court *En Banc* required complainant Rodolfo M. Bernardo (Bernardo) to file comment on the petition. However, it was returned unserved with the notation "RTS-Unknown" appearing on the envelope.

Resolutions dated February 20, 2007 and February 27, 2007, were sent to Bernardo reiterating the requirement to file comment. Both Resolutions, however, were returned unserved with the notation "RTS-Refused to Receive; Unknown" appearing on the envelope. Thus, the Court dispensed with the filing of the comment and, thereafter, gave due course to the petition.

[3] *Cui v. Cui*, 120 Phil. 725, 731 (1964).

leave a legacy to his children and redeem the indignity that they have suffered due to his disbarment.

After his disbarment, he put up the *Mejia Law Journal*, a publication containing his religious and social writings. He also organized a religious organization and named it "El Cristo Movement and Crusade on Miracle of Heart and Mind."

The Court is inclined to grant the present petition. Fifteen years has passed since Mejia was punished with the severe penalty of disbarment. Although the Court does not lightly take the bases for Mejia's disbarment, it also cannot close its eyes to the fact that Mejia is already of advanced years. While the age of the petitioner and the length of time during which he has endured the ignominy of disbarment are not the sole measure in allowing a petition for reinstatement, the Court takes cognizance of the rehabilitation of Mejia. Since his disbarment in 1992, no other transgression has been attributed to him, and he has shown remorse. Obviously, he has learned his lesson from this experience, and his punishment has lasted long enough. Thus, while the Court is ever mindful of its duty to discipline its erring officers, it also knows how to show compassion when the penalty imposed has already served its purpose. After all, penalties, such as disbarment, are imposed not to punish but to correct offenders.

We reiterate, however, and remind petitioner that the practice of law is a privilege burdened with conditions. Adherence to the rigid standards of mental fitness, maintenance of the highest degree of morality and faithful compliance with the rules of the legal profession are the continuing requirements for enjoying the privilege to practice law.[4]

WHEREFORE, in view of the foregoing, the petition for reinstatement in the Roll of Attorneys by Ismael F. Mejia is hereby *GRANTED*.

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[4] *Tolentino v. Mendoza*, Adm. Case No. 5151, October 19, 2004, 440 SCRA 519, 532-533; *Barrientos v. Libiran-Meteoro*, Adm. Case No. 6408, August 31, 2004, 437 SCRA 209, 219; *Zaldivar v. Sandiganbayan*, G.R. Nos. 79690-707, April 7, 1993, 221 SCRA 132, 135.

SO ORDERED.

Puno, C.J.,Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., and *Reyes, JJ.,* concur.

Quisumbing, J., on leave.

EN BANC

[A.C. No. 6483. August 31, 2007]

NICOLAS O. TAN, *complainant, vs.* **ATTY. AMADEO E. BALON, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; AFTER HAVING BEEN CHASTISED BY THE COURT AND STRIPPED OF THE PRIVILEGE TO PRACTICE LAW, RESPONDENT WAS UNREPENTANT AND UNMOVED AND CONTINUE TO COMMIT FALSEHOOD AND DISHONEST ACTS.— It appears that after the chastisement he received from the Court and despite having been stripped of the privilege to practice law, respondent was unrepentant and unmoved as he continued to commit falsehood and dishonest acts. In the instant case, respondent collected the money intended for his client without informing the latter of such receipt. Worse, he used the amount for personal purposes. It was almost four years from the time he received the money that his client knew of the collection. Although respondent offered to pay the amount, he was not able to fully pay the same. He even had the temerity to allege in his comment that he has fully paid the amount only to admit during the hearing conducted by the IBP that he only paid a portion thereof. Moreover, the checks he issued to Tan as payment bounced for insufficiency of funds. Notwithstanding his disbarment on October 28, 2003, he continued to represent himself as a lawyer, not only before

the IBP but also before this Court. In the *Motion for Extension* dated October 5, 2004, respondent signed his name under "Balon Law Office" and appended his PTR, IBP and Roll numbers. He also signed as Notary Public in the Affidavit of Service of Sally I. Leonardo. In his Comment dated October 21, 2004, respondent prayed in the alternative that the case be referred to the IBP despite his prior disbarment. Again he signed his name below "Balon Law Office" and as Notary Public in the Affidavit of Service. In the Rejoinder dated December 15, 2004, respondent reiterated his prayer that the case be referred to the IBP for investigation despite knowledge of IBP's lack of jurisdiction in view of his prior disbarment. He again appended his name under "Balon Law Office" together with his Roll number.

2. ID.; ID.; ID.; GOOD FAITH AND FAIR DEALING REQUIRE RESPONDENT TO DISCLOSE HIS DISBARMENT.— There is no merit in respondent's contention that he continued to represent himself as a lawyer because the disbarment became final only on April 12, 2005. Good faith and fair dealing require him to disclose his disbarment. Instead, he continued to sign the pleadings as a lawyer and as notary public. Moreover, we note that even after the disbarment became final on April 12, 2005, respondent continued to represent himself as a lawyer. During the IBP hearing on August 24, 2005, he deliberately failed to mention his prior disbarment. In the *Motion to Suspend the Period to File Position Paper and to Defer the Submission of the Case for Resolution and With Motion to Set Case for Trial and/or Reception of Evidence* dated September 9, 2005, although he did not append the title "Attorney" to his name, yet he affixed his PTR, IBP and Roll numbers under his signature. The same is true with the *Urgent Motion for Postponement* dated November 23, 2005. This notwithstanding the Court's Decision on October 28, 2003 to strike out his name from the Roll of Attorneys. As a former lawyer, respondent should know that the IBP's jurisdiction is limited to the members of the Bar. In fact, in the *Motion to Suspend the Period to File Position Paper and to Defer Submission of the Case for Resolution* dated September 9, 2005, respondent alleged that the IBP has no jurisdiction over the instant complaint because it allegedly concerns a contract of loan, and not a fiduciary transaction between a lawyer and his client. However, after

the IBP found out his duplicity and referred the case back to this Court, and after the complainant submitted his Affidavit of Desistance, respondent still has the temerity to say that "it would be prudent for the Honorable Court, if the same will also be referred to the IBP for appropriate action x x x."

3. ID.; ID.; ID.; RESPONDENT IS MAKING A MOCKERY OF THE PROCEEDINGS AS WELL AS THE AUTHORITY OF THE INTEGRATED BAR OF THE PHILIPPINES AND THE COURT; ACTS COMMITTED ARE NOT ONLY REPREHENSIBLE BUT CONTUMACIOUS AND DONE IN UTTER DISREGARD OF THE COURT'S AUTHORITY.— Respondent is making a mockery of the proceedings as well as of the authority of the IBP and the Court. After claiming that the IBP has no jurisdiction over the complaint, he now alleges that it would be prudent for this Court to refer back the case as well as the complainant's affidavit of desistance to the IBP. In *Lemoine v. Balon, Jr.*, respondent was found guilty of grave misconduct for misappropriating the funds of his client. In the instant case, respondent committed the same reprehensible act. In addition, he continued to represent himself as a lawyer despite his prior disbarment, and committed contumacious acts before the IBP and the Court. Such utter disregard of this Court's authority must not be countenanced. It has been held that contempt of court is a defiance of the authority, justice or dignity of the court, such conduct as tends to bring the authority and administration of the law into disrespect. It signifies not only a willful disregard or disobedience of the court's order but such conduct as tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice. Section 3, Rule 71 of the Rules of Court provides that a person may be punished for indirect contempt for: x x x (c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule; (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice; (e) Assuming to be an attorney or an officer of a court, and acting as such without authority; x x x The same Rule further provides that a person may be punished for indirect contempt after a charge in writing has been filed, and an opportunity given to the respondent to

comment thereon and to be heard by himself or counsel. In the instant case, respondent was ordered to show cause why he should not be cited for contempt for not disclosing his prior disbarment and for continuing to represent himself as a lawyer. He submitted an explanation but we find the same unsatisfactory. Thus, respondent was properly accorded his right to due process. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. "To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

On July 13, 2004, Nicolas O. Tan filed a complaint against Atty. Amadeo E. Balon, Jr. for misappropriation of funds and issuance of bum checks.

Tan alleged that he engaged the services of Atty. Balon relative to the returned checks issued to the former by Jose G. Guisande. Atty. Balon sent demand letters to Guisande but thereafter failed to inform Tan about the status of the same. Tan alleged that as a fellow Rotarian, he regularly met Atty. Balon but the latter said nothing about the case.

Tan thus engaged the services of another lawyer, Atty. Romualdo Jubay, who filed an estafa case against Guisande. During the proceedings, Guisande's counsel informed Tan and Atty. Jubay that out of the ₱96,085.00 originally owed, ₱60,000.00 was already collected by Atty. Balon.

When confronted by Tan, Atty. Balon admitted that he collected the amount of ₱60,000.00 from Guisande. He then proposed to Tan that 20% of the ₱60,000.00 or ₱12,000.00 be applied as attorney's fees. He offered to pay the remaining balance of ₱48,000.00 with interest of 6% from September 29, 1999 to January 13, 2003 by issuing two postdated checks. However,

the two checks issued by Atty. Balon bounced for reason "account closed" when presented for payment.

Upon being informed of the dishonor, Atty. Balon offered to settle his obligations by depositing cash in Tan's account. However, he was only able to deposit a total amount of ₱20,000.00. Despite several demands, Atty. Balon failed to fully settle his obligations. Thus, Tan filed the instant complaint.

In his Comment, Atty. Balon alleged that he had fully paid his obligations; that on several occasions, he rendered legal services to Tan for free; that the administrative complaint was intended to harass him and to stop him from filing a collection case for unpaid legal services against Tan.

On December 8, 2004, we referred the complaint to the Integrated Bar of the Philippines (IBP) for investigation. The IBP held a mandatory conference and conducted a hearing on August 24, 2005. During the hearing, Atty. Balon admitted that he was not able to fully pay his obligations to Tan.[1] The parties were then directed to submit their respective position papers on or before September 12, 2005.

Complainant submitted his position paper. Respondent, however, submitted a "*Motion to Suspend the Period to File Position Paper and to Defer the Submission of the Case for Resolution and With Motion to Set Case for Trial and/or Reception of Evidence*." In the same Motion, particularly paragraph 6 thereof, respondent claimed that "the IBP has no jurisdiction over the complaint as it concerns a contract of loan, rather than a fiduciary transaction of lawyer-client relationship." The IBP granted the motion and scheduled the hearing on December 6, 2005.

Subsequently, however, the Investigating Commissioner learned that respondent had been disbarred by the Court in *Lemoine v. Balon, Jr.*[2] on October 28, 2003, or even prior to the institution

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[1] *Rollo*, p. 30.

[2] A.C. No. 5829, 414 SCRA 511.

of the instant complaint. Thus, the IBP deemed the proceedings closed and terminated for lack of disciplinary jurisdiction over respondent in view of his prior disbarment. At the same time, it ordered respondent to show cause why he should not be cited for contempt for failing to inform the IBP of his disbarment and for continuing to represent that he is still a member of the Bar.

In his explanation, respondent alleged that he assumed the IBP knew of his disbarment; that his disbarment attained finality only on April 12, 2005; and that he intended to discuss his disbarment in the position paper he is yet to submit to the IBP.

Unsatisfied with the explanation, the IBP recommended that respondent be cited for contempt for continuing to practice law despite his disbarment.

On March 7, 2007, we required the parties to manifest whether they are willing to submit the case for resolution. However, on May 4, 2007, complainant filed an Affidavit of Desistance claiming that the filing of the instant case was a product of misunderstanding and misapprehension of facts; and that he and the respondent had cleared their differences and reconciled their accounting records. Consequently, he is no longer interested in pursuing the complaint.

On the other hand, respondent filed on May 8, 2007 a Manifestation and Motion claiming that considering complainant's Affidavit of Desistance, it would be "prudent" for the Supreme Court to refer the matter back to the IBP.

In *Lemoine v. Balon, Jr.*, respondent was found unfit to remain as a member of the Bar after committing malpractice, deceit, and gross misconduct. He received the check corresponding to his client's insurance claim, falsified the check and made it payable to himself, encashed the same and appropriated the proceeds. The Court found his acts so appalling and his character grossly flawed that it ruled in this wise:

Specifically with respect to above-quoted provision of Canon 16 of the Code of Professional Responsibility, the Filipino lawyer's

principal source of ethical rules, which Canon 16 bears on the principal complaint of complainant, a lawyer must hold in trust all moneys and properties of his client that he may come to possess. This commandment entails certain specific acts to be done by a lawyer such as rendering an accounting of all money or property received for or from the client as well as delivery of the funds or property to the client when due or upon demand. Respondent breached this Canon when after he received the proceeds of complainant's insurance claim, he did not report it to complainant, who had a given address in Makati, or to his co-attorney-in-fact Garcia who was his contact with respect to complainant.

In fact, long after respondent received the December 23, 1998 check for ₱525,000.00 he, by his letter of March 26, 1999 to Garcia, had even the temerity to state that the claim was still pending and recommend "acceptance of the 50% offer . . . which is ₱350,000.00 pesos." His explanation that he prepared and sent this letter on Garcia's express request is nauseating. A lawyer, like respondent, would not and should not commit prevarication, documented at that, on the mere request of a friend.

By respondent's failure to promptly account for the funds he received and held for the benefit of his client, he committed professional misconduct. Such misconduct is reprehensible at a greater degree, for it was obviously done on purpose through the employment of deceit to the prejudice of complainant who was kept in the dark about the release of the check, until he himself discovered the same, and has to date been deprived of the use of the proceeds thereof.

A lawyer who practices or utilizes deceit in his dealings with his client not only violates his duty of fidelity, loyalty and devotion to the client's cause but also degrades himself and besmirches the fair name of an honorable profession.

That respondent had a lien on complainant's funds for his attorney's fees did not relieve him of his duty to account for it. The lawyer's continuing exercise of his retaining lien presupposes that the client agrees with the amount of attorney's fees to be charged. In case of disagreement or when the client contests that amount for being unconscionable, however, the lawyer must not arbitrarily apply the funds in his possession to the payment of his fees. He can file, if he still deems it desirable, the necessary action or proper motion with the proper court to fix the amount of such fees.

In respondent's case, he never had the slightest attempt to bring the matter of his compensation for judicial determination so that his and complainant's sharp disagreement thereon could have been put to an end. Instead, respondent stubbornly and in bad faith held on to complainant's funds with the obvious aim of forcing complainant to agree to the amount of attorney's fees sought. This is an appalling abuse by respondent of the exercise of an attorney's retaining lien which by no means is an absolute right and cannot at all justify inordinate delay in the delivery of money and property to his client when due or upon demand.

Respondent was, before receiving the check, proposing a 25% attorney's fees. After he received the check and after complainant had discovered its release to him, he was already asking for 50%, objection to which complainant communicated to him. Why respondent had to doubly increase his fees after the lapse of about one year when all the while he has been in custody of the proceeds of the check defies comprehension. At any rate, it smacks of opportunism, to say the least.

As for respondent's claim in his June 2001 Supplement to his Counter-Affidavit that he had on several occasions from May 1999 to October 1999 already delivered a total of ₱233,000.00 out of the insurance proceeds to Garcia in trust for complainant, this does not persuade, for it is bereft of any written memorandum thereof. It is difficult to believe that a lawyer like respondent could have entrusted such total amount of money to Garcia without documenting it, especially at a time when, as respondent alleged, he and Garcia were not in good terms. Not only that. As stated earlier, respondent's Counter-Affidavit of February 18, 2000 and his December 7, 1999 letter to complainant unequivocally contained his express admission that the total amount of ₱525,000.00 was in his custody. Such illogical, futile attempt to exculpate himself only aggravates his misconduct. Respondent's claim discredited, the affidavits of Leonardo and Roxas who, acting allegedly for him, purportedly gave Garcia some amounts forming part of the ₱233,000.00 are thus highly suspect and merit no consideration.

The proven ancillary charges against respondent reinforce the gravity of his professional misconduct.

The intercalation of respondent's name to the Chinabank check that was issued payable solely in favor of complainant as **twice certified** by Metropolitan Insurance is clearly a brazen act of

falsification of a commercial document which respondent resorted to in order to encash the check.

Respondent's threat in his December 7, 1999 letter to expose complainant to possible sanctions from certain government agencies with which he bragged to have a "good network" reflects lack of character, self-respect, and justness.

It bears noting that for close to five long years respondent has been in possession of complainant's funds in the amount of over half a million pesos. The deceptions and lies that he peddled to conceal, until its discovery by complainant after about a year, his receipt of the funds and his tenacious custody thereof in a grossly oppressive manner point to his lack of good moral character. Worse, by respondent's turnaround in his Supplement to his Counter-Affidavit that he already delivered to complainant's friend Garcia the amount of ₱233,000.00 which, so respondent claims, is all that complainant is entitled to, he in effect has declared that he has nothing more to turn over to complainant. Such incredible position is tantamount to a refusal to remit complainant's funds, and gives rise to the conclusion that he has misappropriated them.

In fine, by respondent's questioned acts, he has shown that he is no longer fit to remain a member of the noble profession that is the law.

WHEREFORE, respondent Atty. Amadeo E. Balon, Jr., is found GUILTY of malpractice, deceit and gross misconduct in the practice of his profession as a lawyer and he is hereby DISBARRED. The Office of the Clerk of Court is directed to strike out his name from the Roll of Attorneys and to inform all courts and the Integrated Bar of the Philippines of this Decision.

Respondent is ordered to turn over to complainant, Daniel Lemoine, the amount of ₱525,000.00 within thirty (30) days from notice, without prejudice to whatever judicial action he may take to recover his attorney's fees and purported expenses incurred in securing the release thereof from Metropolitan Insurance.

SO ORDERED.

It appears that after the chastisement he received from the Court and despite having been stripped of the privilege to practice law, respondent was unrepentant and unmoved as he continued to commit falsehood and dishonest acts.

In the instant case, respondent collected the money intended for his client without informing the latter of such receipt. Worse, he used the amount for personal purposes. It was almost four years from the time he received the money that his client knew of the collection. Although respondent offered to pay the amount, he was not able to fully pay the same. He even had the temerity to allege in his comment that he has fully paid the amount only to admit during the hearing conducted by the IBP that he only paid a portion thereof. Moreover, the checks he issued to Tan as payment bounced for insufficiency of funds.

Notwithstanding his disbarment on October 28, 2003, he continued to represent himself as a lawyer, not only before the IBP but also before this Court. In the *Motion for Extension* dated October 5, 2004, respondent signed his name under "Balon Law Office" and appended his PTR, IBP and Roll numbers.[3] He also signed as Notary Public in the Affidavit of Service of Sally I. Leonardo.[4]

In his Comment dated October 21, 2004, respondent prayed in the alternative that the case be referred to the IBP[5] despite his prior disbarment. Again he signed his name below "Balon Law Office"[6] and as Notary Public in the Affidavit of Service.[7]

In the Rejoinder dated December 15, 2004, respondent reiterated his prayer that the case be referred to the IBP for investigation[8] despite knowledge of IBP's lack of jurisdiction in view of his prior disbarment. He again appended his name under "Balon Law Office" together with his Roll number.[9]

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[3] *Rollo*, p. 17.

[4] *Id*. at 18.

[5] *Id*. at 22.

[6] *Id*. at 23.

[7] *Id*. at 26.

[8] *Id*. at 36.

[9] *Id*.

There is no merit in respondent's contention that he continued to represent himself as a lawyer because the disbarment became final only on April 12, 2005. Good faith and fair dealing require him to disclose his disbarment. Instead, he continued to sign the pleadings as a lawyer and as notary public.

Moreover, we note that even after the disbarment became final on April 12, 2005, respondent continued to represent himself as a lawyer. During the IBP hearing on August 24, 2005, he deliberately failed to mention his prior disbarment. In the *Motion to Suspend the Period to File Position Paper and to Defer the Submission of the Case for Resolution and With Motion to Set Case for Trial and/or Reception of Evidence* dated September 9, 2005, although he did not append the title "Attorney" to his name, yet he affixed his PTR, IBP and Roll numbers under his signature. The same is true with the *Urgent Motion for Postponement* dated November 23, 2005. This notwithstanding the Court's Decision on October 28, 2003 to strike out his name from the Roll of Attorneys.

As a former lawyer, respondent should know that the IBP's jurisdiction is limited to the members of the Bar. In fact, in the *Motion to Suspend the Period to File Position Paper and to Defer Submission of the Case for Resolution* dated September 9, 2005, respondent alleged that the IBP has no jurisdiction over the instant complaint because it allegedly concerns a contract of loan, and not a fiduciary transaction between a lawyer and his client. However, after the IBP found out his duplicity and referred the case back to this Court, and after the complainant submitted his Affidavit of Desistance, respondent still has the temerity to say that "it would be prudent for the Honorable Court, if the same will also be referred to the IBP for appropriate action x x x."

Respondent is making a mockery of the proceedings as well as of the authority of the IBP and the Court. After claiming that the IBP has no jurisdiction over the complaint, he now alleges that it would be prudent for this Court to refer back the case as well as the complainant's affidavit of desistance to the IBP.

In *Lemoine v. Balon, Jr.*, respondent was found guilty of grave misconduct for misappropriating the funds of his client. In the instant case, respondent committed the same reprehensible act. In addition, he continued to represent himself as a lawyer despite his prior disbarment, and committed contumacious acts before the IBP and the Court. Such utter disregard of this Court's authority must not be countenanced.

It has been held that contempt of court is a defiance of the authority, justice or dignity of the court, such conduct as tends to bring the authority and administration of the law into disrespect.[10] It signifies not only a willful disregard or disobedience of the court's order but such conduct as tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice.[11]

Section 3, Rule 71 of the Rules of Court provides that a person may be punished for indirect contempt for:

x x x x x x x x x

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

x x x x x x x x x

The same Rule further provides that a person may be punished for indirect contempt after a charge in writing has been filed, and an opportunity given to the respondent to comment thereon and to be heard by himself or counsel. In the instant case, respondent was ordered to show cause why he should not be

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[10] *Abad v. Somera*, G.R. No. 82216, July 2, 1990, 187 SCRA 75, 84-85.

[11] *Id.* at 85.

cited for contempt for not disclosing his prior disbarment and for continuing to represent himself as a lawyer. He submitted an explanation but we find the same unsatisfactory.

Thus, respondent was properly accorded his right to due process. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. "To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[12]

A person adjudged guilty of indirect contempt may be punished by a fine not exceeding ₱30,000.00 or imprisonment not exceeding six months, or both.[13] Under the circumstances prevailing in the instant case, we find the fine in the maximum amount of ₱30,000.00 as appropriate.

ACCORDINGLY, respondent Amadeo E. Balon, Jr. is found guilty of *INDIRECT CONTEMPT* and is ordered to pay a *FINE* of ₱30,000.00 payable in full within a non-extendible period of five days from receipt of this Resolution, and strongly warned to refrain from any further attempts to make a mockery of judicial processes and that commission of the same or similar act will merit a more severe sanction. Failure to pay the fine within the given period will subject respondent to imprisonment until full compliance.

SO ORDERED.

Puno, C.J., Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., Nachura, and *Reyes, JJ.,* concur.

Quisumbing, J., on leave.

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[12] *Mutuc v. Court of Appeals*, G.R. No. L-48108, September 26, 1990, 190 SCRA 43, 49.

[13] RULES OF COURT, Rule 71, Sec. 7.

THIRD DIVISION

[A.M. No. P-07-2342. August 31, 2007]
(Formerly OCA I.P.I. No. 01-1188-P)

ROELA D. CO, *complainant, vs.* **ALLAN D. SILLADOR, Sheriff IV, Regional Trial Court, Branch 62, Bago City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; SHERIFFS; NEGLECT OF DUTY; RESPONDENT CANNOT ESCAPE ADMINISTRATIVE LIABILITY FOR HIS FAILURE TO COMPLY WITH THE MANDATORY PROCEDURE FOR THE CONDUCT OF THE AUCTION SALE AND REDEMPTION OF PROPERTIES, REASON FOR THE DELAY IN THE CONDUCT OF THE AUCTION SALE IS NOT JUSTIFIED.— The absence of bad faith notwithstanding, respondent cannot escape administrative liability for his failure to comply with the mandatory procedure for the conduct of the auction sale and the redemption of properties. Rule 39 of the Rules of Court unequivocally provides the time in which the auction sale is to be conducted as well as the procedure to be followed in the redemption of the properties. Respondent's justification for the delay in the conduct of the auction sale is not well-taken. To begin with, respondent's Orders requiring the judgment obligee to post indemnity bonds were patently defective. Before issuance thereof, respondent should have determined the respective values of the levied properties in order to fix the exact amount of the indemnity bonds. Section 16, Rule 39 of the Rules of Court, explicitly mandates that the indemnity bond shall be in a sum not less than the value of the property levied on. It was incumbent upon respondent, as the officer effecting the levy, to ascertain the veracity of the third party claims, and not simply rely on the third party claimants' representations as to the value of the levied properties, prior to issuing the said Orders. He could have easily asked for the tax declarations thereon when presented with the third party claims. Thus, the delay in the conduct of the auction sale and the procedural shortcuts taken thereon are attributable to the respondent.

2. ID.; ID.; ID.; ID.; ID.; RESPONDENT SHERIFF UNWITTINGLY COMPROMISED THE EXECUTION PROCEEDINGS.— The Orders requiring the judgment obligee to post indemnity bonds for the levied properties were issued on the date of the auction sale itself, giving the judgment obligee only until 4:00 p.m. of that very day to post the indemnity bonds. Evidently, even if the judgment obligee complied therewith, respondent would still continue with the scheduled auction sale in direct violation of our rules thereon. Concededly, respondent recalled his Orders considering the defective third party claims. However, the recall was undoubtedly belated. To reiterate, respondent should have desisted from issuing the Orders in the first place, and he did not have to wait for the submission of the tax declarations on the levied properties before doing so. In needlessly waiting for the said documents, respondent unwittingly compromised the execution proceedings.

3. ID.; ID.; ID.; ID.; ID.; RESPONDENT'S AUTOMATIC RE-LEVY OF THE PROPERTIES WITHOUT NOTICE TO ALL AFFECTED PARTIES, INCLUDING THE SPOUSES OF THE JUDGMENT OBLIGOR IS UNWARRANTED.— On the questionable re-levying of the redeemed properties, the respondent's explication does not persuade. Although the tendered redemption amounts were deficient, the judgment obligee accepted them, subject to the payment of any deficiency. The redemption of the property had yet to be completed. As such, respondent should have refrained from issuing a Certificate of Redemption to the redeeming parties. Respondent failed to state whether he demanded from the redemptioners payment of the deficiency in the redemption price, including any taxes and assessment paid by the judgment obligee. He forthwith re-levied on the judgment obligors' properties instead of canceling the Certificate of Redemption. His insistence that the re-levying of the properties was simply in furtherance of his ministerial duty to effect full satisfaction of the RTC Bago's judgment is misplaced. For the complete satisfaction of the judgment award, the judgment obligee's available remedies are outlined in Sections 36 and 37, Rule 39 of the Rules of Court. Clearly, respondent's automatic re-levy of the same properties without notice to all affected parties, including the spouses of the judgment obligor, was unwarranted.

4. ID.; ID.; ID.; ID.; ID.; PRIMORDIAL ROLE OF SHERIFFS IN THE DISPENSATION OF JUSTICE, EMPHASIZED.—

> We cannot overemphasize the primordial role sheriffs play in the dispensation of justice. As officers of the court, they must discharge their duties with great care and diligence. They are exhorted to use reasonable skill and diligence in performing their official duties, especially when the rights of individuals may be jeopardized by neglect. The *raison d'etre* for this exacting standard is grounded on public office being a public trust. More particularly, sheriffs, in serving the court's writs and processes, and in implementing the orders of the court, cannot afford to err without affecting the efficiency of the process of the administration of justice. All told, respondent is liable for simple neglect of duty which has been defined as the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for complainant.
Demetrio M. Vinson, Jr. for respondent.

D E C I S I O N

NACHURA, *J.*:

Before us is an administrative complaint[1] charging Allan D. Sillador, Sheriff of the Regional Trial Court (RTC), Branch 62, Bago City, with partiality and malfeasance in office arising from his alleged irregular acts in enforcing the judgment in Civil Case No. 754[2] which held the defendants Teodoro Borlongan, Corazon Bejasa, and Arturo Manuel, Jr., jointly and severally liable with Urban Bank.

Complainant, Atty. Roela D. Co, is the counsel of the defendants in Civil Case No. 754 for Recovery of Agent's Compensation, Damages and Attorney's Fees.

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[1] *Rollo*, pp. 1-7.

[2] Entitled "*Atty. Magdaleno Peña v. Urban Bank, Teodoro Borlongan, et al.,*" *id*. at 8-31.

On June 15, 1999, upon the judgment obligee's motion, the RTC granted execution pending appeal. Thereafter, defendants Borlongan, Bejasa, and Manuel (judgment obligors) received a notice of sale on execution of real property involving their respective lots. The auction sale of the levied properties was scheduled on June 8, 2001 at 9:00 a.m. in front of the Bago City Hall of Justice.

Subsequently, on June 7, 2001, Ma. Dolores E. Borlongan, Ma. Theresa R. Manuel, and Nestor B. Bejasa filed their respective Notices/Affidavits of Third Party Claim[3] with respondent. The third party claimants similarly alleged that they are the spouses of the judgment obligors in Civil Case No. 754, and that the properties levied upon for execution sale are included in their respective conjugal estates.

Thus, on June 8, 2001, the scheduled date of the auction sale, respondent issued three Orders directing the judgment obligee to post indemnity bonds not later than 4:00 p.m. on even date; otherwise, the levied properties shall be released to the third party claimants.[4] During the auction sale which began at 3:40 p.m., the judgment obligee, who failed to comply with respondent's Orders, insisted that the third party claims of the judgment obligors' spouses were fatally defective[5] and, as such, should be ignored by the respondent who, thereafter, should proceed with the scheduled auction sale. On the other hand, complainant pointed out that since the judgment obligee failed to file the required indemnity bonds, the levied properties should be released to the third party claimants, and the scheduled auction sale held in abeyance. Yet, over complainant's objections and notwithstanding the late hour, respondent continued with the auction sale which ended at 4:45 p.m.

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[3] Annexes "B", "C", "D" of the Complaint, *id*. at 32-60.

[4] Annexes "E", "F", "G" of the Complaint, *id*. at 61-63.

[5] No copy was served on the judgment obligee and it did not state the value of the levied properties for the fixing of the amount of the indemnity bonds.

In his answer,[6] respondent explained that the delay in the auction sale was caused by the complainant who undertook to submit documents relating to the value of the levied properties, but failed to do so. Respondent posited that he was constrained to recall his Orders because the third party claims did not indicate the individual values of the properties. Under the circumstances, he had no basis for fixing the indemnity bonds pursuant to Section 16, Rule 39 of the Rules of Court.

Upon our Resolution[7] dated February 3, 2003, this administrative matter was referred to Executive Judge Henry J. Trocino, RTC, Branch 62, Bago City, for investigation, report and recommendation.

The investigation revealed that the judgment obligee was belatedly furnished copies of the third party claims, denying him the opportunity to comment on the same. The investigating judge likewise found that the third party claims were defective, as these failed to allege the value of the levied properties, and thus, respondent had no basis for setting the amount of the indemnity bonds. Further, the scheduled auction sale started at 3:35 p.m. and ended at 4:45 p.m. on the same day. However, the delay cannot be imputed solely to the respondent who was made to wait for the tax declarations on the levied properties to properly determine the amount of the indemnity bonds. Ultimately, the respondent failed to comply with paragraph 2, Section 15(d), Rule 39 of the Rules of Court which mandates that the auction sale shall be conducted not earlier than 9:00 a.m. and not later than 2:00 p.m.

For not strictly complying with the procedure regarding the conduct of the auction sale, the investigating judge found respondent liable for simple negligence and recommended that he be reprimanded with a warning that a repetition of the same or similar offense will be dealt with more severely. The investigating judge also recommended that complainant's other

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[6] *Rollo,* pp. 90-96.

[7] *Id.* at 108.

charges be dismissed for insufficiency of evidence and lack of merit.

Meanwhile, on August 29, 2003, complainant filed a Supplemental Complaint against respondent relative to the alleged irregularities committed by the latter in the redemption of the properties sold during the questioned auction sale.

Apparently, the spouses of the judgment obligors, the third party claimants, timely filed a Notice of Redemption on February 11, 2003, and requested from the respondent a breakdown of the amounts to redeem the properties. On February 26, 2003, since respondent had yet to respond to the request, the third party claimants, through their counsels, including herein complainant, each tendered payment in the amount of ₱1,260,000.00 in checks which respondent initially refused. Eventually, however, respondent was prevailed upon to accept the checks upon complainant's undertaking to pay any deficiency.

Curiously, the very next day, respondent returned the checks at the complainant's office. Complainant was, thus, constrained to consign the redemption payment with the RTC Bago.

In another turn of events, the judgment obligee became amenable to accepting the checks previously tendered and consigned with the RTC Bago. He signed the acknowledgment receipt but with a notation "subject to any deficiency claim." Accordingly, the respondent issued Certificates of Redemption for the redeemed properties.

Notwithstanding the foregoing, however, respondent caused a re-levy on the same properties for the unsatisfied portion of the judgment award which was annotated on the titles thereof. Thus, complainant filed a Motion to Cancel Notice of Re-levy, which was opposed by the judgment obligee.

In response, the respondent maintains that he did not act irregularly in causing the re-levy of the subject properties considering the unsatisfied portion of the judgment award. In fact, he emphasizes that he acted in good faith in the discharge of his functions pertaining to the execution proceedings in Civil Case No. 754 before the RTC Bago.

Assessing the parties' respective claims, the Office of the Court Administrator (OCA) concurred with the findings of the investigating judge that respondent held the auction sale way beyond the time provided in Section 15, Rule 39 of the Rules of Court. The OCA also found respondent liable for irregularities committed in connection with the redemption of the levied properties.

We see no reason to depart from the findings of the OCA.

The absence of bad faith notwithstanding, respondent cannot escape administrative liability for his failure to comply with the mandatory procedure for the conduct of the auction sale and the redemption of properties.

Rule 39 of the Rules of Court unequivocally provides the time in which the auction sale is to be conducted as well as the procedure to be followed in the redemption of the properties.[8] Respondent's justification for the delay in the conduct of the auction sale is not well-taken. To begin with, respondent's Orders requiring the judgment obligee to post indemnity bonds were patently defective. Before issuance thereof, respondent should have determined the respective values of the levied properties in order to fix the exact amount of the indemnity bonds. Section 16, Rule 39 of the Rules of Court, explicitly mandates that the indemnity bond shall be in a sum not less than the value of the property levied on. It was incumbent upon respondent, as the officer effecting the levy, to ascertain the veracity of the third party claims, and not simply rely on the third party claimants' representations as to the value of the levied properties, prior to issuing the said Orders. He could have easily asked for the tax declarations thereon when presented with the third party claims. Thus, the delay in the conduct of the auction sale and the procedural shortcuts taken thereon are attributable to the respondent.

Moreover, the Orders requiring the judgment obligee to post indemnity bonds for the levied properties were issued on the

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[8] Section 15(d) and Section 28, Paragraph 2.

date of the auction sale itself, giving the judgment obligee only until 4:00 p.m. of that very day to post the indemnity bonds.[9] Evidently, even if the judgment obligee complied therewith, respondent would still continue with the scheduled auction sale in direct violation of our rules thereon.

Concededly, respondent recalled his Orders considering the defective third party claims. However, the recall was undoubtedly belated. To reiterate, respondent should have desisted from issuing the Orders in the first place, and he did not have to wait for the submission of the tax declarations on the levied properties before doing so. In needlessly waiting for the said documents, respondent unwittingly compromised the execution proceedings.

On the questionable re-levying of the redeemed properties, the respondent's explication does not persuade. Although the tendered redemption amounts were deficient, the judgment obligee accepted them, subject to the payment of any deficiency. The redemption of the property had yet to be completed. As such, respondent should have refrained from issuing a Certificate of Redemption to the redeeming parties.

Respondent failed to state whether he demanded from the redemptioners payment of the deficiency in the redemption price, including any taxes and assessment paid by the judgment obligee. He forthwith re-levied on the judgment obligors' properties instead of canceling the Certificate of Redemption. His insistence that the re-levying of the properties was simply in furtherance of his ministerial duty to effect full satisfaction of the RTC Bago's judgment is misplaced. For the complete satisfaction of the judgment award, the judgment obligee's available remedies are outlined in Sections 36[10] and

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[9] *Supra* note 4.

[10] SEC. 36. *Examination of judgment obligor when judgment unsatisfied.* — When the return of a writ of execution issued against property of a judgment obligor, or any one of several obligors in the same judgment, shows that the judgment remains unsatisfied, in whole or in part, the judgment obligee, at any time after such return is made, shall be entitled to an order from the court which rendered the said judgment, requiring such judgment obligor to appear

37,[11] Rule 39 of the Rules of Court. Clearly, respondent's automatic re-levy of the same properties without notice to all affected parties, including the spouses of the judgment obligor, was unwarranted.

We cannot overemphasize the primordial role sheriffs play in the dispensation of justice. As officers of the court, they must discharge their duties with great care and diligence.[12] They are exhorted to use reasonable skill and diligence in performing their official duties, especially when the rights of individuals may be jeopardized by neglect.[13] The *raison d'etre* for this exacting standard is grounded on public office being a public trust.[14] More particularly, sheriffs, in serving the court's writs and processes, and in implementing the orders of the court, cannot afford to err without affecting the efficiency of the process of the administration of justice.[15]

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and be examined concerning his property and income before such court or before a commissioner appointed by it, at a specified time and place; and proceedings may thereupon be had for the application of the property and income of the judgment obligor towards the satisfaction of the judgment. But no judgment obligor shall be so required to appear before a court or commissioner outside the province or city in which such obligor rests or is found.

[11] SEC. 37. *Examination of obligor of judgment obligor*. — When the return of a writ of execution against the property of a judgment obligor shows that the judgment remains unsatisfied, in whole or in part, and upon proof to the satisfaction of the court which issued the writ, that a person, corporation, or other juridical entity has property of such judgment obligor or is indebted to him, the court may, by an order, require such person, corporation, or other juridical entity, or any officer or member thereof, to appear before the court or a commissioner appointed by it, at a time and place within the province or city where such debtor resides or is found, and be examined concerning the same. The service of the order shall bind all credits due the judgment obligor and all the money and property of the judgment obligor in the possession or in control of such person, corporation, or juridical entity from the time of service; and the court may also require notice of such proceedings to be given to any party to the action in such manner as it may deem proper.

[12] *Vda. de Velayo v. Ramos*, 424 Phil. 734, 740 (2002).

[13] *Escobar Vda. de Lopez v. Luna*, A.M. No. P-04-1786, February 13, 2006, 482 SCRA 265, 276.

[14] *Pecson v. Sicat*, 358 Phil. 606, 615-616 (1998).

[15] *Supra* note 13.

All told, respondent is liable for simple neglect of duty which has been defined as the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference.[16]

WHEREFORE, this Court finds respondent Sheriff Allan D. Sillador *GUILTY* of simple neglect of duty and is accordingly *SUSPENDED* for a period of one (1) month without pay, with a *STERN WARNING* that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 143972. August 31, 2007]

PACIFIC BASIN SECURITIES CO., INC., *petitioner, vs.* **ORIENTAL PETROLEUM and MINERALS CORP. and EQUITABLE BANKING CORP.,** *respondents.*

[G.R. No. 144056. August 31, 2007]

ORIENTAL PETROLEUM and MINERALS CORP., EQUITABLE BANKING CORP. and ROBERT COYIUTO, JR., *petitioners, vs.* **PACIFIC BASIN SECURITIES CO., INC.,** *respondent.*

[G.R. No. 144631. August 31, 2007]

PACIFIC BASIN SECURITIES CO., INC., *petitioner, vs.* **ORIENTAL PETROLEUM and MINERALS CORP.,**

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[16] *Dignum v. Diamla,* A.M. No. P-06-2166, April 28, 2006, 488 SCRA 405, 415.

EQUITABLE BANKING CORP., ROBERTO COYIUTO and ETHELWOLDO FERNANDEZ, *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG); AS MERE CONSERVATOR, IT DOES NOT AUTOMATICALLY BECOME THE OWNER OF A SEQUESTERED PROPERTY IN BEHALF OF THE GOVERNMENT.— Prior to the 31 May 1991 sale to Pacific Basin, Piedras Petroleum was the owner of the subject OPMC shares. Piedras Petroleum is a sequestered company controlled by the nominees of the PCGG. The fact that Piedras Petroleum was placed under sequestration by the PCGG does not *ipso facto* make it a government-owned corporation. The Court elucidated on the power of the PCGG to issue sequestration orders in *Bataan Shipyard & Engineering Company, Inc. v. Presidential Commission on Good Government*. A sequestration order is similar to the provisional remedy of Receivership under Rule 59 of the Rules of Court. The PCGG may thus exercise only powers of administration over the property or business sequestered or provisionally taken over so as to bring and defend actions in its own name; receive rents; collect debts due; pay outstanding debts; and generally do such other acts and things as may be necessary to fulfill its mission as conservator and administrator. The PCGG, as a mere conservator, does not automatically become the owner of a sequestered property in behalf of the government. There must be a final determination by the courts if the property is in fact "ill-gotten" and was acquired by using government funds. Thus, OPMC cannot conclusively claim that the subject shares are government property by virtue of a sequestration order on Piedras Petroleum. Such conclusion is *non sequitur*.

2. ID.; ID.; ID.; PROCLAMATION NO. 50 (ASSET PRIVATIZATION TRUST LAW); DEFINITION OF THE TERM "ASSETS."— Proclamation No. 50 seeks to "[p]romote privatization through an orderly, coordinated and efficient programs for the prompt disposition of the large number of non-performing assets of the government financial institutions, and certain government-owned or controlled corporations

which have been found unnecessary or inappropriate for the government sector to maintain." The term "assets" is defined under Article I, Sec. 2, Par. 1, of Proclamation No. 50, as: (i) receivables and other obligations due to government institutions under credit, lease, indemnity and other agreements together with all collateral security and other rights (including but not limited to rights in relation to shares of stock in corporations such as voting rights as well as rights to appoint directors of corporations or otherwise engage in the management thereof) granted to such institutions by contract or operation of law to secure or enforce the right of payment of such obligations; (ii) real and personal property of any kind owned or held by government institutions, including shares of stock in corporations, obtained by such government institutions, whether directly or indirectly, through foreclosure or other means, in settlement of such obligations; (iii) shares of stock and other investments held by government institutions; and (iv) the government institutions themselves, whether as parent or subsidiary corporations.

3. ID.; ID.; ID.; ID.; THE SUBJECT SHARES DO NOT FALL UNDER THE AMBIT OF ASSETS AS THE TERM CONTEMPLATES PROPERTIES WHICH ARE GOVERNMENT-OWNED.— The subject OPMC shares do not fall within the ambit of "assets," as the term contemplates properties which are government-owned. To repeat, the OPMC shares originally owned by Piedras Petroleum, a sequestered corporation controlled by the nominees of PCGG, remain to be privately owned until such time when the court declares that the subject shares were acquired through government funds. Even on the assumption that the OPMC shares are government assets, the Court finds that the sale of the subject shares through the stock exchange is valid and binding, as there is no law which mandates that listed shares which are owned by the government be sold only through public bidding. As conceded by both Pacific Basin and OPMC, the subject OPMC shares are listed and traded in the stock exchange. OPMC is a listed corporation in the Philippine Stock Exchange (PSE). As a listed corporation, it shall be bound by the provisions of the Revised Listing Rules of the PSE the objective of which is "to provide a fair, orderly, efficient, and transparent market for the trading of securities . . . ." This Court held in *Nicolas v. Court of Appeals* that stock market trading is a technical and highly specialized

institution in the Philippines. Trading of listed shares should therefore be left to the stock market where knowledge and expertise on securities mechanism can be expected.

4. ID.; ID.; ID.; ID.; EVEN IF THE LAW INDEED REQUIRES THAT THE SALE OF THE SUBJECT SHARES UNDERGO PUBLIC BIDDING, THE SALE THROUGH THE STOCK EXCHANGE IS ALREADY A SUBSTANTIAL COMPLIANCE WITH THE PUBLIC BIDDING REQUIREMENT.— Even if the law indeed requires that the sale of the subject shares undergo public bidding, the Court finds that sale through the stock exchange is already a substantial compliance with the public bidding requirement. As correctly held by the CA: [T]o the mind of the Court, the sale of the sale of shares through public stock exchange offers transparent and fair competition. Parenthetically, the pricing of shares of stock is a highly specialized field that is better left to the experts. It involves an inquiry into the earning potential, dividend history, business risks, capital structure, management, asset values of the company, prevailing business climate, political and economic conditions, and myriad other factors that bear on the valuation of shares. x x x The Commission on Audit does not require public bidding of publicly listed shares of stock as the stock market determines the price of the share, hence, by analogy, the stock market itself can be considered as public bidding. . . .

5. MERCANTILE LAW; CORPORATION CODE; CERTIFICATE OF STOCK; TRANSFER OF SHARES; THE RIGHT OF A TRANSFEREE/ASSIGNEE TO HAVE STOCKS TRANSFERRED TO HIS NAME IS AN INHERENT RIGHT FLOWING FROM HIS OWNERSHIP OF THE STOCKS; RESPONDENT COMPANY'S FAILURE TO RECORD THE TRANSFER OF SHARES IS VIOLATIVE OF SECTION 63 OF THE CORPORATION CODE AND ITS OWN AMENDED BY-LAWS.— It is beyond dispute that OPMC holds no unpaid claim against Pacific Basin for the value of the shares acquired by the latter. The Court sees no reason why OPMC and EBC consistently and continuously refused to record the transfer in the stock and transfer books of OPMC and issue new certificates in favor of Pacific Basin. Section 63 of the Corporation Code provides: Sec. 63. . . . Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the

owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid except as between the parties, until the transfer is recorded in the books of the corporation . . . . Clearly, the right of a transferee/assignee to have stocks transferred to his name is an inherent right flowing from his ownership of the stocks. The Court had ruled in *Rural Bank of Salinas, Inc. v. Court of Appeals* that the corporation's obligation to register is ministerial, citing *Fletcher*, to wit: In transferring stock, the secretary of a corporation acts in purely ministerial capacity, and does not try to decide the question of ownership. The duty of the corporation to transfer is a ministerial one and if it refuses to make such transaction without good cause, it may be compelled to do so by *mandamus*. The Court further held in *Rural Bank of Salinas* that the only limitation imposed by Section 63 of the Corporation Code is when the corporation holds any unpaid claim against the shares intended to be transferred. Pacific Basin satisfied the condition of full payment of the OPMC shares as evidenced by the FRMC Buy Invoice No. 14200 dated May 31, 1991. This fact was never denied by both OPMC and EBC. Therefore, upon Pacific Basin's full payment of the OPMC shares, it became a ministerial duty on the part of OPMC to record the transfer in the stock and transfer book of OPMC and issue new stock certificates in favor of Pacific Basin. Thus, OPMC's and EBC's refusal to record the transfer is violative of Section 63 of the Corporation Code and OPMC's own amended by-laws which states: **Certificate of stock shall be issued to each holder of fully paid stock** in numerical order from the stock certificate book, and shall be signed by the President and countersigned by the Secretary and sealed with the corporate seal. A record of each certificate issued shall be kept on the stub thereof and upon the stock register of the company.

6. CIVIL LAW; DAMAGES; ACTUAL OR COMPENSATORY; CANNOT BE PRESUMED, BUT MUST BE DULY PROVED, AND SO PROVED WITH REASONABLE DEGREE OF CERTAINTY; NO ADEQUATE AND COMPETENT PROOF OF THE ACTUAL PECUNIARY LOSS ALLEGEDLY SUFFERED BY PETITIONER IN CASE AT BAR.— In order that damages may be recovered, the best evidence obtainable by the injured party must be presented. Actual or compensatory damages cannot be presumed, but must

be duly proved, and so proved with reasonable degree of certainty. A court cannot rely on speculation, conjecture or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have been suffered and on evidence of the actual amount thereof. If the proof is flimsy and unsubstantial, no damages will be awarded. The court cannot rely on uncorroborated testimony whose truth is suspect, but must depend upon competent proof that actual damages have been actually suffered. The testimonies should be viewed in light of claimant's self-interest and, hence, should not be taken as gospel truth. Based on the records, the claim of Pacific Basin for actual damages, in the amount of ₱20,000,000.00 is not supported by any documentary evidence. We find that the bare testimonial assertions of Ms. Vicky Chan are not adequate and competent proof of the actual pecuniary loss allegedly suffered by Pacific Basin.

7. ID.; ID.; TEMPERATE DAMAGES; AWARDED IN LIEU OF ACTUAL OR COMPENSATORY DAMAGES; THE COURT IS CONVINCED THAT PETITIONER SUFFERED PECUNIARY LOSS, THE AMOUNT OF WHICH, HOWEVER, CANNOT BE PROVED WITH CERTAINTY TO JUSTIFY AN AWARD OF ACTUAL DAMAGES.— OPMC and EBC, however, cannot escape liability. The Court awards Pacific Basin temperate damages. Temperate damages are included within the context of compensatory damages. In arriving at a reasonable level of temperate damages to be awarded, courts are guided by the ruling that there are cases where from the nature of the case, definite proof of pecuniary loss cannot be offered, although the court is convinced that there has been such loss. The nature of stock market trading is speculative where the value of a specific share may vary from time to time, depending on several factors which may affect the market. Pacific Basin is in the business which involves marketing of securities; it would buy shares and re-sell them when their value appreciates to gain profit from the transaction. OPMC's and EBC's refusal to record the transfer in the stock and transfer book and issuance of new certificates of stock in the name of Pacific Basin prevented Pacific from re-selling the subject shares in the market. By this non-performance of a ministerial function, the Court is convinced that Pacific Basin suffered pecuniary loss, the amount of which cannot be proved with certainty. In lieu of actual damages, the Court finds OPMC and EBC, Mr. Roberto

Coyiuto and Ethelwoldo Fernandez (as president and corporate secretary of OPMC respectively) liable for temperate damages, jointly and severally in the amount of ₱1,000,000.00.

8. ID.; ID.; EXEMPLARY DAMAGES; NOT APPLICABLE IN CASE AT BAR; RESPONDENT'S REFUSAL TO TRANSFER THE SUBJECT SHARES CANNOT BE SAID TO HAVE BEEN DONE IN BAD FAITH NOR IN A WANTON, FRAUDULENT RECKLESS, OPPRESSIVE OR MALEVOLENT MANNER.— The issue on exemplary damages deserves scant consideration. Well settled is the rule that although exemplary damages are not recoverable as a matter of right, and although such damages may not be proved, it must first be shown that the claimant is entitled to moral, temperate or compensatory damages before a court can favorably consider an award of exemplary damages. The Court found earlier that Pacific Basin is not entitled to actual damages. Exemplary damages, as an accessory to actual damages, cannot also be awarded. Moreover, the Court agrees with the findings of both the SEC *en banc* and the CA when it held that OPMC and EBC did not act in bad faith nor in a wanton, fraudulent reckless, oppressive or malevolent manner when they refused to transfer the subject shares under Pacific Basin's name. It is true that both OPMC and EBC refused to transfer the subject OPMC shares in the name of Pacific Basin despite the fact that such transfer is ministerial in nature. However, the Court did not find any proof that such refusal was tainted by bad faith. Pacific Basin alleges that the bad faith of both OPMC and EBC is manifested by the propensity for shifting their defenses and the deliberate deprivation of the rights so that OPMC can gain substantial shareholdings in the company and affect the balance of power. All these are mere allegations. It is axiomatic that good faith is always presumed unless convincing evidence to the contrary is adduced. It is incumbent upon the party alleging bad faith to sufficiently prove such allegation. Absent enough proof thereof, the presumption of good faith prevails. In the case at bar, the burden of proving alleged bad faith therefore was on Pacific Basin, which failed to discharge its *onus probandi*. Without a clear and persuasive evidence of bad faith, the presumption of good faith in favor of OPMC and EBC stands.

9. ID.; ID.; ATTORNEY'S FEES; JUSTIFIED IN THE CASE AT BAR.— On the issue regarding the award of attorney's fees, the Court finds that it is justified. Attorney's fees may be

awarded *inter alia* when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interests or in any other case where the court deems it just and equitable that the attorney's fees and expenses of litigation be recovered. Here, Pacific Basin was forced to file a case for *Mandamus* when the OPMC officers refused to do the ministerial act of recording the purchase of shares in the stock and transfer book and to issue new certificates of stock for fully paid shares.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo and Ongsiako for Pacific Basin Securities Co., Inc.

Ethelwoldo E. Fernandez and *Sycip Salazar Hernandez & Gatmaitan Law Office* for Oriental Petroleum & Minerals Corp., *et al.*

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

By Resolution dated February 21, 2001,[1] the Court ordered the consolidation of the Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court docketed as G.R. No. 143972,[2] G.R. No. 144056[3] and G.R. No. 144631.[4]

The facts of the case are undisputed:

On May 31, 1991, Pacific Basin Securities, Inc. (Pacific Basin), through the stock brokerage firm First Resources

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[1] *Rollo* II (G.R. No. 144056), p. 114.

[2] Entitled, "*Pacific Basin Securities Inc., Petitioner versus Oriental Petroleum and Mineral Corp. and Mineral Corp. and Equitable Banking Corp., Respondents*."

[3] Entitled, "*Oriental Petroleum and Mineral Corp., Equitable Banking Corp., and Robert Coyiuto, Jr., Petitioners versus Pacific Basin Securities Co., Inc., Respondent*."

[4] Entitled, "*Pacific Basin Securities Inc., versus Oriental Petroleum and Minerals Corp., Equitable Banking Corp., Roberto Coyiuto and Ethelwoldo Fernandez, Respondents*."

Management and Securities Corporation (FRMSC), purchased 308,300,000 Class "A" shares of Oriental Petroleum and Minerals Corporation (OPMC). Pacific Basin fully paid for the OPMC shares in the total amount of ₱17,727,000.00 or ₱.05750 per share.[5] The shares were listed and traded in the Makati Stock Exchange.

The OPMC shares turned out to be owned by Piedras Petroleum Mining Corporation (Piedras Petroleum), a sequestered company controlled by the nominees of the Presidential Commission on Good Government (PCGG). PCGG sent a letter dated June 10, 1991 to Equitable Banking Corporation (EBC), OPMC's stock and transfer agent, confirming Piedras Petroleum's sale of the OPMC shares in favor of Pacific Basin through FRMSC. In the same letter, PCGG requested EBC to record the acquisition of said shares and to issue the corresponding certificates of stock in favor of Pacific Basin.[6]

The requests were left unheeded. EBC informed FRMSC that it cannot effect the transfer of the OPMC shares to Pacific Basin on the following grounds: *first*, that the endorser of the stock certificate, a certain Mr. Clemente Madarang, was not among the authorized signatories of Piedras Petroleum; and *second*, there was no board resolution from Piedras Petroleum which authorized the sale of the OPMC shares.[7]

FRMSC complied with the requirements imposed by EBC and consequently renewed its demand for the transfer of the OPMC shares to Pacific Basin and the issuance of new certificates of stock.[8] Again, these requests proved futile.

Hence, on April 23, 1992, Pacific Basin filed a Petition for *Mandamus* with Prayer for a Writ of Preliminary Mandatory Injunction and/or Restraining Order and Writ of Preliminary

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[5] *Rollo* III (G.R. No. 144631), p. 118.

[6] *Id.* at 135.

[7] *Id.* at 140.

[8] *Id.* at 125 and 144.

Prohibitory Injunction docketed as SEC Case No. 04225.[9] Pacific Basin alleged that: it had purchased 308,300,000 Class "A" shares of stock of OPMC; EBC refused to record its acquisition of the shares and to issue the corresponding certificates of stock, which is in grave neglect of the performance of the ministerial duty specifically enjoined by Section 63 of the Corporation Code; and there was a violation of Section 1, Article 1 of the Amended By-laws of OPMC which mandates the issuance of certificate of stock to each holder of fully paid stock.[10]

In their Answer,[11] OPMC and EBC claimed that the government's title over the subject OPMC shares was based on the cession made by Mr. Roberto S. Benedicto, an associate of former President Ferdinand Marcos, in exchange for immunity from prosecution and suit by the government for allegedly amassing ill-gotten wealth. According to OPMC and EBC, item no. 6 of the annex to the Compromise Agreement executed between the government (through PCGG) and Mr. Benedicto shows that part of the assets to be turned over by Mr. Benedicto to the government were all of the OPMC shares owned by Piedras Petroleum. The Court, however, in G.R. Nos. 108368, 108548-49, and 108550 issued a Temporary Restraining Order enjoining the enforcement of the Compromise Agreement. Thus, OPMC and EBC maintained that the basis for PCGG's claim of title over the OPMC shares disappeared as the effectivity of the supposed cession made by Mr. Benedicto is suspended.

OPMC and EBC also argued that even on the assumption that the government has a valid and effective title over the subject OPMC shares, the sale by Piedras Petroleum to Pacific Basin was void as there was no showing that Piedras Petroleum complied with the legal requirements for the disposition of government owned assets as embodied in Proclamation No. 50, as amended, and related rules and regulations on the

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[9] *Id*. at 107-117.

[10] *Id*. at 109-113.

[11] *Rollo* I (G.R. No. 143972), pp. 217-226.

matter. The non-holding of a public bidding for the sale of the shares was allegedly a blatant violation of the said law.

The Securities and Exchange Commission Hearing Officer[12] ruled in favor of Pacific Basin. In the Decision[13] dated December 28, 1995, the Hearing Officer took judicial notice of the Court's January 10, 1993 and January 18, 1994 *En Banc* Resolutions which dismissed the petition and denied the Motion for Reconsideration filed by PCGG in G.R. No. 108368. Thus, the issue of the Temporary Restraining Order on the Compromise Agreement executed between PCGG and Mr. Benedicto was rendered moot. The Decision further held that since the subject shares have been fully paid by Pacific Basin, it is the obligation and a ministerial duty of OPMC and EBC to transfer the shares in the corporate books and issue certificates of stock in favor of Pacific Basin under Section 63 of the Corporation Code and Section I of Article I of the amended by-laws of OPMC. The corporate officers of OPMC were also found to have acted in bad faith when they refused to transfer the shares to Pacific Basin. Hence, they were ordered to jointly and severally pay Pacific Basin the following amounts: ₱20,000,000.00 representing actual damages; ₱300,000.00 representing exemplary damages; ₱300,000.00 representing attorney's fees; and ₱50,000.00 for the cost and expenses of the suit.

On December 28, 1995, OPMC and EBC filed their Motion for Reconsideration which was denied by the Hearing Officer. Later, OPMC and EBC filed their appeal before the SEC *en banc*. On July 13, 1999, the SEC *en banc* rendered its Decision[14] which modified the December 28, 1995 Decision of the Hearing Officer by deleting the awards of actual and exemplary damages in favor of Pacific Basin.

Petitioner Pacific Basin and respondents OPMC and EBC separately went to the Court of Appeals (CA) on appeal, docketed

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[12] SEC Hearing Officer Juanito B. Almosa, Jr.

[13] *Rollo* III (G.R. No. 144631), pp. 285-309.

[14] *Id.* at 93-100.

as CA-G.R. SP No. 54456 and CA-G.R. SP No. 54442, respectively.

In CA-G.R. SP No. 54442, OPMC and EBC contend that the SEC erred in holding that the sale of publicly listed shares of stock through the stock market is tantamount to a public bidding and that they are ministerially bound to record said shares in their stock and transfer book.[15]

On January 26, 2000, the CA rendered a Decision[16] which affirmed *in toto* the July 13, 1999 Decision of the SEC *en banc*.[17] The CA held that: public bidding signifies a letting of a contract that is open to all notorious, a letting that furnishes fair and reasonable public notice and secures to the public equal competition in bidding and becoming contractors; the sale of shares through public stock exchange offers transparent and fair competition; and the pricing of shares of stock is a highly specialized field that is better left to the experts. The dispositive portion of the Decision states:

> WHEREFORE, the instant petition is hereby DENIED. Accordingly, the Decision dated 13 July 1999 of the Securities and Exchange Commission is AFFIRMED *in toto.*
>
> SO ORDERED.[18]

Upon learning the January 26, 2000 Decision of the CA in CA-G.R. SP No. 54442, Pacific Basin filed with the Court a petition, docketed as G.R. No. 143972, assailing said CA Decision claiming that:

> I.
>
> THE COURT OF APPEALS COMMITTED GRAVE ERROR WHEN IT SUSTAINED THE SEC'S *EN BANC* DECISION WHICH DELETED

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[15] *Rollo* II (G.R. No. 144056), p. 23.

[16] Associate Justice Artemio G. Tuquero, *ponente,* with Associate Justices Ramon U. Mabutas, Jr. and Mercedes Gozo-Dadole, concurring; *id*.

[17] *Id*. at 22-28.

[18] *Id*. at 27.

THE AWARD OF ACTUAL AND COMPENSATORY DAMAGES IN FAVOR OF THE PETITIONER. THERE IS CLEAR AND CONVINCING EVIDENCE ESTABLISHED THROUGH THE UNREBUTTED TESTIMONY OF PETITIONER'S EXPERT WITNESS THAT PETITIONER WAS DEPRIVED OF ACTUAL PROFITS IN THE AMOUNT OF AROUND TWENTY MILLION PESOS (₱20,000,000.00) x x x

II.

THE COURT OF APPEALS COMMITTED GRAVE ERROR WHEN IT FAILED TO AWARD THE PETITIONER EXEMPLARY DAMAGES, AS FOUND BY THE SEC HEARING OFFICER WHO CONDUCTED ADVERSARIAL PROCEEDINGS BELOW AND HAD OPPORTUNITY TO EXAMINE THE PARTIES' EVIDENCE AND THEIR WITNESSES. RESPONDENTS' MANIFEST BAD FAITH AND MALICIOUS REFUSAL TO REGISTER THE PURCHASE OF THE SHARES DESPITE LACK OF REASONABLE OR JUSTIFIABLE GROUND ENTITLE THE PETITIONER TO EXEMPLARY DAMAGES. x x x

OPMC and EBC are also before the Court in a petition, docketed as G.R. No. 144056, questioning the CA Decision, thus:

I.

[G]OVERNMENT-OWNED PROPERTY, EVEN OF [SIC] SHARES OF STOCK WHICH ARE PUBLICLY LISTED IN A STOCK EXCHANGE, MAY BE DISPOSED OF ONLY THROUGH A PUBLIC BIDDING, THAT THE SALE OF SUCH SHARES IF MADE IN VIOLATION OF THE PUBLIC BIDDING REQUIREMENT IS NOT VALID AND THAT THE DISPOSITION OF SUCH SHARES THROUGH THE NORMAL OPERATION OF THE STOCK EXCHANGE DOES NOT SATISFY THE REQUIREMENT OF PUBLIC BIDDING. x x x

II.

x x x THE GOOD FAITH OF THE PETITIONERS HAVING BEEN ESTABLISHED AS A MATTER OF FACT THERE IS NO LEGAL BASIS TO ASSESS ATTORNEY'S FEES IN FAVOR OF THE RESPONDENT.

On the other hand, in CA-G.R. SP. No. 54456, Pacific Basin questioned SEC *en banc's* deletion of the actual and exemplary damages awarded to it by the SEC Hearing Officer.[19]

On August 18, 2000, the CA rendered its Decision[20] which held that: the testimony given by Ms. Vicky Chan, the Vice-President of Pacific Basin, is not sufficient to prove actual damages; no exemplary damages should be awarded since the responsible officers of OPMC did not act in bad faith nor in a wanton, fraudulent, reckless, oppressive or malevolent manner when they refused to transfer the subject shares to Pacific Basin's name; and the responsible officers of OPMC were only taking extra precautions in verifying the validity of the transfer since it involved a substantial number of shares aside from the highly controversial matters underlying the transfer which created doubt in their minds. The dispositive portion of the Decision states:

> WHEREFORE, foregoing premises considered, the appealed Decision dated July 13, 1999 of the Securities and Exchange Commission (SEC) *En Banc* is hereby **AFFIRMED** *in toto*. Costs against the petitioner.
>
> SO ORDERED.[21]

Pacific Basin is once again before the Court in a petition, docketed as G.R. No. 144631, assailing the CA Decision claiming that:

I.

IT WAS GRAVE ERROR FOR THE COURT OF APPEALS TO RULE THAT PETITIONER HAS FAILED TO PROVE ITS CLAIM FOR DAMAGES WITH A REASONABLE DEGREE OF CERTAINTY DESPITE THE EVIDENCE ON RECORD. EFFECTIVELY, THE COURT OF APPEALS IS REQUIRING ABSOLUTE CERTAINTY, WHICH IS EVEN BEYOND PROOF BEYOND REASONABLE

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[19] *Id*. at 68-69.

[20] Associate Justice Mercedes Gozo-Dadole, *ponente*, with Associate Justices Buenaventura J. Guerrero and Hilarion L. Aquino.

[21] *Rollo* III (G.R. No. 144631), p. 53.

DOUBT IN CRIMINAL PROCEEDINGS OR PREPONDERANCE OF EVIDENCE IN CIVIL PROCEEDINGS. SINCE THIS CASE WAS ORIGINALLY ADMINISTRATIVE IN NATURE, THE PROOF REQUIRED IS MERELY SUBSTANTIAL EVIDENCE WHICH PETITIONER HAS MORE THAN SUFFICIENTLY ESTABLISHED.

II.

THE COURT OF APPEALS COMMITTED GRAVE ERROR WHEN IT RULED THAT THE TESTIMONY OF MS. VICKY CHAN, PETITIONER'S VICE-PRESIDENT, IS NOT SUFFICIENT TO PROVE ACTUAL DAMAGES SUSTAINED BY PETITIONER. THE TESTIMONY OF MS. CHAN WAS UNREBUTTED EVEN IN THE PROCEEDINGS BEFORE THE SEC. HER EXPERTISE IN STOCK BROKERAGE WAS ADMITTED AND NEVER QUESTIONED BY THE RESPONDENTS. x x x

III.

THE COURT OF APPEALS COMMITTED GRAVE ERROR WHEN IT RULED THAT RESPONDENTS DID NOT ACT IN BAD FAITH, NOR IN WANTON, FRAUDULENT, RECKLESS OR OPPRESSIVE MANNER. x x x MOREOVER, THIS CASE AFFECTS THE EXPECTATION OF THE INVESTING PUBLIC ON THE MARKETABILITY OF THE SHARES LISTED AND TRADED IN THE STOCK EXCHANGE. AS AN EXAMPLE TO THE PUBLIC GOOD, RESPONDENTS SHOULD BE ORDERED TO PAY EXEMPLARY DAMAGES.

The petitions are without merit.

In G.R. No. 144056, OPMC and EBC argue that the OPMC shares are government-owned and, as government property, these can be disposed of only through public bidding. Hence, the sale by Piedras Petroleum of the OPMC shares to Pacific Basin through the stock market is not valid, since it does not comply with the public bidding requirement.

The argument is baseless.

Prior to the 31 May 1991 sale to Pacific Basin, Piedras Petroleum was the owner of the subject OPMC shares. Piedras Petroleum is a sequestered company controlled by the nominees of the PCGG. The fact that Piedras Petroleum was placed

under sequestration by the PCGG does not *ipso facto* make it a government-owned corporation.

The Court elucidated on the power of the PCGG to issue sequestration orders in *Bataan Shipyard & Engineering Company, Inc. v. Presidential Commission on Good Government*.[22] The Court held:

> By the clear terms of the law, the power of the PCGG to *sequester property* claimed to be "ill-gotten" means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property and records pertaining thereto may be found, including "business enterprises and entities,"— **for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving, the same — until it can be determined, through appropriate judicial proceedings, whether the property was in truth "ill- gotten,"** *i.e.*, acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdictions. (Emphasis supplied)[23]

The Court further held:

> As thus described, sequestration, freezing and provisional takeover are akin to the provisional remedy of preliminary attachment, or receivership. By attachment, a sheriff seizes property of a defendant in a civil suit so that it may stand as security for the satisfaction of any judgment that may be obtained, and not disposed of, or dissipated, or lost intentionally or otherwise, pending the action. By receivership, property, real or personal, which is subject of litigation, is **placed in the possession and control of a receiver appointed by the Court, who shall conserve it pending final determination of the title or right of possession over it.** x x x (Emphasis supplied)[24]

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[22] No. 75885, May 7, 1987, 150 SCRA 181.

[23] *Id*. at 208-209.

[24] *Id*. at 213.

A sequestration order is similar to the provisional remedy of Receivership under Rule 59 of the Rules of Court. The PCGG may thus exercise only powers of administration over the property or business sequestered or provisionally taken over so as to bring and defend actions in its own name; receive rents; collect debts due; pay outstanding debts; and generally do such other acts and things as may be necessary to fulfill its mission as conservator and administrator.[25]

The PCGG, as a mere conservator, does not automatically become the owner of a sequestered property in behalf of the government. There must be a final determination by the courts if the property is in fact "ill-gotten" and was acquired by using government funds. Thus, OPMC cannot conclusively claim that the subject shares are government property by virtue of a sequestration order on Piedras Petroleum. Such conclusion is *non sequitur.*

OPMC and EBC insist that Proclamation No. 50[26] is the law which should govern the sale of the OPMC shares to Pacific Basin. Under said law, the OPMC shares should be disposed of through public bidding. We find such argument untenable.

Proclamation No. 50 seeks to "[p]romote privatization through an orderly, coordinated and efficient programs for the prompt disposition of the large number of non-performing assets of the government financial institutions, and certain government-owned or controlled corporations which have been found unnecessary or inappropriate for the government sector to maintain."

The term "assets" is defined under Article I, Sec. 2, Par. 1, of Proclamation No. 50, as:

(i) receivables and other obligations due to government institutions under credit, lease, indemnity and other

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[25] *Id.* at 236-237.

[26] Entitled, "*Proclaiming and Launching A Program for the Expeditious Disposition and Privatization of Certain Government Corporations and/or Assets Thereof, and Creating the Committee on Privatization and the Asset Privatization Trust*" (1986).

agreements together with all collateral security and other rights (including but not limited to rights in relation to shares of stock in corporations such as voting rights as well as rights to appoint directors of corporations or otherwise engage in the management thereof) granted to such institutions by contract or operation of law to secure or enforce the right of payment of such obligations;

(ii) real and personal property of any kind owned or held by government institutions, including shares of stock in corporations, obtained by such government institutions, whether directly or indirectly, through foreclosure or other means, in settlement of such obligations;

(iii) shares of stock and other investments held by government institutions; and

(iv) the government institutions themselves, whether as parent or subsidiary corporations.

The subject OPMC shares do not fall within the ambit of "assets," as the term contemplates properties which are government-owned. To repeat, the OPMC shares originally owned by Piedras Petroleum, a sequestered corporation controlled by the nominees of PCGG, remain to be privately owned until such time when the court declares that the subject shares were acquired through government funds.

Even on the assumption that the OPMC shares are government assets, the Court finds that the sale of the subject shares through the stock exchange is valid and binding, as there is no law which mandates that listed shares which are owned by the government be sold only through public bidding.

As conceded by both Pacific Basin and OPMC, the subject OPMC shares are listed and traded in the stock exchange. OPMC is a listed corporation in the Philippine Stock Exchange (PSE).[27] As a listed corporation, it shall be bound by the provisions of the Revised Listing Rules of the PSE[28] the objective of which

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[27] www.pse.coom.ph (visited 08 August 2007).

[28] Memorandum for Brokers No. 149-2004 (2004).

is "to provide a fair, orderly, efficient, and transparent market for the trading of securities x x x."

This Court held in *Nicolas v. Court of Appeals*[29] that stock market trading is a technical and highly specialized institution in the Philippines. Trading of listed shares should therefore be left to the stock market where knowledge and expertise on securities mechanism can be expected.

Moreover, even if the law indeed requires that the sale of the subject shares undergo public bidding, the Court finds that sale through the stock exchange is already a substantial compliance with the public bidding requirement. As correctly held by the CA:

> [T]o the mind of the Court, the sale of the sale of shares through public stock exchange offers transparent and fair competition. Parenthetically, the pricing of shares of stock is a highly specialized field that is better left to the experts. It involves an inquiry into the earning potential, dividend history, business risks, capital structure, management, asset values of the company, prevailing business climate, political and economic conditions, and myriad other factors that bear on the valuation of shares.
>
> x x x x x x x x x
>
> The Commission on Audit does not require public bidding of publicly listed shares of stock as the stock market determines the price of the share, hence, by analogy, the stock market itself can be considered as public bidding. x x x[30]

It is beyond dispute that OPMC holds no unpaid claim against Pacific Basin for the value of the shares acquired by the latter. The Court sees no reason why OPMC and EBC consistently and continuously refused to record the transfer in the stock and transfer books of OPMC and issue new certificates in favor of Pacific Basin.

Section 63 of the Corporation Code provides:

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[29] 351 Phil. 548, 559 (1998).

[30] *Rollo* II (G.R. No. 144056), pp. 22-28.

Sec. 63. x x x Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid except as between the parties, until the transfer is recorded in the books of the corporation x x x.

Clearly, the right of a transferee/assignee to have stocks transferred to his name is an inherent right flowing from his ownership of the stocks.[31] The Court had ruled in *Rural Bank of Salinas, Inc. v. Court of Appeals*[32] that the corporation's obligation to register is ministerial, citing *Fletcher*, to wit:

In transferring stock, the secretary of a corporation acts in purely ministerial capacity, and does not try to decide the question of ownership.[33]

The duty of the corporation to transfer is a ministerial one and if it refuses to make such transaction without good cause, it may be compelled to do so by *mandamus*.[34]

The Court further held in *Rural Bank of Salinas* that the only limitation imposed by Section 63 of the Corporation Code is when the corporation holds any unpaid claim against the shares intended to be transferred.[35]

Pacific Basin satisfied the condition of full payment of the OPMC shares as evidenced by the FRMC Buy Invoice No. 14200 dated May 31, 1991.[36] This fact was never denied by both OPMC and EBC. Therefore, upon Pacific Basin's full payment of the OPMC shares, it became a ministerial duty on the part of OPMC to record the transfer in the stock and transfer

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[31] *Rural Bank of Salinas v. Court of Appeals*, G.R. No. 96674, June 26, 1992.

[32] *Id*.

[33] *Id*. citing *12 Fletcher 434*, Sec. 5528.

[34] *Id*. citing *12 Fletcher 394*, Sec. 5518.

[35] *Id*.

[36] *Rollo* III (G.R. No. 144631), p. 118.

book of OPMC and issue new stock certificates in favor of Pacific Basin. Thus, OPMC's and EBC's refusal to record the transfer is violative of Section 63 of the Corporation Code and OPMC's own amended by-laws which states:

> **Certificate of stock shall be issued to each holder of fully paid stock** in numerical order from the stock certificate book, and shall be signed by the President and countersigned by the Secretary and sealed with the corporate seal. A record of each certificate issued shall be kept on the stub thereof and upon the stock register of the company. (Emphasis supplied)

The Court agrees with and adopts the findings of the SEC Hearing Officer in his Decision:[37]

> [t]he rights of an innocent purchaser of shares of stock cannot be prejudiced and has to be protected especially when the purchase of the shares are coursed through the Stock Market (in this case the Makati Stock Exchange). An investor when purchasing publicly listed shares of stock in the Stock Market has every right to presume that the shares of a publicly listed corporation being traded in the Stock Market are free from any defect, and that upon purchased [sic] of the said shares, it will be registered in his name in the corporate books.
>
> To rule otherwise would be froth with dangerous consequences. The investing public's confidence in purchasing and investing in shares of stocks thru the Stock Market will erode and become a tedious and burdensome transaction for the buying or selling of shares of stock of publicly listed corporation. An investor who invests good money in shares in the stock market necessarily expects that the said shares will be registered in his name upon payment of the full value thereof.
>
> Instead of building investor's confidence and encourage investment in publicly listed shares in the Stock Market, every investor will have second thoughts in investing as they will be purchasing shares in the stock market subject to a caveat that there is no guaranty the shares they buy are good or transferable to his name. Thus, every potential investor, prior to his purchase of shares of stock in the

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[37] *Rollo* III (G.R. No. 144631), p. 285.

Stock Market will have to investigate each and every share he intends to purchase to make sure that it is free from any defect and that the said shares may be registered in his name after he purchases the same.

In G.R. No. 143972 and G.R. No. 144631, Pacific Basin alleges that the CA erred when it upheld the Decision of the SEC *En Banc* which directed the deletion of the actual and exemplary damages awarded by the SEC Hearing Officer.

As to the issue on actual damages, Pacific Basin contends that the CA erred in ruling that there was failure to prove its claim for actual damages. Pacific Basin maintains that the testimony of its Vice-President, Ms. Vicky Chan, is sufficient to establish the loss incurred as a result of OPMC's refusal to transfer the shares in their name.

In order that damages may be recovered, the best evidence obtainable by the injured party must be presented. Actual or compensatory damages cannot be presumed, but must be duly proved, and so proved with reasonable degree of certainty. A court cannot rely on speculation, conjecture or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have been suffered and on evidence of the actual amount thereof. If the proof is flimsy and unsubstantial, no damages will be awarded.[38]

The court cannot rely on uncorroborated testimony whose truth is suspect, but must depend upon competent proof that actual damages have been actually suffered.[39] The testimonies should be viewed in light of claimant's self-interest and, hence, should not be taken as gospel truth.[40]

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[38] *Development Bank of the Philippines v. Court of Appeals*, 319 Phil. 447, 457 (1995).

[39] *Baliwag Transit, Inc. v. Court of Appeals*, 326 Phil. 762, 772 (1996) citing *Fuentes, Jr. v. Court of Appeals and People of the Philippines*, 323 Phil. 508, 518 (1996).

[40] *Marikina Auto Line Transport Corporation v. People of the Philippines and Valdellon*, G.R. No. 152040, March 31, 2006, 486 SCRA 284, 299.

Based on the records, the claim of Pacific Basin for actual damages, in the amount of ₱20,000,000.00 is not supported by any documentary evidence. We find that the bare testimonial assertions of Ms. Vicky Chan are not adequate and competent proof of the actual pecuniary loss allegedly suffered by Pacific Basin.

OPMC and EBC, however, cannot escape liability. The Court awards Pacific Basin temperate damages.[41]

Temperate damages are included within the context of compensatory damages. In arriving at a reasonable level of temperate damages to be awarded, courts are guided by the ruling that there are cases where from the nature of the case, definite proof of pecuniary loss cannot be offered, although the court is convinced that there has been such loss.[42]

The nature of stock market trading is speculative where the value of a specific share may vary from time to time, depending on several factors which may affect the market. Pacific Basin is in the business which involves marketing of securities; it would buy shares and re-sell them when their value appreciates to gain profit from the transaction.

OPMC's and EBC's refusal to record the transfer in the stock and transfer book and issuance of new certificates of stock in the name of Pacific Basin prevented Pacific from re-selling the subject shares in the market. By this non-performance of a ministerial function, the Court is convinced that Pacific Basin suffered pecuniary loss, the amount of which cannot be proved with certainty.

In lieu of actual damages, the Court finds OPMC and EBC, Mr. Roberto Coyiuto and Ethelwoldo Fernandez (as president

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[41] Article 2224, Civil Code provides: Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.

[42] *Pleno v. Court of Appeals*, No. 56505, May 9, 1988, 161 SCRA 208, 223.

and corporate secretary of OPMC respectively) liable for temperate damages, jointly and severally[43] in the amount of ₱1,000,000.00.

The issue on exemplary damages deserves scant consideration. Well settled is the rule that although exemplary damages are not recoverable as a matter of right, and although such damages may not be proved, it must first be shown that the claimant is entitled to moral, temperate or compensatory damages before a court can favorably consider an award of exemplary damages.[44]

The Court found earlier that Pacific Basin is not entitled to actual damages. Exemplary damages, as an accessory to actual damages, cannot also be awarded.

Moreover, the Court agrees with the findings of both the SEC *en banc*[45] and the CA[46] when it held that OPMC and EBC did not act in bad faith nor in a wanton, fraudulent reckless, oppressive or malevolent manner when they refused to transfer the subject shares under Pacific Basin's name.

It is true that both OPMC and EBC refused to transfer the subject OPMC shares in the name of Pacific Basin despite the fact that such transfer is ministerial in nature. However, the Court did not find any proof that such refusal was tainted by bad faith. Pacific Basin alleges that the bad faith of both OPMC and EBC is manifested by the propensity for shifting their defenses and the deliberate deprivation of the rights so that OPMC can gain substantial shareholdings in the company and affect the balance of power.[47] All these are mere allegations.

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[43] Section 31, Corporation Code provides: Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation x x x shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation x x x.

[44] *Professional Academic Plans, Inc. v. Crisostomo*, G.R. No. 148599, March 4, 2005, 453 SCRA 342, 359.

[45] *Rollo* III (G.R. No. 144631), p. 99.

[46] *Id*. at 52.

[47] *Rollo* I (G.R. No. 143972), pp. 22-27.

It is axiomatic that good faith is always presumed unless convincing evidence to the contrary is adduced. It is incumbent upon the party alleging bad faith to sufficiently prove such allegation. Absent enough proof thereof, the presumption of good faith prevails.[48] In the case at bar, the burden of proving alleged bad faith therefore was on Pacific Basin, which failed to discharge its *onus probandi*. Without a clear and persuasive evidence of bad faith, the presumption of good faith in favor of OPMC and EBC stands.

On the issue regarding the award of attorney's fees, the Court finds that it is justified. Attorney's fees may be awarded *inter alia* when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interests or in any other case where the court deems it just and equitable that the attorney's fees and expenses of litigation be recovered.[49]

Here, Pacific Basin was forced to file a case for *Mandamus* when the OPMC officers refused to do the ministerial act of recording the purchase of shares in the stock and transfer book and to issue new certificates of stock for fully paid shares.

WHEREFORE, the petition in G.R. No. 144056 is *DENIED*. The petitions in G.R. Nos. 143972 and 144631 are *PARTLY GRANTED*. The assailed Decisions of the Court of Appeals dated January 26, 2000 and August 18, 2000 are *AFFIRMED* with *MODIFICATION* to the effect that Oriental Petroleum and Minerals Corporation and Equitable Banking Corporation, Mr. Roberto Coyiuto and Ethelwoldo Fernandez (as president and corporate secretary of OPMC respectively) are *ORDERED* to pay Pacific Basin Securities Co., Inc., jointly and severally, temperate damages in the amount of ₱1,000,000.00.

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[48] *Andrade v. Court of Appeals*, 423 Phil. 30, 43 (2001); *Heirs of Severa P. Gregorio v. Court of Appeals*, 360 Phil. 753, 764-765 (1998).

[49] CIVIL CODE OF THE PHILIPPINES, Article 2229; *Poliand Industrial Limited v. National Development Company*, G.R. No. 143866, August 22, 2005, 467 SCRA 500, 549.

Costs against Oriental Petroleum and Minerals Corporation and Equitable Banking Corporation.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 162421. August 31, 2007]

NELSON CABALES and RITO CABALES, *petitioners, vs.* **COURT OF APPEALS, JESUS FELIANO and ANUNCIACION FELIANO,** *respondents.*

SYLLABUS

1. CIVIL LAW; SUCCESSION; ORDER OF INTESTATE SUCCESSION; RIGHT OF A WIDOW OR WIDOWER AND LEGITIMATE CHILDREN OR DESCENDANTS; RIGHT OF REPRESENTATION OF DECEASED HEIRS; CASE AT BAR.— When Rufino Cabales died intestate, his wife Saturnina and his six (6) children, Bonifacio, Albino, Francisco, Leonora, Alberto and petitioner Rito, survived and succeeded him. Article 996 of the New Civil Code provides that "[i]f a widow or widower and legitimate children or descendants are left, the surviving spouse has in the succession the same share as that of each of the children." Verily, the seven (7) heirs inherited equally on subject property. Petitioner Rito and Alberto, petitioner Nelson's father, inherited in their own rights and with equal shares as the others. But before partition of subject land was effected, Alberto died. By operation of law, his rights and obligations to one-seventh of subject land were transferred to his legal heirs — his wife and his son petitioner Nelson.

2. ID.; SALES; SALE WITH *PACTO DE RETRO*; EFFECT OF REDEMPTION OF A CO-OWNER; A CO-OWNER WHO

REDEEMED THE PROPERTY IN ITS ENTIRETY DOES NOT MAKE HIS/HER THE OWNER OF THE PROPERTY; THE PROPERTY REMAINED IN A STATE OF CO-OWNERSHIP AS THE REDEMPTION DID NOT PROVIDE FOR A MODE OF TERMINATING A CO-OWNERSHIP.— The first sale with *pacto de retro* to Dr. Corrompido by the brothers and co-owners Bonifacio, Albino and Alberto was valid but only as to their *pro-indiviso* shares to the land. When Alberto died prior to repurchasing his share, his rights and obligations were transferred to and assumed by his heirs, namely his wife and his son, petitioner Nelson. But the records show that it was Saturnina, Alberto's mother, and not his heirs, who repurchased for him. As correctly ruled by the Court of Appeals, Saturnina was not subrogated to Alberto's or his heirs' rights to the property when she repurchased the share. In ***Paulmitan v. Court of Appeals***, we held that a co-owner who redeemed the property in its entirety did not make her the owner of all of it. The property remained in a condition of co-ownership as the redemption did not provide for a mode of terminating a co-ownership. But the one who redeemed had the right to be reimbursed for the redemption price and until reimbursed, holds a lien upon the subject property for the amount due. Necessarily, when Saturnina redeemed for Alberto's heirs who had then acquired his *pro-indiviso* share in subject property, it did not vest in her ownership over the *pro-indiviso* share she redeemed. But she had the right to be reimbursed for the redemption price and held a lien upon the property for the amount due until reimbursement. The result is that the heirs of Alberto, *i.e.*, his wife and his son petitioner Nelson, retained ownership over their *pro-indiviso* share.

3. ID.; ID.; ID.; LEGAL GUARDIAN'S PLENARY POWER OF ADMINISTRATION OVER THE MINOR'S PROPERTY DOES NOT INCLUDE THE POWER OF ALIENATION WHICH NEEDS JUDICIAL AUTHORITY. — Upon redemption from Dr. Corrompido, the subject property was resold to respondents-spouses by the co-owners. Petitioners Rito and Nelson were then minors and as indicated in the Deed of Sale, their shares in the proceeds were held in trust by respondents-spouses to be paid and delivered to them upon reaching the age of majority. As to petitioner Rito, the contract of sale was unenforceable as correctly held by the Court of

Appeals. Articles 320 and 326 of the New Civil Code state that: Art. 320. The father, or in his absence the mother, is the legal administrator of the property pertaining to the child under parental authority. If the property is worth more than two thousand pesos, the father or mother shall give a bond subject to the approval of the Court of First Instance. Art. 326. When the property of the child is worth more than two thousand pesos, the father or mother shall be considered a guardian of the child's property, subject to the duties and obligations of guardians under the Rules of Court. In other words, the father, or, in his absence, the mother, is considered legal administrator of the property pertaining to the child under his or her parental authority without need of giving a bond in case the amount of the property of the child does not exceed two thousand pesos. Corollary to this, Rule 93, Section 7 of the Revised Rules of Court of 1964, applicable to this case, automatically designates the parent as legal guardian of the child without need of any judicial appointment in case the latter's property does not exceed two thousand pesos, thus: Sec. 7. Parents as guardians. — When the property of the child under parental authority is worth two thousand pesos or less, the father or the mother, without the necessity of court appointment, shall be his legal guardian x x x Saturnina was clearly petitioner Rito's legal guardian without necessity of court appointment considering that the amount of his property or one-seventh of subject property was ₱1,143.00, which is less than two thousand pesos. However, Rule 96, Sec. 1 provides that: Section 1. To what guardianship shall extend. — A guardian appointed shall have the care and custody of the person of his ward, and the management of his estate, or the management of the estate only, as the case may be. The guardian of the estate of a nonresident shall have the management of all the estate of the ward within the Philippines, and no court other than that in which such guardian was appointed shall have jurisdiction over the guardianship. Indeed, the legal guardian only has the plenary power of administration of the minor's property. It does not include the power of alienation which needs judicial authority. Thus, when Saturnina, as legal guardian of petitioner Rito, sold the latter's *pro-indiviso* share in subject land, she did not have the legal authority to do so. Article 1403 of the New Civil Code provides, thus: Art. 1403. The following contracts are unenforceable, unless they are ratified: (1) Those entered into in the name of another person

by one who has been given no authority or legal representation, or who has acted beyond his powers; x x x Accordingly, the contract of sale as to the *pro-indiviso* share of petitioner Rito was unenforceable. However, when he acknowledged receipt of the proceeds of the sale on July 24, 1986, petitioner Rito effectively ratified it. This act of ratification rendered the sale valid and binding as to him.

4. ID.; ID.; ID.; CONTRACT OF SALE WITH RESPECT TO MINOR HEIR NOT REPRESENTED BY LEGAL GUARDIAN IS VOID; CASE AT BAR.— With respect to petitioner Nelson, on the other hand, the contract of sale was void. He was a minor at the time of the sale. Saturnina or any and all the other co-owners were not his legal guardians with judicial authority to alienate or encumber his property. It was his mother who was his legal guardian and, if duly authorized by the courts, could validly sell his undivided share to the property. She did not. Necessarily, when Saturnina and the others sold the subject property in its entirety to respondents-spouses, they only sold and transferred title to their *pro-indiviso* shares and not that part which pertained to petitioner Nelson and his mother. Consequently, petitioner Nelson and his mother retained ownership over their undivided share of subject property.

5. ID.; ID.; ID.; LEGAL REDEMPTION MAY ONLY BE EXERCISED BY THE CO-OWNER OR CO-OWNERS WHO DID NOT PART WITH HIS OR THEIR *PRO-INDIVISO* SHARE IN THE PROPERTY HELD IN COMMON.— Legal redemption may only be exercised by the co-owner or co-owners who did not part with his or their *pro-indiviso* share in the property held in common. As demonstrated, the sale as to the undivided share of petitioner Rito became valid and binding upon his ratification on July 24, 1986. As a result, he lost his right to redeem subject property. However, as likewise established, the sale as to the undivided share of petitioner Nelson and his mother was not valid such that they were not divested of their ownership thereto. Necessarily, they may redeem the subject property from respondents-spouses. But they must do so within thirty days from notice in writing of the sale by their co-owners vendors.

6. ID.; ID.; ID.; LEGAL REDEMPTION INSTITUTED BEYOND THE PERIOD REQUIRED BY LAW.— In reckoning this

period, we held in ***Alonzo v. Intermediate Appellate Court***, thus: x x x we test a law by its results; and likewise, we may add, by its purposes. It is a cardinal rule that, in seeking the meaning of the law, the first concern of the judge should be to discover in its provisions the intent of the lawmaker. Unquestionably, the law should never be interpreted in such a way as to cause injustice as this is never within the legislative intent. An indispensable part of that intent, in fact, for we presume the good motives of the legislature, is *to render justice*. Thus, we interpret and apply the law not independently of but in consonance with justice. Law and justice are inseparable, and we must keep them so. x x x While we may not read *into* the law a purpose that is not there, we nevertheless have the right to read *out of it* the reason for its enactment. In doing so, we defer not to "the letter that killeth" but to "the spirit that vivifieth," to give effect to the lawmaker's will. In requiring written notice, Article 1088 (and Article 1623 for that matter) seeks to ensure that the redemptioner is properly notified of the sale and to indicate the date of such notice as the starting time of the 30-day period of redemption. Considering the shortness of the period, it is really necessary, as a general rule, to pinpoint the precise date it is supposed to begin, to obviate the problem of alleged delays, sometimes consisting of only a day or two. In the instant case, the right of redemption was invoked not days but years after the sale was made in 1978. We are not unmindful of the fact that petitioner Nelson was a minor when the sale was perfected. Nevertheless, the records show that in 1988, petitioner Nelson, then of majority age, was informed of the sale of subject property. Moreover, it was noted by the appellate court that petitioner Nelson was likewise informed thereof in 1993 and he signified his intention to redeem subject property during a *barangay* conciliation process. But he only filed the complaint for legal redemption and damages on January 12, 1995, certainly more than thirty days from learning about the sale. In the face of the established facts, petitioner Nelson cannot feign ignorance of the sale of subject property in 1978. To require strict proof of written notice of the sale would be to countenance an obvious false claim of lack of knowledge thereof, thus commending the letter of the law over its purpose, *i.e.*, the notification of redemptioners. The Court is satisfied that there was sufficient notice of the sale to petitioner Nelson. The thirty-day

redemption period commenced in 1993, after petitioner Nelson sought the *barangay* conciliation process to redeem his property. By January 12, 1995, when petitioner Nelson filed a complaint for legal redemption and damages, it is clear that the thirty-day period had already expired. As in **Alonzo**, the Court, after due consideration of the facts of the instant case, hereby interprets the law in a way that will render justice. Petitioner Nelson, as correctly held by the Court of Appeals, can no longer redeem subject property. But he and his mother remain co-owners thereof with respondents-spouses. Accordingly, title to subject property must include them.

APPEARANCES OF COUNSEL

Godofredo L. Cualteros for petitioners.
Atoc Law Office for private respondents.

D E C I S I O N

PUNO, *C.J.*:

This is a petition for review on *certiorari* seeking the reversal of the decision[1] of the Court of Appeals dated October 27, 2003, in CA-G.R. CV No. 68319 entitled *"Nelson Cabales and Rito Cabales v. Jesus Feliano and Anunciacion Feliano,"* which affirmed with modification the decision[2] of the Regional Trial Court of Maasin, Southern Leyte, Branch 25, dated August 11, 2000, in Civil Case No. R-2878. The resolution of the Court of Appeals dated February 23, 2004, which denied petitioners' motion for reconsideration, is likewise herein assailed.

The facts as found by the trial court and the appellate court are well established.

Rufino Cabales died on July 4, 1966 and left a 5,714-square meter parcel of land located in Brgy. Rizal, Sogod, Southern

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[1] Penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Roberto A. Barrios and Arsenio J. Magpale.

[2] Penned by Judge Romeo M. Gomez.

Leyte, covered by Tax Declaration No. 17270 to his surviving wife Saturnina and children Bonifacio, Albino, Francisco, Leonora, Alberto and petitioner Rito.

On July 26, 1971, brothers and co-owners Bonifacio, Albino and Alberto sold the subject property to Dr. Cayetano Corrompido for ₱2,000.00, with right to repurchase within eight (8) years. The three (3) siblings divided the proceeds of the sale among themselves, each getting a share of ₱666.66.

The following month or on August 18, 1971, Alberto secured a note ("vale") from Dr. Corrompido in the amount of ₱300.00.

In 1972, Alberto died leaving his wife and son, petitioner Nelson.

On December 18, 1975, within the eight-year redemption period, Bonifacio and Albino tendered their payment of ₱666.66 each to Dr. Corrompido. But Dr. Corrompido only released the document of sale with *pacto de retro* after Saturnina paid for the share of her deceased son, Alberto, including his "vale" of ₱300.00.

On even date, Saturnina and her four (4) children Bonifacio, Albino, Francisco and Leonora sold the subject parcel of land to respondents-spouses Jesus and Anunciacion Feliano for ₱8,000.00. The Deed of Sale provided in its last paragraph, thus:

> It is hereby declared and understood that the amount of TWO THOUSAND TWO HUNDRED EIGHTY SIX PESOS (₱2,286.00) corresponding and belonging to the Heirs of Alberto Cabales and to Rito Cabales who are still minors upon the execution of this instrument are held in trust by the VENDEE and to be paid and delivered only to them upon reaching the age of 21.

On December 17, 1985, the Register of Deeds of Southern Leyte issued Original Certificate of Title No. 17035 over the purchased land in the names of respondents-spouses.

On December 30, 1985, Saturnina and her four (4) children executed an affidavit to the effect that petitioner Nelson would only receive the amount of ₱176.34 from respondents-spouses

when he reaches the age of 21 considering that Saturnina paid Dr. Corrompido ₱966.66 for the obligation of petitioner Nelson's late father Alberto, *i.e.*, ₱666.66 for his share in the redemption of the sale with *pacto de retro* as well as his "vale" of ₱300.00.

On July 24, 1986, 24-year old petitioner Rito Cabales acknowledged receipt of the sum of ₱1,143.00 from respondent Jesus Feliano, representing the former's share in the proceeds of the sale of subject property.

In 1988, Saturnina died. Petitioner Nelson, then residing in Manila, went back to his father's hometown in Southern Leyte. That same year, he learned from his uncle, petitioner Rito, of the sale of subject property. In 1993, he signified his intention to redeem the subject land during a *barangay* conciliation process that he initiated.

On January 12, 1995, contending that they could not have sold their respective shares in subject property when they were minors, petitioners filed before the Regional Trial Court of Maasin, Southern Leyte, a complaint for redemption of the subject land plus damages.

In their answer, respondents-spouses maintained that petitioners were estopped from claiming any right over subject property considering that (1) petitioner Rito had already received the amount corresponding to his share of the proceeds of the sale of subject property, and (2) that petitioner Nelson failed to consign to the court the total amount of the redemption price necessary for legal redemption. They prayed for the dismissal of the case on the grounds of laches and prescription.

No amicable settlement was reached at pre-trial. Trial ensued and on August 11, 2000, the trial court ruled against petitioners. It held that (1) Alberto or, by his death, any of his heirs including petitioner Nelson lost their right to subject land when not one of them repurchased it from Dr. Corrompido; (2) Saturnina was effectively subrogated to the rights and interests of Alberto when she paid for Alberto's share as well as his obligation to Dr. Corrompido; and (3) petitioner Rito had no more right to redeem his share to subject property as the sale by Saturnina,

his legal guardian pursuant to Section 7, Rule 93 of the Rules of Court, was perfectly valid; and it was shown that he received his share of the proceeds of the sale on July 24, 1986, when he was 24 years old.

On appeal, the Court of Appeals modified the decision of the trial court. It held that the sale by Saturnina of petitioner Rito's undivided share to the property was unenforceable for lack of authority or legal representation but that the contract was effectively ratified by petitioner Rito's receipt of the proceeds on July 24, 1986. The appellate court also ruled that petitioner Nelson is co-owner to the extent of one-seventh (1/7) of subject property as Saturnina was not subrogated to Alberto's rights when she repurchased his share to the property. It further directed petitioner Nelson to pay the estate of the late Saturnina Cabales the amount of ₱966.66, representing the amount which the latter paid for the obligation of petitioner Nelson's late father Alberto. Finally, however, it denied petitioner Nelson's claim for redemption for his failure to tender or consign in court the redemption money within the period prescribed by law.

In this petition for review on *certiorari*, petitioners contend that the Court of Appeals erred in (1) recognizing petitioner Nelson Cabales as co-owner of subject land but denied him the right of legal redemption, and (2) not recognizing petitioner Rito Cabales as co-owner of subject land with similar right of legal redemption.

First, we shall delineate the rights of petitioners to subject land.

When Rufino Cabales died intestate, his wife Saturnina and his six (6) children, Bonifacio, Albino, Francisco, Leonora, Alberto and petitioner Rito, survived and succeeded him. Article 996 of the New Civil Code provides that "[i]f a widow or widower and legitimate children or descendants are left, the surviving spouse has in the succession the same share as that of each of the children." Verily, the seven (7) heirs inherited equally on subject property. Petitioner Rito and Alberto, petitioner Nelson's father, inherited in their own rights and with equal shares as the others.

But before partition of subject land was effected, Alberto died. By operation of law, his rights and obligations to one-seventh of subject land were transferred to his legal heirs – his wife and his son petitioner Nelson.

We shall now discuss the effects of the two (2) sales of subject land to the rights of the parties.

The first sale with *pacto de retro* to Dr. Corrompido by the brothers and co-owners Bonifacio, Albino and Alberto was valid but only as to their *pro-indiviso* shares to the land. When Alberto died prior to repurchasing his share, his rights and obligations were transferred to and assumed by his heirs, namely his wife and his son, petitioner Nelson. But the records show that it was Saturnina, Alberto's mother, and not his heirs, who repurchased for him. As correctly ruled by the Court of Appeals, Saturnina was not subrogated to Alberto's or his heirs' rights to the property when she repurchased the share.

In ***Paulmitan v. Court of Appeals***,[3] we held that a co-owner who redeemed the property in its entirety did not make her the owner of all of it. The property remained in a condition of co-ownership as the redemption did not provide for a mode of terminating a co-ownership.[4] But the one who redeemed had the right to be reimbursed for the redemption price and until reimbursed, holds a lien upon the subject property for the amount due.[5] Necessarily, when Saturnina redeemed for Alberto's heirs who had then acquired his *pro-indiviso* share in subject property, it did not vest in her ownership over the *pro-indiviso* share she redeemed. But she had the right to be reimbursed for the redemption price and held a lien upon the property for the amount due until reimbursement. The result is that the heirs of Alberto, *i.e.*, his wife and his son petitioner Nelson, retained ownership over their *pro-indiviso* share.

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[3] G.R. No. 61584, November 25, 1992, 215 SCRA 867, *citing Adille v. Court of Appeals*, G.R. No. L-44546, January 29, 1988, 157 SCRA 455.

[4] *Id.*

[5] *Id.*

Upon redemption from Dr. Corrompido, the subject property was resold to respondents-spouses by the co-owners. Petitioners Rito and Nelson were then minors and as indicated in the Deed of Sale, their shares in the proceeds were held in trust by respondents-spouses to be paid and delivered to them upon reaching the age of majority.

As to petitioner Rito, the contract of sale was unenforceable as correctly held by the Court of Appeals. Articles 320 and 326 of the New Civil Code[6] state that:

> Art. 320. The father, or in his absence the mother, is the legal administrator of the property pertaining to the child under parental authority. If the property is worth more than two thousand pesos, the father or mother shall give a bond subject to the approval of the Court of First Instance.
>
> Art. 326. When the property of the child is worth more than two thousand pesos, the father or mother shall be considered a guardian of the child's property, subject to the duties and obligations of guardians under the Rules of Court.

In other words, the father, or, in his absence, the mother, is considered legal administrator of the property pertaining to the child under his or her parental authority without need of giving a bond in case the amount of the property of the child does not exceed two thousand pesos.[7] Corollary to this, Rule 93, Section 7 of the Revised Rules of Court of 1964, applicable to this case, automatically designates the parent as legal guardian of the child without need of any judicial appointment in case the latter's property does not exceed two thousand pesos,[8] thus:

> Sec. 7. Parents as guardians. — When the property of the child under parental authority is worth two thousand pesos or less, the

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[6] Law applicable to the case. Executive Order No. 209 otherwise known as the Family Code of the Philippines, which expressly repealed these provisions, took effect on August 4, 1988.

[7] *See Badillo v. Ferrer*, No. 51369, July 29, 1987, 152 SCRA 407.

[8] *Id.*

father or the mother, without the necessity of court appointment, shall be his legal guardian x x x[9]

Saturnina was clearly petitioner Rito's legal guardian without necessity of court appointment considering that the amount of his property or one-seventh of subject property was ₱1,143.00, which is less than two thousand pesos. However, Rule 96, Sec. 1[10] provides that:

> Section 1. To what guardianship shall extend. — A guardian appointed shall have the care and custody of the person of his ward, and the management of his estate, or the management of the estate only, as the case may be. The guardian of the estate of a nonresident shall have the management of all the estate of the ward within the Philippines, and no court other than that in which such guardian was appointed shall have jurisdiction over the guardianship.

Indeed, the legal guardian only has the plenary power of administration of the minor's property. It does not include the power of alienation which needs judicial authority.[11] Thus, when Saturnina, as legal guardian of petitioner Rito, sold the latter's *pro-indiviso* share in subject land, she did not have the legal authority to do so.

Article 1403 of the New Civil Code provides, thus:

> Art. 1403. The following contracts are unenforceable, unless they are ratified:

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[9] The New Rules on Guardianship of Minors, adapted in the May 1, 2003 Resolution of the Court in A.M. No. 03-02-05-SC, provide, *inter alia*:

> Section 1. *Applicability of the Rule.* — This Rule shall apply to petitions for guardianship over the person or property, or both, of a minor.
>
> The father and the mother shall jointly exercise legal guardianship over the person and property of their unemancipated common child without the necessity of a court appointment. In such case, this Rule shall be suppletory to the provisions of the Family Code on guardianship.

[10] Revised Rules of Court of 1964.

[11] Revised Rules of Court of 1964, Rule 95.

(1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;

x x x x x x x x x

Accordingly, the contract of sale as to the *pro-indiviso* share of petitioner Rito was unenforceable. However, when he acknowledged receipt of the proceeds of the sale on July 24, 1986, petitioner Rito effectively ratified it. This act of ratification rendered the sale valid and binding as to him.

With respect to petitioner Nelson, on the other hand, the contract of sale was void. He was a minor at the time of the sale. Saturnina or any and all the other co-owners were not his legal guardians with judicial authority to alienate or encumber his property. It was his mother who was his legal guardian and, if duly authorized by the courts, could validly sell his undivided share to the property. She did not. Necessarily, when Saturnina and the others sold the subject property in its entirety to respondents-spouses, they only sold and transferred title to their *pro-indiviso* shares and not that part which pertained to petitioner Nelson and his mother. Consequently, petitioner Nelson and his mother retained ownership over their undivided share of subject property.[12]

But may petitioners redeem the subject land from respondents-spouses? Articles 1088 and 1623 of the New Civil Code are pertinent:

Art. 1088. Should any of the heirs sell his hereditary rights to a stranger before the partition, any or all of the co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale, provided they do so within the period of one month from the time they were notified in writing of the sale by the vendor.

Art. 1623. The right of legal pre-emption or redemption shall not be exercised except within thirty days from the notice in writing

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[12] Nothing on the records indicates that petitioner Nelson's mother predeceased him.

by the prospective vendor, or by the vendor, as the case may be. The deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners.

The right of redemption of co-owners excludes that of adjoining owners.

Clearly, legal redemption may only be exercised by the co-owner or co-owners who did not part with his or their *pro-indiviso* share in the property held in common. As demonstrated, the sale as to the undivided share of petitioner Rito became valid and binding upon his ratification on July 24, 1986. As a result, he lost his right to redeem subject property.

However, as likewise established, the sale as to the undivided share of petitioner Nelson and his mother was not valid such that they were not divested of their ownership thereto. Necessarily, they may redeem the subject property from respondents-spouses. But they must do so within thirty days from notice in writing of the sale by their co-owners vendors. In reckoning this period, we held in ***Alonzo v. Intermediate Appellate Court***,[13] thus:

x x x we test a law by its results; and likewise, we may add, by its purposes. It is a cardinal rule that, in seeking the meaning of the law, the first concern of the judge should be to discover in its provisions the intent of the lawmaker. Unquestionably, the law should never be interpreted in such a way as to cause injustice as this is never within the legislative intent. An indispensable part of that intent, in fact, for we presume the good motives of the legislature, is *to render justice.*

Thus, we interpret and apply the law not independently of but in consonance with justice. Law and justice are inseparable, and we must keep them so. x x x

x x x While we may not read *into* the law a purpose that is not there, we nevertheless have the right to read *out of it* the reason for its enactment. In doing so, we defer not to "the letter that killeth"

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[13] No. 72873, May 28, 1987, 150 SCRA 259.

but to "the spirit that vivifieth," to give effect to the lawmaker's will.

In requiring written notice, Article 1088 (and Article 1623 for that matter)[14] seeks to ensure that the redemptioner is properly notified of the sale and to indicate the date of such notice as the starting time of the 30-day period of redemption. Considering the shortness of the period, it is really necessary, as a general rule, to pinpoint the precise date it is supposed to begin, to obviate the problem of alleged delays, sometimes consisting of only a day or two.

In the instant case, the right of redemption was invoked not days but years after the sale was made in 1978. We are not unmindful of the fact that petitioner Nelson was a minor when the sale was perfected. Nevertheless, the records show that in 1988, petitioner Nelson, then of majority age, was informed of the sale of subject property. Moreover, it was noted by the appellate court that petitioner Nelson was likewise informed thereof in 1993 and he signified his intention to redeem subject property during a *barangay* conciliation process. But he only filed the complaint for legal redemption and damages on January 12, 1995, certainly more than thirty days from learning about the sale.

In the face of the established facts, petitioner Nelson cannot feign ignorance of the sale of subject property in 1978. To require strict proof of written notice of the sale would be to countenance an obvious false claim of lack of knowledge thereof, thus commending the letter of the law over its purpose, *i.e.*, the notification of redemptioners.

The Court is satisfied that there was sufficient notice of the sale to petitioner Nelson. The thirty-day redemption period commenced in 1993, after petitioner Nelson sought the *barangay* conciliation process to redeem his property. By January 12, 1995, when petitioner Nelson filed a complaint for legal redemption and damages, it is clear that the thirty-day period had already expired.

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[14] Included for its application in the case at bar.

As in **Alonzo**, the Court, after due consideration of the facts of the instant case, hereby interprets the law in a way that will render justice.[15]

Petitioner Nelson, as correctly held by the Court of Appeals, can no longer redeem subject property. But he and his mother remain co-owners thereof with respondents-spouses. Accordingly, title to subject property must include them.

IN VIEW WHEREOF, the petition is *DENIED*. The assailed decision and resolution of the Court of Appeals of October 27, 2003 and February 23, 2004 are *AFFIRMED WITH MODIFICATION*. The Register of Deeds of Southern Leyte is *ORDERED* to cancel Original Certificate of Title No. 17035 and to issue in lieu thereof a new certificate of title in the name of respondents-spouses Jesus and Anunciacion Feliano for the 6/7 portion, and petitioner Nelson Cabales and his mother for the remaining 1/7 portion, *pro indiviso*.

SO ORDERED.

Sandoval-Gutierrez, Corona, Azcuna, and *Garcia, JJ.*, concur.

THIRD DIVISION

[G.R. No. 167022. August 31, 2007]

LICOMCEN INCORPORATED, *petitioner, vs.* **FOUNDATION SPECIALISTS, INC.,** *respondent.*

[G.R. No. 169678. August 31, 2007]

FOUNDATION SPECIALISTS, INC., *petitioner, vs.* **LICOMCEN INCORPORATED and COURT OF APPEALS,** *respondents.*

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[15] *See* note 3.

SYLLABUS

1. REMEDIAL LAW; ARBITRATIONS; CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC); HAS JURISDICTION OVER DISPUTES ARISING FROM OR CONNECTED WITH CONSTRUCTION CONTRACTS ENTERED INTO BY PARTIES THAT HAVE AGREED TO SUBMIT THEIR DISPUTE TO VOLUNTARY ARBITRATION.— The power and authority of a court to hear, try, and decide a case is defined as jurisdiction. Elementary is the distinction between jurisdiction over the subject matter and jurisdiction over the person. The former is conferred by the Constitution or by law, while the latter is acquired by virtue of the party's voluntary submission to the authority of the court through the exercise of its coercive process. Section 4 of Executive Order (E.O.) No. 1008, or the *Construction Industry Arbitration Law*, provides: SECTION 4. *Jurisdiction*. — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. *For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration*. The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual provisions; amount of damages and penalties; commencement time and delays; maintenance and defects; payment default of employer or contractor and changes in contract cost. Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines. Corollarily, Section 1, Article III of the *Rules of Procedure Governing Construction Arbitration* provides that recourse to the CIAC may be availed of whenever a contract contains a clause for the submission of a future controversy to arbitration, thus: SECTION 1. Submission to CIAC Jurisdiction. — An arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future

controversy to CIAC jurisdiction, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission. When a contract contains a clause for the submission of a future controversy to arbitration, it is not necessary for the parties to enter into a submission agreement before the claimant may invoke the jurisdiction of CIAC. Clearly then, the CIAC has original and exclusive jurisdiction over disputes arising from or connected with construction contracts entered into by parties that have agreed to submit their dispute to voluntary arbitration.

2. ID.; ID.; ID.; CIAC VALIDLY ACQUIRED JURISDICTION OVER THE DISPUTE IN CASE AT BAR; REASON.— Contrary to what LICOMCEN wants to portray, the CIAC validly acquired jurisdiction over the dispute. Firstly, LICOMCEN submitted itself to the jurisdiction of the CIAC when its president Antonio S. Tan signed the Terms of Reference (TOR) during the preliminary conference. Secondly, we agree with the CA that the suit arose from the execution of works defined in the contract. Thirdly, FSI complied with the condition precedent provided in GC-61. Record shows that FSI referred the claim to ESCA on February 3, 1998, and then to LICOMCEN on March 3, 1998, but it was disallowed on March 24, 1998. Then, on April 15, 1998, FSI rejected the evaluation of the billings made by ESCA and LICOMCEN and further informed the latter of its intention to turn over the project. FSI exerted efforts to have the claim settled amicably, but no settlement was arrived at. Hence, on March 14, 2001, FSI through counsel made a final demand to pay. LICOMCEN, however, adamantly refused to pay, prompting FSI to file suit with the CIAC. Clearly, FSI substantially complied with the condition precedent laid down in GC-61. Finally, the arbitral clause in the agreement, considering that the requisites for its application are present, is a commitment by the parties to submit to arbitration the disputes covered therein. Because that clause is binding, they are expected to abide by it in good faith.

3. ID.; ID.; ID.; ISSUE OF JURISDICTION RENDERED MOOT BY PETITIONER'S ACTIVE PARTICIPATION IN THE PROCEEDINGS BEFORE THE CIAC.— The issue of jurisdiction was rendered moot by LICOMCEN's active participation in the proceedings before the CIAC. It is true that LICOMCEN initially assailed the jurisdiction of the CIAC.

But when the CIAC asserted its jurisdiction in its February 20, 2003 Order, LICOMCEN did not seek relief from the CIAC ruling. Instead, LICOMCEN took part in the discussion on the merits of the case, even going to the extent of seeking affirmative relief. The active involvement of a party in the proceedings is tantamount to an invocation of, or at least an acquiescence to, the court's jurisdiction. Such participation indicates a willingness to abide by the resolution of the case, and will bar said party from later on impugning the court or body's jurisdiction. The Court will not countenance the effort of any party to subvert or defeat the objective of voluntary arbitration for its own private motives. After submitting itself to arbitration proceedings and actively participating therein, LICOMCEN is estopped from assailing the jurisdiction of the CIAC, merely because the latter rendered an adverse decision.

4. CIVIL LAW; LACHES; NOT APPLICABLE IN CASE AT BAR; MERE LAPSE OF FOUR YEARS SINCE THE PROJECT WAS "INDEFINITELY SUSPENDED" CAN HARDLY BE CONSIDERED UNREASONABLE TO GIVE RISE TO THE CONCLUSION THAT RESPONDENT ALREADY ABANDONED ITS CLAIM.— Neither can LICOMCEN find refuge in the principle of laches to steer clear of liability. It is not just the lapse of time or delay that constitutes laches. The essence of laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, through due diligence, could or should have been done earlier, thus giving rise to a presumption that the party entitled to assert it had either abandoned or declined to assert it. Indeed, FSI filed its petition for arbitration only on October 8, 2002, or after the lapse of more than four years since the project was "indefinitely suspended." But we agree with the CIAC and the CA that such delay can hardly be considered unreasonable to give rise to the conclusion that FSI already abandoned its claim. On the contrary, the delay was due to the fact that FSI exerted efforts to have the claim settled extra-judicially which LICOMCEN rebuffed. Besides, except for LICOMCEN's allegation that the filing of the suit is already barred by laches, no proof was offered to show that the filing of the suit was iniquitous or unfair to LICOMCEN. We reiterate that, unless reasons of inequitable proportions are adduced, a delay within the prescriptive period is sanctioned by law and is not to be

considered delay that would bar relief. In the instant case, FSI filed its claim well within the ten-year prescriptive period provided for in Article 1144 of the Civil Code. Therefore, laches cannot be invoked to bar FSI from instituting this suit. The doctrine of laches is based upon grounds of public policy which require, for the peace of society, discouraging stale claims. It is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted. There is no absolute rule as to what constitutes laches; each case is to be determined according to its particular circumstances. The question of laches is addressed to the sound discretion of the court, and since it is an equitable doctrine, its application is controlled by equitable considerations. It cannot be worked to defeat justice or to perpetrate fraud and injustice.

5. DAMAGES; RESPONDENT'S CLAIM FOR EQUIPMENT AND LABOR STANDARD COST, DENIED; NO CONVINCING EVIDENCE SUCH AS THE LEASE CONTRACT OR THE RECEIPTS OF PAYMENT ISSUED BY OWNERS OF THE RENTED EQUIPMENT WAS PRESENTED; MERE SUBMISSION OF THE LIST OF EMPLOYEES DOES NOT CATEGORICALLY PROVE THAT THE LISTED EMPLOYEES WERE ACTUALLY EMPLOYED AT THE CONSTRUCTION SITE DURING THE SUSPENSION.— We also uphold the denial of FSI's claim for equipment and labor standard costs, as no convincing evidence was presented to prove it. The list of rented equipment and the list of workers offered by FSI and which were admitted by CIAC, are far from being clear and convincing proof that FSI actually incurred the expenses stated therein. As aptly said by the CA, FSI should have presented convincing pieces of documentary evidence, such as the lease contract or the receipts of payment issued by the owners of the rented equipment, to establish the claim. As to its claimed labor expenses, the list of employees does not categorically prove that these listed employees were actually employed at the construction site during the suspension. Hence, even assuming that LICOMCEN failed to submit evidence to rebut these lists, they do not *ipso facto* translate into duly proven facts. FSI still had the burden of proving its cause of action, because it is the one asserting entitlement to an affirmative relief. On this score, FSI failed. The CA, therefore, committed no reversible error in denying the claim.

6. ID.; ID.; CLAIM FOR UNREALIZED PROFIT, REJECTED; THE CONTRACT ITSELF PROHIBITS A CLAIM FOR ANTICIPATED PROFITS.— FSI's claim for unrealized profit has to be rejected too. GC-41 specifically provided that: x x x The Contractor shall have *no claim for anticipated profits on the work thus terminated, nor any other claim, except for work actually performed at the time of complete discontinuance*, including any variations authorized by the LICOMCEN, INCORPORATED/Engineer to be done under the section dealing with variation, after the date of said order, and for any claims for variations accruing up to the date of said notice of termination. The provision was agreed upon by the parties freely, and significantly, FSI did not question this. It is not for the Court to change the stipulations in the contract when they are not illegal. Article 1306 of the Civil Code provides that the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy. Besides, no convincing proof was offered to prove the claim. In light of the foregoing, the CA, therefore, correctly denied the claim for unrealized profit.

7. ID.; ID.; PETITIONER SHOULD BEAR THE COST OF ARBITRATION AS IT ADAMANTLY REFUSED TO PAY RESPONDENT'S JUST AND VALID CLAIM, PROMPTING THE LATTER TO INSTITUTE A PETITION FOR ARBITRATION.—We agree with the CIAC and the CA that LICOMCEN should bear the cost of arbitration as it adamantly refused to pay FSI's just and valid claim, prompting the latter to institute a petition for arbitration.

8. REMEDIAL LAW; EVIDENCE; DISTINCTION BETWEEN ADMISSIBILITY OF EVIDENCE AND ITS PROBATIVE VALUE; JUST BECAUSE A PIECE OF EVIDENCE IS NOT OBJECTED TO DOES NOT *IPSO FACTO* MEAN THAT IT CONCLUSIVELY PROVES THE FACT IN DISPUTE.— We must emphasize the distinction between admissibility of evidence and its probative value. Just because a piece of evidence is not objected to does not *ipso facto* mean that it conclusively proves the fact in dispute. The admissibility of evidence should not be confused with its probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value

refers to the question of whether the admitted evidence proves an issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.

APPEARANCES OF COUNSEL

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D E C I S I O N

NACHURA, *J.*:

For review in these consolidated petitions is the November 23, 2004 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP. No. 78218, as well as the Resolutions dated February 4, 2005[2] and September 13, 2005,[3] denying the motions for its reconsideration.

Liberty Commercial Center, Inc. (LICOMCEN) is a corporation engaged in the business of operating shopping malls. In March 1997, the City Government of Legaspi leased its lot in the Central District of Legaspi to LICOMCEN. The Lease Contract was based on the Build-Operate-Transfer Scheme under which LICOMCEN will finance, develop and construct the LCC City Mall (CITIMALL). LICOMCEN engaged E.S. De Castro and Associates (ESCA) as its engineering consultant for the project.

On September 1, 1997, LICOMCEN and Foundation Specialist, Inc. (FSI) signed a Construction Agreement for the bored pile foundation of CITIMALL.[4] Forming part of the agreement

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[1] Penned by Justice Josefina Guevarra-Salonga, with Associate Justices Conrado M. Vasquez, Jr. and Fernanda Lampas Peralta, concurring; CA *rollo*, Vol. IV, pp. 1695-1713.

[2] *Id*. at 1817-1820.

[3] *Id*. at 2011.

[4] Exhibit "A", CIAC records, Folder II, pp. 419-429.

were the Bid Documents and the General Conditions of Contract (GCC)[5] prepared by ESCA. A salient provision of the GCC is the authority granted the engineering consultant to suspend the work, wholly or partly. LICOMCEN was also given the right to suspend the work or terminate the contract. Among other caveats, GC-05 provided that questions arising out or in connection with the contract or its breach should be litigated in the courts of Legaspi, except where otherwise stated, or when such question is submitted for settlement through arbitration. GC-61 also provided that disputes arising out of the execution of the work should first be submitted to LICOMCEN for resolution, whose decision shall be final and binding, if not contested within thirty (30) days from receipt. Otherwise, the dispute shall be submitted to the Construction Industry Arbitration Commission (CIAC) for arbitration.

Upon receipt of the notice to proceed, FSI commenced work and undertook to complete it within ninety (90) days, all in accordance with the approved drawing, plans, and specifications.

In the course of the construction, LICOMCEN revised the design for the CITIMALL involving changes in the bored piles and substantial reduction in number and length of the piles. ESCA, thus, informed FSI of the major revision on December 16, 1997[6] and ordered the non-delivery of the steel bars, pending approval of the new design. FSI, however, responded that the steel bars had already been loaded and shipped out of Manila. ESCA then suggested the delivery of 50% of the steel bars to the jobsite and the return of the other 50% to Manila, where storage and security were better.[7]

On January 15, 1998, LICOMCEN sent another letter to FSI ordering all the construction activities suspended, because Albay Accredited Constructions Association (AACA) had contested

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[5] Exhibits "B-14" to "B-50", *id*. at 444-480.

[6] TSN, March 10, 2003, pp. 33-34, CIAC records, Folder III, pp. 1058-1059.

[7] Letter dated January 6, 1998, Exhibit "2", CIAC records, Folder II, p. 660.

the award of the Contract of Lease to LICOMCEN and filed criminal complaints with the Office of the Ombudsman for violation of the *Anti-Graft and Corrupt Practices Act* against LICOMCEN and the City Government of Legaspi. Thus, pending a clear resolution of the case, LICOMCEN decided to suspend all construction activities. It also requested FSI not to unload the steel bars.[8]

On January 17, 1998, the steel bars for the CITIMALL arrived at the Legaspi port, and despite LICOMCEN's previous request, these were unloaded and delivered to the jobsite and some to Tuanzon compound,[9] FSI's batching site. Then, on January 19, 1998, LICOMCEN reiterated its decision to suspend construction, and ordered demobilization of the materials and equipment for the project.[10] Finally, on February 17, 1998, LICOMCEN indefinitely suspended the project, due to the pending cases in the Ombudsman.[11]

FSI demanded payment for its work accomplishments, material costs, and standby off equipment, as well as other expenses amounting to ₱22,667,026.97,[12] but LICOMCEN took no heed.

On October 12, 1998, the Ombudsman dismissed the cases filed against the City Government and LICOMCEN. The dismissal was affirmed by this Court[13] and attained finality on September 20, 2000.[14] This notwithstanding, LICOMCEN did not lift the suspension of the construction that it previously ordered. It

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[8] Letter dated January 15, 1998, Exhibit "3", *id*. at 662.

[9] TSN, March 10, 2003, pp. 40-43, CIAC records, Folder III, pp. 1065-1068.

[10] Letter dated January 19, 1998, Exhibit "4", CIAC records, Folder II, p. 663.

[11] Letter dated February 17, 1998, Exhibit "6", *id*. at 669.

[12] Letters dated February 3, 1998 and March 3, 1998, Exhibits "J" and "K", *id*. at 526, 531-532.

[13] Exhibit "14", *id*. at 764-765.

[14] Exhibit "15", *id*. at 766.

then hired Designtech Consultants and Management System (Designtech) as its new project consultant, which, in turn, invited contractors, including FSI, to bid for the bored piling works for CITIMALL.[15]

FSI reiterated its demand for payment from LICOMCEN, but the latter failed and refused to pay, prompting FSI to file a petition for arbitration with the CIAC, docketed as CIAC Case No. 37-2002.

LICOMCEN denied the claim of FSI, arguing that it lacks factual and legal basis. It also assailed the jurisdiction of the CIAC to take cognizance of the suit, claiming that jurisdiction over the controversy was vested in the regular courts, and that arbitration under the GC-61 of the GCC may only be resorted to if the dispute concerns the execution of works, not if it concerns breach of contract.

During the preliminary conference, the parties agreed to submit the controversy to the Arbitral Tribunal and signed the Terms of Reference (TOR).[16] But on February 4, 2003, LICOMCEN, through a collaborating counsel, filed an *Ex Abundati Ad Cautela* Omnibus Motion.[17] It reiterated the claim that the arbitration clause in the contract does not cover claims for payment of unrealized profits and damages, and FSI did not comply with the condition precedent for the filing of the suit, thus, the CIAC cannot take cognizance of the suit. LICOMCEN further averred that FSI has no cause of action against it because the claim for material costs has no factual basis and because the contract is clear that FSI cannot claim damages beyond the actual work accomplishments, but only reasonable expenses for the suspension or termination of the contract. LICOMCEN also alleged that the expenses incurred by FSI, if there be any, cannot be considered reasonable, because there was no showing that the materials were ordered and actually delivered to the job site. Finally, it

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[15] Exhibit "I-1", *id*. at 523.

[16] CIAC records, Folder I, pp. 369-375.

[17] *Id*. at 379-397.

prayed for the suspension of the proceedings, pending the resolution of its omnibus motion.

On February 20, 2003, the CIAC issued an Order[18] denying LICOMCEN's omnibus motion on the ground that it runs counter to the stipulations in the TOR. Trial, thereafter, ensued. FSI and LICOMCEN presented witnesses in support of their respective claims.

After due proceedings, the CIAC rendered a Decision[19] in favor of FSI, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of Claimant **FOUNDATION SPECIALIST, INC.** and against Respondent **LICOMCEN, INCORPORATED**, ordering the latter to pay to the former the following amounts:
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> 1. ₱14,643,638.51 representing material costs at site;
> 2. ₱2,957,989.94 representing payment for equipment and labor standby costs;
> 3. ₱5,120,000.00 representing unrealized profit; and
> 4. ₱1,264,404.12 representing the unpaid balance of FSI's billing.
>
> FURTHER, the said Respondent is ordered to solely and exclusively bear the entire cost of arbitration proceedings in the total amount of ₱474,407.95 as indicated in the TOR, and to reimburse the herein Claimant of any amount thereof which it had advanced and paid pursuant to TOR.
>
> All the above-awarded amounts shall bear interest of 6% per annum from the date of the formal demand on February 3, 1998 (Par. 10, Admitted Facts, TOR) until the date this Decision/Award becomes final and executory and 12% per annum from the date this Decision/Award becomes final and executory until fully paid.
>
> SO ORDERED.[20]

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[18] CIAC records, Folder II, pp. 697-698.

[19] CIAC records, Folder IV, pp. 1448-1462.

[20] *Id*. at 1462.

LICOMCEN elevated the CIAC Decision to the CA. It faulted the CIAC for taking cognizance of the case, arguing that it has no jurisdiction over the suit. It also assailed the award and the ruling that the contract had been terminated, allegedly for lack of factual and legal basis.

On November 23, 2004, the CA rendered the assailed Decision, modifying the CIAC Decision, *viz*.:

> WHEREFORE, the foregoing considered, the assailed Decision is hereby **MODIFIED** to the extent that paragraph 1 of the dispositive portion is amended and accordingly, petitioner is ordered to pay only the amount of ₱5,694,939.865 representing the material costs at site; and paragraphs 2 and 3 on equipment and labor standby costs and unrealized profit of the same dispositive portion are deleted. The rest is **AFFIRMED** in all respects. No costs.
>
> SO ORDERED.[21]

Both LICOMCEN and FSI filed motions for partial reconsideration, but these were denied by the CA in its Resolutions dated February 4, 2005[22] and September 13, 2005.[23]

LICOMCEN and FSI reacted with the instant petitions. Considering that the cases involve the same parties, issues and assailed decision, this Court ordered the consolidation of G.R. No. 167022 and G.R. No. 169678 in its Resolution dated November 20, 2006.

LICOMCEN raised the following issues:

1.

WHETHER OR NOT THE PROJECT WAS MERELY SUSPENDED AND NOT TERMINATED.

2.

WHETHER OR NOT THE TRIBUNAL HAD JURISDICTION OVER THE DISPUTE.

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[21] CA *rollo*, Vol. IV, p. 1713.

[22] *Id*. at 1817-1820.

[23] *Id*. at 2011.

3.

WHETHER OR NOT FSI IS ENTITLED TO CLAIM ANY AMOUNT OF DAMAGES.

4.

WHETHER OR NOT LICOMCEN IS THE PARTY AT FAULT.[24]

FSI, on the other hand, interposes the following:

1. THE COURT OF APPEALS ERRED IN NOT AWARDING TO PETITIONER THE FULL AMOUNT OF MATERIAL COSTS AT THE SITE.

2. THE COURT OF APPEALS ERRED IN DENYING PETITIONER'S CLAIM FOR EQUIPMENT AND LABOR STANDBY COSTS.

3. THE COURT OF APPEALS ERRED IN DENYING PETITIONER'S CLAIM FOR UNREALIZED PROFIT.

4. THE COURT OF APPEALS ERRED IN RENDERING A MERE MINUTE RESOLUTION IN RESOLVING PETITIONER'S MOTION FOR PARTIAL RECONSIDERATION.[25]

First, we resolve the issue of the CIAC's jurisdiction.

LICOMCEN insists that the CIAC had no jurisdiction over the suit. Citing GC-05 and GC-61 of the GCC, it posits that jurisdiction over the dispute rests with the regular courts of Legaspi City.

The argument is misplaced.

The power and authority of a court to hear, try, and decide a case is defined as jurisdiction. Elementary is the distinction between jurisdiction over the subject matter and jurisdiction over the person. The former is conferred by the Constitution or by law, while the latter is acquired by virtue of the party's

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[24] Memorandum, *rollo* (G.R. No. 167022),Vol. II, pp. 1914-1915.

[25] Memorandum, *id.* at 2130.

voluntary submission to the authority of the court through the exercise of its coercive process.[26]

Section 4 of Executive Order (E.O.) No. 1008, or the *Construction Industry Arbitration Law*, provides:

> SECTION 4. *Jurisdiction*. — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. *For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.*
>
> The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual provisions; amount of damages and penalties; commencement time and delays; maintenance and defects; payment default of employer or contractor and changes in contract cost.
>
> Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines. (Emphasis supplied)

Corollarily, Section 1, Article III of the *Rules of Procedure Governing Construction Arbitration* provides that recourse to the CIAC may be availed of whenever a contract contains a clause for the submission of a future controversy to arbitration, thus:

> SECTION 1. Submission to CIAC Jurisdiction. — An arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission. When a contract contains a clause for the submission of a future controversy to arbitration, it is not necessary for the parties to enter into a submission agreement before the claimant may invoke the jurisdiction of CIAC.

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[26] *Arnado v. Buban*, A.M. No. MTJ-04-1543, May 31, 2004, 430 SCRA 382, 386.

Clearly then, the CIAC has original and exclusive jurisdiction over disputes arising from or connected with construction contracts entered into by parties that have agreed to submit their dispute to voluntary arbitration.[27]

The GCC signed by LICOMCEN and FSI had the following arbitral clause:

GC-61 DISPUTES AND ARBITRATION

Should any dispute of any kind arise between the LICOMCEN, INCORPORATED and the Contractor or the Engineer and the Contractor in connection with, or arising out of the execution of the Works, such dispute shall first be referred to and settled by the LICOMCEN, INCORPORATED who shall within a period of thirty (30) days after being formally requested by either party to resolve the dispute, issue a written decision to the Engineer and Contractor. Such decision shall be final and binding upon the parties and the Contractor shall proceed with the execution of the Works with due diligence notwithstanding any Contractor's objection to the decision of the Engineer. If within a period of thirty (30) days from receipt of the LICOMCEN, INCORPORATED's decision on the dispute, either party does not officially give notice to contest such decision through arbitration, the said decision shall remain final and binding. However, should any party within thirty (30) days from receipt of the LICOMCEN, INCORPORATED's decision contest said decision, the dispute shall be submitted for arbitration under the Construction Industry Arbitration Law, Executive Order 1008. The arbitrators appointed under said rules and regulations shall have full power to open up, revise and review any decision, opinion, direction, certificate or valuation of the LICOMCEN, INCORPORATED. Neither party shall be limited to the evidence or arguments put before the LICOMCEN, INCORPORATED for the purpose of obtaining his said decision. No decision given by the LICOMCEN, INCORPORATED shall disqualify him from being called as a witness and giving evidence in the arbitration. It is understood that the obligations of the LICOMCEN, INCORPORATED, the Engineer and the Contractor shall not be altered by reason of the arbitration being conducted during the progress of the Works.[28]

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[27] *Philrock, Inc. v. Construction Industry Arbitration Commission*, 412 Phil. 236, 245 (2001).

[28] Exhibit "B-50", CIAC records, Folder II, p. 480.

LICOMCEN theorizes that this arbitration clause cannot vest jurisdiction in the CIAC, because it covers only disputes arising out of or in connection with the execution of works, whether permanent or temporary. It argues that since the claim of FSI was not connected to or did not arise out of the execution of the works as contemplated in GC-61, but is based on alleged breach of contract, under GC-05[29] of the GCC, the dispute can only be taken cognizance of by the regular courts. Furthermore, FSI failed to comply with the condition precedent for arbitration. Thus, according to LICOMCEN, the CIAC erred in assuming jurisdiction over the case.

Contrary to what LICOMCEN wants to portray, the CIAC validly acquired jurisdiction over the dispute. Firstly, LICOMCEN submitted itself to the jurisdiction of the CIAC when its president Antonio S. Tan signed the TOR[30] during the preliminary conference. The TOR states:

V. MODE OF ARBITRATION

The parties agree that their differences be settled by an Arbitral Tribunal who were appointed in accordance with the provision of Article V, Section 2 of the CIAC Rules of Procedure Governing Construction Arbitration, as follows:

SALVADOR C. CEGUERA
Chairman

FELISBERTO G.L. REYES
Member

SALVADOR P. CASTRO, JR.
Member

The case shall be decided in accordance with the Contract of the parties and the Construction Industry Arbitration Law (Executive

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[29] GC-05. JURISDICTION

Any question between the contracting parties that may arise out of or in connection with the Contract or breach thereof shall be litigated in the courts of Legaspi, except where otherwise specifically stated or except when such question is submitted for settlement thru arbitration as provides herein.

[30] CIAC records, Folder I, pp. 369-375.

Order No. 1008) and on the basis of evidence submitted, applicable laws, and industry practices where applicable under the law.[31]

Secondly, we agree with the CA that the suit arose from the execution of works defined in the contract. As it aptly ratiocinated:

> [T]he dispute between [FSI] and [LICOMCEN] arose out of or in connection with the execution of works. [LICOMCEN] has gone quite far in interpreting "disputes arising out of or in connection with the execution of work" as separate and distinct from "disputes arising out of or in connection with the contract" citing the various provisions of the Construction Agreement and Bid Documents to preclude CIAC from taking cognizance of the case. To the mind of this Court, such differentiation is immaterial. Article 1374 of the Civil Code on the interpretation of contracts ordains that "the various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly." Essentially, while we agree that [FSI's] money claims against [LICOMCEN] arose out of or in connection with the contract, the same necessarily arose from the work it accomplished or sought to accomplish pursuant thereto. Thus, said monetary claims can be categorized as a dispute arising out of or in connection with the execution of work.[32]

Thirdly, FSI complied with the condition precedent provided in GC-61. Record shows that FSI referred the claim to ESCA on February 3, 1998, and then to LICOMCEN on March 3, 1998,[33] but it was disallowed on March 24, 1998.[34] Then, on April 15, 1998, FSI rejected the evaluation of the billings made by ESCA and LICOMCEN and further informed the latter of its intention to turn over the project.[35] FSI exerted efforts to have the claim settled amicably, but no settlement was arrived at. Hence, on March 14, 2001, FSI through counsel made a

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[31] *Id.* at 372.

[32] CA *rollo,* Vol. IV, p. 1702.

[33] *Supra* note 12.

[34] Exhibit "L", CIAC records, Folder II, p. 543.

[35] Exhibit "L-2", *id.* at 545.

final demand to pay.[36] LICOMCEN, however, adamantly refused to pay, prompting FSI to file suit with the CIAC. Clearly, FSI substantially complied with the condition precedent laid down in GC-61. Finally, the arbitral clause in the agreement, considering that the requisites for its application are present, is a commitment by the parties to submit to arbitration the disputes covered therein. Because that clause is binding, they are expected to abide by it in good faith.[37]

Just as meaningful, the issue of jurisdiction was rendered moot by LICOMCEN's active participation in the proceedings before the CIAC. It is true that LICOMCEN initially assailed the jurisdiction of the CIAC. But when the CIAC asserted its jurisdiction in its February 20, 2003 Order,[38] LICOMCEN did not seek relief from the CIAC ruling. Instead, LICOMCEN took part in the discussion on the merits of the case, even going to the extent of seeking affirmative relief. The active involvement of a party in the proceedings is tantamount to an invocation of, or at least an acquiescence to, the court's jurisdiction. Such participation indicates a willingness to abide by the resolution of the case, and will bar said party from later on impugning the court or body's jurisdiction.[39] The Court will not countenance the effort of any party to subvert or defeat the objective of voluntary arbitration for its own private motives.[40] After submitting itself to arbitration proceedings and actively participating therein, LICOMCEN is estopped from assailing the jurisdiction of the CIAC, merely because the latter rendered an adverse decision.

Having resolved the issue of jurisdiction, we proceed to the merits of the case.

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[36] Exhibit "M", *id*. at 546.

[37] *Reyes v. Balde II*, G.R. No. 168384, August 7, 2006, 498 SCRA 186, 194.

[38] CIAC records, Folder II, pp. 697-698.

[39] *Meat Packing Corporation of the Philippines v. Sandiganbayan*, 411 Phil. 959, 977-978 (2001).

[40] *Philrock v. Construction Industry Arbitration Commission*, *supra* note 27, at 246.

LICOMCEN faults the CIAC and the CA for ruling that the contract had been terminated, insisting that it was merely indefinitely suspended. To bolster its position, LICOMCEN cited GC-41 of the GCC which reads:

> GC-41 LICOMCEN, INCORPORATED'S RIGHT TO SUSPEND WORK OR TERMINATE THE CONTRACT
>
> x x x x x x x x x
>
> 2. For Convenience of LICOMCEN, INCORPORATED
>
> If any time before completion of work under the Contract it shall be found by the LICOMCEN, INCORPORATED that reasons beyond the control of the parties render it impossible or against the interest of LICOMCEN, INCORPORATED to complete the work, the LICOMCEN, INCORPORATED at any time, by written notice to the Contractor, may *discontinue the work and terminate* the Contract in whole or in part. Upon issuance of such notice of termination, the Contractor shall discontinue the work in such manner, sequence and at such time as the LICOMCEN, INCORPORATED/Engineer may direct, continuing and doing after said notice only such work and only until such time or times as the LICOMCEN, INCORPORATED/Engineer may direct. x x x[41] (Emphasis supplied)

Unfortunately for LICOMCEN, this provision does not support but enervates its theory of indefinite suspension. The cited provision may be invoked only in cases of termination of contract, as clearly inferred from the phrase "discontinue the work *and* terminate the contract." *And* in statutory construction implies conjunction, joinder or union.[42] Thus, by invoking GC-41, LICOMCEN, in effect, admitted that the contract had already been terminated.

The termination of the contract was made obvious and unmistakable when LICOMCEN's new project consultant rebidded the contract for the bored piling works for the CITIMALL.[43] The claim that the rebidding was conducted for

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[41] Exhibit "B-40", CIAC records, Folder II, p. 470.

[42] *Solanda Enterprises v. Court of Appeals*, 351 Phil. 194, 206 (1998).

[43] Exhibit "I-1", CIAC records, Folder II, p. 523.

purposes of getting cost estimates for a possible new design[44] taxes our credulity. It impresses us as nothing more than a lame attempt of LICOMCEN to avoid liability under the contract. As the CIAC had taken pains to demonstrate:

> Suspension of work is ordinarily understood to mean a temporary work stoppage or a cessation of work for the time being. It may be assumed that, at least initially, LCC had a valid reason to suspend the Works on December 16, 1997 pursuant to GC-38 above-quoted. The evidence show, however, that it has not ordered a resumption of work up to the present despite the lapse of more than four years, and despite the dismissal of the case filed with the Office of the Ombudsman which it gave as reason for the suspension in the first place. As such, LCC's suspension of the Works had already lost its essential characteristic of being merely temporary or only for the time being. To still consider it a "suspension" at this point is to do violence to reason and logic.
>
> Perhaps because of this LCC came up with the assertion that what we have is an "indefinite suspension." There is no such term in the Construction Agreement or the Contract Documents. In fact, it is unknown in the construction industry. Construction work may either be suspended or terminated, but never indefinitely suspended. Since it is not sanctioned by practice and not mentioned in the herein Construction Agreement and the Contract Documents, "indefinite suspension" is irregular and invalid. Due to the apparent incongruity of an "indefinite suspension," LCC changed the term to "continued suspension" in its Memorandum. Unfortunately for it, the factual situation remains unchanged. The Works stay suspended for an indefinite period of time.[45]

Accordingly, the CA did not err in affirming the CIAC ruling that the contract had already been terminated.

Neither can LICOMCEN find refuge in the principle of laches to steer clear of liability. It is not just the lapse of time or delay that constitutes laches. The essence of laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, through due diligence, could or should have

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[44] TSN, April 11, 2003, p. 10, CIAC records, Folder III, p. 1369.

[45] CIAC records, Folder IV, p. 1455.

been done earlier, thus giving rise to a presumption that the party entitled to assert it had either abandoned or declined to assert it.[46]

Indeed, FSI filed its petition for arbitration only on October 8, 2002, or after the lapse of more than four years since the project was "indefinitely suspended." But we agree with the CIAC and the CA that such delay can hardly be considered unreasonable to give rise to the conclusion that FSI already abandoned its claim. On the contrary, the delay was due to the fact that FSI exerted efforts to have the claim settled extra-judicially which LICOMCEN rebuffed. Besides, except for LICOMCEN's allegation that the filing of the suit is already barred by laches, no proof was offered to show that the filing of the suit was iniquitous or unfair to LICOMCEN. We reiterate that, unless reasons of inequitable proportions are adduced, a delay within the prescriptive period is sanctioned by law and is not to be considered delay that would bar relief.[47] In the instant case, FSI filed its claim well within the ten-year prescriptive period provided for in Article 1144 of the Civil Code.[48] Therefore, laches cannot be invoked to bar FSI from instituting this suit.

The doctrine of laches is based upon grounds of public policy which require, for the peace of society, discouraging stale claims. It is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted. There is no absolute rule as to what constitutes laches; each case is to be determined according to its particular circumstances. The question of laches is addressed to the sound discretion of the court, and since it is an equitable doctrine, its application is controlled by equitable

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[46] *Placewell International Services Corporation v. Camote*, G.R. No. 169973, June 26, 2006, 492 SCRA 761, 769.

[47] *Agra v. Philippine National Bank*, 368 Phil. 829, 844 (1999).

[48] Article 1144. The following actions must be brought within ten years from the time the cause of action accrues:

(1) Upon a written contract;
(2) Upon an obligation created by law;
(3) Upon a judgment.

considerations. It cannot be worked to defeat justice or to perpetrate fraud and injustice.[49]

We now come to the monetary awards granted to FSI. LICOMCEN avers that the award lacked factual and legal basis. FSI, on the other hand, posits otherwise, and cries foul on the modification made by the CA. It asserts that the CA erred in disregarding the pieces of evidence that it submitted in support of the claim despite the lack of objection and opposition from LICOMCEN. It insists entitlement to the full amount of material costs at site, for equipment and labor standard costs, as well as unrealized profits.

In this connection, we must emphasize the distinction between admissibility of evidence and its probative value. Just because a piece of evidence is not objected to does not *ipso facto* mean that it conclusively proves the fact in dispute. The admissibility of evidence should not be confused with its probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.[50]

We have carefully gone over the records and are satisfied that the findings of the CA are well supported by evidence. As mentioned above, the contract between LICOMCEN and FSI had already been terminated and, in such case, the GCC expressly provides that:

GC-42 PAYMENT FOR TERMINATED CONTRACT

If the Contract is terminated as aforesaid, the Contractor will be paid for all items of work executed, and satisfactorily completed and accepted by the LICOMCEN, INCORPORATED up to the date of termination, at the rates and prices provided for in the contract and in addition:

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[49] *Placewell International Services Corporation v. Camote, supra* note 46, at 769.

[50] *Heirs of Sabanpan v. Comorposa*, 456 Phil. 161, 172 (2003).

1. The cost of partially accomplished items of additional or extra work agreed upon by the LICOMCEN, INCORPORATED and the Contractor.

2. The cost of materials or goods reasonably ordered for the Permanent or Temporary Works which have been delivered to the Contractor but not yet used and which delivery has been certified by the Engineer.

3. The reasonable cost of demobilization

For any payment due the Contractor under the above conditions, the LICOMCEN, INCORPORATED, however, shall deduct any outstanding balance due from the Contractor for advances in respect to mobilization and materials, and any other sum the LICOMCEN, INCORPORATED is entitled to be credited.[51]

We agree with the Court of Appeals that the liability of LICOMCEN for the cost of materials on site is only ₱5,694,939.85. The said award represents the materials reasonably ordered for the project and which were delivered to the job site. FSI cannot demand full payment of the steel bars under Purchase Order No. 6035.[52] As shown by the records, the steel bars were loaded at M/V Alberto only on January 12, 1998[53] and reached Legaspi City on January 16, 1998.[54] But as early as December 16, 1997, LICOMCEN already informed FSI of the major revision of the design and ordered the non-delivery to the jobsite of the 50% of the steel bars. Inexplicably, FSI continued the delivery. Worse, it unloaded all the steel bars and delivered them to the jobsite and some to the Tuanzon batching plant on January 17, 1998,[55] despite LICOMCEN's order not to do so. FSI cannot now claim payment of the cost of all these materials.

LICOMCEN, however, cannot deny liability for 50% of the steel bars because, as mentioned, it ordered their delivery to

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[51] Exhibits "B-40" to "B-41", CIAC records, Folder II, pp. 470-471.

[52] Exhibit "Q-2", CIAC records, Folder II, p. 571.

[53] Exhibit "Q-3", *id.* at 572.

[54] Exhibit "Q-4", *id.* at 573.

[55] *Supra* note 8.

the jobsite. The steel bars had in fact been delivered to the jobsite and inventoried by Cesar Cortez of ESCA,[56] contrary to LICOMCEN's claim. The payment of these materials is, therefore, in order, pursuant to GC-41:

> The Contractor shall receive compensation for reasonable expenses incurred in good faith for the performance of the Contract and for reasonable expenses associated with the termination of the Contract. x x x.[57]

We also uphold the denial of FSI's claim for equipment and labor standard costs, as no convincing evidence was presented to prove it. The list of rented equipment[58] and the list of workers[59] offered by FSI and which were admitted by CIAC, are far from being clear and convincing proof that FSI actually incurred the expenses stated therein.

As aptly said by the CA, FSI should have presented convincing pieces of documentary evidence, such as the lease contract or the receipts of payment issued by the owners of the rented equipment, to establish the claim. As to its claimed labor expenses, the list of employees does not categorically prove that these listed employees were actually employed at the construction site during the suspension. Hence, even assuming that LICOMCEN failed to submit evidence to rebut these lists, they do not *ipso facto* translate into duly proven facts. FSI still had the burden of proving its cause of action, because it is the one asserting entitlement to an affirmative relief.[60] On this score, FSI failed. The CA, therefore, committed no reversible error in denying the claim.

FSI's claim for unrealized profit has to be rejected too. GC-41 specifically provided that:

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[56] Exhibit "R", CIAC records, Folder II, p. 738.

[57] Exhibits "B-14" to "B-50".

[58] Exhibits "K-8" to "K-9", CIAC records, Folder II, pp. 539-540.

[59] Exhibits "K-10" to "K-11", *id*. at 541-542.

[60] *Heirs of Sabanpan v. Comorposa, supra* note 50, at 172.

x x x The Contractor shall have *no claim for anticipated profits on the work thus terminated, nor any other claim, except for work actually performed at the time of complete discontinuance*, including any variations authorized by the LICOMCEN, INCORPORATED/Engineer to be done under the section dealing with variation, after the date of said order, and for any claims for variations accruing up to the date of said notice of termination.[61] (Emphasis supplied)

The provision was agreed upon by the parties freely, and significantly, FSI did not question this. It is not for the Court to change the stipulations in the contract when they are not illegal. Article 1306 of the Civil Code provides that the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.[62] Besides, no convincing proof was offered to prove the claim. In light of the foregoing, the CA, therefore, correctly denied the claim for unrealized profit.

Similarly, we agree with the CIAC and the CA that LICOMCEN should bear the cost of arbitration as it adamantly refused to pay FSI's just and valid claim, prompting the latter to institute a petition for arbitration.

In sum, we find no reason to disturb the decision of the CA. It cannot be faulted for denying FSI's motion for reconsideration through a mere Minute Resolution, for as we held in *Ortigas and Company Limited Partnership v. Velasco*:[63]

The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment

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[61] Exhibit "B-40", CIAC records, Folder II, p. 470.

[62] *Security Bank & Trust Company v. RTC Makati*, 331 Phil. 787, 793-794 (1996).

[63] *Ortigas and Company Limited Partnership v. Velasco*, 324 Phil. 483, 491-492 (1996).

or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, x x x deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); *i.e.*, the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, *etc*.

WHEREFORE, the herein petitions for review are *DENIED*, and the assailed Decision and Resolutions of the Court of Appeals are *AFFIRMED*.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 169647. August 31, 2007]

ANTONIO CHIENG, substituted by WILLIAM CHIENG, *petitioner, vs.* **SPOUSES EULOGIO and TERESITA SANTOS,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; MORTGAGE; REMEDIES AVAILABLE TO A MORTGAGE CREDITOR; PERSONAL

ACTION FOR DEBT OR A REAL ACTION TO FORECLOSE THE MORTGAGE; REMEDIES ARE DEEMED ALTERNATIVE AND NOT CUMULATIVE AND AN ELECTION OF ONE OPERATES AS WAIVER OF THE OTHER.— A mortgage-creditor may, in the recovery of a debt secured by a real estate mortgage, institute against the mortgage-debtor either a personal action for debt or a real action to foreclose the mortgage. These remedies available to the mortgage-creditor are deemed alternative and not cumulative. An election of one remedy operates as a waiver of the other. In sustaining the rule that prohibits a mortgage-creditor from pursuing both remedies of a personal action for debt or a real action to foreclose the mortgage, we held in *Bachrach Motor Co., Inc. v. Icarangal,* that a rule which would authorize the mortgage-creditor to bring a personal action against the mortgage-debtor and simultaneously or successively another action against the mortgaged property, would result not only in multiplicity of suits so offensive to justice and obnoxious to law and equity, but would also subject the mortgage-debtor to the vexation of being sued in the place of his residence or of the residence of the mortgage-creditor, and then again in the place where the property lies. Hence, a remedy is deemed chosen upon the filing by the mortgage-creditor of the suit for collection or upon his filing of the complaint in an action for foreclosure of mortgage, pursuant to the provisions of Rule 68 of the Rules of Court.

2. ID.; ID.; ID.; ID.; THE IMPLIEDLY INSTITUTED CIVIL ACTION IN CRIMINAL CASES NO. 612-90 TO NO. 615-90 FOR VIOLATION OF BATAS PAMBANSA BLG. 22 IS, IN EFFECT, A COLLECTION SUIT FOR THE RECOVERY OF THE MORTGAGE DEBT.— When petitioner filed Criminal Cases No. 612-90 to No. 615-90 for violation of Batas Pambansa Blg. 22 against respondent Eulogio, petitioner's civil action for the recovery of the amount of the dishonored checks was impliedly instituted therein pursuant to Section 1(b) of Rule 111 of the 2000 Rules on Criminal Procedure. The impliedly instituted civil action in Criminal Cases No. 612-90 to No. 615-90 for violation of Batas Pambansa Blg. 22 was, in effect, a collection suit or suit for the recovery of the mortgage-debt since the dishonored checks involved in the said criminal cases were issued by respondent Eulogio to

petitioner for the payment of the same loan secured by the Deed of Real Estate Mortgage. As correctly found by the Olongapo City RTC, Branch 74, in its Decision dated 23 October 2001 in Civil Case No. 239-0-93. Consequently, when petitioner filed Criminal Cases No. 612-90 to No. 615-90, he was deemed to have already availed himself of the remedy of collection suit. Following the rule on the alternative remedies of a mortgage-creditor, petitioner is barred from subsequently resorting to an action for foreclosure.

3. ID.; ID.; ID.; ID.; PROPER COMPUTATION OF INTERESTS OF THE TOTAL OUTSTANDING BALANCE OF THE LOAN.— We, nonetheless, do not subscribe to the computations made by the RTC. In *Eastern Shipping Lines, Inc. v. Court of Appeals*, we ruled that when the obligation is breached and it consists in the payment of a sum of money such as a loan, the interest due should be that which may have been stipulated in writing. We also held that the interest due shall itself earn legal interest from the time it is demanded, and that in the absence of stipulation as to the payment of interest, the rate of interest shall be 12% per annum **to be computed from default, *i.e.*, from judicial or extra-judicial demand**. We further declared that when the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, regardless of whether it is a loan/forbearance of money case or not, shall be 12% per annum from such finality until its satisfaction, this *interim* period being deemed to be then equivalent to a forbearance of credit. In the instant case, there was no written agreement as to the payment of interest on the mortgage-loan between petitioner and respondents. The rate of interest, therefore, is 12% per annum, to be computed from the time an extra-judicial demand was made by the petitioner on 30 July 1992. We also found that an amount of ₱107,000.00 out of the total loan of ₱200,000.00 was already paid by the respondents. Thus, only the balance of ₱93,000.00 should earn a legal interest of 12% per annum from the time of the extra-judicial demand on 30 July 1992. In addition, a legal interest of 12% per annum should also be imposed to be computed from the finality of this Decision up to its satisfaction.

4. ID.; HUMAN RELATIONS; UNJUST ENRICHMENT; TO ALLOW RESPONDENTS TO BENEFIT FROM THE LOAN WITHOUT PAYING ITS WHOLE AMOUNT TO

PETITIONER, AND TO PRECLUDE THE LATTER FROM RECOVERING THE REMAINING BALANCE OF THE LOAN, WOULD CONSTITUTE UNJUST ENRICHMENT AT THE EXPENSE OF PETITIONER.— It should be stressed that respondents have not yet fully paid the loan. In fact, respondents themselves admitted that they still owe petitioner the balance of the loan. To allow respondents to benefit from the loan without paying its whole amount to petitioner, and to preclude the petitioner from recovering the remaining balance of the loan, would constitute unjust enrichment at the expense of petitioner. The principle that no person may unjustly enrich himself at the expense of another (*Nemo cum alterius detrimento locupletari potest*) is embodied in Article 22 of the New Civil Code, to wit: ART. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him. As can be gleaned from the foregoing, there is unjust enrichment when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another. The main objective of the principle of unjust enrichment is to prevent one from enriching oneself at the expense of another. It is commonly accepted that this doctrine simply means that a person shall not be allowed to profit or enrich himself inequitably at another's expense. One condition for invoking this principle is that the aggrieved party has no other action based on contract, quasi-contract, crime, quasi-delict or any other provision of law. The principle of unjust enrichment obliges the respondents to pay the remaining balance of the loan plus interest. Relieving the respondents of their obligation to pay the balance of the loan would, indeed, be to sanction unjust enrichment in favor of respondents and cause unjust poverty to petitioner. In the exercise of our mandate as a court of justice and equity, we hold, *pro hac vice*, that respondents are still liable to pay the remaining balance of the loan.

APPEARANCES OF COUNSEL

Ernesto A. Gonzales, Jr. for petitioner.
Karaan & Karaan Law Office for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court,[1] praying that the Decision, dated 13 September 2005 of the Court of Appeals in CA-G.R. CV No. 79971[2] be set aside and the Decision[3] and Order[4] of the Olongapo City Regional Trial Court (RTC), Branch 74, in Civil Case No. 239-0-93, dated 23 October 2001 and 11 January 2002, respectively, which were reversed by the appellate court, be reinstated.

Stripped of the non-essentials, the facts are as follows:

On 17 August 1989, petitioner Antonio Chieng[5] extended a loan in favor of respondent spouses Eulogio and Teresita Santos. As security for such loan, the respondents executed in favor of petitioner a Deed of Real Estate Mortgage over a piece of land, consisting of 613 square meters, situated at West Bajac-Bajac, Olongapo City, and covered by Transfer Certificate of Title (TCT) No. T-2570 issued by the Registry of Deeds of Olongapo City in the name of respondents. On even date, the Deed of Real Estate Mortgage was registered with the Registry of Deeds of Olongapo City and was duly annotated on TCT No. T-2570.

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[1] *Rollo*, pp. 3-12.

[2] Penned by Associate Justice Andres B. Reyes Jr. with Associate Justices Lucas P. Bersamin and Celia C. Librea-Leagogo, concurring; *id*. at 15-25.

[3] Penned by Judge Fatima Gonzales-Asdala; *id*. at 41-50.

[4] Records, pp. 302-303.

[5] Antonio Chieng instituted Civil Case No. 239-0-93 before the Olongapo City RTC, Branch 74, but he died during the pendency of the case before the said trial court, and was substituted by his son, William Chieng. Hence, it was already William Chieng who filed the Petition at bar. However, since William Chieng merely stepped into the rights of his father Antonio Chieng, we have treated them as one and the same in the person of the petitioner herein.

Thereafter, respondent Eulogio issued several checks in favor of petitioner as payment for the loan. Some of these checks were dishonored, prompting the petitioner to file a criminal case against respondent Eulogio for violation of Batas Pambansa Blg. 22 before the Olongapo City RTC, Branch 72, docketed as **Criminal Cases No. 612-90 to No. 615-90**. During the pre-trial conference of these cases, petitioner and respondent Eulogio entered into a compromise agreement, which was contained in the Order of the court, to wit:

ORDER

When this case was called for pre-trial conference in the presence of the Honorable Prosecutor, accused Eulogio Santos and private complainant Antonio Chieng came to an agreement that the total indebtedness of Mr. Santos as of today, July 15, 1991 amounts to Two Hundred Thousand (₱200,000.00) Pesos including interest since the beginning and excluding those already paid for. It is understood that at a payment of ₱20,000.00 each month starting on or before July 31, 1991 and upon the completion of the amount of ₱200,000.00 without any interest, the indebtedness of Mr. Santos shall/have been discharged and upon payment of ₱20,000.00 on or before July 31, 1991, the next payment on or before August 31, 1991, these cases will be considered terminated.

Prosecutor Martinez, Accused Eulogio Santos and complainant Antonio Chieng are notified of this assignment.[6]

Respondent Eulogio failed to comply with his obligation in the compromise agreement.

On 17 June 1993, petitioner filed with the Olongapo City RTC, Branch 74, an action for foreclosure of mortgage constituted on respondents' real property docketed as **Civil Case No. 239-0-93**. Petitioner alleged that he extended a loan of ₱600,000.00 in favor of respondents for which respondents executed the Deed of Real Estate Mortgage dated 17 August 1987 in his favor. Despite his repeated demands, respondents failed to pay the loan.

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[6] Records, p. 172.

Respondents sought the dismissal of the case on the ground of lack of cause of action claiming that the Deed of Real Estate Mortgage did not reflect the parties' true intention or agreement because the total amount of their indebtedness was only around ₱200,000.00, not ₱600,000.00 as stated in the Deed. Respondents and petitioner supposedly agreed to make it appear that respondents' loan amounted to ₱600,000.00 to protect the latter from the claims of their other creditors who were trying to attach or levy their property. Respondents further averred that they had partly paid their loan but petitioner refused to issue them receipts and to render an accounting of their remaining obligation.

On 10 February 1994, petitioner made his formal offer of evidence. Upon submission by respondents of their Comment/ Objections to petitioner's formal offer of evidence, the court issued an Order dated 1 September 1994, admitting petitioner's offer of evidence, and set the hearing for the reception of respondents' evidence on 28 September 1994. However, hearings were successively postponed upon the motions of respondents. On 14 January 1997, the court issued an Order declaring that (1) the respondents were deemed to have waived their right to present evidence; and (2) the case was considered submitted for decision. Respondents filed a Motion for Reconsideration of the said RTC Order dated 14 January 1997, but this was denied.[7]

On 9 July 1997, the Olongapo City RTC, Branch 74, rendered a Decision[8] ordering the respondents to pay petitioner their loan obligation amounting to ₱600,000.00, plus interests and attorney's fees, thus:

> WHEREFORE, judgment is hereby rendered ordering the [herein respondents] to pay [herein petitioner] within 90 days from receipt of this Decision the sum of ₱600,000.00 with legal rate of interest of 12% per annum from August 13, 1992 until the amount is fully paid; to pay [petitioner] the amount of ₱60,000.00 as attorney's fees; and the costs of this suit.

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[7] *Id.* at 145.

[8] Penned by Judge Eliodoro G. Ubiadas; *rollo*, pp. 38-40.

In default of such payment, the Sheriff of this Court is ordered to sell at public auction the property described in the Deed of Real Estate Mortgage x x x together with the improvements thereon and apply the proceeds thereof to the principal obligation, interests, attorney's fees and the costs of this suit.

Respondents filed a Motion for Reconsideration[9] arguing:

[C]onsidering that another branch of this Honorable Court, particularly Branch 72 through Judge Esther Nobles Bans had issued an order fixing the actual obligation of the [herein respondents] to [herein petitioner] in the sum of ₱200,000.00 with the conformity of both the herein parties, a copy of the said order is hereto attached as Annex "I" of this motion for the ready reference and guidance of this Honorable Court.

In effect, the said order is in the nature of a judicial compromise or judgment that should be strictly complied with and/or honored by the herein parties, unless the same was entered into through palpable mistake.

Besides, it would be the height of injustice to compel the herein [respondents] to pay more than ₱200,000.00 when the herein parties had already pegged the obligation of the herein [respondents] to the said [petitioner] in the sum of ₱200,000.00.

On 6 October 1997, the court issued an Order setting aside its earlier Decision dated 9 July 1997.[10]

Respondent Eulogio explained that he issued several checks amounting to ₱107,000.00 in favor of petitioner as partial payment of the loan as evidenced by a memorandum. He added that some of the checks he issued bounced; thus, he and his wife failed to fully discharge their loan. Instead of foreclosing the mortgage on their property, petitioner chose to institute criminal cases against respondent Eulogio for issuing bouncing checks in violation of Batas Pambansa Blg. 22, docketed as Criminal Cases No. 612-90 to No. 615-90 before the Olongapo City RTC, Branch 72. He bared that the ₱200,000.00 which he was directed to pay petitioner by the Olongapo City RTC, Branch

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[9] Records, pp. 155-156.

[10] *Id*. at 167.

72 in its Order dated 15 July 1991 in Criminal Cases No. 612-90 to No. 615-90 was the same subject of Civil Case No. 239-0-93 pending with the Olongapo City RTC, Branch 74.

On 23 September 1998, petitioner passed away.[11] Thereafter, his heirs filed a motion to substitute him in Civil Case No. 239-0-93.[12] In its Order dated 12 January 1999, the Olongapo City RTC, Branch 74 granted the motion and directed the substitution of petitioner by his son, William Chieng.[13]

On 23 October 2001, the Olongapo City RTC, Branch 74 rendered a Decision in Civil Case No. 239-0-93 directing the respondents to pay petitioner the amount of ₱377,000.00 with interest, plus attorney's fees and costs.[14] The decretal portion of the decision reads:

> WHEREFORE, finding [herein respondents] Eulogio Santos and Teresita Santos liable to [herein petitioner] Antonio Chieng (substituted herein by William Cheng) in the sum of ₱377,000,00 including interest;
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> — judgment is hereby rendered directing Eulogio Santos and Teresita Santos, to jointly and severally pay to the Court:
>
> 1. the sum of Three Hundred Seventy Seven Thousand Pesos (₱377,000.00) within a period of not less than ninety (90) days from notice of this judgment;
>
> 2. the sum of ₱25,000.00 to pay for the attorney's fees of [petitioner's] counsel;
>
> 3. the sum of ₱3,210.00 costs/filing fees.
>
> In default of such payment, the property to be sold by the Court's Deputy Sheriff, to realize the mortgage debt and costs.[15]

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[11] *Id.* at 197-199.

[12] *Id.*

[13] *Id.* at 207.

[14] *Rollo,* pp. 41-50.

[15] *Id.* at 50.

It agreed with respondents that the Deed of Real Estate Mortgage was simulated and that the loan obligation was only ₱200,000.00. It also found that respondents made payments amounting to ₱107,000.00. Respondent's liability was arrived at in this manner:

> Since the mortgage debt of ₱200,000.00 was contracted on August 17, 1989, when judicially demanded on June 23, 1993, the mortgage debt of ₱200,000.00 at 12% per annum (without compounding since there is no written agreement to that effect) earned an interest of ₱92,000.00 on June 17, 1993. From 1993 up to the present, a total of ₱192,000,00 in interest again accrued and adding the same to the interest due from August 17, 1989, an overall total interest of ₱284,000.00 at 12% per annum without compounding, is due from the [herein respondents].
>
> Accordingly, [respondents] have paid a total of ₱107,000.00 to [herein petitioner], hence, deducting that amount from the total interest due, would leave an unpaid interest of ₱177,000,00. Adding this to the uncontroverted principal debt of ₱200,000.00, the [respondents] owe [petitioner] the total sum of ₱377,000.00.[16]

Respondents filed a Motion for Reconsideration asserting that the charging of interest on the loan obligation was unwarranted because no payment of interest was agreed upon.[17] In its Order dated 11 January 2002, the court denied the Motion for Reconsideration, reasoning that respondents were the ones who presented as evidence the supposed compromise agreement between petitioner and respondent Eulogio, as stated in the Order dated 15 July 1991 of the Olongapo City RTC, Branch 72, in Criminal Cases No. 612-90 to No. 615-90.[18] According to the court, it used the very same compromise agreement as its basis for imposing the 12% per annum interest rate, and that respondents were precluded from disclaiming the said agreement.

Unsatisfied, respondents filed an appeal with the Court of Appeals, docketed as CA-G.R. CV No. 79971. In a decision

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[16] *Id*. at 50.

[17] Records, pp. 297-299.

[18] *Id*. at 302.

dated 13 September 2005, the appellate court reversed the Decision dated 23 October 2001 and Order dated 11 January 2002 of the Olongapo City RTC, Branch 74, and dismissed Civil Case No. 239-0-93.[19] Citing our ruling in *Bank of America v. American Realty Corporation*,[20] it held that a mortgagor-creditor has two choices of action: he may either file an ordinary action to recover the indebtedness or foreclose the mortgage. In short, once a collection suit is filed, the action to foreclose the mortgage is barred.

It ratiocinated that although Criminal Cases No. 612-90 to No. 615-90 for Violation of Batas Pambansa Blg. 22 before the Olongapo City RTC, Branch 72, were not strictly in the nature of ordinary actions for collection/payment of debts or loans, the resulting compromise agreement in the said cases between petitioner and respondent Eulogio, on the matter of payment of the loan, had the effect of settling respondents' indebtedness to petitioner. This is pursuant to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure which provides that the civil action for the recovery of civil liability is impliedly instituted in the criminal actions. Having been impliedly instituted in the criminal cases, any separate civil action for the collection or payment of the loan, like the action for foreclosure of real estate mortgage, can no longer be availed of by petitioner. Thus, it pronounced that the issue of the payment of the loan, having been the subject of the Order dated 15 July 1991 of the Olongapo City RTC, Branch 72, in Criminal Cases No. 612-90 to No. 615-90, cannot be re-litigated and that the proper course of action for petitioner was to seek the execution of the said order. In closing, the Court of Appeals decreed:

> Having made the foregoing pronouncement, the Court finds no necessity to discuss the second assignment of error because there being no loan obligation which can be enforced, no interest could be likewise granted in favor of [herein petitioner].

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[19] *Rollo,* pp. 15-25.

[20] 378 Phil. 1279, 1290-1291 (1999).

WHEREFORE, in view of the foregoing, the Decision of the Regional Trial Court of Olangapo, Branch 74, in Civil Case No. 239-0-93 is hereby REVERSED and a new one entered DISMISSING the complaint.[21]

Petitioner thus filed the instant Petition before us challenging the Decision dated 13 September 2005 of the Court of Appeals. In our Resolution dated 5 December 2005, we denied the Petition due to petitioner's failure to submit the duplicate original or certified true copy of the assailed decision pursuant to Sections 4(d) and 5, Rule 45 in relation to Section 5(d), Rule 56 of the Rules of Court.[22] Petitioner filed a Motion for Reconsideration praying that his submission of one certified true copy of the questioned decision be considered as substantial compliance with the Rules.[23] Finding the Motion meritorious, we issued a Resolution dated 19 April 2006 reinstating the present Petition.[24]

The sole issue to be resolved is: whether petitioner, by filing Criminal Cases No. 612-90 to No. 615-90 for violation of Batas Pambansa Blg. 22 against respondent Eulogio, was already barred or precluded from availing himself of the other civil remedy of the foreclosure of the real estate mortgage.[25]

Petitioner maintains that, in filing Criminal Cases No. 612-90 to No. 615-90 for violation of Batas Pambansa Blg. 22 against respondent Eulogio, he should not be deemed to have impliedly instituted therein an ordinary action for collection of the loan which will preclude him from pursuing the remedy of foreclosure of real estate mortgage.[26] He asserts that no evidence was adduced proving that the obligation for which the checks were issued in Criminal Cases No. 612-90 to No. 615-90 was the same loan obligation secured by the Deed of Real Estate Mortgage

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[21] *Rollo,* p. 25.

[22] Resolution of the Second Division of this Court; *id*. at 51.

[23] Resolution of the First Division of this Court; *id*. at 52.

[24] *Id*. at 74.

[25] *Id*. at 7-8.

[26] *Id*. at 8-10.

in Civil Case No. 239-0-93. Petitioner's complaint-affidavit and the informations filed against respondent Eulogio in the said criminal cases, which could have shed light on the rights of the parties therein, were not presented during the trial before the Olongapo City RTC, Branch 74 in Civil Case No. 239-0-93. Petitioner argues that, if indeed the obligation for which the checks were issued in said criminal cases is the same as the obligation secured by the Deed of Real Estate Mortgage, the Olongapo City RTC, Branch 72 would have mentioned in its Order dated 15 July 1991 in Criminal Cases No. 612-90 to No. 615-90 that the consideration in the Deed of Real Estate Mortgage was being reduced to only ₱200,000.00.[27]

Moreover, petitioner claims that respondents did not pay a single centavo under the compromise agreement in Criminal Cases No. 612-90 to No. 615-90. The compromise agreement was thus deemed abandoned, with no more force and effect. Petitioner further asseverates that 14 years had already lapsed from the time the Order dated 15 July 1991 of the Olongapo City RTC, Branch 72 in Criminal Cases No. 612-90 to No. 615-90 became final, so that he can no longer file a Motion for Execution thereof or an Action to Revive Judgment. It was for this very reason why petitioner was constrained to file an action for judicial foreclosure of mortgage. To enjoin his action to foreclose the real estate mortgage would be an injustice since he would be left with no other recourse in recovering the loan balance from respondents.[28]

For reasons of justice and equity, we rule in favor of petitioner.

At the threshold, the following discussion merits equal attention. A mortgage-creditor may, in the recovery of a debt secured by a real estate mortgage, institute against the mortgage-debtor either a personal action for debt or a real action to foreclose the mortgage. These remedies available to the mortgage-creditor are deemed alternative and not cumulative. An election of one

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[27] *Id*. at 10.

[28] *Id*. at 10-12.

remedy operates as a waiver of the other. In sustaining the rule that prohibits a mortgage-creditor from pursuing both remedies of a personal action for debt or a real action to foreclose the mortgage, we held in *Bachrach Motor Co., Inc. v. Icarangal*,[29] that a rule which would authorize the mortgage-creditor to bring a personal action against the mortgage-debtor and simultaneously or successively another action against the mortgaged property, would result not only in multiplicity of suits so offensive to justice and obnoxious to law and equity, but would also subject the mortgage-debtor to the vexation of being sued in the place of his residence or of the residence of the mortgage-creditor, and then again in the place where the property lies. Hence, a remedy is deemed chosen upon the filing by the mortgage-creditor of the suit for collection or upon his filing of the complaint in an action for foreclosure of mortgage, pursuant to the provisions of Rule 68 of the Rules of Court.[30]

Proceeding therefrom, we shall now determine whether petitioner's filing of Criminal Cases No. 612-90 to 615-90 is equivalent to the filing of a collection suit for the recovery of the mortgage-loan which, pursuant to the aforesaid rule on the alternative remedies of collection and foreclosure, precludes the petitioner from subsequently availing himself of the action to foreclose the mortgaged property.

When petitioner filed Criminal Cases No. 612-90 to No. 615-90 for violation of Batas Pambansa Blg. 22 against respondent Eulogio, petitioner's civil action for the recovery of the amount of the dishonored checks was impliedly instituted therein pursuant to Section 1(b) of Rule 111 of the 2000 Rules on Criminal Procedure. In the case of *Hyatt Industrial Manufacturing Corporation v. Asia Dynamic Electrix Corporation*,[31] we elucidated thus:

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[29] 68 Phil. 287, 293-294 (1939).

[30] *Suico Rattan & Buri Interiors, Inc. v. Court of Appeals*, G.R. No. 138145, 15 June 2006, 490 SCRA 560, 582; *BPI Family Savings Bank, Inc. v. Vda. De Coscolluela*, G.R. No. 167724, 27 June 2006, 493 SCRA 472, 493-494.

[31] G.R. No. 163597, 29 July 2005, 465 SCRA 454, 459-461.

We agree with the ruling of the Court of Appeals that upon filing of the criminal cases for violation of B.P. 22, the civil action for the recovery of the amount of the checks was also impliedly instituted under Section 1(b) of Rule 111 of the 2000 Rules on Criminal Procedure. Under the present revised Rules, the criminal action for violation of B.P. 22 shall be deemed to include the corresponding civil action. The reservation to file a separate civil action is no longer needed. The Rules provide:

> Section 1. *Institution of criminal and civil actions. —*
>
> (a) x x x
>
> (b) The criminal action for violation of *Batas Pambansa Blg.* 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.

Upon filing of the aforesaid joint criminal and civil actions, the offended party shall pay in full the filing fees based on the amount of the check involved, which shall be considered as the actual damages claimed. Where the complaint or information also seeks to recover liquidated, moral, nominal, temperate or exemplary damages, the offended party shall pay additional filing fees based on the amounts alleged therein. If the amounts are not so alleged but any of these damages are subsequently awarded by the court, the filing fees based on the amount awarded shall constitute a first lien on the judgment.

Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with Section 2 of this Rule governing consolidation of the civil and criminal actions.

The foregoing rule was adopted from Circular No. 57-97 of this Court. It specifically states that the criminal action for violation of B.P. 22 shall be deemed to include the corresponding civil action. It also requires the complainant to pay in full the filing fees based on the amount of the check involved. Generally, no filing fees are required for criminal cases, but because of the inclusion of the civil action in complaints for violation of B.P. 22, the Rules require the payment of docket fees upon the filing of the complaint. This rule was enacted to help declog court dockets which are filled with

B.P. 22 cases as creditors actually use the courts as collectors. Because ordinarily no filing fee is charged in criminal cases for actual damages, the payee uses the intimidating effect of a criminal charge to collect his credit *gratis* and sometimes, upon being paid, the trial court is not even informed thereof. The inclusion of the civil action in the criminal case is expected to significantly lower the number of cases filed before the courts for collection based on dishonored checks. It is also expected to expedite the disposition of these cases. Instead of instituting two separate cases, one for criminal and another for civil, only a single suit shall be filed and tried. It should be stressed that the policy laid down by the Rules is to discourage the separate filing of the civil action. The Rules even prohibit the reservation of a separate civil action, which means that one can no longer file a separate civil case after the criminal complaint is filed in court. The only instance when separate proceedings are allowed is when the civil action is filed ahead of the criminal case. Even then, the Rules encourage the consolidation of the civil and criminal cases. We have previously observed that a separate civil action for the purpose of recovering the amount of the dishonored checks would only prove to be costly, burdensome and time-consuming for both parties and would further delay the final disposition of the case. This multiplicity of suits must be avoided. Where petitioners' rights may be fully adjudicated in the proceedings before the trial court, resort to a separate action to recover civil liability is clearly unwarranted. x x x.

The impliedly instituted civil action in Criminal Cases No. 612-90 to No. 615-90 for violation of Batas Pambansa Blg. 22 was, in effect, a collection suit or suit for the recovery of the mortgage-debt since the dishonored checks involved in the said criminal cases were issued by respondent Eulogio to petitioner for the payment of the same loan secured by the Deed of Real Estate Mortgage. As correctly found by the Olongapo City RTC, Branch 74, in its Decision dated 23 October 2001 in Civil Case No. 239-0-93:

After a careful scrutiny of the evidence adduced by the parties, this Court will not hesitate to state that —

— it is convinced that the parties had one and only transaction, the one constituted on August 17, 1989;

x x x x x x x x x

— the bouncing checks for which defendant was criminally charged with, were part of the checks issued to plaintiff in consideration of the mortgage debt secured on August 17, 1989;

— defendant's payment for those checks should appropriately be considered as payment of the mortgage debt, defendant's only obligation in favor of the plaintiff;

x x x x x x x x x

The Court has likewise taken note of the fact that plaintiff is a businessman by his admission, and the fact that the purpose of the defendants' seeing him on August 17, 1989 is in order to borrow money. The testimony of plaintiff that defendants are known to him cannot be related to any special occasion or event of meeting and later becoming friends, otherwise plaintiff could have stated so. His having known the defendants refer to only one occasion, that is, when the defendants came to his business office to obtain a loan. Anyone can do that. That person would then be his debtor. And so, defendants on August 17, 1989 became debtors of the plaintiff.

Why would defendants come to plaintiff if not for that purpose? Plaintiff is known in Olongapo City as a money lender. His business at 1670 Rizal Avenue, West Bajac-bajac is a money lending business.

As a lender, plaintiff's prime concern is profit. In order to attain this, he has to impose double measures to protect his interest. First, to ask the borrower to produce the title to the property intended as collateral. On this, the lender asks the borrower to execute a deed of mortgage. Plaintiff does not operate as a commercial bank neither as a rural bank, hence, he belongs to the group that allows a borrower to repay within a shorter period. **Secondly, to facilitate collection of the monthly repayments, the lender requires the borrower to issue checks for each month ensuing all in equal amounts. Usually, the checks so issued would also include the interest due each month, but in this case, there is no testimony to that effect. However, it can be assumed considering the subsequent acts of the parties.**

As soon as the borrower is able to satisfy the two conditions, he gets the desired loan. The lender then has the borrower's head, as well as his tail, in his hands, and that is the predicament where the defendants found themselves in. Defendants were, however, confronted with a problem. Someone else is after their property, a third person in whose favor they owe a demandable obligation.

This person is hot on pursuing the property to satisfy what defendants owe her. And defendants opened up and relayed their predicament to the plaintiff and the latter agreed.

Anxious that the defendants' property will eventually be attached or levied, leaving the loan he will give without any collateral, plaintiff agreed to simulate the amount in the Deed, to an amount higher that the third persons claim against the defendants but at the same time he required from the defendants checks to cover the ₱200,000.00 loan. **Defendant Eulogio testified that he issued the checks for the amount of ₱200,000.00 and plaintiff did not deny this. x x x.**[32]

Consequently, when petitioner filed Criminal Cases No. 612-90 to No. 615-90, he was deemed to have already availed himself of the remedy of collection suit. Following the rule on the alternative remedies of a mortgage-creditor, petitioner is barred from subsequently resorting to an action for foreclosure.

However, it should be stressed that respondents have not yet fully paid the loan. In fact, respondents themselves admitted that they still owe petitioner the balance of the loan.[33]

To allow respondents to benefit from the loan without paying its whole amount to petitioner, and to preclude the petitioner from recovering the remaining balance of the loan, would constitute unjust enrichment at the expense of petitioner. The principle that no person may unjustly enrich himself at the expense of another (*Nemo cum alterius detrimento locupletari potest*) is embodied in Article 22 of the New Civil Code, to wit:

ART. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

As can be gleaned from the foregoing, there is unjust enrichment when (1) a person is unjustly benefited, and (2) such benefit is

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[32] Records, pp. 292-294.

[33] Records, p. 297.

derived at the expense of or with damages to another.[34] The main objective of the principle of unjust enrichment is to prevent one from enriching oneself at the expense of another.[35] It is commonly accepted that this doctrine simply means that a person shall not be allowed to profit or enrich himself inequitably at another's expense.[36] One condition for invoking this principle is that the aggrieved party has no other action based on contract, quasi-contract, crime, quasi-delict or any other provision of law.[37]

The principle of unjust enrichment obliges the respondents to pay the remaining balance of the loan plus interest. Relieving the respondents of their obligation to pay the balance of the loan would, indeed, be to sanction unjust enrichment in favor of respondents and cause unjust poverty to petitioner.

In the exercise of our mandate as a court of justice and equity,[38] we hold, *pro hac vice*, that respondents are still liable to pay the remaining balance of the loan.

We, nonetheless, do not subscribe to the computations made by the RTC. In *Eastern Shipping Lines, Inc. v. Court of Appeals*,[39] we ruled that when the obligation is breached and it consists in the payment of a sum of money such as a loan, the interest due should be that which may have been stipulated in writing. We also held that the interest due shall itself earn legal interest from the time it is demanded, and that in the

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[34] *Tamio v. Ticson*, G.R. No. 154895, 18 November 2004, 443 SCRA 44, 53; *H.L. Carlos Construction, Inc. v. Marina Properties Corporation*, 466 Phil. 182, 197 (2004).

[35] *P.C. Javier & Sons, Inc. v. Court of Appeals*, G.R. No. 129552, 29 June 2005, 462 SCRA 36, 47.

[36] *Id*.

[37] *Reyes v. Lim*, 456 Phil. 1, 13 (2003).

[38] *National Development Company v. Madrigal Wan Hai Lines Corporation*, 458 Phil. 1038, 1055 (2003).

[39] G.R. No. 97412, 12 July 1994, 234 SCRA 78, 95-97.

absence of stipulation as to the payment of interest, the rate of interest shall be 12% per annum **to be computed from default, *i.e.*, from judicial or extra-judicial demand**. We further declared that when the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, regardless of whether it is a loan/forbearance of money case or not, shall be 12% per annum from such finality until its satisfaction, this *interim* period being deemed to be then equivalent to a forbearance of credit.

In the instant case, there was no written agreement as to the payment of interest on the mortgage-loan between petitioner and respondents. The rate of interest, therefore, is 12% per annum, to be computed from the time an extra-judicial demand was made by the petitioner on 30 July 1992.[40]

We also found that an amount of ₱107,000.00 out of the total loan of ₱200,000.00 was already paid by the respondents. Thus, only the balance of ₱93,000.00 should earn a legal interest of 12% per annum from the time of the extra-judicial demand on 30 July 1992. In addition, a legal interest of 12% per annum should also be imposed to be computed from the finality of this Decision up to its satisfaction.

WHEREFORE, the instant Petition is hereby *GRANTED*. The Decision of the Court of Appeals dated 13 September 2005 in CA-G.R. CV No. 79971 is hereby *REVERSED* and *SET ASIDE*. Respondents Eulogio and Teresita Santos are hereby *ORDERED* to pay petitioner Antonio Chieng, substituted by William Chieng, the balance of the loan amounting to ₱93,000.00, plus legal interest of 12% per annum from 30 July 1992 up to the finality of this Decision, and an additional legal interest of 12% per annum from the finality of this Decision up to its satisfaction. No costs.

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[40] The RTC misapplied the reckoning period of interest by holding that the interest begins to accrue, not from the date of the extra-judicial demand on 30 July 1992, but from the time the loan was obtained by the respondents on 17 August 1989.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.*, concur.

THIRD DIVISION

[G.R. No. 171858. August 31, 2007]

REMINGTON INDUSTRIAL SALES CORPORATION, *petitioner, vs.* **CHINESE YOUNG MEN'S CHRISTIAN ASSOCIATION OF THE PHIL. ISLANDS, doing business under the name MANILA DOWNTOWN YMCA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; AN ACTION AGAINST ONE WHO UNLAWFULLY WITHHOLDS POSSESSION AFTER THE EXPIRATION OR TERMINATION OF HIS RIGHT TO HOLD POSSESSION BY VIRTUE OF ANY CONTRACT, EXPRESS OR IMPLIED, BROUGHT WITHIN ONE YEAR FROM THE DATE OF THE LAST DEMAND.— A case for *Unlawful Detainer* is an action against one who *unlawfully withholds possession* after the expiration or termination of his right to hold possession by virtue of any contract, express or implied, brought within one year from the date of the last demand. From the allegations of the respondent, the case for unlawful detainer is grounded on three acts of petitioner, *i.e.*, using the premises as passageway, the continued padlocking of the premises and non-turnover of keys.

2. CIVIL LAW; CONTRACTS; LEASE; OBLIGATIONS OF THE LESSEE; OBLIGATION TO DELIVER THE THING WHICH IS THE OBJECT OF THE CONTRACT UPON ITS TERMINATION.— In a contract of lease, the lessor binds

himself to give the enjoyment or use of a thing to the lessee for a price certain, and for a period which may be definite or indefinite. The lessor is obliged to deliver the thing which is the object of the contract in such condition as to render it fit for the use intended and upon its termination, the lessee shall return the thing just as he received it, save what has been lost or impaired by the lapse of time, or by ordinary wear and tear, or from an inevitable cause.

3. ID.; ID.; ID.; ID.; PETITIONER FAILED TO COMPLY WITH ITS OBLIGATION TO RETURN THE PREMISES TO RESPONDENT; IN ORDER TO RETURN THE THING LEASED TO THE LESSOR, IT IS NOT ENOUGH THAT THE LESSEE VACATES IT; IT IS NECESSARY THAT HE PLACES THE THING AT THE DISPOSAL OF THE LESSOR, SO THAT THE LATTER CAN RECEIVE IT WITHOUT ANY OBSTACLE.— The filing of the *Formal Surrender of Leased Premises* and the actual emptying of the premises constitute constructive delivery of possession. Hence, the contract of lease was terminated on July 1, 1998 and it is incumbent upon petitioner, as lessee, to comply with its obligation to return the thing leased to the lessor and vacate the premises. However, petitioner failed to comply with its obligation to return the premises to respondent. In order to return the thing leased to the lessor, it is not enough that the lessee vacates it. It is necessary that he places the thing at the disposal of the lessor, so that the latter can receive it without any obstacle. He must return the keys and leave no sub-lessees or other persons in the property; otherwise he shall continue to be liable for rents.

4. ID.; ID.; ID.; ID.; PETITIONER'S CONSTRUCTIVE DELIVERY OF THE PREMISES DID NOT PRODUCE THE EFFECT OF ACTUAL DELIVERY TO RESPONDENT-LESSOR; DESPITE THE TERMINATION OF THE LEASE, RESPONDENT WAS NEVER IN POSSESSION OF THE PREMISES AND WAS DEPRIVED TO USE THE SAME AS IT PLEASES.— Petitioner's constructive delivery of the premises did not produce the effect of actual delivery to the respondent. To be effective, it is necessary that the person to whom the delivery is made must be able to take control of it without impediment especially from the person who supposedly made such delivery. In the case at bar, records show that despite

the termination of the lease, respondent was never in possession of the premises because it was padlocked. Respondent was not given the key to the premises hence it was deprived to use the same as it pleases. Although the use of the premises as passageway was justified, petitioner cannot deprive respondent the use of the said premises by having it padlocked. Other than simply repudiating the demand for back rentals, petitioner should have given respondent a set of keys so it can enter the premises without exposing the property to security risks. Prudence dictates the delivery of the keys to respondent to dispel any doubt that petitioner is using the premises other than as a mere passageway and that it has never withheld possession of the same to the respondent. Petitioner had several opportunities to give respondent access to the premises starting from the time it sent its first demand to pay back rentals until the complaint for ejectment was filed but it never availed of these opportunities. From the foregoing, it is apparent that petitioner's constructive delivery did not effectively transfer possession of the leased premises to respondent. From the time the lease was terminated, petitioner unlawfully withheld possession of the leased premises from respondent. However, it appears that petitioner had moved out from respondent's building on March 12, 2004, as stated in its Manifestation before Branch 25 of the RTC-Manila.

5. ID.; ID.; ID.; ID.; RESPONDENT-LESSOR IS ENTITLED TO A REASONABLE COMPENSATION FOR PETITIONER'S CONTINUED OCCUPANCY OF THE PREMISES DESPITE TERMINATION THEREOF; AMOUNT OF REASONABLE COMPENSATION.— Respondent is entitled to a reasonable compensation for petitioner's continued occupancy of the premises despite termination of the lease from July 1, 1998 to March 12, 2004. Under Section 17, Rule 70 of the Rules of Court, the trial court may award reasonable compensation for the use and occupation of the leased premises after the same is duly proved. In *Asian Transmission Corporation v. Canlubang Sugar Estates*, the Court ruled that the reasonable compensation contemplated under said Rule partakes of the nature of actual damages based on the evidence adduced by the parties. The Court also ruled that "fair rental value is defined as the amount at which a willing lessee would pay and a willing lessor would receive for the use of a certain property, neither

being under compulsion and both parties having a reasonable knowledge of all facts, such as the extent, character and utility of the property, sales and holding prices of similar land and the highest and best use of the property." The reasonable compensation for the leased premises fixed by the trial court based on the stipulated rent under the lease contract which is ₱22,531.00, must be equitably reduced in view of the circumstances attendant in the case at bar. First, it should be noted that the premises was used only as a means of passageway caused by respondent's failure to provide sufficient passageway towards the second floor unit it also occupies. Second, respondent was negligent because it waited for more than a year before it actually demanded payment for back rentals as reflected in its Statement of Accounts dated September 7, 1999. When both parties to a transaction are mutually negligent in the performance of their obligations, the fault of one cancels the negligence of the other and, as in this case, their rights and obligations may be determined equitably under the law proscribing unjust enrichment. From the foregoing, we find the amount of ₱11,000.00 a month equitable and reasonable compensation for petitioner's continued use of the premises.

APPEARANCES OF COUNSEL

Roberto A. Abad for petitioner.
Gancayco Balasbas & Associates Law Offices for respondent.

R E S O L U T I O N

YNARES-SANTIAGO, *J.*:

For resolution is the motion for reconsideration filed by respondent Chinese Young Men's Christian Association of the Philippine Islands (YMCA) of the Decision dated January 22, 2007, the dispositive portion of which states:

WHEREFORE, the instant petition is GRANTED. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 88599 are SET ASIDE. The Decision of the Regional Trial Court of Manila, Branch 25, in Civil Case No. 03-107655, dismissing the unlawful detainer case for lack of merit, is hereby REINSTATED and AFFIRMED.

SO ORDERED.[1]

Respondent YMCA owns a two storey-building in Binondo, Manila. It leased Unit No. 963 located at the second floor to petitioner RISC from December 1, 1993 to November 30, 1995. It also leased to petitioner RISC Unit No. 966 located at the ground floor from December 1, 1995 to November 30, 1997, while the adjoining unit or Unit 964 was leased to petitioner's sister company RSC. Petitioner removed the partition between Units 964 and 966 and used the combined areas as its office, hardware store and display shop for steel products. It was also used as a passageway to Unit 963, which was utilized by petitioner as its staff room.

On February 27, 1997, respondent formally terminated the lease over the second floor unit and gave RISC until March 31, 1997 to vacate the premises. Before the said period ended, RISC filed an action for the *Fixing of Lease Period* over the said unit.[2] Subsequently, YMCA filed an action for *Ejectment*[3] against petitioner. The two cases were consolidated before Branch 26 of the Metropolitan Trial Court of Manila (MeTC-Manila).

Meanwhile, petitioner filed a *Petition for Consignation of Rentals*[4] alleging that respondent refused to receive payments of the rentals for the ground floor units without just cause. During the hearing, petitioner filed a *Formal Surrender of the Leased Premises*[5] to which respondent manifested that it does not object to the turn over or the surrender of the leased premises.[6] On July 9, 1998, after petitioner delivered two checks covering the rents for the ground floor units, the trial court issued an

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[1] *Rollo*, p. 286.

[2] Civil Case No. 154969-CV, March 24, 1997.

[3] Civil Case No. 155083-CV, April 8, 1997.

[4] Civil Case No. 155897-CV.

[5] *Rollo*, pp. 45-46.

[6] *Id.* at 47-48.

Order declaring the consignation case closed. However, petitioner continued to use the premises as passageway since it is the only means of ingress and egress to the second floor unit it occupies. RISC kept the premises padlocked allegedly as a security measure and failed to give YMCA the keys to the premises.

On August 11, 1998, the trial court hearing the consolidated cases rendered a Decision extending the lease period for three years from finality of the Decision and dismissed YMCA's complaint for ejectment. Petitioner filed a Motion to Constitute Passageway alleging that it has no means of ingress or egress to its second floor Unit. An ocular inspection was conducted on February 5, 1999. The Commissioner's Report revealed that petitioner is still in possession of the keys to the two ground floor units because YMCA failed to provide an adequate passageway to the second floor.[7] Thereafter, YMCA manifested its willingness to constitute a passageway provided Remington will surrender possession of the ground floor unit.[8]

Since respondent was never in actual possession of the premises at the ground floor, it demanded payment from the respective lessees rentals in arrears. Respondent sent Statements of Account dated September 7, 1999 and December 31, 1999 which petitioner repudiated. Finally, on January 18, 2000, respondent sent petitioner a *Notice of Termination of Lease* with demand to vacate and pay rents from July 1998 to December 1999. This was followed by Statements of Account dated July 28, 2000 and August 7, 2000 according to which the rental arrears amounted to ₱571,153.85.

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[7] *Id.* at 61-62.

[8] Without resolving the motion to constitute passageway, the consolidated cases was elevated to the RTC which affirmed the MTC Branch 26 ruling extending the lease but for a period of five years and granted the motion to constitute passageway. However, the Court of Appeals, in its Decision dated September 19, 2003, ruled in favor of YMCA and ordered RISC to vacate the premises. On May 21, 2004, the Court of Appeals denied RISC's motion for reconsideration in accordance with its manifestation that it had completely vacated the premises which rendered the case moot and academic.

On October 26, 2000, respondent filed two ejectment cases against petitioner before the MeTC of Manila. The ejectment case against RSC over ground floor Unit No. 964 was raffled to Branch 20 of the MeTC-Manila which rendered its Decision on November 5, 2001 ordering RSC to vacate the premises and to pay back rents. However, upon appeal, the RTC reversed the Decision of the MeTC and dismissed the complaint. YMCA appealed to the Court of Appeals which dismissed the case on technical grounds and is now pending appeal before this Court.

The ejectment case against petitioner RISC over ground floor Unit No. 966, the subject matter of the case at bar, was raffled to Branch 17 of the MeTC-Manila.[9] In its Decision dated June 20, 2003, it ordered petitioner RISC to vacate the premises and to pay back rents.[10] Consequently, petitioner appealed to the RTC which ruled in its favor dismissing the complaint for ejectment for lack of cause of action.[11] Thereafter, YMCA appealed to the Court of Appeals which reversed the RTC and reinstated the Decision of the MeTC.

The Court of Appeals decided in favor of respondent YMCA ruling that it was effectively deprived of possession of the subject units since RISC failed to surrender possession despite manifesting its willingness to do so, by padlocking the subject premises. It did not lend credence to petitioner's claim that the padlocking of the premises was for self-preservation and that it is the only means of ingress and egress to its second floor unit since RISC continued to exercise control over the subject premises. The appellate court also rejected the RTC's observation that YMCA was not prevented from taking control of the disputed units for it could have easily forced open the padlocks. It maintained that ejectment is the legal alternative as against the use of force and breaches of the peace.

RISC thus filed the instant petition for review on *certiorari* assailing the Decision of the Court of Appeals. In the assailed

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[9] Civil Case No. 168628-CV.

[10] *Rollo*, pp. 78-82.

[11] *Id.* at 102-110.

Decision, we ruled that petitioner has effectively surrendered possession of Units 964 and 966; that the filing of petitioner's *Formal Surrender of the Leased Premises* constitute constructive delivery of the said premises effective July 1, 1998 as it thereafter emptied and vacated the premises; and that respondent could have easily removed the padlock and take legal and actual possession of the premises.

In the instant motion for reconsideration, respondent argues that petitioner has not constructively delivered the possession of the ground floor units despite the filing in the consignation case of the *Formal Surrender of the Leased Premises* and after it has emptied and vacated the leased premises on July 1, 1998. Respondent contends that petitioner's use of the premises as passageway, the continued padlocking of the gates and non-turnover of keys constitute unlawful withholding of the possession of the subject premises for which petitioner should be liable.

We grant the motion.

A case for *Unlawful Detainer* is an action against one who *unlawfully withholds possession* after the expiration or termination of his right to hold possession by virtue of any contract, express or implied, brought within one year from the date of the last demand.[12] From the allegations of the respondent, the case for unlawful detainer is grounded on three acts of petitioner, *i.e.*, using the premises as passageway, the continued padlocking of the premises and non-turnover of keys.

In a contract of lease, the lessor binds himself to give the enjoyment or use of a thing to the lessee for a price certain, and for a period which may be definite or indefinite.[13] The lessor is obliged to deliver the thing which is the object of the contract in such condition as to render it fit for the use intended[14] and upon its termination, the lessee shall return the thing just as he received it, save what has been lost or impaired by the

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[12] RULES OF COURT, Rule 70, Section 1.

[13] CIVIL CODE, Article 1643.

[14] CIVIL CODE, Article 1654 (1).

lapse of time, or by ordinary wear and tear, or from an inevitable cause.[15]

The filing of the *Formal Surrender of Leased Premises* and the actual emptying of the premises constitute constructive delivery of possession. Hence, the contract of lease was terminated on July 1, 1998 and it is incumbent upon petitioner, as lessee, to comply with its obligation to return the thing leased to the lessor and vacate the premises.

However, petitioner failed to comply with its obligation to return the premises to respondent. In order to return the thing leased to the lessor, it is not enough that the lessee vacates it. It is necessary that he places the thing at the disposal of the lessor, so that the latter can receive it without any obstacle. He must return the keys and leave no sub-lessees or other persons in the property; otherwise he shall continue to be liable for rents.[16]

Petitioner's constructive delivery of the premises did not produce the effect of actual delivery to the respondent. To be effective, it is necessary that the person to whom the delivery is made must be able to take control of it without impediment especially from the person who supposedly made such delivery.[17] In the case at bar, records show that despite the termination of the lease, respondent was never in possession of the premises because it was padlocked. Respondent was not given the key to the premises hence it was deprived to use the same as it pleases.

Although the use of the premises as passageway was justified, petitioner cannot deprive respondent the use of the said premises by having it padlocked. Other than simply repudiating the demand for back rentals, petitioner should have given respondent a set of keys so it can enter the premises without exposing the property

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[15] CIVIL CODE, Article 1665.

[16] Arturo M. Tolentino, Vol. 2, © 1992, Central Professional Books, Inc., Quezon City, pp. 603-604.

[17] See *A. A. Addison v. Felix and Tioco*, 38 Phil. 404, 408 (1918).

to security risks. Prudence dictates the delivery of the keys to respondent to dispel any doubt that petitioner is using the premises other than as a mere passageway and that it has never withheld possession of the same to the respondent. Petitioner had several opportunities to give respondent access to the premises starting from the time it sent its first demand to pay back rentals until the complaint for ejectment was filed but it never availed of these opportunities.

From the foregoing, it is apparent that petitioner's constructive delivery did not effectively transfer possession of the leased premises to respondent. From the time the lease was terminated, petitioner unlawfully withheld possession of the leased premises from respondent.[18] However, it appears that petitioner had moved out from respondent's building on March 12, 2004, as stated in its Manifestation[19] before Branch 25 of the RTC-Manila. Respondent is entitled to a reasonable compensation for petitioner's continued occupancy of the premises despite termination of the lease from July 1, 1998 to March 12, 2004.

Under Section 17, Rule 70 of the Rules of Court, the trial court may award reasonable compensation for the use and occupation of the leased premises after the same is duly proved. In *Asian Transmission Corporation v. Canlubang Sugar Estates*,[20] the Court ruled that the reasonable compensation contemplated under said Rule partakes of the nature of actual damages based on the evidence adduced by the parties. The Court also ruled that "fair rental value is defined as the amount at which a willing lessee would pay and a willing lessor would receive for the use of a certain property, neither being under compulsion and both parties having a reasonable knowledge of all facts, such as the extent, character and utility of the property,

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[18] See *Josefa v. San Buenaventura*, G.R. No. 163429, March 3, 2006.

[19] *Rollo*, pp. 95-97, In its Manifestation before Branch 25 of the RTC-Manila, petitioner stated that it had already surrendered all of the keys to respondent's lawyer on said date and has fully vacated both the ground floor and second floor units of respondent's building.

[20] G.R. No. 142383, August 29, 2003, 410 SCRA 202.

sales and holding prices of similar land and the highest and best use of the property."[21]

The reasonable compensation for the leased premises fixed by the trial court based on the stipulated rent under the lease contract which is ₱22,531.00, must be equitably reduced in view of the circumstances attendant in the case at bar. First, it should be noted that the premises was used only as a means of passageway caused by respondent's failure to provide sufficient passageway towards the second floor unit it also occupies. Second, respondent was negligent because it waited for more than a year before it actually demanded payment for back rentals as reflected in its Statement of Accounts dated September 7, 1999. When both parties to a transaction are mutually negligent in the performance of their obligations, the fault of one cancels the negligence of the other and, as in this case, their rights and obligations may be determined equitably under the law proscribing unjust enrichment.[22] From the foregoing, we find the amount of ₱11,000.00 a month equitable and reasonable compensation for petitioner's continued use of the premises.

WHEREFORE, the motion for reconsideration is *GRANTED*. The Decision dated January 22, 2007 is *VACATED* and a new judgment is entered *REINSTATING* and *AFFIRMING* the Decision of the Metropolitan Trial Court of Manila in Civil Case No. 168628-CV with the *MODIFICATION* that petitioner is ordered to *PAY* respondent ₱11,000.00 a month from July 1, 1998 until March 12, 2004 as reasonable compensation for the use of the premises.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.*, concur.

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[21] *Josefa v. San Buenaventura, supra.*

[22] *Rodzssen Supply Co., Inc. v. Far East Bank & Trust Co.*, 409 Phil. 706, 715 (2001).

THIRD DIVISION

[G.R. No. 173797. August 31, 2007]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EMMANUEL ROCHA *alias* "Nopoy" and RUEL RAMOS *alias* "Aweng,"** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; THE GRANTING OF A MOTION TO WITHDRAW APPEAL IS ADDRESSED TO THE SOUND DISCRETION OF THE COURT.— Since the case of accused-appellants is not subject to the mandatory review of this Court, the rule that neither the accused nor the courts can waive a mandatory review is not applicable. Consequently, accused-appellants' separate motions to withdraw appeal may be validly granted. The granting of a Motion to Withdraw Appeal, however, is addressed to the sound discretion of the Court. After a case has been submitted to the court for decision, the appellant cannot, **at his election**, withdraw the appeal. In *People v. Casido*, we denied the accused-appelant's Urgent Motion to Withdraw Appeal therein: It is then clear that the conditional pardons separately extended to the accused-appellants were issued during the pendency of their instant appeal. In the resolution of 31 January 1995 in *People vs. Hinlo*, **this Court categorically declared the "practice of processing applications for pardon or parole despite pending appeals" to be "in clear violation of law**." Earlier, in our resolution of 21 March 1991 in *People vs. Sepada*, **this Court signified in no uncertain terms the necessity of a final judgment before parole or pardon could be extended.** Having observed that the pronouncements in the aforementioned cases remained unheeded, either through deliberate disregard or erroneous applications of the *obiter dictum* in *Monsanto vs. Factoran* or the ruling in *People vs. Crisola*, this Court, in its resolution of 4 December 1995 in *People vs. Salle*, explicitly declared: We now declare that the "conviction by final judgment" limitation under Section 19, Article VII of the present Constitution prohibits the grant of pardon, whether full or conditional, to an accused during the pendency of his appeal from his conviction by the trial court.

Any application therefor, if one is made, should not be acted upon or the process toward its grant should not be begun unless the appeal is withdrawn. Accordingly, the agencies or instrumentalities of the Government concerned must require proof from the accused that he has not appealed from his conviction or that he has withdrawn his appeal. Such proof may be in the form of a certification issued by the trial court or the appellate court, as the case may be. The acceptance of the pardon shall not operate as an abandonment or waiver of the appeal, and the release of an accused by virtue of a pardon, commutation of sentence, or parole before the withdrawal of an appeal shall render those responsible therefor administratively liable. Accordingly, those in custody of the accused must not solely rely on the pardon as a basis for the release of the accused from confinement. x x x This rule shall fully bind pardons extended after 31 January 1995 during the pendency of the grantee's appeal. It follows then that the conditional pardons granted in this case to accused-appellants William Casido and Franklin Alcorin are void for having been extended on 19 January 1996 during the pendency of their instant appeal.

2. ID.; ID.; ID.; WITHDRAWAL OF APPEAL; NO REASON TO DENY ACCUSED-APPELLANTS' MOTIONS TO WITHDRAW THEIR APPEAL IN CASE AT BAR.— In the case at bar, however, we see no reason to deny accused-appellants' Motions to Withdraw Appeal. There is no showing that accused-appellants had already applied for parole at the time of the filing of their Motions to Withdraw Appeal. On the contrary, they stated in their motions that they merely intend to apply for the same. Plaintiff-appellee claims that the present Motion to Withdraw Appeal is actually a scheme to evade the penalty of *reclusion perpetua* and is meant to trifle with our judicial system. Plaintiff-appellee, however, does not explain how the withdrawal of appeal can be used by accused-appellants for these purposes. It seems that plaintiff-appellee is expecting that the granting of the Motions to Withdraw Appeal would nullify the Court of Appeals Decision, on the understanding that the Court of Appeals cannot enter judgments on cases remanded to them pursuant to *Mateo*. Such conclusion, however, is applicable only where the death penalty is imposed. Rule 124, Section 13 of the Rules of Court, which was likewise amended in A.M. No. 00-5-03-SC pursuant to *Mateo*, provides: Section 13. *Certification or appeal of case to the Supreme*

Court. — (a) Whenever the Court of Appeals finds that the penalty of death should be imposed, the court shall render judgment but refrain from making an entry of judgment and forthwith certify the case and elevate its entire record to the Supreme Court for review. (b) Where the judgment also imposes a lesser penalty for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more severe offense for which the penalty of death is imposed, and the accused appeals, the appeal should be included in the case certified for review to the Supreme Court. (c) In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

3. ID.; ID.; ID.; THE COURT CANNOT REVIEW, MUCH LESS PREEMPT, THE EXERCISE OF EXECUTIVE CLEMENCY UNDER THE PRETEXT OF PREVENTING THE ACCUSED FROM EVADING THE PENALTY OF *RECLUSION PERPETUA* OR TRIFLING WITH THE JUDICIAL SYSTEM; CLEMENCY IS NOT A FUNCTION OF THE JUDICIARY, IT IS AN EXECUTIVE FUNCTION.— This Court cannot review, much less preempt, the exercise of executive clemency under the pretext of preventing the accused from evading the penalty of *reclusion perpetua* or from trifling with our judicial system. Clemency is not a function of the judiciary; it is an executive function. Thus, it is the President, not the judiciary, who should exercise caution and utmost circumspection in the exercise of executive clemency in order to prevent a derision of the criminal justice system. We cannot and shall not deny accused-appellants' Motions to Withdraw Appeal just because of their intention of applying for executive clemency. With the Constitution bestowing upon the Executive the power to grant clemency, it behooves the Court to pass the ball to the President and let her determine the fate of accused-appellants.

4. ID.; ID.; ID.; MANDATORY REVIEW BY THE COURT IS ONLY REQUIRED FOR CASES WHERE THE PENALTY IMPOSED IS DEATH; WHERE THE PENALTY IMPOSED IS *RECLUSION PERPETUA* OR LIFE IMPRISONMENT, A REVIEW OF THE TRIAL COURT'S DECISION IS CONDUCTED ONLY WHEN THE ACCUSED FILES A

NOTICE OF APPEAL.— In sum, the mandatory review by this Court is only required for cases where the penalty imposed is death. Where the penalty imposed is *reclusion perpetua* or life imprisonment, a review of the trial court decision is conducted only when the accused files a notice of appeal. Neither the Decision of this Court in *Mateo* nor the abolition of the death penalty has changed this. As the penalty imposed by the trial court and the Court of Appeals in the case at bar is *reclusion perpetua*, the review by this Court is not mandatory and, therefore, the accused-appellants can validly withdraw their appeal. The granting of a Motion to Withdraw Appeal is addressed to the sound discretion of the Court. In the case at bar, we see no reason to deny accused-appellants' Motion to Withdraw Appeal. Plaintiff-appellee's allegation that the Motion was for the purpose of evading the penalty of *reclusion perpetua* and trifling with our judicial system is unsubstantiated, as the Court of Appeals' imposition of *reclusion perpetua*, unlike an imposition of the death penalty, may be entered by said appellate court even without another review by this Court. Neither should we deny the Motions just because of accused-appellants' intention to apply for executive clemency, since the granting of such executive clemency is within the prerogative of the Executive Department, and not of this Court.

5. CRIMINAL LAW; INDETERMINATE SENTENCE LAW; DOES NOT APPLY TO PERSONS CONVICTED OF OFFENSES PUNISHABLE WITH DEATH PENALTY OR LIFE IMPRISONMENT; PENALTY OF *RECLUSION PERPETUA* IS CONSIDERED SYNONYMOUS TO LIFE IMPRISONMENT FOR PURPOSES OF THE INDETERMINATE SENTENCE LAW.— Plaintiff-appellee must have likewise observed that accused-appellants intend to apply not only for parole, but also for executive clemency. This is shown by the Manifestation and Motion to Withdraw Appeal of accused-appellant Ramos, where he affirmed that he intends to follow his co-accused who had already "applied for executive clemency to avail of parole." It should be kept in mind that accused-appellants could not avail themselves of parole if their appeal is dismissed, unless they also apply for executive clemency and ask for the commutation of their *reclusion perpetua* sentences. Republic Act No. 4108, as amended, otherwise known as the Indeterminate Sentence Law, does not apply to persons convicted of offenses punishable with death penalty or life imprisonment.

> In several cases, we have considered the penalty of *reclusion perpetua* as synonymous to life imprisonment for purposes of the Indeterminate Sentence Law, and ruled that said law does not apply to persons convicted of offenses punishable with the said penalty. As further discussed by Associate Justice Dante Tinga in his Concurring Opinion in *People v. Tubongbanua*: Parole is extended only to those convicted of divisible penalties. *Reclusion perpetua* is an indivisible penalty, with no minimum or maximum period. Under Section 5 of the Indeterminate Sentence Law, it is after "any prisoner shall have served the minimum penalty imposed on him," that the Board of Indeterminate Sentence may consider whether such prisoner may be granted parole. There being no "minimum penalty" imposable on those convicted to *reclusion perpetua*, it follows that even prior to the enactment of Rep. Act No. 9346, persons sentenced by final judgment to *reclusion perpetua* could not have availed of parole under the Indeterminate Sentence Law.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for R. Ramos.
Bienvenido P. Tomboc for E. Rocha.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

On 12 May 1994, an Information was filed against herein accused-appellants Emmanuel Rocha *y* Yeban *alias* Nopoy (Rocha) and Ruel Ramos *y* Alcober *alias* Aweng (Ramos), along with Romeo Trumpeta *y* Aguaviva (Trumpeta), in the Regional Trial Court (RTC) of Quezon City, Branch 215. Another accused, Eustaquio Cenita *y* Omas-As (Cenita), was impleaded in the Amended Information. The Amended Information alleged a crime committed as follows:

> That on or about the 28th day of September, 1993, in Quezon City, Philippines, the above-named accused, conspiring and confederating with several others, whose true identities, whereabouts and personal

circumstances have not as yet been ascertained and mutually helping one another, all armed with high power (sic) guns, with intent to gain and by means of violence and intimidation against person (sic), did then and there, wilfully, unlawfully and feloniously rob the Bank of the Philippine Islands (BPI) represented by ALEX BABASA, JR. in the following manner, to wit: on the date and place aforementioned, while Alex Babasa, Jr. was placing the money contained in two (2) duffle bags inside the vault of the armored van, with the two (2) security guards on the watch, the said accused pursuant to their conspiracy and with intent to kill, opened fire at them hitting S/G ROGER TARROQUIN and S/G TITO HOMERES, thereby inflicting upon them serious and mortal wounds which were the immediate cause of their death and thereafter, accused took, robbed and carried away the said two (2) duffle bags containing ₱1.5 million pesos, Philippine Currency, and the 12 gauge shotgun with SN 1048245 worth ₱11,000.00 issued to S/G Roger Tarroquin and the cal. 38 revolver with SN 23238 worth ₱6,500.00 issued to S/G Tito Henares and owned by Eaglestar Security Services, Incorporated to the damage and prejudice of the offended parties in the amount aforementioned and to the heirs of the said victims.[1]

On 6 February 1996, the RTC promulgated its Decision in Criminal Case No. Q-93-49474 finding Trumpeta, Cenita and herein accused-appellants Rocha and Ramos guilty of the crime of Robbery with Homicide, and imposing upon them the penalty of *reclusion perpetua*. The RTC disposed of the case as follows:

> WHEREFORE, the accused ROMEO TRUMPETA *y* AGUAVIVA, EMMANUEL RIOCHA *y* YEBAN, RUEL RAMOS *y* ALCOBER and EUSTAQUIO CENITA *y* OMAS-AS, are found GUILTY of the crime of Robbery With Homicide as charged, the prosecution having proven their guilt beyond reasonable doubt. In accordance with Article 294 of the Revised Penal Code, paragraph 1 thereof, all of the above-named accused are sentenced to suffer the penalty of *reclusion perpetua* with all the accessory penalties attendant thereto. They could have been sentenced to death but for the fact that the death penalty was suspended, then the crime was committed.[2]

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[1] CA *rollo*, p. 51.

[2] The Information stated that the crime was committed on 28 September 1993 before the effectivity of Republic Act No. 7659 (the Heinous Crime Law) on 31 December 1993; *People v. Salazar*, 334 Phil. 556, 574 (1997).

In addition, all the accused are jointly and severally ordered to pay the heirs of deceased Roger Tarroquin and Tito Henares ₱50,000.00 each, respectively. Further, all the accused are jointly and severally ordered to indemnify the Bank of the Philippine Islands the sum of ₱1,600,000. With costs against the accused.[3]

Trumpeta, Cenita and accused-appellants appealed to this Court. On 13 September 1999, however, Trumpeta filed an Urgent Motion to Withdraw Appeal,[4] which was granted by this Court on 11 October 1999.[5] On 29 May 2001, Cenita filed his own Urgent Motion to Withdraw Appeal,[6] which was granted by this Court on 15 August 2001.[7]

On 25 August 2004, pursuant to the Decision of this Court in *People v. Mateo*,[8] we transferred the case to the Court of Appeals.

On 31 March 2006, the Court of Appeals promulgated its Decision[9] in CA-G.R. CR H.C. No. 01765 affirming with clarification the Decision of the RTC, thus:

Wherefore, the appealed Decision is AFFIRMED with CLARIFICATION. Appellants Emmanuel Rocha @ "Nopoy" and Ruel Ramos @ "Aweng" are found guilty as co-principals in the crime of Robbery with Homicide and each is hereby sentenced to suffer the penalty of *reclusion perpetua*. Each one of them is ordered to pay civil indemnity in the amount of [Fifty Thousand Pesos] (₱50,000.00) each to the heirs of Roger Tarroquin and Tito Homeres. All other aspects of the appealed Decision are MAINTAINED.[10]

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[3] CA *rollo*, p. 70.

[4] *Id*. at 243.

[5] *Id*. at 246.

[6] *Id*. at 264.

[7] *Id*. at 276.

[8] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[9] Penned by Associate Justice Magdangal M. de Leon with Associate Justices Conrado M. Vasquez, Jr. and Mariano C. del Castillo, concurring; *rollo*, pp. 3-23.

[10] *Id*. at 22.

On 18 April 2006, accused-appellants Rocha and Ramos, through the Public Attorney's Office (PAO), appealed the Decision of the Court of Appeals to this Court.

On 13 September 2006, this Court required the parties to submit their respective supplemental briefs.

On 14 November 2006, accused-appellant Rocha, having been detained for more than seventeen years, filed a Motion to Withdraw Appeal, stating that he intends to apply for parole. He also manifested that his co-accused on this case, Romeo Trumpeta and Estaquio Cenita, had already withdrawn their appeal.

On 14 February 2007, plaintiff-appellee People of the Philippines, through the Solicitor General, filed a Comment opposing accused-appellant Rocha's Motion to Withdraw Appeal.

On 28 February 2007, accused-appellant Ramos followed suit and filed his own Manifestation with Motion to Withdraw Appeal. He likewise manifested that he had already served fourteen years in prison and that all his other co-accused had already withdrawn their appeal, and applied for executive clemency to avail himself of parole.[11]

We are therefore determining herein whether or not the Motions to Withdraw Appeal of accused-appellants Rocha and Ramos should be granted.

According to the plaintiff-appellee,

> 8. It is well-settled that in cases where the penalty imposed is *reclusion perpetua*, appeal in criminal cases to this Honorable Court is a matter of right. A review of the trial court's judgment of conviction is automatic and does not depend on the whims of the convicted felon. It is mandatory and leaves the reviewing court without any option.
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> 9. In ***U.S. v. Laguna*** [17 Phil. 533 (1910)], this Honorable Court first enunciated the rationale behind the Court's power of automatic review. The High Court ratiocinated:

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[11] *Id*. at 28-29.

> The requirement that the Supreme Court pass upon a case in which capital punishment has been imposed by the sentence of the trial court is one having for its object simply and solely the protection of the accused. Having received the highest penalty which the law imposes, he is entitled under that law to have the sentence and all the facts and circumstances upon which it is founded placed before the highest tribunal of the land to the end that its justice and legality may be clearly and conclusively determined. Such procedure is merciful. It gives a second chance of life. **Neither the courts nor the accused can waive it.** It is a positive provision of the law that brooks no interference and tolerates no evasions. (emphasis supplied)

10. No less than this Honorable Court recognizes the value of human life that it provided an intermediate appeal or review in favor of the accused. In *People vs. Mateo*, this Honorable Court held:

> While the Fundamental Law requires a mandatory review by the Supreme Court of cases where the penalty imposed is *reclusion perpetua*, life imprisonment, or death, nowhere, however has it proscribed an intermediate review. If only to ensure utmost circumspection before the penalty of death, *reclusion perpetua* or life imprisonment is imposed, the court now deems it wise and compelling to provide in these cases a review by the Court of Appeals before the case is elevated to the Supreme Court. Where life and liberty are at stake, all possible avenues to determine his guilt or innocence must be accorded an accused, and no care in the evaluation of the facts can ever be undone. A prior determination by the Court of Appeals on, particularly, the factual issues, would minimize the possibility of an error in judgment. If the Court of Appeals should affirm the penalty of death, *reclusion perpetua* or life imprisonment, it could then render judgment imposing the corresponding penalty as the circumstances so warrant, refrain from entering judgment and elevate the entire records of the case to the Supreme Court for its final disposition.

11. Appellant's motion to withdraw appeal, therefore, contravenes this Honorable Court's power to automatically review a decision imposing the penalty of *reclusion perpetua* or life imprisonment. Neither appellant nor this Honorable Court can waive by mere motion to withdraw appeal, the Court's power to review the instant case.

12. Based on the above disquisition, the review by this Honorable court of appellants' conviction is mandatory and the withdrawal of his appeal can not be granted as it will contravene the applicable rules and jurisprudence.[12]

Plaintiff-appellee also claims that accused-appellant Rocha's motion is "actually a scheme to evade the supreme penalty of *reclusion perpetua*"[13] and that it is "obviously merely an afterthought designed to trifle not only with our procedural law, but more importantly, our judicial system."[14] Plaintiff-appellee continues that "if indeed, appellant Emmanuel Rocha was acting in good faith, he should have withdrawn his appeal at the first opportunity. Instead, he waited for the 'intermediate review' of the RTC Decision to be first resolved and after an unfavorable decision thereon that he now decides to withdraw his appeal."[15]

We resolve to grant the Motions of accused-appellants Rocha and Ramos.

The confusion in the case at bar seems to stem from the effects of the Decision of this Court in *People v. Mateo*.[16] In *Mateo*, as quoted by plaintiff-appellee, it was stated that "[w]hile **the Fundamental Law requires a mandatory review by the Supreme Court of cases where the penalty imposed is *reclusion perpetua***, life imprisonment, or death, nowhere, however, has it proscribed an intermediate review."[17] A closer study of *Mateo*, however, reveals that the inclusion in the foregoing statement of cases where the penalty imposed is *reclusion perpetua* and life imprisonment was only for the purpose of including these cases within the ambit of the intermediate review of the Court of Appeals: "[this] Court now deems it wise and compelling to provide in these cases [cases where the penalty imposed is

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[12] *Id*. at 43-44.

[13] *Id*. at 45.

[14] *Id*.

[15] *Id*.

[16] *Supra* note 8.

[17] *Id*. at 656.

reclusion perpetua, life imprisonment or death] review by the Court of Appeals before the case is elevated to the Supreme Court."[18]

We had not intended to pronounce in *Mateo* that cases where the penalty imposed is *reclusion perpetua* or life imprisonment are subject to the mandatory review of this Court. In *Mateo*, these cases were grouped together with death penalty cases because, prior to *Mateo*, it was this Court which had jurisdiction to directly review *reclusion perpetua*, life imprisonment and death penalty cases alike. The mode of review, however, was different. *Reclusion perpetua* and life imprisonment cases were brought before this Court *via* a notice of appeal, while death penalty cases were reviewed by this Court on automatic review. Thus, the **erstwhile Rule 122, Sections 3 and 10**, provided as follows:

SEC. 3. *How appeal taken.*—

(a) The appeal to the Regional Trial Court, or to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction, shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and by serving a copy thereof upon the adverse party.

(b) The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review under Rule 42.

(c) The appeal to the Supreme Court in cases where the **penalty imposed by the Regional Trial Court is *reclusion perpetua*, or life imprisonment**, or where a lesser penalty is imposed but for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua*, or life imprisonment is imposed, shall be by **filing a notice of appeal in accordance with paragraph (a)** of this section.

(d) **No notice of appeal is necessary in cases where the death penalty is imposed by the Regional Trial Court.** The same shall

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[18] *Id*.

be automatically reviewed by the Supreme Court as provided in Section 10 of this Rule.

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SEC. 10. *Transmission of records in case of death penalty.*— In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Supreme Court for automatic review and judgment within five (5) days after the fifteenth (15) day following the promulgation of the judgment or notice of denial of a motion for new trial or reconsideration. The transcript shall also be forwarded within ten (10) days after the filing thereof by the stenographic reporter.

After the promulgation of *Mateo* on 7 June 2004, this Court promptly caused the amendment of the foregoing provisions, but retained the distinction of requiring a notice of appeal for *reclusion perpetua* and life imprisonment cases and automatically reviewing death penalty cases. Thus, **Rule 122, Sections 3 and 10, as amended by A.M. No. 00-5-03-SC (which took effect on 15 October 2004),** now provides:

SEC. 3. *How appeal taken.*—

(a) The appeal to the Regional Trial Court, or to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction, shall be by notice of appeal filed with the court which rendered the judgment or final order appealed from and by serving a copy thereof upon the adverse party.

(b) The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review under Rule 42.

(c) The appeal in cases where the **penalty imposed by the Regional Trial Court is *reclusion perpetua*, or life imprisonment**, or where a lesser penalty is imposed but for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua*, or life imprisonment is imposed, shall be by **notice of appeal in accordance with paragraph (a)** of this Rule.

(d) **No notice of appeal is necessary in cases where the Regional Trial Court imposed the death penalty.** The Court of Appeals

automatically review the Judgment provided in Section 10 of this Rule.

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SEC. 10. *Transmission of records in case of death penalty.*— In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Court of Appeals for automatic review and judgment within twenty days but not earlier than fifteen days from the promulgation of the judgment or notice of denial of a motion for new trial or reconsideration. The transcript shall also be forwarded within ten (10) days after the filing thereof by the stenographic reporter.

Neither does the Constitution require a mandatory review by this Court of cases where the penalty imposed is *reclusion perpetua* or life imprisonment. The constitutional provision quoted in *Mateo* merely gives this Court jurisdiction over such cases:

> Up until now, the Supreme Court has assumed the direct appellate review over all criminal cases in which the penalty imposed is death, *reclusion perpetua* or life imprisonment (or lower but involving offenses committed on the same occasion or arising out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua*, or life imprisonment is imposed). The practice finds justification in the 1987 Constitution —
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> > Article VIII, Section 5. The Supreme Court shall have the following powers:
> > "(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
> > "x x x x x x x x x
> > "(d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher."[19]

For a clear understanding of this provision, the full text thereof provides:

> Section 5. The Supreme Court shall have the following powers:

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[19] *Id.* at 653-654.

1. Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.

2. Review, revise, reverse, modify, or affirm on appeal or *certiorari* as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

   a. All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

   b. All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

   c. All cases in which the jurisdiction of any lower court is in issue.

   d. All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.

   e. All cases in which only an error or question of law is involved.

3. Assign temporarily judges of lower courts to other stations as public interest may require. Such temporary assignment shall not exceed six months without the consent of the judge concerned.

4. Order a change of venue or place of trial to avoid a miscarriage of justice.

5. Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

6. Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law.

In this provision, only paragraphs (1) and (2) speak of jurisdiction over cases. However, this Constitutional provision does not enumerate cases involving mandatory review. Indeed, it would almost be silly to claim that this Court is mandatorily required to review all cases in which the jurisdiction of any lower court is in issue. Instead, the significance of the enumeration of this Court's jurisdiction in paragraphs (1) and (2) is that while Section 2 of the same Article VIII of the Constitution gives to Congress the power to define, prescribe and apportion the jurisdiction of various courts, it denies to Congress the power to deprive this Court of jurisdiction over cases enumerated in Section 5.[20]

Since the case of accused-appellants is not subject to the mandatory review of this Court, the rule that neither the accused nor the courts can waive a mandatory review is not applicable. Consequently, accused-appellants' separate motions to withdraw appeal may be validly granted.

The granting of a Motion to Withdraw Appeal, however, is addressed to the sound discretion of the Court. After a case has been submitted to the court for decision, the appellant cannot, **at his election**, withdraw the appeal.[21] In *People v. Casido*,[22] we denied the accused-appelant's Urgent Motion to Withdraw Appeal therein:

It is then clear that the conditional pardons separately extended to the accused-appellants were issued during the pendency of their instant appeal.

In the resolution of 31 January 1995 in *People vs. Hinlo*, **this Court categorically declared the "practice of processing**

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[20] Bernas, *The 1987 Constitution of the Republic of the Philippines, a Commentary* (2003 Ed.), p. 935.

[21] *People v. Belaro*, 367 Phil. 90, 112-113 (1999), citing *United States v. Sotto*, 38 Phil. 666, 677 (1918).

[22] 328 Phil. 1149, 1153-1154 (1996).

applications for pardon or parole despite pending appeals" to be "in clear violation of law."

Earlier, in our resolution of 21 March 1991 in *People vs. Sepada*, **this Court signified in no uncertain terms the necessity of a final judgment before parole or pardon could be extended**.

Having observed that the pronouncements in the aforementioned cases remained unheeded, either through deliberate disregard or erroneous applications of the *obiter dictum* in *Monsanto vs. Factoran* or the ruling in *People vs. Crisola*, this Court, in its resolution of 4 December 1995 in *People vs. Salle*, explicitly declared:

> We now declare that the "conviction by final judgment" limitation under Section 19, Article VII of the present Constitution prohibits the grant of pardon, whether full or conditional, to an accused during the pendency of his appeal from his conviction by the trial court. Any application therefor, if one is made, should not be acted upon or the process toward its grant should not be begun unless the appeal is withdrawn. Accordingly, the agencies or instrumentalities of the Government concerned must require proof from the accused that he has not appealed from his conviction or that he has withdrawn his appeal. Such proof may be in the form of a certification issued by the trial court or the appellate court, as the case may be. The acceptance of the pardon shall not operate as an abandonment or waiver of the appeal, and the release of an accused by virtue of a pardon, commutation of sentence, or parole before the withdrawal of an appeal shall render those responsible therefor administratively liable. Accordingly, those in custody of the accused must not solely rely on the pardon as a basis for the release of the accused from confinement.
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> x x x x x x x x x
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> This rule shall fully bind pardons extended after 31 January 1995 during the pendency of the grantee's appeal. (Italics supplied)

It follows then that the conditional pardons granted in this case to accused-appellants William Casido and Franklin Alcorin are void for having been extended on 19 January 1996 during the pendency of their instant appeal.

In the case at bar, however, we see no reason to deny accused-appellants' Motions to Withdraw Appeal. There is no showing that accused-appellants had already applied for parole at the time of the filing of their Motions to Withdraw Appeal. On the contrary, they stated in their motions that they merely intend to apply for the same.

Plaintiff-appellee claims that the present Motion to Withdraw Appeal is actually a scheme to evade the penalty of *reclusion perpetua* and is meant to trifle with our judicial system. Plaintiff-appellee, however, does not explain how the withdrawal of appeal can be used by accused-appellants for these purposes. It seems that plaintiff-appellee is expecting that the granting of the Motions to Withdraw Appeal would nullify the Court of Appeals Decision, on the understanding that the Court of Appeals cannot enter judgments on cases remanded to them pursuant to *Mateo*. Such conclusion, however, is applicable only where the death penalty is imposed. Rule 124, Section 13 of the Rules of Court, which was likewise amended in A.M. No. 00-5-03-SC pursuant to *Mateo*, provides:

> Section 13. *Certification or appeal of case to the Supreme Court*. — (a) Whenever the Court of Appeals finds that the penalty of death should be imposed, the court shall render judgment but refrain from making an entry of judgment and forthwith certify the case and elevate its entire record to the Supreme Court for review.
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> (b) Where the judgment also imposes a lesser penalty for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more severe offense for which the penalty of death is imposed, and the accused appeals, the appeal should be included in the case certified for review to the Supreme Court.
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> (c) In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

Plaintiff-appellee must have likewise observed that accused-appellants intend to apply not only for parole, but also for executive

clemency. This is shown by the Manifestation and Motion to Withdraw Appeal of accused-appellant Ramos, where he affirmed that he intends to follow his co-accused who had already "applied for executive clemency to avail of parole."

It should be kept in mind that accused-appellants could not avail themselves of parole if their appeal is dismissed, unless they also apply for executive clemency and ask for the commutation of their *reclusion perpetua* sentences. Republic Act No. 4108, as amended, otherwise known as the Indeterminate Sentence Law, does not apply to persons convicted of offenses punishable with death penalty or life imprisonment. In several cases,[23] we have considered the penalty of *reclusion perpetua* as synonymous to life imprisonment for purposes of the Indeterminate Sentence Law, and ruled that said law does not apply to persons convicted of offenses punishable with the said penalty. As further discussed by Associate Justice Dante Tinga in his Concurring Opinion in *People v. Tubongbanua*[24]:

> Parole is extended only to those convicted of divisible penalties. *Reclusion perpetua* is an indivisible penalty, with no minimum or maximum period. Under Section 5 of the Indeterminate Sentence Law, it is after "any prisoner shall have served the minimum penalty imposed on him," that the Board of Indeterminate Sentence may consider whether such prisoner may be granted parole. There being no "minimum penalty" imposable on those convicted to *reclusion perpetua*, it follows that even prior to the enactment of Rep. Act No. 9346, persons sentenced by final judgment to *reclusion perpetua* could not have availed of parole under the Indeterminate Sentence Law.

This Court cannot review, much less preempt, the exercise of executive clemency under the pretext of preventing the accused from evading the penalty of *reclusion perpetua* or from trifling

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[23] *People v. Asturias*, G.R. No. 61126, 31 January 1985, 134 SCRA 405; *Serrano v. Court of Appeals*, 317 Phil. 242, 251 (1995); *People v. Lampaza*, 377 Phil. 119, 137 (1999); *People v. Enriquez, Jr.*, G.R. No. 158797, 29 July 2005, 465 SCRA 407, 418.

[24] G.R. No. 171271, 31 August 2006, 500 SCRA 727, 749.

with our judicial system. Clemency is not a function of the judiciary; it is an executive function.[25] Thus, it is the President, not the judiciary, who should exercise caution and utmost circumspection in the exercise of executive clemency in order to prevent a derision of the criminal justice system. We cannot and shall not deny accused-appellants' Motions to Withdraw Appeal just because of their intention of applying for executive clemency. With the Constitution bestowing upon the Executive the power to grant clemency,[26] it behooves the Court to pass the ball to the President and let her determine the fate of accused-appellants.

In sum, the mandatory review by this Court is only required for cases where the penalty imposed is death. Where the penalty imposed is *reclusion perpetua* or life imprisonment, a review of the trial court decision is conducted only when the accused files a notice of appeal. Neither the Decision of this Court in *Mateo* nor the abolition of the death penalty has changed this. As the penalty imposed by the trial court and the Court of Appeals in the case at bar is *reclusion perpetua*, the review by this Court is not mandatory and, therefore, the accused-appellants can validly withdraw their appeal.

The granting of a Motion to Withdraw Appeal is addressed to the sound discretion of the Court. In the case at bar, we see no reason to deny accused-appellants' Motion to Withdraw Appeal. Plaintiff-appellee's allegation that the Motion was for the purpose of evading the penalty of *reclusion perpetua* and trifling with our judicial system is unsubstantiated, as the Court of Appeals' imposition of *reclusion perpetua*, unlike an imposition of the death penalty, may be entered by said appellate court even without another review by this Court. Neither should we deny the Motions just because of accused-appellants' intention to apply for executive clemency, since the granting of such executive clemency is within the prerogative of the Executive Department, and not of this Court.

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[25] *Supra* note 20.

[26] CONSTITUTION, Article VII, Section 19.

IN VIEW OF THE FOREGOING, the respective Motions to Withdraw Appeal of accused-appellants Emmanuel Rocha and Ruel Ramos are *GRANTED,* and the Court of Appeals Decision dated 31 March 2006 in CA-G.R. CR-H.C. No. 01765 is hereby deemed *FINAL AND EXECUTORY*.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.,* concur.

EN BANC

[G.R. No. 174693. August 31, 2007]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **DORINDA B. BUMOGAS,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; DISHONESTY AND FALSIFICATION OF OFFICIAL DOCUMENT; QUANTUM OF PROOF NECESSARY TO PROVE A CHARGE IN ADMINISTRATIVE CASES IS SUBSTANTIAL EVIDENCE.— Dishonesty and falsification of official document are grave offenses punishable by dismissal from the service. As defined, dishonesty is intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing one's examination, registration, appointment or promotion. Dishonesty is understood to imply a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity. We have consistently ruled that making a false statement in a personal data sheet amounts to dishonesty and falsification of an official document. In administrative cases, the quantum of proof

necessary to prove a charge is *substantial evidence*, that is, such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

2. ID.; ID.; ID.; CERTIFICATION FROM THE COMMISSION ON HIGHER EDUCATION-CORDILLERA (CHED-CAR) ADMINISTRATIVE REGION ALONE CANNOT BE CONSIDERED SUBSTANTIAL EVIDENCE TO PROVE THAT RESPONDENT COMMITTED DISHONESTY AND FALSIFICATION. — Petitioner CSC's evidence mainly consists of the Certification from the CHED-CAR that the Special Order No. 2-100225 appearing on respondent's transcript of records could not have been issued to her since its Special Order numbers for Bachelor of Education degree start with 211, not 2. To our minds, this Certification alone cannot be considered substantial evidence to prove that respondent committed dishonesty or falsification. The CSC-CAR should have presented as witnesses the personnel from the Abra Valley Colleges who prepared and signed respondent's transcript of records to testify on its genuineness or falsity, or the officials concerned from the same school who could determine whether such transcript of records bears its *imprimatur*. As aptly held by the Court of Appeals, the findings of the CSC-CAR and the CSC have no basis since **"the officials who signed the transcript of records were not presented to testify that their signatures on the unauthenticated copy of the transcript of records of petitioner BUMOGAS were forged."** Basic is the rule that in administrative proceedings, the complainant bears the *onus* of establishing, by substantial evidence, the averments of his complaint. Failing to do so, as in this case, respondent cannot be held guilty of the charges. At this point, it must be emphasize that respondent is a holder of a Professional Civil Service Eligibility. Why did petitioner CSC grant her such eligibility if she were not a college graduate?

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Sanidad & Villanueva Law Offices for respondent.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

For our resolution is the instant Petition for Review on *Certiorari* assailing the Decision[1] dated May 8, 2006 and Resolution dated September 14, 2006 of the Court of Appeals in CA-G.R. SP No. 89310, entitled "*Dorinda B. Bumogas v. Civil Service Commission*."

Dorinda B. Bumogas, respondent, was the Municipal Treasurer of Penarrubia, Abra. She was promoted to said position when she made it to appear in her personal data sheet dated September 15, 1997 that she complied with the "college graduate" requirement for the position indicating therein that she graduated from the Abra Valley Colleges with the degree of Bachelor of Elementary Education. Attached to her personal data sheet was a copy of her transcript of records.

After her promotion, the Civil Service Commission-Cordillera Administrative Region (CSC-CAR) received a confidential information that respondent is not a college graduate and that her transcript of records is spurious.

In a letter dated October 27, 1997, the CSC-CAR requested the Abra Valley Colleges to authenticate respondent's transcript of records. However, the school did not act thereon.

On May 26, 1999, the CSC-CAR again sent a similar letter-request to the Abra Valley Colleges and at the same time, sought the assistance of the Commission on Higher Education-Cordillera Administrative Region (CHED-CAR) to ascertain the genuineness of respondent's transcript of records.

In a letter dated June 7, 1999, the CHED-CAR informed the CSC-CAR that such request for authentication of respondent's transcript of records should be addressed to the Abra Valley

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[1] Penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justice Godardo A. Jacinto (retired) and Associate Justice Juan Q. Enriquez, Jr.

Colleges and that the Special Order No. 100225 appearing on her transcript of records could not be issued to respondent since the CHED-CAR's Special Order numbers for Bachelor of Elementary Education degree start with 211, not 2, thus:

> This has reference to your communication, dated May 26, 1999, regarding the authenticity of the transcript of records and S.O. No. 2-100225, s. 1992, of Ms. Dorinda B. Bumogas.
>
> As to the authenticity of the transcript of records (TOR), we suggest that your office communicate this matter directly to the school Abra Valley College (AVC), as this office does not maintain files of TOR's issued by private schools like AVC.
>
> As to the alleged Special Order (S.O.) number, please be informed that based on our records, the same has not been issued to Ms. Bumogas, and can never be issued to anyone because this Office's S.O. numbers for Bachelor of Elementary Education (BEEd) starts with **211**, and not only with **2.**"

On June 23, 2000, the Abra Valley Colleges finally informed the CSC-CAR that a copy of respondent's transcript of records could no longer be found because a fire razed the school's ground floor on April 28, 2000 resulting in the destruction of all its records.

On November 15, 2000, the CSC-CAR filed an administrative complaint for dishonesty and falsification of public document against respondent.

In her answer, respondent denied the charges. She alleged that she actually attended classes in the Abra Valley Colleges and graduated on March 31, 1992 with the degree of Bachelor of Elementary Education. She attached to her answer her official transcript of records and diploma issued by the Abra Valley Colleges. She further alleged that she has no participation in the issuance of Special Order No. 2-100225 appearing on her transcript of records or in the preparation of said transcript of records and diploma. These were the official acts of the Abra Valley Colleges.

On August 27, 2002, the CSC-CAR rendered Decision No. CAR 02-096 DC finding respondent guilty as charged and

dismissing her from the service with all its accessory penalties, thus:

> WHEREFORE, Dorinda B. Bumogas is hereby found GUILTY of Dishonesty and Falsification of Public Documents. Accordingly, she is meted out the penalty of dismissal from the service including all its accessory penalties.

Respondent filed a motion for reconsideration but it was denied by the CSC-CAR in its Decision No. CAR 02-121 DC dated December 10, 2002.

On appeal, the Civil Service Commission (CSC), herein petitioner, rendered Resolution No. 040280 dated March 18, 2004 affirming the Decision of the CSC-CAR. Respondent then filed a motion for reconsideration. However, it was denied by the CSC in Resolution No. 050280 dated February 28, 2005, prompting her to file with the Court of Appeals a petition for review.

In its Decision dated May 8, 2006, the appellate court reversed the CSC-CAR Decision and CSC Resolution and dismissed the administrative case against respondent, thus:

> WHEREFORE, premises considered, the petition is hereby GRANTED and the assailed Decision No. CAR 02-096 DC of the Civil Service Commission-CAR dated August 27, 2002 dismissing petitioner Dorinda B. Bumogas from the service along with accessory penalties and the CSC-QC March 18, 2004 Resolution No. 040280, are hereby REVERSED and SET ASIDE and the instant administrative case against her is hereby DISMISSED for lack of merit.
>
> SO ORDERED.

Petitioner CSC filed a motion for reconsideration but it was denied by the appellate court in its Resolution of September 14, 2006.

Hence, the instant recourse.

The main issue for our resolution is whether there is substantial evidence to prove that respondent is administratively liable for dishonesty and falsification.

Petitioner CSC contends that Special Order No. 2-100225 appearing in respondent's transcript of records is spurious as evidenced by the Certification issued by the CHED-CAR that such number was never issued to respondent. The CSC then concluded that her transcript of records is falsified. And since she has in her possession the falsified transcript of records and made use of and benefited from it, then she is the forger.

Respondent, on the other hand, maintains that the preparation of her transcript of records bearing Special Order No. 2-100225 was accomplished by the Abra Valley Colleges and that she had no participation therein. The CSC's conclusion that she forged her transcript of records, the same being in her possession, is speculative.

Obviously, the issue raised before us is a question of fact, the determination of which is beyond this Court's power of review for it is not a trier of facts.[2] However, there are instances when questions of fact may be reviewed by this Court, as **when the findings of the Court of Appeals are contrary to those of the trial court or the agency concerned,**[3] as in this case.

Here, the CSC and the Court of Appeals made conflicting findings of fact, specifically on the existence of substantial evidence to prove the charges against respondent. Hence, a review of such factual findings is in order.

Dishonesty and falsification of official document are grave offenses punishable by dismissal from the service.[4] As defined,

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[2] *Nicolas v. Desierto*, G.R. No. 154668, December 16, 2004, 447 SCRA 154.

[3] *Ong v. Bogñalbal*, G.R. No. 149140, September 12, 2006, 501 SCRA 490, *citing The Insular Life Assurance Company, Ltd. v. Court of Appeals, 428 SCRA 79 (2004); Heirs of Dicman v. Cariño*, 490 SCRA 240 (2006); *Spouses Almendrala v. Spouses Ngo*, 471 SCRA 311 (2005); *Manila Electric Company v. Benamira*, 463 SCRA 331 (2005); *Aguirre v. Court of Appeals*, 421 SCRA 310 (2004).

[4] Under Section 23, Rule XIV of the Omnibus Rules Implementing the Provisions of Book V of Executive Order No. 292, The Administrative Code of 1987.

dishonesty is intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing one's examination, registration, appointment or promotion.[5] Dishonesty is understood to imply a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity.[6] We have consistently ruled that making a false statement in a personal data sheet amounts to dishonesty and falsification of an official document.[7]

In administrative cases, the quantum of proof necessary to prove a charge is *substantial evidence*, that is, such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[8]

Petitioner CSC's evidence mainly consists of the Certification from the CHED-CAR that the Special Order No. 2-100225 appearing on respondent's transcript of records could not have been issued to her since its Special Order numbers for Bachelor of Education degree start with 211, not 2. To our minds, this Certification alone cannot be considered substantial evidence to prove that respondent committed dishonesty or falsification. The CSC-CAR should have presented as witnesses the personnel

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[5] *Brucal v. Desierto*, G.R. No. 152188, July 8, 2005, 463 SCRA 151, *citing Sevilla v. Gocon*, 423 SCRA 98 (2004) and *Aquino v. The Gen. Mgr. of the GSIS*, 130 Phil. 488 (1968).

[6] *Id.*, citing *Sevilla v. Gocon*, 423 SCRA 98 (2004) and *Phil. Amusement and Gaming Corp. v. Rilloraza*, 412 Phil. 114 (2001).

[7] *Wooden v. CSC*, G.R. No. 152884, September 30, 2005, 471 SCRA 512; *Ratti v. Mendoza-De Castro*, A.M. No. P-04-1844, July 23, 2004, 435 SCRA 11; *Re: Administrative Case for Dishonesty and Falsification of Official Document: Benjamin R. Katly*, A.M. No. 2003-9-SC, March 25, 2004, 426 SCRA 236, 242-243; *Administrative Case for Dishonesty and Falsification of Official Document Against Noel V. Luna, SC Chief Judicial Staff Officer*, A.M. No. 2003-7-SC, December 15, 2003, 418 SCRA 460, 467; *De Guzman v. Delos Santos*, A.M. No. 2002-8-SC, December 18, 2002, 394 SCRA 210, 215; *Civil Service Commission v. Sta. Ana*, A.M. No. OCA 01-5, August 1, 2002, 386 SCRA 1.

[8] Section 5, Rule 133, 1997 Revised Rules of Court; *Nicolas v. Desierto*, G.R. No. 154668, December 16, 2004, 447 SCRA 154.

from the Abra Valley Colleges who prepared and signed respondent's transcript of records to testify on its genuineness or falsity, or the officials concerned from the same school who could determine whether such transcript of records bears its *imprimatur*.

As aptly held by the Court of Appeals, the findings of the CSC-CAR and the CSC have no basis since "**the officials who signed the transcript of records were not presented to testify that their signatures on the unauthenticated copy of the transcript of records of petitioner BUMOGAS were forged**."

Basic is the rule that in administrative proceedings, the complainant bears the *onus* of establishing, by substantial evidence, the averments of his complaint. Failing to do so, as in this case, respondent cannot be held guilty of the charges.

At this point, it must be emphasized that respondent is a holder of a Professional Civil Service Eligibility. Why did petitioner CSC grant her such eligibility if she were not a college graduate?

WHEREFORE, we *DENY* the petition. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 89310 are *AFFIRMED*.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., and *Reyes, JJ.,* concur.

Nachura, J., no part. Filed pleading as Solicitor General.

Quisumbing, J., on leave.

SPECIAL THIRD DIVISION

[G.R. No. 174994. August 31, 2007]

In the Matter of the Petition for a Writ of *Habeas Corpus* of the person of ARMY MAJOR JASON LAUREANO AQUINO, PA

MARIA FE S. AQUINO, *petitioner, vs.* **LT. GEN. HERMOGENES C. ESPERON, AFP,[*] in his capacity as Commanding General, Philippine Army, and the Custodial Officer or Commander, Army Detention Center, G2-21D, Camp Capinpin, Tanay, Rizal,[**]** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ARTICLES OF WAR; PERSONS SUBJECT TO MILITARY LAW; AS A REGULAR OFFICER OF THE ARMED FORCES OF THE PHILIPPINES, ARMY MAJOR JASON LAUREANO AQUINO IS SUBJECT TO THE APPLICABLE PROVISIONS OF THE ARTICLES OF WAR AND EXECUTIVE ORDER NO. 178, OR THE MANUAL FOR COURTS-MARTIAL, PHILIPPINE ARMY.— It is established that Major Aquino is governed by military law. Article 2 of the Articles of War circumscribes the jurisdiction of military law only over persons subject thereto. Major Aquino, G3 of the First Scout Ranger Regiment (FSRR) of the Special Operation Command of the Philippine Army, is subject to military law. Thus: Art. 2. Persons Subject to Military Law. — The following persons are subject to these articles and shall

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[*] Lt. Gen. Hermogenes Esperon is currently the Chief of Staff of the Armed Forces of the Philippines. He was succeeded by Lt. General Romeo Tolentino as Commanding General of the Philippine Army.

[**] Lt. General Romeo Tolentino, in his capacity as the Commanding General of the Philippine Army was included as party-respondent in the Petition for Issuance of a Writ of *Habeas Corpus* filed before the Court of Appeals (CA-G.R. SP No. 95341).

be understood as included in the term "any person subject to military law" or "persons subject to military law", whenever used in these articles: (a) **All officers and soldiers in the active service of the Armed Forces of the Philippines or of the Philippine Constabulary; all members of the reserve force, from the dates of their call to active duty and while on such active duty**; all trainees undergoing military instructions; and all other persons lawfully called, drafted, or ordered into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft, or order to obey the same; x x x As a regular officer of the Armed Forces of the Philippines, Major Aquino falls squarely under Article 2 of the Articles of War. Consequently, he is subject to the applicable provisions of the Articles of War and Executive Order No. 178; or the Manual for Courts-Martial, Philippine Army.

2. ID.; ID.; ID.; CONFINEMENT OF MAJOR AQUINO IS VALID; ARTICLE 70 OF THE ARTICLES OF WAR EMPOWERS THE COMMANDING OFFICER TO PLACE, IN CONFINEMENT OR IN ARREST, ANY PERSON SUBJECT TO MILITARY LAW CHARGED WITH A CRIME OR A SERIOUS OFFENSE UNDER THE ARTICLES OF WAR.— A scrutiny of the confinement of Major Aquino proves that the same is valid. Article 70 of the Articles of War governs the cases of arrest or confinement. Evidently, Article 70 of the Articles of War empowers the commanding officer to place, in confinement or in arrest, any person subject to military law charged with a crime or with a serious offense under the Articles of War. Article 70 is the authority for enabling the proper military personnel to put an instant end to criminal or unmilitary conduct, and to impose such restraint as may be necessary upon the person of a military offender, with a view of his trial by court-martial.

3. ID.; ID.; ID.; CONDUCT OF INVESTIGATIONS UNDER MILITARY LAW; A THOROUGH AND IMPARTIAL INVESTIGATION IS A PREREQUISITE NOT TO MAKING A CHARGE AGAINST A PERSON SUBJECT TO MILITARY LAW, BUT TO THE REFERRAL OF THE CHARGE TO THE GENERAL COURT MARTIAL; IT IS THE CHARGE WHICH COMES PRIOR TO THE INVESTIGATION, AND WHICH SETS INTO MOTION

THE INVESTIGATION. — We juxtapose Article 70 with Article 71 of the Articles of War. Under military law, the conduct of investigations is governed by Article 71 of the Articles of War. The formal written accusation in court-martial practice consists of two parts, the technical charge and the specification. The charge, where the offense alleged is a violation of the articles, merely indicates the article the accused is alleged to have violated while the specifications sets forth the specific facts and circumstances relied upon as constituting the violation. Each specification, together with the charge under which it is placed, constitutes a separate accusation. The term "charges" or "charges and specifications" is applied to the formal written accusation or accusations against an accused. The first part of Article 71 of the Articles of War categorically provides that charges and specifications must be signed by a person subject to military law, who under oath states that he either has personal knowledge of, or has investigated, the matters set forth therein and that the same are true in fact, to the best of his knowledge and belief. Further, the second paragraph of Article 71 explicitly provides that no charge will be referred to a general court-martial for trial until after a thorough and impartial investigation thereof shall have been made. A charge is made followed by a thorough and impartial investigation and if the result of the investigation so warrants, the charge is referred to the general court martial. Contrary to petitioner's contention, Article 71 makes no qualification that there can be a "charge" against a person subject to military law only if a pre-trial has been completed and the case has been referred to a court martial. What Article 71 instructs is that no charges, *i.e.* charges and specifications signed by a person subject to military law under oath, may be referred to a general court-martial for trial until after a thorough and impartial investigation thereof shall have been made. Article 71 does not make the thorough and impartial investigation a prerequisite before charges may be filed against a person subject to military law. Clearly, the thorough and impartial investigation is a prerequisite not to making a charge against a person subject to military law, but to the referral of the charge to the general court martial. It is the charge which comes prior to the investigation, and which sets into motion the investigation.

4. ID.; ID.; ID.; REQUIREMENTS OF THE ARTICLES OF WAR REGARDING THE CHARGES AND SPECIFICATIONS

FOR VIOLATIONS OF ARTICLE 67 (ATTEMPTING TO BEGIN OR CREATE MUTINY) AND ARTICLE 96 (CONDUCT UNBECOMING AN OFFICER AND A GENTLEMAN) OF THE ARTICLES OF WAR; COMPLIED WITH IN CASE AT BAR.— We find that there was compliance with the requirements of the Articles of War. As shown by the evidence on record, the amended charge sheets against Major Aquino, containing the charges and the specifications for violations of Article 67 (Attempting to Begin or Create Mutiny) and Article 96 (Conduct Unbecoming an Officer and Gentleman) of the Articles of War, were personally signed under oath by Capt. Armando P. Paredes, a person subject to military law. The amended charge sheets were sworn to by the accuser, Capt. Armando P. Paredes in the manner provided under Article 71. As it is, Major Aquino stands charged in court martial proceedings for alleged violations of the Articles of War. In *Kapunan, Jr. v. De Villa*, this Court denied the writ of *habeas corpus* prayed for, and upheld the legality of the confinement even when there was merely a substantial compliance with the procedural requisites laid down in Article 71. In said case, the Court held that the fact that the charge sheets were not certified in the manner provided by the pertinent law, *i.e.*, that the officer administering the oath has personally examined the affiant and is satisfied that the latter voluntarily executed and understood his affidavit, does not invalidate said charge sheets. With more reason do we herein uphold the validity of the amended charge sheets against Major Aquino considering that they were executed in accordance with the law, and without breach of Article 71 of the Articles of War. The preferment of charges under Article 71 is a ground for the confinement or arrest of Major Aquino pursuant to Article 70 of the Articles of War. It bears stressing that subsequent to the preferment of charges under Article 70, the Judge Advocate General of the General Headquarters of the AFP, issued Office Order Number 14-06, creating a Pre-trial Investigation Panel to investigate the case of Major Aquino and his co-accused. In addition, the Office of the Judge Advocate General issued a subpoena and a notice of pre-trial investigation to Major Aquino summoning him to appear in person before the Pre-trial Investigation Panel. Furthermore, Major Aquino was given the opportunity to submit counter-affidavits and affidavits of his witnesses. More significantly, Major Aquino was present

during the scheduled investigation. His arrest and confinement cannot be said to be without due process of law.

5. ID.; ID.; ID.; THE GRAVITY OF THE OFFENSE CHARGED MAY BE CONSIDERED IN DETERMINING THE "CIRCUMSTANCES" OF ARREST AND CONFINEMENT OF PERSONS CHARGED WITH CRIME OR SERIOUS OFFENSE SUCH AS ATTEMPTING TO BEGIN OR CREATE A MUTINY.— The first part of Article 70 of the Articles of War grants discretion to military authorities over the imposition of arrest or confinement of persons subject to military law charged with crime or with serious offense. Major Aquino is charged with violations of Article 67, for attempting to begin or create mutiny, and Article 97, for Conduct Unbecoming an Officer and Gentleman. According to Article 67, any person subject to military law who attempts to create or who begins, excites, causes or joins in any mutiny shall suffer death or such other punishment as a court-martial may direct. It cannot be gainsaid that in determining the "circumstances" of arrest and confinement in Article 70 of persons charged with crime or with serious offense, such circumstances as the gravity of the offense charged may be considered.

6. REMEDIAL LAW; SPECIAL PROCEEDINGS; *HABEAS CORPUS;* THE LEGALITY OF MAJOR AQUINO'S RESTRAINT HAVING BEEN SETTLED, THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IS UNAVAILING.— We do not find that the Court of Appeals erred in denying petitioner's Petition for *Habeas Corpus* for the person of Major Aquino. A writ of *habeas corpus* extends to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled to it. As a general rule, the writ of *habeas corpus* will not issue where the person alleged to be restrained of his liberty is in the custody of an officer under a process issued by the court which has jurisdiction to do so. Its essential object and purpose is to inquire into all manner of involuntary restraint and to relieve a person from it if such restraint is illegal. In the case at bar, Major Aquino stands charged in court martial proceedings for alleged violations of Article 67 (Attempting to Begin or Create Mutiny) and Article 96 (Conduct Unbecoming an Officer and

Gentleman) of the Articles of War. The legality of Major Aquino's restraint having been settled, the privilege of the writ is unavailing.

7. ID.; ID.; ID.; *HABEAS CORPUS* IS NOT THE PROPER MODE TO QUESTION CONDITIONS OF CONFINEMENT.— At this juncture, it must be stressed that respondents deny the solitary confinement of Major Aquino. According to respondents, Major Aquino is confined in a U-shaped building without any division/partition. The place is described as a long hall with 50 double-deck beds. Respondents also asseverate that Major Aquino is confined along with 16 other military personnel who were similarly charged in the 23-24 February 2006 incident. While it is true that the extraordinary writ of *habeas corpus* is the appropriate remedy to inquire into questions of violations of constitutional right, this Court, however, does not find the conditions of Major Aquino's confinement to be a proper subject of inquiry in the instant Petition. This Court has declared that *habeas corpus* is not the proper mode to question conditions of confinement.

8. ID.; ID.; ID.; FACTORS TO DETERMINE IF AN ACTION CONSTITUTES PUNISHMENT; NOT PRESENT IN CASE AT BAR.— The following guidelines were given by the Court to determine if an action constitutes punishment, to wit: (1) that action causes the inmate to suffer some harm or "disability," and (2) the purpose of the action is to punish the inmate. It is also an additional requisite that the harm or disability be significantly greater than, or be independent of, the inherent discomforts of confinement. We do not see the attendance of the foregoing factors in the instant case. There are no specific facts that are brought to the attention of this Court to indicate the punitive character of the confinement. The confinement is not herein imposed as a punishment. We do not see that the confinement of Major Aquino causes him to suffer some harm or disability. There is no punitive hardship that exists in the case at bar. In fact, petitioner does not even allege a single act which would show such harm or such "disability" as to prove that the same is significantly greater than, or independent of, the inherent discomforts of confinement.

9. ID.; ID.; ID.; OBJECT OF *HABEAS CORPUS* PROCEEDINGS IS TO INQUIRE INTO THE LEGALITY OF ONE'S

DETENTION, AND IF FOUND ILLEGAL, TO ORDER THE RELEASE OF THE DETAINEE; IT IS NOT A MEANS FOR THE REDRESS OF GRIEVANCES OR TO SEEK INJUNCTIVE RELIEF OR DAMAGES.— Anent petitioner's allegation that she was restricted from visiting Major Aquino, the Court had in the past underscored the "hands-off doctrine"—a deference given by courts to military custodians over prison matters, especially on blanket restrictions on contact visit. In *Alejano,* we gave reasons for the allowance of such restrictions, thus: *Block v. Rutherford* [468 U.S. 576 (1984)], which reiterated *Bell v. Wolfish,* upheld the blanket restriction on contact visits as this practice was reasonably related to maintaining security. The safety of innocent individuals will be jeopardized if they are exposed to detainees who while not yet convicted are awaiting trial for serious, violent offenses and may have prior criminal conviction. Contact visits make it possible for the detainees to hold visitors and jail staff hostage to effect escapes. Contact visits also leave the jail vulnerable to visitors smuggling in weapons, drugs, and other contraband. The restriction on contact visit was imposed even on low-risk detainees as they could also potentially be enlisted to help obtain contraband and weapons. The security consideration in the imposition of blanket restriction on contact visits was ruled to outweigh the sentiments of the detainees. *Block v. Rutherford* held that the prohibition of contact visits bore a rational connection to the legitimate goal of internal security. **This case reaffirmed the "hands-off" doctrine enunciated in *Bell v. Wolfish,* a form of judicial self-restraint, based on the premise that courts should decline jurisdiction over prison matters in deference to administrative expertise**. As a rule, therefore, the writ of *habeas corpus* does not extend into questions of conditions of confinement; but only to the fact and duration of confinement. The high prerogative writ of *habeas corpus* was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint. Its object is to inquire into the legality of one's detention, and if found illegal, to order the release of the detainee. It is not a means for the redress of grievances or to seek injunctive relief or damages. We reiterate the pronouncement of this Court in *Alejano*: The ruling in this case, however, does not foreclose the right of detainees and convicted prisoners from petitioning the courts for the redress of grievances. Regulations and

conditions in detention and prison facilities that violate the Constitutional rights of the detainees and prisoners will be reviewed by the courts on a case-by-case basis. The courts could afford injunctive relief or damages to the detainees and prisoners subjected to arbitrary and inhumane conditions. **However, *habeas corpus* is not the proper mode to question conditions of confinement. The writ of *habeas corpus* will only lie if what is challenged is the fact or duration of confinement.**

APPEARANCES OF COUNSEL

Avisado Bite Aruego and Associates and *E.O. Gana Partners* for petitioner.

The Solicitor General for respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

At bar is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, seeking to nullify the Decision[1] dated 31 August 2006, of the Court of Appeals in CA-G.R. SP. No. 95341, which denied petitioner Maria Fe S. Aquino's Petition for the Issuance of a Writ of *Habeas Corpus* for the person of her husband, Army Major Jason Laureano Aquino (Major Aquino) of the First Scout Ranger Regiment, Special Operation Command of the Philippine Army, and the Resolution[2] dated 5 October 2006, of the same court which denied reconsideration of its earlier Decision.

The facts leading to the arrest of Major Aquino, as set forth in the Solicitor General's brief,[3] show that on 3 February 2006, Major Aquino, along with several military men, namely, Major

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[1] Penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Amelita G. Tolentino and Fernanda Lampas Peralta, concurring; *rollo*, pp. 53-66.

[2] *Id.* at 37-38.

[3] *Id.* at 92-141.

Leomar Jose M. Doctolero, Captain Joey T. Fontiveros, Captain Montano B. Aldomovar,[4] Captain Isagani Criste, and Captain James Sababa, allegedly met at the resthouse of Captain Aldomovar near Camp Tecson, San Miguel, Bulacan to plot a breach of the Camp Defense Plan of Camp General Emilio Aguinaldo and to take over Camp Aquinaldo, as well as the Headquarters of the Philippine Army. On 26 February 2006, in the wake of the group's alleged withdrawal of support from the Armed Forces of the Philippines chain of command and the current administration of President Gloria Macapagal-Arroyo, Major Aquino was ordered arrested and confined at the Intelligence Service Group of the Philippine Army in Fort Bonifacio, Taguig, upon the order of Lt. Gen. Hermogenes C. Esperon, (Lt. Gen. Esperon) who was then the Commanding General of the Philippine Army. On the same day, Lt. Gen. Esperon ordered the Army Inspector General to conduct an investigation to determine: 1) the circumstances attending Major Aquino's alleged withdrawal of support; 2) the veracity of reports anent the alleged troop movement[5] of some Philippine Military personnel from their respective stations to Manila to join the protest march at Epifanio Delos Santos Avenue on 24 February 2006 with Brigadier General Danilo Lim (Brig. Gen. Lim); and 3) the participation, responsibility and culpability of all Philippine Military personnel involved, if any. For this purpose, a panel of investigators[6] was formed. During the investigation, Major Aquino denied the accusations hurled against

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[4] It is also spelled in some records as "ALMODOVAR."

[5] The facts show that on 24 February 2006, four Scout Ranger Teams of 26 enlisted personnel from the 7th SRC, 3rd SRB under 1LT Jacon S. Cordero, were apprehended by the 31st Infantry Battalion, 9th Infantry Division at Sipocot, Camarines Sur. Those apprehended were in civilian outfits but they were found to have with them their military uniforms, bandoleers, berets, and ₱2,000.00 each as food allowance and transportation fee; *id*. at 94-95.

[6] Composed of MGen Ferdinand M. Bocobo, AFP as Chairman, Col. Jose R. Recuenco INF (GSC) PA as Vice Chairman, and Maj. Crescencio C. Libo-on (QMS) PA, Maj. Romeo F. De Los Santos (AGS) PA, Maj. Ferdinand A. Napuli (INF) PA, Maj. Jose Emmanuel L. Mariano (INF) PA, Cpt. Michael D. Licyayo (INF) PA, Cpt. Robert B. Maraon Jags (PA), Cpt. Geraldine C. Ranillo JAGS (PA), and 2Lt. Rodelia L. Hizon (INF), PA, as Members; *id*. at 158.

him. He intimated, *inter alia*, that he had no plan nor did he make any pronouncement of withdrawing support from the chain of command, and that he pledged to continue to support the same and the duly constituted authorities.[7]

On 4 March 2006, the panel of investigators submitted its Investigation Report to the Commanding General of the Philippine Army. In its report, the panel of investigators found that the troop movement[8] by some military personnel from their respective stations to Manila was illegal, implicating Major Aquino therein, thus:

> 14.2 Based on the account of MAJ AQUINO, it may be reasonably observed that said Officer and BGEN LIM were closely coordinating the progress of the latter's talks with CSAFP [Chief of Staff of the Armed Forces of the Philippines] on the night of 23 February 2006. Moreover, there are other circumstances which seem to indicate that the leadership of FSRR [First Scout Ranger Regiment] was preparing some of its personnel to move should the talks succeed, *i.e.* movement of the 7SRC & 9SRC personnel to Manila. Notedly, the following attendant circumstances put to doubt the real intention of FSRR in ordering the aforementioned troop movement, to wit:
>
> i) There is no indication that CO, 3SRB sought clearance or informed CO, 901st Bde or CG, 91 D of said troop movement;
>
> ii) There was no order or call from HPA or SOCOM for the immediate fill up or augmentation of the 10th SRC at Fort Bonifacio;
>
> iii) There is no showing that the troop movement was coordinated, approved and/or cleared with the AOC, the AFPCC or SOLCOM, AFP;
>
> iv) When CO, 901st Bde called CO, 3SRB to inquire about any troop movement, the latter answered in the negative and immediately ordered his men to go back to command post
>
> v) When the twenty six (26) 7SRC personnel were apprehended, they were in civilian attire but brought with them

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[7] *Id.* at 146.

[8] *Id.* at 143-158.

their bandoleer with magazines and ammunitions which were placed inside their backpack.[9]

The panel of investigators recommended that: 1) all implicated officers therein mentioned be immediately relieved from their respective posts; and 2) appropriate charges be filed before the General Court Martial against Major Aquino, among other military officers/personnel, for violations of Article 67[10] (Attempting to Begin or Create Mutiny); and Article 97[11] (Disorders and Neglects Prejudicial to Good Order and Military Discipline) of the Articles of War, to wit:

> 15.3.1 In addition to the relief of BGEN DANILO D LIM 0-7665 AFP which in itself is already a disciplinary action, recommend that subj Officer and MAJ JASON LAUREANO *Y* AQUINO O-10503 (INF) PA be charged before the PAGCM for violation of *AW 67* (CAUSING OR EXCITING A MUTINY) and *AW 97* (DISORDERS AND NEGLECTS PREJUDICIAL TO GOOD ORDER AND MILITARY DISCLIPLINE.)[12]

Further, the panel's Investigation Report was referred by Lt. Gen. Esperon to the Judge Advocate General's Office (JAGO) of the Philippine Army for review. On 17 March 2006, the JAGO found the existence of probable cause against Major Aquino, among other military officers, for violations of

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[9] *Id*. at 154-155.

[10] Art. 67. Mutiny or Sedition. — Any person subject to military law who attempts to create or who begins, excites, causes, or joins in any mutiny or sedition in any company, party, post, camp, detachment, guard, or other command shall suffer death or such other punishment as a court-martial may direct.

[11] Art. 97. General Article. — Though not mentioned in these Articles, all disorders and neglects to the prejudice of good order and military discipline and all conduct of a nature to bring discredit upon the military service shall be taken cognizance of by a general or special or summary court-martial according to the nature and degree of the offense, and punished at the discretion of such court.

[12] *Rollo*, p. 157.

Article 96[13] (Conduct Unbecoming an Officer and a Gentleman), Article 97 (Disorders and Neglects Prejudicial to Good Order and Military Discipline), and Article 67 (Attempting to Begin or Create Mutiny) of the Articles of War.

The JAGO's recommendation reads:

> 6.3. For publishing, distributing and discussing the pamphlet entitled *"The New Order — The Solution to the Filipino Political Problem,"* which publication is not sanctioned as an official publication of the Armed Forces of the Philippines or the Philippine Army, and which material tends to urge or incite other military officers and enlisted men to collectively or concertedly defy standing and lawful orders of the Commanding General, Philippine Army as well as the Chief of Staff, Armed Forces of the Philippines, MAJ AQUINO should likewise be charged of (sic) violating *AW 96* (CONDUCT UNBECOMING AN OFFICER AND GENTLEMAN) and *AW 97* (Disorders and Neglects Prejudicial to Good Order and Military Discipline) under a separate specification.
>
> 6.4. In the (sic) light of the new averments revealed in the Supplemental Affidavit of 1Lt REYES, there is now basis for charging MAJ AQUINO, MAJ DOCTOLERO, CPT FONTIVEROS, CPT ALDOMOVAR, CPT CRISTE, CPT SABABAN for violation of *AW 67* (ATTEMPT TO CREATE A MUTINY). Per said Supplemental Affidavit, it was revealed that subj Officers met at the resthouse of CPT ALDOMOVAR near the so-called tower area in Camp Tecson, San Miguel, Bulacan, on the evening of 03 Feb 2006, discuss and plot their plan to breach the Camp Defense Plan of Camp General Emilio Aguinaldo and hatch a plan to take over Camp Aguinaldo and [the] Headquarters [of the] Philippine Army. x x x.[14]

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[13] Art. 96. Conduct Unbecoming an Officer and Gentleman. — Any officer, cadet, flying cadet, or probationary second lieutenant, who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service. (As amended by Republic Acts 242 and 516).

[14] *Rollo*, pp. 162-163.

On the basis of JAGO's recommendations, Col. Jose R. Recuenco (Col. Recuenco), then Army Provost Marshal, signed under oath a charge sheet[15] against Major Aquino, charging the latter with violations of Article 67 (Attempting to Begin or Create Mutiny)[16]

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[15] *Id*. at 165.

[16] The charges and specifications for violation of the 67th Article of War (Attempting, Beginning, Causing, Exciting to Create a Mutiny) against Major Lim, reads:

> Specification 4: In that MAJ JASON LAUREANO *Y* AQUINO 0-10503 (INF) PA, a person subject to military law, did, at Headquarters, First Scout Ranger Regiment, SOCOM, PA, sometime in June to December 2005, excite and/or cause a mutiny by compiling, collating, publishing and/or distributing a pamphlet entitled "The New Order — The Solution to the Filipino Political Problem," which publication is not sanctioned as an official publication of the Armed Forces of the Philippines or the Philippine Army, which material tends to urge or incite other military officers and enlisted men to collectively or concertedly defy standing and lawful orders of the Commanding General, Philippine Army as well as the Chief of Staff, Armed Forces of the Philippines to follow the chain of command, support the 1987 Constitution and the duly constituted authorities. Contrary to law.
>
> Specification 5: In that MAJ JASON LAUREANO *Y* AQUINO 0-10503 (INF) PA, a person subject to military law, did, at Headquarters, First Scout Ranger Regiment, SOCOM, PA, sometime in November 2005, excite and/or cause a mutiny by presenting a powerpoint presentation on the salient points of the pamphlet entitled "The New Order — The Solution to the Filipino Political Problem" espousing his political ideas to fellow military officers, which act tends to incite other military officers and enlisted men to collectively or concertedly defy standing and lawful orders of the Commanding General, Philippine Army[,] as well as the Chief of Staff, Armed Forces of the Philippines to follow the chain of command, support the 1987 Constitution and the duly constituted authorities. Contrary to law.
>
> Specification 6: In that MAJ JASON LAUREANO *Y* AQUINO 0-10503 (INF) PA, MAJ LEOMAR JOSE M DOCTOLERO 0-10112 (INF) PA, CPT DANTE D LANGKIT 0-11957 (INF) PA, CPT JOEY T FONTIVEROS 0-11713 (INF) PA, CPT MONTANO B. ALDOMOVAR 0-11572 (INF) PA, CPT ISAGANI O CRISTE 0-11549 (INF) PA, CPT WILLIAM UPANO 0-11876 (INF) PA and 1LT JERALD A REYES 0-13257 (INF) PA, persons subject to military law, did, at the resthouse of CPT MONTANO B ALDOMOVAR 0-11572 (INF) PA near the so-called tower area in Camp Tecson, San

and Article 96[17] (Conduct Unbecoming an Officer and Gentleman) of the Articles of War, which was indorsed to the Chief of Staff of the Armed Forces of the Philippines (AFP).

Miguel, Bulacan, in the evening of 03 February 2006, meet then and there, to conspire, confederate and help one another in studying, discussing and plotting how to breach the Camp Defense Plan of Camp General Emilio Aguinaldo and Headquarters Philippine Army, which act or series of acts engenders specific intent to commit mutiny and proximately tending to, but fall short of consummation and as such constitutes an attempt to create a mutiny. Contrary to law. *Id*. at 166-167.

[17] The charges and specifications for violation of the 96th Article of War (Conduct Unbecoming an Officer and a Gentleman) against Major Aquino, provides:

Specification 2: In that MAJ JASON LAUREANO *Y* AQUINO 0-10503 (INF) PA, a person subject to military law, did, at Headquarters, First Scout Ranger Regiment, SOCOM, PA, sometime in June to December 2005, compile, collate, publish and/or distribute a pamphlet entitled "The New Order — The Solution to the Filipino Political Problem," which publication is not sanctioned as an official publication of the Armed Forces of the Philippines or the Philippine Army, which material tends to urge or incite other military officers and enlisted men to collectively or concertedly defy standing and lawful orders of the Commanding General, Philippine Army as well as the Chief of Staff, Armed Forces of the Philippines, which act dishonors or otherwise disgraces him as an officer and seriously compromises his character and standing as a gentleman and exhibits him to be morally unworthy to remain a member of the noble profession of arms. Contrary to law.

Specification 3: In that MAJ JASON LAUREANO *Y* AQUINO 0-10503 (INF) PA, MAJ LEOMAR JOSE M DOCTOLERO 0-10112 (INF) PA, CPT JOEY T FONTIVEROS 0-11713 (INF) PA, CPT MONTANO B ALDOMOVAR 0-11572 (INF) PA, CPT DANTE D LANGKIT 0-11957 (INF) PA, CPT ISAGANI O CRISTE 0-11549 (INF) PA, CPT WILLIAM UPANO 0-11876 (INF) PA, and 1LT JERALD A REYES 0-13257 (INF) PA, persons subject to military law, did, at the resthouse of CPT MONTANO B. ALDOMOVAR 0-11572 (INF) PA near the so-called tower area in Campt Tecson, San Miguel, Bulacan, on the evening of 03 Feb 2006, meet then and there, conspire, confederate and help one another in studying, discussing and plotting how to breach the Camp Defense Plan of Camp General Emilio Aguinaldo and hatch the plan to take over Camp Aguinaldo and Headquarters Philippine Army, which act dishonors or otherwise disgraces them as officers and seriously compromises their character and standing as gentlemen and exhibits them to be morally unworthy to remain members of the noble profession of arms. Contrary to law. *Id*. at 171-172.

On 12 July 2006, Lt. Gen. Esperon issued an Order[18] to the Commanding Officer, 191st, MP Bn to exercise custodial responsibility of Major Aquino, together with the other implicated military personnel who withdrew their support from the chain of command in February 2006, and to place them in confinement at the Philippine Army Detention Center, Camp Capinpin, Tanay, Rizal. The same Order also designated the aforementioned Commanding Officer to exercise direct supervision and control over the concerned detainees.[19]

On 20 July 2006, the charge sheet against Major Aquino was amended to set forth more detailed specifications of the charges.[20] It, however, retained the charges against Major Aquino

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[18] *Id.* at 179-180.

[19] *Id.* at 180.

[20] The pertinent portions of the amended charge sheet, read, as follows:

CHARGE 1: *Violation of the 67th Article of War (Attempting to Begin or Create Mutiny)*

SPECIFICATION: In that x x x Major JASON LAUREANO *Y* AQUINO 0-10503 (Infantry) Philippine Army, x x x persons subject to military law, did, on or about February 23, 2006, and on dates prior or subsequent thereto, in Camp Aguinaldo, Quezon City and Fort Bonifacio, Makati City, together with several John Does, conniving, confederating, and mutually helping one another, each committing individual acts towards a common design or purpose, attempted to begin or caused a mutiny by withdrawing their support from President Gloria Macapagal-Arroyo, Commander-in-Chief of the Armed Forces of the Philippines, urging the Chief of Staff of the Armed Forces of the Philippines and other officers and enlisted personnel to likewise withdraw their support from the President, and attempting to join the protest actions of the so-called civil society groups and political oppositions calling for the President's resignation, with the intent to usurp, subvert and/or override lawful authority.

CHARGE 2: *Violation of the 96th Article of War (Conduct Unbecoming an Officer and Gentleman)*

SPECIFICATION: In that Major JASON LAUREANO *Y* AQUINO 0-10503 (Infantry) Philippine Army, person subject to military law, did, on or about February 3, 2006 at the rest house of Captain Montano B Aldomovar PA at Camp Tecson, San Miguel, Bulacan, together with Major Leomar Jose Doctolero PA, Captain Dante Langkit PA, Captain

as stated in the original charge sheet—*i.e.* violation of Article 67 (Attempting to Begin or Create a Mutiny) and Article 96 (Conduct Unbecoming an Officer and Gentleman) of the Articles of War.

On 20 July 2006, the Judge Advocate General of the AFP General Headquarters of the AFP issued Office Order Number 14-06, creating a Pre-trial Investigation Panel[21] for the case of Major Aquino, *et al.*

On 21 July 2006, petitioner filed a Petition for *Habeas Corpus*[22] with the Court of Appeals, praying that the AFP Chief of Staff and the Commanding General of the Philippine Army, or whoever are acting in their place and stead, be directed to immediately produce the body of Major Aquino and explain forthwith why he should not be set at liberty without delay. The case was docketed as CA-G.R. SP No. 95341.

In the meantime, the Pre-trial Investigation Panel of the AFP issued a Subpoena/Notice of Pre-trial Investigation[23] to Major

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Joey T Fontiveros, Captain Montano Aldomovar PA, Captain Isagani Criste PA, Captain William Upano PA, Major James Sababan and 1LT Gerald Reyes PA, participated in an attempt to begin or create a mutiny by planning how to breach the Camp Defense Plan of Camp Aguinaldo and take-over Camp Aguinaldo and Headquarters, Philippine Army, and joining Col Ariel Querubin and BGen Danilo Lim and other Army and Marine officers numbering about ten (10) in a meeting at Century Park Sheraton Hotel in Manila where they discussed the plan to talk with CSAFP GEN GENEROSO SENGA about the withdrawal of support from President Gloria Mcapagal-Arroyo, conduct unbecoming an officer and gentleman. *Id*. at 182–183.

[21] Per Office Order Number 14-06, the following are the Members of the Pre-trial Investigation Panel in the case of MGEN RENATO P MIRANDA 0-6728 AFP, BGEN DANILON D LIM 0-7665 AFP and others [including Major Aquino]: COL AL I FERRERAS 0-10004 (GSC) JAGS (Chairman), MAJ ERWIN VICTORIANO A MACHICA III 0-131286 JAGS (Member) and MAJ AGUSTIN G MATAVIA 0-133273 JAGS (Member-Recorder). *Id*. at 185.

[22] *Id*. at 47-51.

[23] *Id*. at 186.

Aquino, summoning him to appear in person before the panel and to submit his counter-affidavits and affidavits of witnesses.[24]

After hearing,[25] the Court of Appeals rendered a Decision[26] dated 31 August 2006, denying the Petition for *Habeas Corpus.*

The Court of Appeals held that the remedy of the writ of *habeas corpus* is futile because charges had already been preferred[27] against Major Aquino.[28] In tracing the factual

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[24] The pertinent portions of the Subpoena/Notice of Pre-trial Investigation, dated 27 July 2006, provide:

1. You are hereby summoned to appear in person before the Pre-Trial Investigation Panel on 021400H Aug 2006 at Court Rm Nr 2, Torres Hall of Justice, Camp Aguinaldo, Quezon City, then and there, to submit your counter-affidavit and affidavits of your witnesses if any, in the Pre-Trial Investigation of the charges against you for violation of AW 67 (Attempting to Begin or Create Mutiny) and AW 96 (Conduct Unbecoming an Officer and Gentleman).

2. Failure to submit the aforementioned Counter-Affidavit on the date above specified shall be deemed a waiver of your right to submit controverting evidence. All motions, including motion to dismiss, will be considered as your counter-affidavit.

3. Attached herewith are the Charge Sheets consisting of 4 pages with accompanying documents/documentary evidence. *Id.*

[25] Respondents produced the person of Major Aquino during the scheduled hearing before the Court of Appeals where the respective arguments of the parties were heard. *Id*. at 55.

[26] *Id*. at 53-66.

[27] To *prefer* is to put forward or present for consideration; esp. (of a grand jury), to bring (a charge or indictment) against a criminal suspect. (Black's Law Dictionary, 8th Ed (1999), p. 1217); On this matter the Court of Appeals, held:

Charges, as defined within the purview of the (sic) military law, are the instruments in which the military offense against an accused person is set forth. They are commonly initiated by someone bringing to the attention of the military authorities information concerning a supposed offense committed by a person subject to military law such information may be received from anyone, whether subject to military law or not. But by the usage of the service, all military charges should be formally *preferred* by a commissioned officer; *id*. at 62.

[28] *Id*. at 63.

antecedents leading to the preferment of charges against Major Aquino, the Court of Appeals significantly noted that after the Investigating Panel found probable cause against him for violation of Article 67 (Attempting to Begin or Create Mutiny) and Article 96 (Conduct Unbecoming an Officer and Gentleman) of the Articles of War, Lt. Gen. Esperon forwarded the panel's recommendation to the JAGO for review, which sustained the same.[29] In view of such developments, a charge sheet against Major Aquino was signed under oath by Col. Recuenco, then Army Provost Marshall. The latter, thereafter, endorsed the charge sheet to the AFP Chief of Staff for appropriate Action. Then, the Pre-trial Investigation Panel conducted a pre-trial investigation whereby Major Aquino appeared before the said body. The Court of Appeals said:

> Significantly, even if at the time Major AQUINO was arrested there was yet no formal charge filed against him, however[,] the remedy of *habeas corpus* being resorted to by the Petitioner is still unavailing, considering that, as the records disclosed, charges have been *preferred* against him even before the filing by the Petitioner of the instant petition. Basic is the rule that once a person detained is duly charged in court, he may no longer question his detention *via* a petition for the issuance of a writ of *habeas corpus*.[30]

Petitioner filed a Motion for Reconsideration of the 31 August 2006 Decision, but, the Court of Appeals denied the same and found no reason to disturb its judgment.[31]

Hence, the instant Petition for Review on *Certiorari*.

For this Court's consideration, petitioner elevates three issues, to wit:

I

WHETHER OR NOT THE [COURT OF APPEALS] ERRED IN RULING THAT THE PREFERMENT OF THE CHARGE SHEET AGAINST ARMY MAJOR AQUINO IS EQUIVALENT TO

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[29] *Id*.

[30] *Id*.

[31] *Id*. at 37-38.

FORMALLY CHARGING THE LATTER AS CONTEMPLATED IN ARTICLE 70 OF THE ARTICLES OF WAR.

II

WHETHER OR NOT THE [COURT OF APPEALS] ERRED IN RULING THAT THERE IS LEGAL BASIS IN PLACING ARMY MAJOR AQUINO IN SOLITARY CONFINEMENT IN A MAXIMUM SECURITY DETENTION FACILITY.

III

WHETHER OR NOT THE [COURT OF APPEALS] ERRED IN RULING THAT ARMY MAJOR AQUINO'S SOLITARY CONFINEMENT IN A MAXIMUM SECURITY DETENTION FACILITY IS IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 70 OF THE ARTICLES OF WAR.[32]

The paramount issue posed for resolution is whether the confinement of Major Aquino is legal.

Anent the first issue, petitioner assails the legality of Major Aquino's confinement on the ground that the latter had not been formally charged. It is petitioner's theory that charges can only be deemed formally filed after a thorough and impartial investigation shall have been made.[33] Thus, petitioner suggests that the word "charge" as used in Article 70[34] of the Articles of

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[32] *Id*. at 18.

[33] *Id*. at 20.

[34] Art. 70. Arrest or Confinement. — Any person subject to military law charged with crime or with a serious offense under these articles shall be placed in confinement or in arrest, as circumstances may require; but when charged with a minor offense only, such person shall not ordinarily be placed in confinement. Any person placed in arrest under the provisions of this Article shall thereby be restricted to his barracks, quarters, or tent, unless such limits shall be enlarged by proper authority. Any officer or cadet who breaks his arrest or who escapes from confinement, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be dismissed from the service or suffer such other punishment as a court-martial may direct, and any other person subject to military law who escapes from confinement or who breaks his arrest, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be punished as a court-martial may direct.

War means that a person is formally charged only after the conduct of a mandatory pre-trial investigation. According to petitioner, the charge sheet and the furnishing thereof to any person subject to military law is the act of preferment, which act is evidently different from the act of filing. Otherwise stated, the charge sheet is not the "charge" contemplated in Article 70 of the Articles of War for the arrest or confinement of any person subject to military law. Thus, according to petitioner, the filing of a formal charge can only be done after the conclusion of the pre-trial investigation, when the case is referred to the general court-martial, akin to the conduct of a preliminary investigation in civilian courts.[35]

We are not persuaded.

First, it is established that Major Aquino is governed by military law. Article 2 of the Articles of War[36] circumscribes the jurisdiction of military law only over persons subject thereto. Major Aquino, G3 of the First Scout Ranger Regiment (FSRR) of the Special Operation Command of the Philippine Army, is subject to military law. Thus:

> Art. 2. Persons Subject to Military Law. —The following persons are subject to these articles and shall be understood as included in the term "any person subject to military law" or "persons subject to military law," whenever used in these articles:
>
> (a) **All officers and soldiers in the active service of the Armed Forces of the Philippines or of the Philippine Constabulary; all members of the reserve force, from the dates of their call to active duty and while on such active duty**; all trainees undergoing military instructions; and all other persons lawfully called, drafted, or ordered into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft, or order to obey the same;
>
> (b) Cadets, flying cadets, and probationary second lieutenants;
>
> (c) All retainers to the camp and all persons accompanying or serving with the Armed Forces of the Philippines in the field in

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[35] *Rollo*, p. 20.

[36] Commonwealth Act No. 408, as amended.

time of war or when martial law is declared though not otherwise subject to these articles;

(d) All persons under sentence adjudged by courts-martial. (As amended by Republic Acts 242 and 516).

As a regular officer of the Armed Forces of the Philippines, Major Aquino falls squarely under Article 2 of the Articles of War. Consequently, he is subject to the applicable provisions of the Articles of War and Executive Order No. 178;[37] or the Manual for Courts-Martial, Philippine Army.

Second, a scrutiny of the confinement of Major Aquino proves that the same is valid.

Article 70 of the Articles of War governs the cases of arrest or confinement, *viz.*:

Art. 70. Arrest or Confinement. — Any person subject to military law charged with crime or with a serious offense under these articles shall be placed in confinement or in arrest, as circumstances may require; but when charged with a minor offense only, such person shall not ordinarily be placed in confinement. Any person placed in arrest under the provisions of this Article shall thereby be restricted to his barracks, quarters, or tent, unless such limits shall be enlarged by proper authority. Any officer or cadet who breaks his arrest or who escapes from confinement, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be dismissed from the service or suffer such other punishment as a court-martial may direct, and any other person subject to military law who escapes from confinement or who breaks his arrest, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be punished as a court-martial may direct.

Evidently, Article 70 of the Articles of War empowers the commanding officer to place, in confinement or in arrest, any person subject to military law charged with a crime or with a serious offense under the Articles of War. Article 70 is the

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[37] PRESCRIBING THE PROCEDURE, INCLUDING MODES OF PROOF, IN CASES BEFORE COURTS-MARTIAL, COURTS OF INQUIRY, MILITARY COMMISSIONS AND OTHER MILITARY TRIBUNALS OF THE ARMY OF THE PHILIPPINES.

authority for enabling the proper military personnel to put an instant end to criminal or unmilitary conduct, and to impose such restraint as may be necessary upon the person of a military offender, with a view of his trial by court-martial.[38]

We juxtapose Article 70 with Article 71 of the Articles of War. Under military law, the conduct of investigations is governed by Article 71 of the Articles of War,[39] to wit:

> Art. 71. Charges; Action Upon. — **Charges and specifications must be signed by a person subject to military law, and under oath either that he has personal knowledge of, or has investigated, the matters set forth therein and that the same are true in fact, to the best of his knowledge and belief.**
>
> **No charge will be referred to a general court-martial for trial until after a thorough and impartial investigation thereof shall have been made**. This investigation will include inquiries as to the truth of the matter set forth in said charges, form of charges, and what disposition of the case should be made in the interest of justice and discipline. At such investigation[,] full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after such investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides.
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> Before directing the trial of any charge by general court-martial[,] the appointing authority will refer it to his Staff Judge Advocate for consideration and advice.
>
> When any person subject to military law is placed in arrest or confinement immediate steps will be taken to try the person accused or to dismiss the charge and release him. Any officer who is responsible for unnecessary delay in investigating or carrying the case to a final conclusion shall be punished as a court-martial may

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[38] Gloria, *Philippine Military Law Annotated,* (1956 ed.) p. 230, citing Davis, *Treatise on Military Law,* 1912, p. 61.

[39] *Kapunan, Jr. v. De Villa,* G.R. No. 83177, 6 December 1988, 168 SCRA 264, 269.

direct. When a person is held for a trial by general court-martial, the commanding officer, within eight days after the accused is arrested or confined, if practicable, forward the charges to the officer exercising general court-martial jurisdiction and furnish the accused a copy of such charges. If the same be not practicable, he will report to superior authority the reasons for delay. **The trial judge advocate will cause to be served upon the accused a copy of the charges upon which trial is to be had, and a failure so to serve such charges will be ground for a continuance unless the trial be had on the charges furnished the accused as hereinbefore provided.** In time of peace[,] no person shall, against his objection, be brought to trial before a general court-martial within a period of five days subsequent to the service of charges upon him. (As amended by RA 242). (Emphasis supplied.)

The formal written accusation in court-martial practice consists of two parts, the technical charge and the specification.[40] The charge, where the offense alleged is a violation of the articles, merely indicates the article the accused is alleged to have violated while the specifications sets forth the specific facts and circumstances relied upon as constituting the violation.[41] Each specification, together with the charge under which it is placed, constitutes a separate accusation.[42] The term "charges" or "charges and specifications" is applied to the formal written accusation or accusations against an accused.[43]

The first part of Article 71 of the Articles of War categorically provides that charges and specifications must be signed by a person subject to military law, who under oath states that he either has personal knowledge of, or has investigated, the matters

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[40] Sec. 24, Chapter VI (Preparation of Charges), Manual for Courts-Martial, Philippine Army, otherwise known as Executive Order No. 178, "PRESCRIBING THE PROCEDURE, INCLUDING MODES OF PROOF, IN CASES BEFORE COURTS-MARTIAL, COURTS OF INQUIRY, MILITARY COMMISSIONS AND OTHER MILITARY TRIBUNALS OF THE ARMY OF THE PHILIPPINES.

[41] *Id*.

[42] *Id*.

[43] *Id*.

set forth therein and that the same are true in fact, to the best of his knowledge and belief. Further, the second paragraph of Article 71 explicitly provides that no charge will be referred to a general court-martial for trial until after a thorough and impartial investigation thereof shall have been made. A charge is made followed by a thorough and impartial investigation and if the result of the investigation so warrants, the charge is referred to the general court martial. Contrary to petitioner's contention, Article 71 makes no qualification that there can be a "charge" against a person subject to military law only if a pre-trial has been completed and the case has been referred to a court martial. What Article 71 instructs is that no charges, *i.e.* charges and specifications signed by a person subject to military law under oath, may be referred to a general court-martial for trial until after a thorough and impartial investigation thereof shall have been made. Article 71 does not make the thorough and impartial investigation a prerequisite before charges may be filed against a person subject to military law. Clearly, the thorough and impartial investigation is a prerequisite not to making a charge against a person subject to military law, but to the referral of the charge to the general court martial. It is the charge which comes prior to the investigation, and which sets into motion the investigation.

We find that there was compliance with the requirements of the Articles of War. As shown by the evidence on record, the amended charge sheets[44] against Major Aquino, containing the charges and the specifications for violations of Article 67 (Attempting to Begin or Create Mutiny) and Article 96 (Conduct Unbecoming an Officer and Gentleman) of the Articles of War, were personally signed under oath by Capt. Armando P. Paredes, a person subject to military law. The amended charge sheets were sworn to by the accuser, Capt. Armando P. Paredes in the manner provided under Article 71.[45] As it is, Major Aquino stands charged in court martial proceedings for alleged violations of the Articles of War.

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[44] *Supra* note 20.

[45] *Rollo*, p. 184.

In *Kapunan, Jr. v. De Villa*,[46] this Court denied the writ of *habeas corpus* prayed for, and upheld the legality of the confinement even when there was merely a substantial compliance with the procedural requisites laid down in Article 71. In said case, the Court held that the fact that the charge sheets were not certified in the manner provided by the pertinent law, *i.e.*, that the officer administering the oath has personally examined the affiant and is satisfied that the latter voluntarily executed and understood his affidavit, does not invalidate said charge sheets.[47] With more reason do we herein uphold the validity of the amended charge sheets against Major Aquino considering that they were executed in accordance with the law, and without breach of Article 71 of the Articles of War. The preferment of charges under Article 71 is a ground for the confinement or arrest[48] of Major Aquino pursuant to Article 70[49] of the Articles of War.

It bears stressing that subsequent to the preferment of charges under Article 70, the Judge Advocate General of the General Headquarters of the AFP, issued Office Order Number 14-06, creating a Pre-trial Investigation Panel to investigate the case of Major Aquino and his co-accused. In addition, the Office of the Judge Advocate General issued a subpoena and a notice of pre-trial investigation to Major Aquino summoning him to appear in person before the Pre-trial Investigation Panel. Furthermore, Major Aquino was given the opportunity to submit counter-affidavits and affidavits of his witnesses. More significantly, Major Aquino was present during the scheduled investigation.

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[46] *Supra* note 39.

[47] *Id.* at 272.

[48] *See Gamos v. Abu*, G.R. No. 163998, 13 September 2004, 438 SCRA 286, 289, where therein petitioner, a person subject to military law admitted to having received a facsimile copy of the Charge Sheet against him. The Court in *Gamos* declared that therein petitioner stood charged in court martial proceedings for alleged violations of the Articles of War. The filing of the case against therein petitioner was held by this Court to have defeated therein petitioner's Petition for *Habeas Corpus.*

[49] *Rollo,* p. 20.

His arrest and confinement cannot be said to be without due process of law.

Perforce, we do not find that the Court of Appeals erred in denying petitioner's Petition for *Habeas Corpus* for the person of Major Aquino. A writ of *habeas corpus* extends to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled to it.[50] As a general rule, the writ of *habeas corpus* will not issue where the person alleged to be restrained of his liberty is in the custody of an officer under a process issued by the court which has jurisdiction to do so.[51] Its essential object and purpose is to inquire into all manner of involuntary restraint and to relieve a person from it if such restraint is illegal.[52] In the case at bar, Major Aquino stands charged in court martial proceedings for alleged violations of Article 67 (Attempting to Begin or Create Mutiny) and Article 96 (Conduct Unbecoming an Officer and Gentleman) of the Articles of War. The legality of Major Aquino's restraint having been settled, the privilege of the writ is unavailing.

We proceed to discuss jointly the second and third issues raised by the petitioner before this Court.

Petitioner contends that in his confinement, Major Aquino was not restricted to his barracks, quarters or tent as mandated by Article 70 of the Articles of War; rather, he was placed in solitary confinement in a maximum security detention cell. When petitioner proceeded to the detention cell, she alleged that she was restricted from visiting her husband.[53] Petitioner asserts

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[50] *In the Matter of the Petition for the Habeas Corpus of Atty. Fernando Arguelles, Jr. v. Maj. Gen. Balajadia, Jr.*, G.R. 167211, 14 March 2006, 484 SCRA 653, 657.

[51] *Navales v. Abaya,* G.R. Nos. 162318 and 162341, 25 October 2004, 441 SCRA 393, 420.

[52] *Id*.

[53] *Rollo,* p. 14.

that these are extreme punishments akin to treating Major Aquino as a convicted criminal.[54]

We are not impressed.

At this juncture, it must be stressed that respondents deny the solitary confinement of Major Aquino.[55] According to respondents, Major Aquino is confined in a U-shaped building without any division/partition.[56] The place is described as a long hall with 50 double-deck beds.[57] Respondents also asseverate that Major Aquino is confined along with 16 other military personnel who were similarly charged in the 23-24 February 2006 incident.[58]

While it is true that the extraordinary writ of *habeas corpus* is the appropriate remedy to inquire into questions of violations of constitutional right,[59] this Court, however, does not find the conditions of Major Aquino's confinement to be a proper subject of inquiry in the instant Petition.

This Court has declared that *habeas corpus* is not the proper mode to question conditions of confinement.

In *Alejano v. Cabuay*,[60] lawyers of soldiers and pre-trial detainees accused of *coup d'etat* before the Regional Trial Court of Makati came to this Court bewailing the regulations adopted by the Chief of the Intelligence Service of the Armed Forces of the Philippines (ISAFP) who had custody over their clients. Therein petitioners claimed that their constitutional rights were violated because they were prevented from seeing the detainees — their clients — at any time of the day or night. They also

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[54] *Id*. at 29.

[55] *Id*. at 136.

[56] *Id*.

[57] *Id*.

[58] *Id*.

[59] *Andal v. People*, 367 Phil. 154, 157 (1999).

[60] G.R. No. 160792, 25 August 2005, 468 SCRA 188.

alleged that the detainees' constitutional right to privacy of communication were violated because ISAFP officials opened and read the personal letters of some of the detainees. They also challenged, as unusual and excessive punishment, the presence of the bars separating the detainees from their visitors and the boarding of the iron grills in their cells with plywood. In denying the petition, this Court declared that the fact that the restrictions inherent in detention intrude into the detainees' desire to live comfortably does not convert those restrictions into punishment.[61] Said the Court in *Alejano*:

> *Bell v. Wolfish* [441 U.S. 520 (1979)] pointed out that while a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law, detention inevitably interferes with a detainee's desire to live comfortably. The fact that the restrictions inherent in detention intrude into the detainees' desire to live comfortably does not convert those restrictions into punishment. It is when the restrictions are arbitrary and purposeless that courts will infer intent to punish. Courts will also infer intent to punish even if the restriction seems to be related rationally to the alternative purpose if the restriction appears excessive in relation to that purpose. **Jail officials are thus not required to use the least restrictive security measure.** They must only refrain from implementing a restriction that appears excessive to the purpose it serves.[62] (Emphasis supplied.)

Furthermore, the following guidelines were given by the Court to determine if an action constitutes punishment, to wit: (1) that action causes the inmate to suffer some harm or "disability," and (2) the purpose of the action is to punish the inmate.[63] It is also an additional requisite that the harm or disability be significantly greater than, or be independent of, the inherent discomforts of confinement.[64] We do not see the attendance of the foregoing factors in the instant case. There are no specific

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[61] *Id*. at 205.

[62] *Id*.

[63] *Id*. at 206, citing *Fischer v. Winter*, 564 F. Supp. 281 (1983).

[64] *Id*. at 206–207.

facts that are brought to the attention of this Court to indicate the punitive character of the confinement. The confinement is not herein imposed as a punishment. We do not see that the confinement of Major Aquino causes him to suffer some harm or disability. There is no punitive hardship that exists in the case at bar. In fact, petitioner does not even allege a single act which would show such harm or such "disability" as to prove that the same is significantly greater than, or independent of, the inherent discomforts of confinement.

To be sure, the first part of Article 70 of the Articles of War grants discretion to military authorities over the imposition of arrest or confinement of persons subject to military law charged with crime or with serious offense, *viz*:

> Art. 70. Arrest or Confinement. — **Any person subject to military law charged with crime or with a serious offense under these Articles shall be placed in confinement or in arrest, as circumstances may require**, but when charged with a minor offense only, such person shall not ordinarily be placed in confinement. Any person placed in arrest under the provisions of this Article shall thereby be restricted to his barracks, quarters, or tent, unless such limits shall be enlarged by proper authority. Any officer or cadet who breaks his arrest or who escapes from confinement, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be dismissed from the service or suffer such other punishment as a court-martial may direct, and any other person subject to military law who escapes from confinement or who breaks his arrest, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be punished as a court-martial may direct. (Emphasis supplied.)

Major Aquino is charged with violations of Article 67, for attempting to begin or create mutiny, and Article 97, for Conduct Unbecoming an Officer and Gentleman. According to Article 67, any person subject to military law who attempts to create or who begins, excites, causes or joins in any mutiny shall suffer death or such other punishment as a court-martial may direct. It cannot be gainsaid that in determining the "circumstances" of arrest and confinement in Article 70 of persons charged with

crime or with serious offense, such circumstances as the gravity of the offense charged may be considered.

Anent petitioner's allegation that she was restricted from visiting Major Aquino, the Court had in the past underscored the "hands-off doctrine" — a deference given by courts to military custodians over prison matters, especially on blanket restrictions on contact visit.

In *Alejano,* we gave reasons for the allowance of such restrictions, thus:

> *Block v. Rutherford* [468 U.S. 576 (1984)], which reiterated *Bell v. Wolfish,* upheld the blanket restriction on contact visits as this practice was reasonably related to maintaining security. The safety of innocent individuals will be jeopardized if they are exposed to detainees who while not yet convicted are awaiting trial for serious, violent offenses and may have prior criminal conviction. Contact visits make it possible for the detainees to hold visitors and jail staff hostage to effect escapes. Contact visits also leave the jail vulnerable to visitors smuggling in weapons, drugs, and other contraband. The restriction on contact visit was imposed even on low-risk detainees as they could also potentially be enlisted to help obtain contraband and weapons. The security consideration in the imposition of blanket restriction on contact visits was ruled to outweigh the sentiments of the detainees.
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> *Block v. Rutherford* held that the prohibition of contact visits bore a rational connection to the legitimate goal of internal security. **This case reaffirmed the "hands-off" doctrine enunciated in *Bell v. Wolfish,* a form of judicial self-restraint, based on the premise that courts should decline jurisdiction over prison matters in deference to administrative expertise.**[65]

As a rule, therefore, the writ of *habeas corpus* does not extend into questions of conditions of confinement; but only to the fact and duration of confinement. The high prerogative writ of *habeas corpus* was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint.[66]

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[65] *Id.* at 207.

[66] *In the Matter of the Petition for the Privilege of the Writ of Habeas Corpus of Azucena L. Garcia,* 393 Phil. 718, 729 (2000).

Its object is to inquire into the legality of one's detention, and if found illegal, to order the release of the detainee.[67] It is not a means for the redress of grievances or to seek injunctive relief or damages. We reiterate the pronouncement of this Court in *Alejano*:

> The ruling in this case, however, does not foreclose the right of detainees and convicted prisoners from petitioning the courts for the redress of grievances. Regulations and conditions in detention and prison facilities that violate the Constitutional rights of the detainees and prisoners will be reviewed by the courts on a case-by-case basis. The courts could afford injunctive relief or damages to the detainees and prisoners subjected to arbitrary and inhumane conditions. **However, *habeas corpus* is not the proper mode to question conditions of confinement. The writ of *habeas corpus* will only lie if what is challenged is the fact or duration of confinement.**[68] (Emphasis supplied.)

In sum, we find the present Petition to be devoid of merit.

WHEREFORE, the Petition is *DENIED*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Quisumbing,[***] *Sandoval-Gutierrez,*[****] and *Austria-Martinez, JJ.,* concur.

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[67] *Id*.

[68] *Supra* note 60 at 215.

[***] Vice Associate Justice Antonio Eduardo B. Nachura, per Raffle dated 13 August 2007. Justice Nachura was the Solicitor General when respondent People of the Philippines filed its Manifestation and Motion to Adopt Comment as Memorandum before this Court.

[****] Designated to sit as additional member per Raffle dated 13 August 2007.

THIRD DIVISION

[G.R. No. 175928. August 31, 2007]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALVIN PRINGAS *y* PANGANIBAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); NON-COMPLIANCE WITH SECTION 21 THEREOF REGARDING CUSTODY AND DISPOSITION OF CONFISCATED DANGEROUS DRUGS AND PARAPHERNALIA WILL NOT RENDER THE ARREST OF THE ACCUSED ILLEGAL; RATIONALE.— Non-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team. Its non-compliance will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. In the case under consideration, we find that the integrity and the evidentiary value of the items involved were safeguarded. The seized/ confiscated items were immediately marked for proper identification. Thereafter, they were forwarded to the Crime Laboratory for examination. Though the justifiable ground for non-compliance with Section 21 was not expressly stated by the arresting/buy-bust team, this does not necessarily mean that appellant's arrest was illegal or the items seized/confiscated inadmissible. In the case at bar, as in *Sta. Maria*, the justifiable ground will remain unknown because appellant did not question during the trial the custody and disposition of the items taken from him. Assuming that Sections 21 and 86 were indeed breached, appellant should have raised these issues before the trial court. This, he did not do. Never did he question the

custody and disposition of the items that were supposedly taken from him. It was only on appeal before the Court of Appeals that he raised them. This, he cannot do.

2. ID,; ID.; VIOLATION OF SECTION 5 THEREOF (ILLEGAL SALE OF DRUGS); ELEMENTS.— The elements necessary for the prosecution of illegal sale of drugs are: (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction took place, coupled with the presentation in court of evidence of *corpus delicti*.

3. ID.; ID.; ID.; BUY-BUST OPERATION AS AN ACCEPTED MODE OF APPREHENDING THOSE INVOLVED IN THE ILLEGAL SALE OF PROHIBITED OR REGULATED DRUGS, JUSTIFIED; PRESENT IN CASE AT BAR.— In this jurisdiction, the conduct of a buy-bust operation is a common and accepted mode of apprehending those involved in the illegal sale of prohibited or regulated drugs. It has been proven to be an effective way of unveiling the identities of drug dealers and of luring them out of obscurity. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the operation deserve full faith and credit. In the case at bar, we find the testimonies of PO1 Joselito Esmallaner and SPO3 Leneal Matias credible. It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respects when no glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals. Finding no reason to depart from the findings of the trial court and the Court of Appeals, we stand by their findings. We, likewise, uphold the presumption of regularity in the performance of official duties.

Said presumption was not overcome, as there was no evidence showing that PO1 Joselito Esmallaner and SPO3 Leneal Matias were impelled by improper motive. Appellant and his common-law wife testified that the members of the buy-bust team were complete strangers. Appellant's defense that there was no buy-bust operation deserves scant consideration. Having been caught *in flagrante delicto*, his identity as seller of the *shabu* can no longer be doubted. Against the positive testimonies of the prosecution witnesses, appellant's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must simply fail. Being his common-law wife, we find Gina Dean not to be a credible witness. Appellant said three of his neighbors witnessed the violent entry made by the policemen in his house, but he failed to present them or any of them to prove his point.

4. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— In illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT, WHEN ACCORDED RESPECT; RATIONALE.— It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respects when no glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CHICO-NAZARIO, *J.*:

On appeal before Us is the Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 00303 dated 31 August 2006 which affirmed *in toto* the decision[2] dated 16 August 2004 of the Regional Trial Court (RTC) of Pasig City, Branch 154, convicting accused-appellant Alvin Panganiban Pringas of Violation of Sections 5,[3] 11[4] and 12[5] of Republic Act No. 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002.

On 25 April 2003, appellant was charged before the RTC of Pasig City with Violation of Sections 5, 11 and 12 of Republic Act No. 9165 under the following informations:

Criminal Case No. 12360-D

On or about April 22, 2003, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to sell, possess or otherwise use any dangerous drug, did then and there willfully, unlawfully and feloniously sell, deliver and give away to Police Officer Joselito Esmallaner, a police poseur buyer, one (1) small heat-sealed transparent plastic bag containing white crystalline substance weighing three (3) centigrams (0.03 grams), which was found positive to the test for methamphetamine hydrochloride (*shabu*), a dangerous drug, in violation of the said law.[6]

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[1] Penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Vicente Q. Roxas and Apolinario D. Bruselas, Jr., concurring. CA *rollo*, pp. 99-111.

[2] Records, pp. 94-100.

[3] Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

[4] Possession of Dangerous Drugs.

[5] Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs.

[6] Records, p. 1.

Criminal Case No. 12361-D

On or about April 22, 2003, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control three (3) small heat-sealed transparent plastic bags containing white crystalline substance weighing, the following to wit:

(a) twenty-five (25) decigrams (0.25 grams);

(b) two (2) centigrams (0.02 grams); and

(c) two (2) centigrams (0.02 grams).

for a total of twenty-nine (29) decigrams (0.29 grams), which were found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.[7]

Criminal Case No. 12362-D

On or about April 22, 2003, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess drug paraphernalia, did then and there willfully, unlawfully and feloniously have in his possession, custody and control, the following to wit:

(a) one (1) small tape-sealed transparent plastic bag containing four (4) smaller unsealed transparent plastic bags each with traces of white crystalline substance;

(b) one (1) improvised water pipes containing traces of white crystalline substance;

(c) two (2) empty strips of aluminum foil;

(d) one (1) pin;

(e) one (1) pair of scissors;

(f) one (1) improvised bamboo tongs;

(g) one (1) pack of empty small transparent plastic bag;

(h) one (1) improvised burner; and

(i) two (2) disposable lighters.

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[7] *Id*. at 14.

all are fit or intended for smoking, consuming, administering, injecting any dangerous drug into the body.[8]

On 30 April 2003, appellant, having been charged without the benefit of a preliminary investigation, filed a motion for reinvestigation.[9] On 14 May 2003, the trial court granted the motion and ordered the Pasig City Prosecutor to conduct a preliminary investigation.[10] With the finding of the City Prosecutor that no cogent reason existed to modify or reverse its previous finding of probable cause against accused-appellant, the trial court set the cases for arraignment and trial.[11]

When arraigned on 4 September 2003, appellant, with the assistance of counsel *de oficio*, pleaded not guilty to the crimes charged.[12]

During the pre-trial conference, appellant admitted the existence and the contents of the Request for Laboratory Examination[13] and the Forensic Chemist Report,[14] with the qualification that the subject of the forensic report was not taken from him, and if ever same was taken from him, it was obtained illegally.[15]

With the termination of the pre-trial conference, the cases were heard jointly.

The prosecution presented two witnesses: PO1 Joselito Esmallaner[16] and SPO3 Leneal Matias,[17] both members of the Station Drug Enforcement Unit of the Pasig City Police Station.

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[8] *Id*. at 16-17.

[9] *Id*. at 20.

[10] *Id*. at 22.

[11] *Id*. at 28.

[12] *Id*. at 34.

[13] Exh. A, *id*. at 74-75.

[14] Exh. B, *id*. at 76.

[15] Records, pp. 36-37.

[16] TSN, 4 March 2004 and 21 April 2004.

[17] TSN, 5 May 2004.

The version of the prosecution is as follows:

On 22 April 2003, SPO4 Danilo Tuaño, Officer-in-Charge of the Station Drug Enforcement Unit of the Pasig City Police Station, designated PO1 Joselito Esmallaner to act as a poseur-buyer in a buy-bust operation to be conducted against appellant along Beverly Street, Barangay Buting, Pasig City. At around 10:30 p.m., the buy-bust team headed by SPO3 Leneal Matias arrived at the target area. PO1 Esmallaner and the informant proceeded to the unnumbered house of appellant, while SPO3 Matias and the other members of the team positioned themselves around ten (10) meters away to serve as back-up.

After the informant knocked on appellant's front door, the latter came out. Upon recognizing the informant, appellant asked, "*Pare, ikaw pala. Bibili ka ba*?" The informant who was standing next to PO1 Esmallaner replied "*Oo, itong kasama ko kukuha*." Appellant then asked PO1 Esmallaner how much drugs he intended to buy to which PO1 Esmallaner replied, "*₱100 lang*." PO1 Esmallaner thereafter gave a one hundred peso (₱100.00) bill to the appellant. Thereafter, the appellant went inside the house. Appellant returned and handed to PO1 Esmallaner a plastic sachet containing a white crystalline substance later found to be *shabu*.[18]

Upon receiving the plastic sachet, PO1 Esmallaner grabbed appellant's hand and got the ₱100.00 bill from the right front pocket of appellant's pants. He introduced himself as a police officer and informed the appellant of his violation and his constitutional rights. PO1 Esmallaner then marked the plastic sachet[19] and placed his initials "JE" on the upper right portion of the ₱100.00[20] bill with serial number FX230133.[21]

After seeing that PO1 Esmallaner tried to grab the hand of appellant, who was able to run inside the house and tried to

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[18] TSN, 4 March 2004, pp. 4-5.

[19] Exh. E, records, p. 71.

[20] Exh. C, *id*. at 77.

[21] Should be FX231033.

lock the door, SPO3 Matias and the other members of the team followed PO1 Esmallaner inside appellant's house. Matias saw three pieces of heat-sealed transparent plastic sachets[22] containing a white crystalline substance which turned out to be *shabu*, two disposable lighters,[23] six strips of aluminum foil with traces of *shabu*,[24] improvised water pipe used as tooter,[25] improvised burner,[26] wooden sealer, small scissors,[27] 14 pieces of transparent plastic sachets,[28] and one small needle[29] on top of a small chair (*bangkito*). The items confiscated were marked and turned over to the Investigator who requested laboratory examination on said items.

On 23 April 2003, Chemistry Report No. D-733-03E[30] was issued with the conclusion that the four sachets, together with four other unsealed transparent plastic bags and a water pipe used as tooter, taken from appellant, were positive for Methamphetamine Hydrochloride (*shabu*). On the same date, poseur-buyer PO1 Esmallaner and team leader SPO3 Matias executed their Joint Affidavit of Arrest.[31]

For the defense, appellant[32] took the witness stand together with his common-law wife, Gina Dean.[33]

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[22] Exhs. F to H, records, p. 95.

[23] Exh. K, *id*.

[24] Exh. J, *id*.

[25] Exh. I, *id*.

[26] Exh. L, *id*.

[27] Exh. N, *id*.

[28] Exh. O, *id*.

[29] Exh. Q, *id*. at 96.

[30] Exh. A, *id*. at 74-75.

[31] Exh. D, *id*. at 78-79.

[32] TSN, 26 May 2004.

[33] TSN, 4 August 2004.

Appellant and his common-law wife deny that a buy-bust occurred. Appellant claims that at about 10:00 p.m. of 22 April 2003, he and his common-law wife were with their three children in their house in Beverly Street, Buting, Pasig City, when somebody kicked the door of their house. Appellant was in the comfort room, while his common-law wife was in the bedroom taking care of their children. Thereafter, four persons, later identified as police officers Esmallaner, Mapula, Espares and Familiara, entered without any warrant of arrest or search warrant. He asked them what they wanted and he was told that they were going to arrest him. When he asked for the reason why he was being arrested, he was told that he would just be informed in their office. With his hands on his back, appellant was handcuffed. The policemen subsequently conducted a search in the house, but they neither recovered nor took anything. After that, appellant was brought to the police station, investigated and placed in jail. He added that the violent entry made by the policemen was witnessed by some of his neighbors, namely, Buboy, Macmac and Zaldy, who were then having a drinking session.

On 19 August 2004, the trial court promulgated its decision finding appellant guilty beyond reasonable doubt of the crimes charged. It disposed of the cases as follows:

WHEREFORE, premises considered, the accused **ALVIN PRINGAS** is hereby found **GUILTY** beyond reasonable doubt of Violation of Section 5 of R.A. 9165 (illegal sale of *shabu*) and he is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine of **₱500,000.00**.

Accused **ALVIN PRINGAS** is also found **GUILTY** OF Violation of Section 11 of the same law and he is hereby sentenced to suffer the indeterminate penalty of **TWELVE (12) YEARS** and **ONE (1) DAY** to **FIFTEEN (15) YEARS** of imprisonment and to pay a fine of **₱400,000.00** and also of violation of Section 12 of R.A. 9165, and he is hereby sentenced to suffer imprisonment from **SIX (6) MONTHS** (and) **ONE (1) DAY** as minimum to **THREE (3) YEARS** and **ONE (1) DAY** as maximum, and to pay a fine of **₱10,000.00**.

Considering the penalty imposed, the immediate commitment of the accused to the National Bilibid Prisons is ordered.

The Court fully realizes that the penalty prescribed by law for the offense committed by the accused is quite severe. However, the Court will not question the wisdom of the law and of the legislators who passed it. ***Dura lex, sed lex***. The only thing that the Court can do is to recommend that the accused be pardoned after he shall have served the minimum period of the penalty imposed on him.[34]

On 3 September 2004, appellant, through counsel, appealed the decision to the Court of Appeals *via* a Notice of Appeal.[35] With the filing of the Notice of Appeal, the trial court transmitted[36] the records of the case to the Court of Appeals for review pursuant to *People v. Mateo*.[37]

In its Decision dated 31 August 2006, the Court of Appeals dismissed appellant's appeal and affirmed *in toto* the decision of the trial court.[38]

Unsatisfied, appellant appealed his conviction before this Court by way of a Notice of Appeal.[39]

With the elevation of the records to the Court and the acceptance of the appeal, the parties were required to file their respective supplemental briefs, if they so desired, within 30 days from notice.[40] The parties manifested that they were not filing supplemental briefs, arguing that the issues of the case had been discussed in their respective briefs.[41]

Appellant makes a lone assignment of error, to wit:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE OFFENSES CHARGED

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[34] Records, p. 100.

[35] *Id*. at 103.

[36] *Id*. at 104.

[37] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[38] *Rollo*, p. 110.

[39] *Id*. at 114.

[40] *Id*. at 15.

[41] *Id*. at 16-17, 19-20.

DESPITE THE INADMISSIBILITY OF THE EVIDENCE HAVING BEEN OBTAINED IN VIOLATION OF SECTIONS 21 AND 86, REPUBLIC ACT NO. 9165.

Appellant argues that the apprehending police officers' failure to comply with the provisions (Sections 21 and 86) of Republic Act No. 9165 casts doubt on the validity of appellant's arrest and the admissibility of the evidence allegedly seized from him. He maintains that since the procurement of the evidence, both documentary and testimonial, during the buy-bust operation was violative of said law and of his constitutional right against illegal arrest, the same should not have been received in evidence to prove his guilt they being inadmissible under the law.

Appellant claims that the police officers violated Section 86 of Republic Act No. 9165 when the alleged buy-bust operation that led to the apprehension of appellant was conducted without the involvement of the Philippine Drug Enforcement Agency (PDEA). It is his contention that nowhere in the Joint Affidavit of Arrest executed by the members of the arresting team was it shown that the buy-bust operation was conducted with the assistance, coordination, knowledge or consent of the PDEA.

We find this claim untenable.

In the Joint Affidavit of Arrest, it is stated that "That, on or about 10:30 PM April 22, 2003, as instructed by SPO4 DANILO TUAÑO, OIC/SDEU, this Office effected a coordination to (sic) Metro Manila Regional Office of PDEA and formed a team of SDEU operatives with a confidential informant to conduct anti-narcotics/Buy-bust operation against the said person x x x."[42] This portion of the affidavit clearly negates appellant's claim that the buy-bust operation subject of the case was not with the involvement of the PDEA. Even assuming *ex gratia argumenti* that the aforementioned statement was not contained in the affidavit, appellant's claim of lack of involvement of the PDEA will render neither his arrest illegal nor the evidence

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[42] Records, p. 78.

seized from him inadmissible. Quoting *People v. Sta. Maria,*[43] we resolved the very same issue in this wise:

> Appellant would next argue that the evidence against him was obtained in violation of Sections 21 and 86 of Republic Act No. 9165 because the buy-bust operation was made without any involvement of the Philippine Drug Enforcement Agency (PDEA). Prescinding therefrom, he concludes that the prosecution's evidence, both testimonial and documentary, was inadmissible having been procured in violation of his constitutional right against illegal arrest.
>
> The argument is specious.
>
> Section 86 of Republic Act No. 9165 reads:
>
> > Sec. 86. *Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions.* — The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: *Provided,* That such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.
>
> > The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen (18) months from the effectivity of this Act: *Provided,* That personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.
>
> > Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes

[43] G.R. No. 171019, 23 February 2007.

> as provided for in their respective organic laws: *Provided, however,* That when the investigation being conductetd by the NBI, PNP or any *ad hoc* anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: *Provided, further,* That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters.

Cursory read, the foregoing provision is silent as to the consequences of failure on the part of the law enforcers to transfer drug-related cases to the PDEA, in the same way that the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 is also silent on the matter. But by no stretch of imagination could this silence be interpreted as a legislative intent to make an arrest without the participation of PDEA illegal nor evidence obtained pursuant to such an arrest inadmissible.

It is a well-established rule of statutory construction that where great inconvenience will result from a particular construction, or great public interests would be endangered or sacrificed, or great mischief done, such construction is to be avoided, or the court ought to presume that such construction was not intended by the makers of the law, unless required by clear and unequivocal words.

As we see it, Section 86 is explicit only in saying that the PDEA shall be the "lead agency" in the investigations and prosecutions of drug-related cases. Therefore, other law enforcement bodies still possess authority to perform similar functions as the PDEA as long as illegal drugs cases will eventually be transferred to the latter. Additionally, the same provision states that PDEA, serving as the implementing arm of the Dangerous Drugs Board, ":shall be responsible for the efficient and effective law enforcement of all the provisions on any dangerous drug and/or controlled precursor and essential chemical as provided in the Act." We find much logic in the Solicitor General's interpretation that it is only appropriate that drugs cases being handled by other law enforcement authorities be transferred or referred to the PDEA as the "lead agency" in the campaign against the menace of dangerous drugs. Section 86 is more of an administrative provision. By having a centralized law enforcement body, *i.e.*, the PDEA, the Dangerous Drugs Board can enhance the efficacy of the law against dangerous drugs. To be sure, Section 86(a) of the IRR emphasizes this point by providing:

(a) Relationship/Coordination between PDEA and Other Agencies. — The PDEA shall be the lead agency in the enforcement of the Act, while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of the PDEA x x x. *Provided, finally*, that nothing in this IRR shall deprive the PNP, the NBI, other law enforcement personnel and the personnel of the Armed Forces of the Philippines (AFP) from effecting lawful arrests and seizures in consonance with the provisions of Section 5, Rule 113 of the Rules of Court.

As regards the non-participation of PDEA in a buy-bust operation, we said:

[T]he challenged buy-bust operation, albeit made without the participation of PDEA, did not violate appellant's constitutional right to be protected from illegal arrest. There is nothing in Republic Act No. 9165 which even remotely indicate the intention of the legislature to make an arrest made without the participation of the PDEA illegal and evidence obtained pursuant to such an arrest inadmissible. Moreover, the law did not deprive the PNP of the power to make arrests.[44]

As regards Section 21 of Republic Act No. 9165, appellant insists there was a violation of said section when pictures, showing him together with the confiscated *shabu*, were not immediately taken after his arrest. He added that the Joint Affidavit of Arrest of the apprehending team did not indicate if the members thereof physically made an inventory of the illegal drugs in the presence of the appellant or his/her representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and given a copy thereof. In short, appellant insists that non-compliance with Section 21 regarding the custody and disposition of the confiscated/seized dangerous drugs and paraphernalia, *i.e.*, the taking of pictures and the making of an inventory, will make these items inadmissible in evidence.

We do not agree. Section 21 reads:

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[44] *Id*.

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

Non-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team.[45] Its non-compliance will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. In the case under consideration, we find that the integrity and the evidentiary value of the items involved were safeguarded. The seized/confiscated items were immediately marked for proper identification. Thereafter, they were forwarded to the Crime Laboratory for examination.

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[45] *Id*., citing Section 21.a. of the Implementing Rules and Regulation of Republic Act No. 9165.

Section 21. (a) *x x x Provided further,* that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

Though the justifiable ground for non-compliance with Section 21 was not expressly stated by the arresting/buy-bust team, this does not necessarily mean that appellant's arrest was illegal or the items seized/confiscated inadmissible. In the case at bar, as in *Sta. Maria*, the justifiable ground will remain unknown because appellant did not question during the trial the custody and disposition of the items taken from him. Assuming that Sections 21 and 86 were indeed breached, appellant should have raised these issues before the trial court. This, he did not do. Never did he question the custody and disposition of the items that were supposedly taken from him. It was only on appeal before the Court of Appeals that he raised them. This, he cannot do. We held:

> The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act 9165 were not raised before the trial court but were raised instead for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.[46]

Appellant was charged with violations of Sections 5, 11 and 12 of Republic Act No. 9165. Appellant was charged with violation of Section 5 for selling 0.03 gram of methamphetamine hydrochloride (*shabu*). The elements necessary for the prosecution of illegal sale of drugs are: (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor.[47] What is material to the prosecution for illegal sale of dangerous drugs is the proof that

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[46] *People v. Sta. Maria, id.*

[47] *People v. Adam,* 459 Phil. 676, 684 (2003).

the transaction took place, coupled with the presentation in court of evidence of *corpus delicti*.[48]

The evidence for the prosecution showed the presence of all these elements. The poseur-buyer and the team leader of the apprehending team narrated how the buy-bust happened, and that the *shabu* sold was presented and identified in court. The poseur-buyer, PO1 Joselito Esmallaner, identified appellant as the seller of the *shabu*. Esmallaner's testimony was corroborated by the team leader, SPO3 Leneal Matias. The white crystalline substance weighing 0.03 grams which was bought from appellant for ₱100.00 was found positive for methamphetamine hydrochloride (*shabu*) per Chemistry Report No. D-733-03E.

In this jurisdiction, the conduct of a buy-bust operation is a common and accepted mode of apprehending those involved in the illegal sale of prohibited or regulated drugs. It has been proven to be an effective way of unveiling the identities of drug dealers and of luring them out of obscurity.[49] Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the operation deserve full faith and credit.[50]

In the case at bar, we find the testimonies of PO1 Joselito Esmallaner and SPO3 Leneal Matias credible. It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respects when no glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner

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[48] *People v. Nicolas*, G.R. No. 170234, 8 February 2007, 515 SCRA 187, 198.

[49] *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 552.

[50] *People v. Del Mundo*, G.R. No. 169141, 6 December 2006, 510 SCRA 554, 565-566.

of testifying during the trial.[51] The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.[52] Finding no reason to depart from the findings of the trial court and the Court of Appeals, we stand by their findings.

We, likewise, uphold the presumption of regularity in the performance of official duties. Said presumption was not overcome, as there was no evidence showing that PO1 Joselito Esmallaner and SPO3 Leneal Matias were impelled by improper motive. Appellant and his common-law wife testified that the members of the buy-bust team were complete strangers.[53]

Appellant's defense that there was no buy-bust operation deserves scant consideration. Having been caught *in flagrante delicto*, his identity as seller of the *shabu* can no longer be doubted. Against the positive testimonies of the prosecution witnesses, appellant's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must simply fail.[54] Being his common-law wife, we find Gina Dean not to be a credible witness. Appellant said three of his neighbors witnessed the violent entry made by the policemen in his house, but he failed to present them or any of them to prove his point.

Appellant was, likewise, charged with possession of three sachets of *shabu* with a total weight of 0.29 gram. In illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[55] All these elements have been established.

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[51] *People v. Julian-Fernandez*, 423 Phil. 895, 910 (2001).

[52] *People v. Cabugatan*, *supra* note 49 at 547.

[53] TSN, 26 May 2004, p. 14, 4 August 2004, p. 12.

[54] *People v. Sy*, G.R. No. 171397, 27 September 2006, 503 SCRA 772, 783.

[55] *People v. Khor*, 366 Phil. 762, 795 (1999).

SPO3 Leneal Matias narrated how he discovered the three pieces of heat-sealed transparent plastic sachets containing a white crystalline substance and other drug paraphernalia on top of a small chair (*bangkito*) in the house of appellant.

Q. After the accused handed something to PO1 Esmallaner, what else happened?

A. I saw PO1 Esmallaner try to grab the hand of the accused, but the accused was able to run inside their house, and tried to close the door, sir.

Q. As a member of the back-up team upon seeing this incident, what did you do, if any?

A. We gave support to PO1 Esmallaner, sir.

Q. Will you please tell us what kind of support did you give to PO1 Esmallaner?

A. To arrest the accused, sir.

Q. What did you do in particular?

A. PO1 Esmallaner followed the accused inside me and my group followed Esmallaner also inside the house, sir.

Q. So, in other words you, and your co-members also went inside the house?

A. Yes, sir.

Q. When [you] went inside the house, what did you find out if any?

A. PO1 Esmallaner accosted the accused, while I discovered three (3) pieces of heat sealed transparent plastic sachet containing undetermined amount of white crystalline substance suspected to be *shabu*, and other paraphernalia on top of the small "*bangkito*," sir.

Q. Were these three (3) sachet and paraphernalia were scattered on the small "*bangkito*?"

A. Yes, sir.

Q. And what did you do, if any when you discovered the presence of these items?

A. I confiscated it and then I marked it, sir.

Q. When you said it what would this?

A. The drug paraphernalia, and the heat plastic sachet, sir.

Q. Could you remember one by one what are those paraphernalia that you confiscated and marked it?

A. The paraphernalia are two (2) disposable lighter colored red and yellow, six (6) pieces of small stripe of aluminum foil with traces of suspected shabu improvised water pipe used as tooter, improvised burner, wooden sealer, and the three (3) pieces heat plastic sachet, fourteen (14) pieces of transparent plastic sachet. That is all I can remember, sir.

Q. Did you place markings on that items that you confiscated?

A. Yes, sir.[56]

Appellant was indeed the owner of these items for they were found in his house on top of the *bangkito* following the buy-bust operation and after his arrest. The substance in the plastic sachets was *shabu* as confirmed by Chemistry Report No. D-733-03E. Finally, the drug paraphernalia seized are sufficient to prove that appellant also violated Section 12 of Republic Act No. 9165.

Reviewing the penalties imposed by the trial court as affirmed by the Court of Appeals, we find them to be in order.

WHEREFORE, premises considered, the instant appeal is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR-HC No. 00303 dated 31 August 2006 which affirmed *in toto* the decision of the Regional Trial Court (RTC) of Pasig City, Branch 154, convicting accused-appellant Alvin Panganiban Pringas of Violation of Sections 5, 11 and 12 of Republic Act No. 9165, is hereby *AFFIRMED*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.,* concur.

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[56] TSN, 5 May 2004, pp. 7-9.

THIRD DIVISION

[G.R. No. 177746. August 31, 2007]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ARTURO BARLAAN *y* ABION,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE LOWER COURTS ARE ACCORDED GREAT WEIGHT AND RESPECT AND ARE DEEMED FINAL, MORESO WHERE THE APPELLATE COURT AFFIRMED THE SAME; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— The issue raised in this appeal, *i.e.*, whether or not the accused participated in the commission of the crime by holding the legs of the victim, is factual in nature. Settled is the rule that this Court is not a trier of facts. Factual findings of the lower courts are accorded great weight and respect and are deemed final, moreso in this case where the appellate court affirmed the factual findings of the trial court. Admittedly, there are exceptions to this rule, such as when the trial court ignored, misconstrued or misinterpreted facts and circumstances of substance which, if considered, would alter the outcome of the case. However, none is present in the instant case. At any rate, we reviewed the findings of the trial court and the Court of Appeals and found the same to be duly supported by the records.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; POSITIVE IDENTIFICATION OF THE APPELLANTS WHEN CATEGORICAL AND CONSISTENT AND WITHOUT ANY ILL-MOTIVE ON THE PART OF EYEWITNESSES TESTIFYING ON THE MATTER, PREVAILS OVER ALIBI AND DENIAL.— Besides, as between categorical testimonies that ring of truth on one hand and a bare denial on the other, this Court has strongly ruled that the former must prevail. Indeed, positive identification of the appellants when categorical and consistent and without any ill-motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.

3. ID.; ID.; CONSPIRACY; WHEN IT EXISTS; DIRECT EVIDENCE OF A PREVIOUS PLAN OR AGREEMENT TO COMMIT ASSAULT IS NOT REQUIRED.— Conspiracy exists among perpetrators of a crime when there is unity of purpose and intention in the commission of the crime. To establish conspiracy, direct evidence of a previous plan or agreement to commit assault is not required, as it is sufficient that at the time of the aggression, all the accused manifested by their acts a common intent or desire to attack. Indeed, conspiracy may be inferred when by their acts, two or more persons proceed towards the accomplishment of the same felonious objective, with each doing his act, so that their acts though seemingly independent were in fact connected, showing a closeness of former association and concurrence of sentiment. Records show that the findings that Barlaan conspired with Esquillon and Domingo in killing the victim was not based solely on the fact that he was seen at the crime scene. On the contrary, both the trial court and the Court of Appeals considered Barlaan's actions before, during and after the commission of the crime in arriving at the conclusion that there was conspiracy among the malefactors.

4. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; WHEN PRESENT; TREACHERY CANNOT BE APPRECIATED WHEN AN ALTERCATION PRECEDED THE STABBING.— We agree with the Court of Appeals that treachery did not attend the commission of the crime. There is treachery when the offender commits any of the crimes against persons employing means, methods, or forms in the execution thereof which tend directly and especially to ensure the execution of the crime without risk to himself from any defense which the victim might make. It must be clearly shown that the method of assault adopted by the aggressor was deliberately chosen to accomplish the crime without risk to the aggressor. Thus, the Court ruled that: The impulsive stabbing followed a brief argument x x x. While the attack may have been sudden, the circumstances show that the casual, brief, and tension-filled encounter did not afford the accused-appellant an opportunity to plan and deliberately adopt the method of assault as to accomplish the crime without risk to himself. He simply used whatever weapon he had on hand. To our mind, therefore, treachery cannot be appreciated. In the instant case, the attack

was spontaneous and there is no evidence showing that the malefactors consciously adopted the method of the attack. Also, an altercation preceded the stabbing. Thus, when Dasalla and the victim fled from the restaurant, they were already aware that the accused would harm them.

5. ID.; ID.; ABUSE OF SUPERIOR STRENGTH; APPRECIATED WHERE THE CONCERTED ACTIONS OF THE THREE ACCUSED SHOWED THAT THEY COOPERATED IN SUCH A WAY AS TO SECURE ADVANTAGE FROM THEIR COMBINED SUPERIORITY IN STRENGTH.— The Court of Appeals correctly appreciated the aggravating circumstance of abuse of superior strength. The accused positioned themselves in such a way as to ensure that the victim cannot escape. Thus, Barlaan held the legs of the victim while his body was being pinned down by Esquillon. Domingo, on the other hand, positioned himself in front of the victim. With synchronicity, the trio attacked the victim who was unarmed. Their concerted actions showed that they cooperated in such a way as to secure advantage from their combined superiority in strength.

6. ID.; MURDER; CIVIL LIABILITIES OF ACCUSED-APPELLANT.— The Court of Appeals also correctly awarded the amounts of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages in line with recent jurisprudence. Civil indemnity is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime. Moral damages on the other hand are awarded in a criminal offense resulting in physical injuries, including death. The award of ₱43,306.50 as actual damages is proper considering it is the amount supported by official receipts. Under Art. 2206 of the Civil Code, the heirs of the victim are also entitled to indemnity for loss of earning capacity. To be entitled to such an award, documentary evidence is necessary. By way of exception, testimonial evidence would suffice: (1) if the victim was self-employed, earning less than the minimum wage under current labor laws and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) if the victim was employed as a daily wage worker earning less than the minimum wage under current labor laws. In this case, the victim's widow testified that her husband manages the small business of his parents of supplying Baguio's

native products, for which he earns a monthly income of ₱10,000.00. Thus, the award of ₱2,040,000.00 representing lost earnings is proper.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

YNARES-SANTIAGO, *J.*:

On March 20, 2001, an Information was filed charging Alex Esquillon, George Domingo and Arturo Barlaan with the crime of murder committed as follows:

That on or about the 10th day of February 2001, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, with intent to kill, and with treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously stab with a bladed weapon one MARVIN SUETOS, thereby inflicting upon the latter multiple stab wounds, and as a result thereof, the said Marvin Suetos died.

That the killing was attended by the qualifying circumstance of treachery in that the attack against the victim with a bladed weapon was sudden and the victim was unarmed and was not able to defend himself.

The killing was likewise attended by the qualifying circumstance of abuse of superior strength in that the accused were three and armed with bladed weapons while the victim was alone.

CONTRARY TO LAW.[1]

Barlaan was arrested while Esquillon and Domingo remain at large.[2]

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[1] Records, p. 1.

[2] *Id*. at 19.

During the arraignment, Barlaan pleaded not guilty. Trial on the merits then ensued.

The facts as found by the trial court are as follows:

It appears that in the evening of February 10, 2001, Jose Dasalla and Marvin Suetos were walking downtown Baguio when they came upon the group of accused Arturo Barlaan, Alex Esquillon and George Domingo who invited them for a round of drinks. At around 11:00 p.m., they all entered the Ledsay Eatery along Otek Street, Baguio City. During their drinking session, they conversed and sang on videoke until around 1:00 a.m. of the following day, February 11, 2001. When they were about to leave the place, there ensued an argument as to who will pay their bill of about ₱200.00. Initially, the group asked Marvin Suetos to pay the bill but the latter refused and was offering only to contribute a certain amount. After some exchanges, the group pointed to Esquillon to pay the bill for which reason the latter got mad and brought out his fan knife. At this juncture, Dasalla and Suetos scampered out of the establishment for their safety and proceeded towards the direction of the nearby Orchidarium. Forthwith, the three accused chased them. When Dasalla and Suetos were running infront of the gate of the Orchidarium, Suetos stumbled and fell on the pavement face down. While Suetos was lying down on the pavement face down, the three accused caught up with him. Esquillon stabbed him at the back several times in rapid succession while Barlaan was preventing him from getting up and escaping by holding his legs. Domingo also lifted the body of Suetos and stabbed him in front. All these were witnessed by Dasalla from a distance of 4 to 5 meters away. Dasalla attempted to help Suetos but Esquillon attacked him with the fan knife. However, Dasalla swiftly moved backwards and so only his cheek got caught by the blade of Esquillon's weapon. Dasalla ran but was chased by the three accused. While chasing him, Esquillon again attempted to stab him but only his shirt got caught by the knife. Dasalla was chased up to Rizal Park at Burnham Park, Baguio City. He went directly to the Baguio City Police Office and reported the incident but was told that there is no available mobile car. He then went back to the crime scene but Suetos was no longer there. He learned from the security guard of the nearby Benguet Pine Hotel that the body of Suetos was rushed to the hospital.

At the Baguio General Hospital, Suetos expired.

An autopsy was conducted by Dr. John Tinoyan who made the following findings:

"FINDINGS:

1. Stab wound no. 1, located at the left axillary, anterior, measuring 5 cm in width, with superior pole sharp and the inferior pole blunt. It was directed slightly upward, anteriorly to the midline, penetrating to the skin and part of the left *pectoralis* major muscle. Depth was 7 cm.

2. Stab wound no. 2 located at the right inguinal area, diagonally with superior pole sharp and inferior pole blunt, measuring 7.5 cm in width. It was directed slightly downward to the midline, cutting through the skin lacerating the femoral artery and femoral vein, then to the pelvic cavity. The depth was 10 cm. Massive hematoma and hemorrhage noted on the pelvic cavity.

3. Group stab wounds at the back numbering in three, with superior poles sharp and posterior poles blunt. Width measures 1.7 cm average, and depth average was 5 cm. All stabwounds were muscle deep.

4. Abrasions: Right knee, measuring 4 cm by 4 cm dimension. Left knee measuring 2 cm. by 3 cm. dimension.

5. Linear superficial cuts, right lower arm, anterior, 3 lines, parallel, diagonally with average length of 9 to 10 cm.

x x x x x x x x x

DEATH: HYPOVOLEMIC SHOCK MASSIVE HEMMORRHAGE. MULTIPLE STAB WOUNDS OF THE BODY.

x x x x x x x x x."

A certificate of Death was issued.

On February 15, 2001, Jose Dasalla gave his Sworn Statement to the Baguio Police, narrating the circumstances surrounding the death of Marvin Suetos and naming Alex Esquillon, George Domingo and Arturo Barlaan as the assailants who helped one another in stabbing Suetos which was the basis for the filing of the instant case. Dasalla likewise complained against the three accused for an attempt on his life when he tried to aid Suetos which resulted to the filing of an Information for Attempted Homicide against said accused in another court.

On the civil aspect, Florian Suetos, wife of the deceased, spent ₱22,500.00 for the services of the Baguio Memorial Chapel, ₱20,000.00 for food during the wake, ₱17,306.00 and ₱3,500.00 for the interment fees and ₱4,500.00 for her husband's hospitalization expenses or a total of ₱67,806.00. Her husband Marvin Suetos died at the age of 29 and, during his lifetime, was managing the business of his parents and was earning an income of ₱10,000.00 a month.

For his part, Arturo Barlaan denied the charges against him. He testified that when Alex Esquillon was stabbing the deceased, he tried to prevent him by shouting "Alex, don't! He is our companion" but, instead, Alex Esquillon turned to him and attempted to stab him so he ran away. Esquillon chased him but did not catch up with him. He proceeded directly home after the incident. At the time Esquillon was stabbing the deceased, he did not see George Domingo around. Few hours thereafter, George Domingo, who is his neighbor, went to his house and informed him that Suetos died.[3]

The trial court found the version of the prosecution more credible. It held that Barlaan conspired with Esquillon and Domingo in killing Suetos; that the testimony of Dasalla was corroborated by the autopsy report of Dr. Tinoyan; that treachery attended the killing; and that the aggravating circumstance of abuse of superior strength is deemed absorbed in treachery.

The dispositive portion of the decision of the Regional Trial Court of Baguio City, Branch 6,[4] reads as follows:

WHEREFORE, the Court finds the accused Arturo Barlaan guilty beyond reasonable doubt of the crime of Murder, qualified by treachery, defined and penalized under Art. 248 of the Revised Penal Code as amended by Sec. 6 of R.A. 7659 and hereby sentences him to *Reclusion Perpetua*; to indemnify the heirs of the deceased Marvin Suetos the sum of ₱50,000.00 as indemnity for his death, ₱67,806.00 as actual damages, ₱2,040,000.00 as unearned income and ₱50,000.00 as moral damages for the pain and anguish suffered by his heirs by reason of his death, all indemnifications being without subsidiary imprisonment in case of insolvency; and to pay the costs.

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[3] *Id.* at 98-101.

[4] Penned by Judge Ruben C. Ayson.

The accused Arturo Barlaan being a detention prisoner, is entitled to be credited 4/5 of his preventive imprisonment in the service of his sentence in accordance with Article 29 of the Revised Penal Code.

In respect to his co-accused Alex Esquillon and George Domingo who remained at large, let an *alias* warrant of arrest be issued against them so that upon their arrest, they shall be entitled to a separate trial. And pending their arrest, the case as to them is archived to be revived upon their arrest.

SO ORDERED.[5]

On appeal, the Court of Appeals affirmed the factual findings of the trial court. In particular, the appellate court found that the assailants conspired with each other as can be inferred from their conduct before, during and after the commission of the crime. Their actions showed a common purpose and design. Thus, when Dasalla and the victim fled, they were chased by Esquillon, Domingo and Barlaan. When the malefactors caught up with the victim, they ganged up on him. Thereafter, Esquillon and Domingo took turns in stabbing him, while Barlaan held the victim's legs to prevent him from escaping.

The Court of Appeals, however, found that treachery was not present because a heated argument and a chase preceded the actual stabbing. Thus, the victim and Dasalla were aware that the accused would harm them when they fled from the restaurant. Moreover, the appellate court noted that the stabbing was spontaneous and there was no evidence showing that the assailants have planned and deliberately or consciously adopted their mode of attack upon the victim.

On the other hand, it appreciated the presence of abuse of superior strength because the aggressors took advantage of their combined strength in order to consummate the offense. The victim was lying prone on the ground and his feet were being held by Barlaan when the two other assailants, Esquillon and Domingo, simultaneously delivered the fatal stab wounds.

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[5] Records, pp. 108-109.

The Court of Appeals likewise sustained the awards of ₱50,000.00 each as civil indemnity and moral damages and ₱2,040,000.00 as lost earnings, but reduced the amount of actual damages awarded by the trial court to only ₱43,306.50 as the same was the amount duly supported by official receipts.

The dispositive portion of the Decision of the Court of Appeals, reads:

> WHEREFORE, in view of the foregoing, the decision dated March 26, 2002 of the Regional Trial Court of Baguio City, Branch 6, in Criminal Case No. 18724-R is AFFIRMED with modification. Accused-appellant ARTURO BARLAAN *y* ABION is found GUILTY beyond reasonable doubt of the crime of murder, qualified by abuse of superior strength, under Article 248 of the Revised Penal Code, as amended, and hereby sentenced to suffer the penalty of *reclusion perpetua*, and ORDERED to pay the heirs of the victim Marvin Suetos *y* Velasco the following amounts: ₱43,306.50 in actual damages; ₱50,000.00 as indemnity; ₱50,000.00 as moral damages; and, the sum of ₱2,040,000.00 representing lost earnings.
>
> SO ORDERED.[6]

Hence, this appeal.

Barlaan alleges that the existence of conspiracy was not proven beyond reasonable doubt and that the trial court erred in convicting him of the crime of murder. He claims that the testimony of prosecution witness Dasalla that he (Barlaan) was holding the legs of the victim who was in a prone position should not have been given credence for being preposterous. He argues that since Esquillon was on top of the victim, then there is no necessity for him (Barlaan) to hold the legs of the victim to prevent his escape. He alleges that Dasalla could have misinterpreted the reason for his presence in the crime scene. At any rate, mere presence at the scene of the crime does not establish conspiracy.

The appeal lacks merit.

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[6] CA *rollo*, p. 121. Penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Jose L. Sabio, Jr. and Sesinando E. Villon.

The issue raised in this appeal, *i.e.*, whether or not the accused participated in the commission of the crime by holding the legs of the victim, is factual in nature. Settled is the rule that this Court is not a trier of facts. Factual findings of the lower courts are accorded great weight and respect and are deemed final, moreso in this case where the appellate court affirmed the factual findings of the trial court. Admittedly, there are exceptions to this rule, such as when the trial court ignored, misconstrued or misinterpreted facts and circumstances of substance which, if considered, would alter the outcome of the case.[7] However, none is present in the instant case. At any rate, we reviewed the findings of the trial court and the Court of Appeals and found the same to be duly supported by the records. Besides, as between categorical testimonies that ring of truth on one hand and a bare denial on the other, this Court has strongly ruled that the former must prevail. Indeed, positive identification of the appellants when categorical and consistent and without any ill-motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.[8]

There is no merit in Barlaan's contention that the trial court and the Court of Appeals erred in construing his presence in the crime scene as proof that he acted in conspiracy with Esquillon and Domingo. The defense misread the findings of the lower courts *vis-à-vis* the issue of conspiracy.

Conspiracy exists among perpetrators of a crime when there is unity of purpose and intention in the commission of the crime. To establish conspiracy, direct evidence of a previous plan or agreement to commit assault is not required, as it is sufficient that at the time of the aggression, all the accused manifested by their acts a common intent or desire to attack. Indeed, conspiracy may be inferred when by their acts, two or more persons proceed towards the accomplishment of the same felonious objective, with each doing his act, so that their acts though seemingly

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[7] *People v. Tagana*, G.R. No. 133027, March 4, 2004, 424 SCRA 620, 638.

[8] *Id.* at 640-641.

independent were in fact connected, showing a closeness of former association and concurrence of sentiment.[9]

Records show that the findings that Barlaan conspired with Esquillon and Domingo in killing the victim was not based solely on the fact that he was seen at the crime scene. On the contrary, both the trial court and the Court of Appeals considered Barlaan's actions before, during and after the commission of the crime in arriving at the conclusion that there was conspiracy among the malefactors.

As correctly noted by the trial court:

3. There is evidence that Arturo Barlaan and his co-accused conspired and confederated in killing the deceased making the act of one the act of all.

For collective responsibility among the accused to be established, it is not required that there be a previous agreement to commit the crime. It is enough that at the time of the assault, all the accused acted in concert and performed specific acts manifesting a common desire or purpose to attack and kill the victim therefore making the act of one as the act of all.

Here, when Suetos and Dasalla scampered out of the Ledsay Eatery after sensing danger, Barlaan, Esquillon and Domingo immediately ran after them. And when the three caught up with Suetos after he fell to the pavement face down, Esquillon and Domingo stabbed him while Barlaan made sure he does not escape by holding his feet. The act of Barlaan in restraining their victim while being stabbed by his confederates show that he was in unity with them in their purpose to kill Suetos. The intent to kill is manifest from the number, location and nature of the stab wounds inflicted. There is no showing at all that Barlaan attempted or endeavored to stop his confederates from inflicting further harm on their victim. Besides, when Dasalla attempted to aid Suetos, he was attacked by Esquillon with a knife prompting him to ran away but Esquillon, Domingo and Barlaan chased him. All these show unity of purpose and design of the accused and that they were acting in concert.[10]

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[9] *Id*. at 641.

[10] Records, pp. 103-104.

Similarly, the Court of Appeals found that:

Concededly, there is no direct evidence that any of the stab wounds sustained by the victim was inflicted by accused-appellant. He is, however, still criminally liable because he and his co-accused, Esquillon and Domingo, conspired to kill the victim.

x x x x x x x x x

In the present case, when the victim and Dasalla fled to escape the rage of accused Esquillon, accused-appellant along with accused Esquillon and Domingo, chased them. When the victim stumbled and fell on the pavement, Esquillon and Domingo took turns in stabbing him while accused-appellant held the victim's feet to prevent him from getting up. When Dasalla came to the victim's rescue, Esquillon tried to stab him. Dasalla ran and the trio, including accused-appellant, likewise chased him. Given these circumstances, it cannot be said that accused-appellant did not conspire with his co-accused in the common purpose to kill the victim.

Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident and all the perpetrators are liable as principals. Thus, while accused-appellant was not the one who actually stabbed and killed the victim, he is still criminally liable since the existence of conspiracy makes the act of one the act of all. The precise extent or modality of participation of each of them becomes secondary, since all the conspirators are principals.[11]

We agree with the Court of Appeals that treachery did not attend the commission of the crime. There is treachery when the offender commits any of the crimes against persons employing means, methods, or forms in the execution thereof which tend directly and especially to ensure the execution of the crime without risk to himself from any defense which the victim might make. It must be clearly shown that the method of assault adopted by the aggressor was deliberately chosen to accomplish

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[11] CA *rollo*, pp. 109-110.

the crime without risk to the aggressor.[12] Thus, the Court ruled that:

> The impulsive stabbing followed a brief argument x x x. While the attack may have been sudden, the circumstances show that the casual, brief, and tension-filled encounter did not afford the accused-appellant an opportunity to plan and deliberately adopt the method of assault as to accomplish the crime without risk to himself. He simply used whatever weapon he had on hand. To our mind, therefore, treachery cannot be appreciated.[13]

In the instant case, the attack was spontaneous and there is no evidence showing that the malefactors consciously adopted the method of the attack. Also, an altercation preceded the stabbing. Thus, when Dasalla and the victim fled from the restaurant, they were already aware that the accused would harm them.

The Court of Appeals correctly appreciated the aggravating circumstance of abuse of superior strength. The accused positioned themselves in such a way as to ensure that the victim cannot escape. Thus, Barlaan held the legs of the victim while his body was being pinned down by Esquillon. Domingo, on the other hand, positioned himself in front of the victim. With synchronicity, the trio attacked the victim who was unarmed. Their concerted actions showed that they cooperated in such a way as to secure advantage from their combined superiority in strength.[14]

The Court of Appeals also correctly awarded the amounts of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages in line with recent jurisprudence. Civil indemnity is mandatory and is granted to the heirs of the victim without need of proof other than the commission of the crime.[15] Moral

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[12] *People v. Bejo*, G.R. No. 138454, February 13, 2002, 376 SCRA 651, 668.

[13] *Id*.

[14] *Id*.

[15] *Sabang v. People*, G.R. No. 168818, March 9, 2007.

damages on the other hand are awarded in a criminal offense resulting in physical injuries,[16] including death. The award of ₱43,306.50 as actual damages is proper considering it is the amount supported by official receipts.

Under Art. 2206 of the Civil Code, the heirs of the victim are also entitled to indemnity for loss of earning capacity. To be entitled to such an award, documentary evidence is necessary. By way of exception, testimonial evidence would suffice: (1) if the victim was self-employed, earning less than the minimum wage under current labor laws and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) if the victim was employed as a daily wage worker earning less than the minimum wage under current labor laws.[17]

In this case, the victim's widow testified that her husband manages the small business of his parents of supplying Baguio's native products, for which he earns a monthly income of ₱10,000.00.[18] Thus, the award of ₱2,040,000.00 representing lost earnings is proper.

WHEREFORE, the Decision of the Court of Appeals finding Arturo Barlaan guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the heirs of the victim the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱43,306.50 as actual damages and ₱2,040.000.00 as lost earnings, are *AFFIRMED*.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Nachura, and *Reyes, JJ.*, concur.

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[16] CIVIL CODE, Art. 2219.

[17] *People v. Tagana*, *supra* note 7 at 647.

[18] CA *rollo*, p. 120.

THIRD DIVISION

[A.M. No. MTJ-07-1685. September 3, 2007]
(Formerly OCA IPI No. 05-1792-MTJ)

GIDEON B. JUSON, *complainant, vs.* **JUDGE VICENTE C. MONDRAGON, MCTC, MAKILALA, NORTH COTABATO,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; CODE OF JUDICIAL CONDUCT; JUDGES ARE REQUIRED TO DISPOSE OF THE COURT'S BUSINESS PROMPTLY AND DECIDE THE CASE WITHIN THE REQUIRED PERIODS.— As a general principle, rules prescribing the time within which certain acts must be done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and the orderly and speedy discharge of judicial business. By their very nature, these rules are regarded as mandatory. The office of the judge exacts nothing less than faithful observance of the Constitution and the law in the discharge of official duties. Section 15(1), Article VIII of the Constitution, mandates that cases or matters filed with the lower courts must be decided or resolved within three months from the date they are submitted for decision or resolution. Moreover, Rule 3.05, Canon 3 of the Code of Judicial Conduct, directs judges to "dispose of the court's business promptly and decide cases within the required periods." Judges must closely adhere to the Code of Judicial Conduct in order to preserve the integrity, competence, and independence of the judiciary and make the administration of justice more efficient. Time and again, this court has stressed the need to strictly observe this duty so as not to negate its efforts to minimize, if not totally eradicate, the twin problems of congestion and delay that have long plagued Philippine courts. Canons 6 and 7 of the Canons of Judicial Ethics also exhort judges to be prompt and punctual in the disposition and resolution of cases and matters pending before their courts, x x x. Finally, Administrative Circular No. 1 dated 28 January 1988 requires all magistrates to observe scrupulously the periods prescribed in Article VIII, Section 15 of the Constitution, and to act promptly

on all motions and interlocutory matters pending before their courts.

2. ID.; ID.; ID.;FAILING HEALTH IS NOT AN EXCUSE FOR THE JUDGE TO RENDER HIS DECISION BEYOND THE PRESCRIBED PERIOD; REMEDY AVAILABLE TO THE JUDGE.— Judge Mondragon ascribes the delay in his resolution of Juson's Motion for Intervention in Civil Case No. 355 to his failing health, which has not returned to normalcy since his stroke in 1997 due to high blood pressure. Such an excuse hardly merits serious consideration. Even if he was stricken by an illness which hampered his due performance of his duties, still it was incumbent upon Judge Mondragon to inform this Court of his inability to seasonably decide the cases assigned to him. His illness should not be an excuse for his failure to render the corresponding decision or resolution within the prescribed period. While the Court sympathizes with his woes, the demands of public service cannot abide by his illness. In case of poor health, the Judge concerned needs only to ask this Court for an extension of time to decide/resolve cases/ incidents, as soon as it becomes clear to him that there would be delay in his disposition thereof. The Court notes that Judge Mondragon made no such request. Also, if his health problems had indeed severely impaired his ability to decide cases, Judge Mondragon could have retired voluntarily instead of remaining at his post to the detriment of the litigants and the public.

3. ID.; ID.; ID.; HEAVY CASE LOAD IS NOT AN EXCUSE FOR THE DELAY IN RESOLVING CASES; JUDGES SHOULD ASK THE COURT FOR A REASONABLE EXTENSION OF TIME TO DISPOSE OF THE CASE INVOLVED, IF THE CASE LOAD PREVENTS THE DISPOSITION OF THE CASE WITHIN THE REGLEMENTARY PERIOD.— Judge Mondragon further presented as an excuse for the delay in resolving Juson's Motion for Intervention the additional work given to him in supervising three courts at a time, to wit: as Presiding Judge of MCTC Makilala-Tulunan, Cotobato; as Acting Judge of MTC Magpet, Cotobato; and as Acting Judge of MCTC Roxas-Antipas-Arakan, Cotobato. This will not exonerate him. His failure to decide the case on time cannot be ignored. As this Court ruled in *Española v. Panay*, if the case load of the judge prevents the disposition of cases within the reglementary periods, again, he should ask this Court for

a reasonable extension of time to dispose of the case involved. This is to avoid or dispel any suspicion that something sinister or corrupt is going on. The records of this administrative matter do not show that any attempt was made by Judge Mondragon to make such a request. Instead, he preferred to keep the case pending, enshrouding the same in his silence.

4. ID.; ID.; ID.; ID.; ID.; THE COURT, ON MERITORIOUS GROUNDS, IS ALMOST ALWAYS DISPOSED TO GRANT A REQUEST FOR A REASONABLE EXTENSION OF TIME TO DISPOSE OF THE CASE.— Judge Mondragon should have known that if *his caseload, additional assignments or designations, health reasons or other factors prevented the timely disposition of his pending cases*, all he had to do was to simply ask this Court for a reasonable extension of time to dispose of his cases. The Court, cognizant of the heavy case load of some judges and mindful of the difficulties encountered by them in the disposition thereof, is almost always disposed to grant such requests on meritorious grounds. But for all his excuses, judge Mondragon failed to file any motion for extension despite the availability of this remedy.

5. ID.; ID.; ID.; ID.; ID.; FAILURE TO DECIDE CASES WITHIN THE REGLEMENTARY PERIOD WITHOUT JUSTIFIABLE REASONS CONSTITUTES GROSS INEFFICIENCY. — This Court cannot overstress this policy on prompt disposition or resolution of cases. Delay in case disposition is a major culprit in the erosion of public faith and confidence in the judiciary and the lowering of its standards. Failure to decide cases within the reglementary period, without strong and justifiable reasons, constitutes gross inefficiency warranting the imposition of administrative sanction on the defaulting judge. Indeed, this Court has consistently impressed upon judges the need to decide cases promptly and expeditiously on the principle that justice delayed is justice denied. Failure to resolve cases submitted for decision within the period fixed by law constitutes a serious violation of the constitutional right of the parties to a speedy disposition of their cases.

6. ID.; ID.; SHOULD BE IMBUED WITH A HIGH SENSE OF DUTY AND RESPONSIBILITY IN THE DISCHARGE OF THEIR OBLIGATION TO PROMPTLY ADMINISTER JUSTICE. — Prompt disposition of cases is attained basically

through the efficiency and dedication to duty of judges. If they do not possess those traits, delay in the disposition of cases is inevitable, to the prejudice of litigants. Accordingly, judges should be imbued with a high sense of duty and responsibility in the discharge of their obligation to promptly administer justice.

7. ID.; ID.; DUTY-BOUND NOT ONLY TO BE FAITHFUL TO THE LAW BUT LIKEWISE TO MAINTAIN PROFESSIONAL COMPETENCE. — As frontline officials of the judiciary, judges should, at all times, act with efficiency and with probity. They are duty-bound not only to be faithful to the law, but likewise to maintain professional competence. The pursuit of excellence must be their guiding principle. This is the least that judges can do to sustain the trust and confidence which the public reposed in them and the institution they represent. The Court reiterates that the judge is the visible representation of the law and, more importantly, of justice. Thus, he must be the first to abide by law and weave an example for the others to follow. He should be studiously careful to avoid committing even the slightest infraction of the Rules.

8. ID.; ID.; UNDUE DELAY IN RENDERING A DECISION IS CLASSIFIED AS A LESS SERIOUS CHARGE; IMPOSABLE PENALTY. — All told, this Court finds Judge Mondragon guilty of undue delay in rendering a decision in Civil Case No. 355 which, under Section 9(1), Rule 140 of the Revised Rules of Court, is classified as a less serious charge. Under Section 11(B) of the same Rule, the penalty for such charge is suspension from office without salary and other benefits for not less than one nor more than three months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

9. ID.; ID.; ID.; ID.; FACTORS IN THE DETERMINATION OF THE PROPER PENALTY TO BE IMPOSED; CASE AT BAR. — In the *Report on the Judicial Audit Conducted in the Regional Trial Court, Branches 29 and 59, Toledo City*, the Court observed the following factors in the determination of the proper penalty for failure to decide a case on time: We have always considered the failure of a judge to decide a case within ninety (90) days as gross inefficiency and imposed either fine or suspension from service without pay for such. The fines imposed vary in each case, depending chiefly on the

> number of cases not decided within the reglementary period and other factors, to wit: I the presence of aggravating or mitigating circumstances- the damage suffered by the parties as a result of the delay, the health and age of the judge, *etc*., x x x. As may be gleaned from the case abovequoted, several factors shall be considered in imposing the proper penalty, such as: the presence of aggravating or mitigating circumstances, the damage suffered by the parties as a result of the delay, the health and age of the judge, *etc.* In the present case, the delay for which Judge Mondragon is being found liable pertains to only one case, Civil Case No. 355. There are the mitigating circumstances of his admission of his fault to decide the case on time and his failing health. While this Court recognizes Judge Mondragon's poor health, as well as his heavy case load, such factors cannot exonerate him from his administrative liability, but can only serve to mitigate the imposable penalty. Hence, the court finds the amount of ₱10,000.00 reasonable under the premises.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

This is an administrative complaint[1] filed by Gideon B. Juson (Juson) against Judge Vicente C. Mondragon (Judge Mondragon), Presiding Judge of the Municipal Circuit Trial Court (MCTC), Makilala-Tulunan, North Cotobato, for Delay in Rendering an Order, relative to Civil Case No. 355, entitled "*Silverio Pareja v. Dominador Almirante, Sr.*," pending before said court.

On 6 June 1996, a certain Silverio Pareja (Pareja) filed a Complaint for recovery of possession of a parcel of land, and damages and attorney's fees against Dominador Almirante (Almirante) before the MCTC of Makilala-Tulunan, North Cotabato, docketed as Civil Case No. 355.

Within the period for filing an answer, Almirante filed a Motion To Dismiss alleging that the claim on which the action is founded

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[1] *Rollo*, pp. 1-3.

is unenforceable under the provision of the statute of limitations; and that the complaint states no cause of action.

Thereafter, a series of conferences was held to strike out a compromise agreement as there was a possibility of an amicable settlement, but the efforts of the parties proved futile as no out-of-court settlement was reached between them.

Meanwhile, herein Juson filed an Answer in Intervention on 3 May 2002 claiming that he is the registered owner of the same parcel of land which was the subject matter of Civil Case No. 355.

Thereafter, the case was scheduled for hearing on 23 May 2002 wherein Juson's counsel manifested[2] that he would file a Motion for Intervention. The hearing was reset to 25 July 2002. For reasons not shown in the records, the scheduled hearing was again apparently reset to 7 August 2003 when Pareja's counsel reminded the court that it had not yet resolved Juson's Motion for Intervention. Accordingly, Judge Mondragon issued an Order[3] on the same day declaring that he would act on the said Motion before the next hearing set on 9 October 2003.

By the hearing on 9 October 2003, Judge Mondragon still had not yet acted on Juson's Motion for Intervention. He, instead, issued an Order[4] explaining that:

> The court did not act on the Motion for Intervention because in the last hearing of this case, Atty. Melvin A. Lamata the lawyer then of Intervenor/Movant [Juson] manifested in court that he is going to withdraw the said Motion because the Intervenor/Movant [Juson] was being threatened. Now, the Intervenor/Movant [Juson] categorically stated in court that he is not going to withdraw his Motion.

Judge Mondragon again promised to take action on Juson's Motion for Intervention before the next hearing set on 2 December 2003. However, the hearing was again postponed to 12 January

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[2] *Id*. at 4.

[3] *Id*. at p. 5.

[4] *Id*. at p. 6.

2004, then to 5 February 2004. The 5 February 2004 hearing was again postponed to 16 March 2004 because Judge Mondragon had not yet acted on Juson's Motion for Intervention.

In the 16 March 2004 hearing, Judge Mondragon still failed to act on Juson's Motion for Intervention despite the presence of all the parties before his court. In his Order,[5] Judge Mondragon stated that "**in view of the fact that the court has not yet acted on the Motion for Intervention of Gideon Juson, the court resets the hearing today to give time for the court to act on the said motion. After the court has acted on the Motion, the case will be set for initial trial**."

Up until 17 October 2005, Juson's Motion for Intervention remained unresolved, to his damage and prejudice.

Hence, this Complaint[6] filed by Juson claming undue delay in the resolution by Judge Mondragon of his Motion for Intervention in Civil Case No. 355.

In his Comment[7] to Juson's complaint, Judge Mondragon points out that Pareja instituted Civil Case No. 355 on 6 June 1996. After the filing of Civil Case No. 355, conferences were held to attempt to reach a compromise agreement between the original parties, but unfortunately, no out-of-court settlement was reached. Juson then filed his Motion for Intervention therein. Judge Mondragon admits the delay in resolving the motion and explains that such delay is attributable to the fact that he is supervising three courts at a time, to wit: as Presiding Judge of MCTC Makilala-Tulunan, Cotabato; as Acting Judge of MTC Magpet, Cotabato; and as Acting Judge of MCTC Roxas-Antipas-Arakan, Cotabato. Also, he invokes his failing health since his stroke in 1997. As a matter of fact, he wrote the Office of the Court Administrator (OCA) inquiring about the requirements for the filing of an application for Disability Retirement effective on 1 January 2007. Judge Mondragon further informs this Court

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[5] *Id*. at p. 8.

[6] *Id*. at 1-3.

[7] *Id*. at 11-12.

that he had already granted Juson's Motion for Intervention in Civil Case No. 355 in a Resolution dated 17 October 2005.

On 17 April 2006, the OCA submitted its Report,[8] recommending that

1. the instant administrative case be RE-DOCKETED as an administrative matter;
2. respondent Judge be FINED in the amount of ₱10,000.00 for Undue Delay in Rendering an Order with a STERN WARNING that commission of the same act would be dealt with more severely.

On 19 June 2006, this Court required[9] the parties herein to manifest within 10 days from notice if they were willing to submit the matter for resolution based on the pleadings filed.

On 2 August 2006, Judge Mondragon submitted his manifestation[10] stating that he was submitting the case for resolution based on the pleadings filed. On the other hand, Juson failed to file his manifestation despite notice sent to and received by him. Thus, this Court deemed[11] as waived his right to submit a supplemental comment/pleading herein, and submitted the case for decision based on the pleadings filed.

After a close scrutiny of the records, this Court agrees in the recommendation of the OCA.

As a general principle, rules prescribing the time within which certain acts must be done, or certain proceedings taken, are considered absolutely indispensable to the prevention of needless delays and the orderly and speedy discharge of judicial business. By their very nature, these rules are regarded as mandatory.[12]

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[8] *Id*. at 18-19.

[9] *Id*. at 20.

[10] *Id*. at 21.

[11] *Id*. at 27.

[12] *Gachon v. Devera, Jr.*, G.R. No. 116695, 20 June 1997, 274 SCRA 540, 548-549, citing Cf. *Valdez v. Ocumen*, 106 Phil. 929, 933 (1960) and *Alvero v. De la Rosa*, 76 Phil. 428, 434 (1946).

The office of the judge exacts nothing less than faithful observance of the Constitution and the law in the discharge of official duties.[13] Section 15(1), Article VIII of the Constitution, mandates that cases or matters filed with the lower courts must be decided or resolved within three months from the date they are submitted for decision or resolution. Moreover, Rule 3.05, Canon 3 of the Code of Judicial Conduct, directs judges to "dispose of the court's business promptly and decide cases within the required periods." Judges must closely adhere to the Code of Judicial Conduct in order to preserve the integrity, competence, and independence of the judiciary and make the administration of justice more efficient.[14] Time and again, this Court has stressed the need to strictly observe this duty so as not to negate its efforts to minimize, if not totally eradicate, the twin problems of congestion and delay that have long plagued Philippine courts. Canons 6 and 7 of the Canons of Judicial Ethics also exhort judges to be prompt and punctual in the disposition and resolution of cases and matters pending before their courts, to wit:

6. PROMPTNESS

He should be prompt in disposing of all matters submitted to him, remembering that justice delayed is often justice denied.

7. PUNCTUALITY

He should be punctual in the performance of his judicial duties, recognizing that the time of litigants, witnesses, and attorneys is of value and that if the judge is unpunctual in his habits, he sets a bad example to the bar and tends to create dissatisfaction with the administration of justice.

Finally, Administrative Circular No. 1 dated 28 January 1988 requires all magistrates to observe scrupulously the periods prescribed in Article VIII, Section 15 of the Constitution, and to act promptly on all motions and interlocutory matters pending before their courts.

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[13] *Re: Report on the Judicial Audit and Physical Inventory of the Cases in RTC-Br. 138, Makati City*, 325 Phil. 111, 118 (1996).

[14] *Office of the Court Administrator v. Javellana*, A.M. No. RTJ-02-1737, 9 September 2004, 438 SCRA 1, 14.

In the case at bar, records are not clear when Juson actually filed the Motion for Intervention. We can only surmise based on Judge Mondragon's Order dated 12 January 2004 that Juson was supposed to file said Motion on 27 January 2004 or 15 days thereafter. We quote the pertinent portion of the 12 January 2004 Order, thus:

> Atty. Tabosares requested that he be allowed to file within 15 days a Motion for Intervention which the court granted. He is given 15 days to file the said Motion for Intervention copy furnish Atty. Guro who is given also 15 days to file his Comment or Opposition to the said Motion, and which Motion for Intervention will be resolved by this court before the next hearing but after Atty. Tabosares have filed his rejoinder to the comment of Atty. Guro.[15]

On 16 March 2004, Judge Mondragon issued another Order[16] stating that *"in view of the fact that the court has not yet acted on the Motion for Intervention of Gideon Juson, the court resets the hearing today to give time for the court to act on the said Motion. After the court has acted on the motion, the case will be set for initial trial."*

Clearly, the Motion for Intervention had already been filed and had become substantial for resolution on or before 16 March 2004. Thus, even if the reckoning period for the 3-month period within which to resolve said motion is on 16 March 2004, still there was delayed action as the Motion for Intervention was resolved only on 17 October 2005 or more than 1½ years after its submission for resolution.

Judge Mondragon ascribes the delay in his resolution of Juson's Motion for Intervention in Civil Case No. 355 to his failing health, which has not returned to normalcy since his stroke in 1997 due to high blood pressure. Such an excuse hardly merits serious consideration. Even if he was stricken by an illness which hampered his due performance of his duties, still it was incumbent upon Judge Mondragon to inform this Court of his inability to seasonably decide the cases assigned to him. His

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[15] *Rollo,* p. 7.

[16] *Id*. at 8.

illness should not be an excuse for his failure to render the corresponding decision or resolution within the prescribed period. While the Court sympathizes with his woes, the demands of public service cannot abide by his illness.[17] In case of poor health, the Judge concerned needs only to ask this Court for an extension of time to decide/resolve cases/incidents, as soon as it becomes clear to him that there would be delay in his disposition thereof.[18] The Court notes that Judge Mondragon made no such request. Also, if his health problems had indeed severely impaired his ability to decide cases, Judge Monragon could have retired voluntarily instead of remaining at his post to the detriment of the litigants and the public.

Judge Mondragon further presented as an excuse for the delay in resolving Juson's Motion for Intervention the additional work given to him in supervising three courts at a time, to wit: as Presiding Judge of MCTC Makilala-Tulunan, Cotabato; as Acting Judge of MTC Magpet, Cotabato; and as Acting Judge of MCTC Roxas-Antipas-Arakan, Cotabato. This will not exonerate him. His failure to decide the case on time cannot be ignored. As this Court ruled in *Española v. Panay*,[19] if the case load of the judge prevents the disposition of cases within the reglementary periods, again, he should ask this Court for a reasonable extension of time to dispose of the cases involved. This is to avoid or dispel any suspicion that something sinister or corrupt is going on. The records of this administrative matter do not show that any attempt was made by Judge Mondragon to make such a request. Instead, he preferred to keep the case pending, enshrouding the same in his silence.

Judge Mondragon should have known that if *his caseload, additional assignments or designations, health reasons or other factors prevented the timely disposition of his pending cases,*

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[17] *Office of the Court Administrator v. Butalid*, 355 Phil. 337, 350 (1998).

[18] *Office of the Court Administrator v. Quizon*, 427 Phil. 63, 76 (2002).

[19] A.M. No. RTJ-95-1325, 4 October 1995, 248 SCRA 684, 687, citing *Cruz v. Basa*, A.M. No. MTJ-91-598, 9 February 1993, 218 SCRA 551, 557.

all he had to do was to simply ask this Court for a reasonable extension of time to dispose of his cases. The Court, cognizant of the heavy case load of some judges and mindful of the difficulties encountered by them in the disposition thereof, is almost always disposed to grant such requests on meritorious grounds.[20] But for all his excuses, Judge Mondragon failed to file any motion for extension despite the availability of this remedy.

This Court cannot overstress this policy on prompt disposition or resolution of cases. Delay in case disposition is a major culprit in the erosion of public faith and confidence in the judiciary and the lowering of its standards.[21] Failure to decide cases within the reglementary period, without strong and justifiable reasons, constitutes gross inefficiency warranting the imposition of administrative sanction on the defaulting judge.[22]

Indeed, this Court has consistently impressed upon judges the need to decide cases promptly and expeditiously on the principle that justice delayed is justice denied. Failure to resolve cases submitted for decision within the period fixed by law constitutes a serious violation of the constitutional right of the parties to a speedy disposition of their cases.[23]

Prompt disposition of cases is attained basically through the efficiency and dedication to duty of judges. If they do not possess those traits, delay in the disposition of cases is inevitable, to the prejudice of litigants. Accordingly, judges should be imbued

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[20] *Gonzalez-Decano v. Siapno*, A.M. No. MTJ-00-1279, 1 March 2001, 353 SCRA 269, 278.

[21] *Re: Report of Deputy Court Administrator Bernardo T. Ponferada Re: Judicial Audit Conducted in the RTC, Branch 26, Argao, Cebu*, A.M. No. 00-4-09-SC, 23 February 2005, 452 SCRA 125, 133.

[22] *Celino v. Judge Abrogar*, 315 Phil. 305, 312 (1995).

[23] *Re: Judicial Audit of the RTC, Br. 14, Zamboanga City, Presided Over by Hon. Ernesto R. Gutierrez*, A.M. No. RTJ-05-1950, 13 February 2006, 482 SCRA 310, 318.

with a high sense of duty and responsibility in the discharge of their obligation to promptly administer justice.[24]

As frontline officials of the judiciary, judges should, at all times, act with efficiency and with probity. They are duty-bound not only to be faithful to the law, but likewise to maintain professional competence. The pursuit of excellence must be their guiding principle. This is the least that judges can do to sustain the trust and confidence which the public reposed in them and the institution they represent.[25]

The Court reiterates that the judge is the visible representation of the law and, more importantly, of justice. Thus, he must be the first to abide by the law and weave an example for the others to follow. He should be studiously careful to avoid committing even the slightest infraction of the Rules.[26]

All told, this Court finds Judge Mondragon guilty of undue delay in rendering a decision in Civil Case No. 355 which, under Section 9(1), Rule 140 of the Revised Rules of Court, is classified as a less serious charge. Under Section 11(B) of the same Rule, the penalty for such charge is suspension from office without salary and other benefits for not less than one nor more than three months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

In the *Report on the Judicial Audit Conducted in the Regional Trial Court, Branches 29 and 59, Toledo City*,[27] the Court observed the following factors in the determination of the proper penalty for failure to decide a case on time:

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[24] *Re: Report on the Judicial Audit and Physical Inventory of Cases in the Regional Trial Court, Br. 54, Bacolod City*, A.M. No. 06-4-219-RTC, 2 November 2006, 506 SCRA 505, 520.

[25] *Re: Report on the Judicial Audit Conducted in the RTC, Branch 22, Manila*, A.M. No. 00-1-10-RTC, 10 September 2004, 438 SCRA 111, 125-126.

[26] *Castillo v. Cortes*, A.M. No. RTJ-93-1082, 25 July 1994, 234 SCRA 398.

[27] 354 Phil. 8, 21 (1998).

> We have always considered the failure of a judge to decide a case within ninety (90) days as gross inefficiency and imposed either fine or suspension from service without pay for such. The fines imposed vary in each case, depending chiefly on the number of cases not decided within the reglementary period and other factors, to wit: the presence of aggravating or mitigating circumstances — the damage suffered by the parties as a result of the delay, the health and age of the judge, *etc*. x x x.

As may be gleaned from the case above-quoted, several factors shall be considered in imposing the proper penalty, such as: the presence of aggravating or mitigating circumstances, the damage suffered by the parties as a result of the delay, the health and age of the judge, *etc*.

In the present case, the delay for which Judge Mondragon is being found liable pertains to only one case, Civil Case No. 355. There are the mitigating circumstances of his admission of his fault to decide the case on time and his failing health. While this Court recognizes Judge Mondragon's poor health, as well as his heavy case load, such factors cannot exonerate him from his administrative liability, but can only serve to mitigate the imposable penalty.

Hence, the Court finds the amount of ₱10,000.00 reasonable under the premises.

WHEREFORE, Judge Vicente C. Mondragon is found *GUILTY* of undue delay in the disposition of the Motion for Intervention of Gideon B. Juson in Civil Case No. 355 and is hereby ordered to pay a *FINE* of TEN THOUSAND PESOS (₱10,000.00). He is warned that a repetition of the same or similar act shall be dealt with more severely. Let a copy of this decision be attached to his personal records. The Court Administrator is directed to furnish all concerned parties copies of this Resolution.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 130348. September 3, 2007]

MIGUEL SORIANO, JR. and JULIETA SORIANO, *petitioners, vs.* **ANTERO SORIANO and VIRGINIA SORIANO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PLEADINGS AND PRACTICES; SERVICE; WHEN A PARTY IS REPRESENTED BY COUNSEL OF RECORD, SERVICE OF ORDERS AND NOTICES MUST BE MADE UPON SAID ATTORNEY; NOTICE TO THE CLIENT AND TO ANY OTHER LAWYER, NOT THE COUNSEL OF RECORD, IS NOT A NOTICE IN LAW.— In practice, service means the delivery or communication of a pleading, notice or some other paper in a case, to the opposite party so as to charge him with receipt of it and subject him to its legal effect. The purpose of the rules on service is to make sure that the party being served with the pleading, order or judgment is duly informed of the same so that he can take steps to protect his interests; *i.e.*, enable a party to file an appeal or apply for other appropriate reliefs before the decision becomes final. Pursuant to Section 2, Rule 13 of the 1997 Rules of Civil Procedure, as amended, service of court processes, *inter alia*, is made in the following manner, to wit: x x x. As mentioned above, the general rule is, where a party appears by attorney in an action or proceeding in a court of record, all notices required to be given therein must be given to the attorney of record; and service of the court's order upon any person other than the counsel of record is not legally effective and binding upon the party, nor may it start the corresponding reglementary period for the subsequent procedural steps that may be taken by the attorney. Notice should be made upon the counsel of record at his exact given address, to which notice of all kinds emanating from the court should be sent in the absence of a proper and adequate notice to the court of a change of address. Said differently, when a party is represented by counsel of record, service of orders and notices must be made upon said attorney; and notice to the client and to any other lawyer, not the counsel of record, is not notice in law.

2. ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT UNDER RULE 45; PETITION BEFORE THE COURT OF APPEALS WAS TIMELY FILED IN CASE AT BAR; RULES OF PROCEDURE ARE USED ONLY TO HELP SECURE AND NOT OVERRIDE SUBSTANTIAL JUSTICE.— Considering the prior disquisition, therefore, petitioners are deemed to have received a copy of the subject denial by the RTC of their motion for reconsideration on 2 June 1997 when their counsel of record, Rico & Associates Law Office, received the same. The remaining five-day period within which to file the petition with the appellate court should have been counted from that date. The last day, therefore, was 7 June 1997. Clearly, the petition interposed before the Court of Appeals on 6 June 1997 was filed in due time. Otherwise, to consider the operative date of receipt of the RTC Order denying petitioners' motion for reconsideration to be 28 May 1997 — when said order was received by petitioner Atty. Miguel Soriano, Jr., who albeit appeared as a collaborating counsel as well — is to violate Section 2 of Rule 13 of the Rules of Court. As amended, that provision states that when party is represented by counsel, service of process must be made on counsel and not on the party. Time and again, we have stressed that the rules of procedure are used only to help secure and not override substantial justice. If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter.

3. ID.; ID.; ID.; LIMITED TO REVIEWING AND CORRECTING ONLY ERRORS OF LAW, NOT OF FACT; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— At the outset, in imputing as error the appellate court's appreciation of the genuineness of two supposed contracts executed by petitioners and Marilou P. Del Castillo, *i.e.*, the Contract of (Sub)Lease *vis-à-vis* the Joint Venture Agreement, petitioners are plainly bringing into play questions of fact and the appreciation of evidence already made by no less than three courts of law below. In a manner of speaking, petitioners would have us review once again the factual determinations of the MeTC, as affirmed by not one court, but two higher courts already — the RTC and the Court of Appeals. It has been consistently held that under Section 1, Rule 45 of the Rules of Court, as amended, in an appeal to

this Court by way of a petition for review on *certiorari*, only questions of law must be raised by the petitioner; that is, our jurisdiction in a petition for review on *certiorari* is limited to reviewing and correcting only errors of law, not of fact, the only power of the Court being to determine if the legal conclusions drawn from the findings of fact are correct. The Court is not expected or required to examine or refute the oral and documentary evidence submitted by the parties. Of course, this Court may be minded to review the factual findings of the Court of Appeals, but only in the presence of any of the following circumstances: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the interference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of fact are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. Alas, we find none of the exceptions to be present in the case at bar; therefore, we see no reason to depart from the general rule. The findings of fact of the three courts are fully substantiated by the evidence extant on record.

4. CIVIL LAW; SPECIAL CONTRACTS; LEASE; CONTRACT OF SUB-LEASE BETWEEN PETITIONERS AND A THIRD PARTY IS A CLEAR VIOLATION OF THE PROHIBITION IN THE CONTRACT OF LEASE BETWEEN PETITIONERS AND RESPONDENTS.— The foregoing discussion notwithstanding, we have reviewed the records of the case at bar and find no reversible error committed by the Court of Appeals concerning the merits of the present petition. Without need to go into the fundamentals of the mendacity surrounding the signature of the witnesses and the notary public found on the subject contract of (sub)lease, the resolution of the present controversy is uncomplicated. It boils down to the consent of petitioner Julieta Soriano and Marilou P. Del Castillo as evidenced by the legitimate signatures thereon. It has been

proved adequately to this Court that there exists a valid contract of (sub)lease between petitioners and Marilou P. Del Castillo. The concurrence of the fact that the latter acknowledges having signed the contract along with petitioner Julieta Soriano, and of the fact that the signatures of the witnesses and notary public are forgeries, do not negate the presence of a valid contract of (sub)lease. The signatures of the witnesses and the notary public are considered necessary simply to make the contract binding on third parties. It would have been a different matter had petitioners alleged and offered evidence to show that the signatures of petitioner Julieta Soriano and Marilou P. Del Castillo, parties to the contract of (sub)lease, were forgeries as well — which would mean that parties to the assailed contract did not give their consent. Absence of consent between the parties means that there was no contract of (sub)lease; hence, petitioners would not be deemed to have violated the prohibition on sublease, which was barred by the contract of lease between them and respondents. In fine, as correctly held by no less than three courts, there exists a contract of (sub)lease between petitioners and a third party, which is in clear violation of the prohibition contained in the contract of lease entered into by petitioners and respondents.

APPEARANCES OF COUNSEL

Rico & Associates for petitioners.
Saul Q. Hofilena, Jr. for respondents.

D E C I S I O N

CHICO-NAZARIO, *J.*:

In this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, as amended, petitioner spouses Miguel Soriano, Jr. and Julieta Soriano seek: (1) the *reversal* of the *18 August 1997 Decision*[2] of the Court of Appeals, in CA-G.R. SP No.

[1] *Rollo*, pp. 9-38.

[2] Penned by Associate Justice Eugenio S. Labitoria with Associate Justices Salome A. Montoya and Portia Aliño Hormachuelos, concurring; *id.* at 39-51.

44365; (2) the *dismissal* of the complaint for ejectment filed by herein respondents; and (3) the *issuance* of a temporary restraining order enjoining the Metropolitan Trial Court (MeTC) and herein respondents, and all persons acting in behalf of the latter, from conducting proceedings relative to the writs of execution and demolition issued in Civil Cases No. 3856 and No. 94-0001 until final resolution of the present petition.

The assailed Court of Appeals decision affirmed *in toto* an earlier Decision[3] of the Regional Trial Court (RTC), Branch 255, Las Piñas, dated 3 April 1997, in two consolidated cases, Civil Cases No. 96-0148 and No. 96-0148(A), affirming *in toto* the *Joint Decision*[4] of the MeTC, Branch 79, Las Piñas, dated 15 April 1996, in Civil Cases No. 3856 and No. 94-0001.

The case filed before the MeTC involved a Complaint[5] for Ejectment filed by respondents, spouses Antero Soriano and Virginia Soriano, before the MeTC, Branch 79, Las Piñas, on 24 February 1994. In said complaint, respondents prayed for the following relief against petitioners, spouses Miguel Soriano, Jr. and Julieta Soriano:

> 1] To vacate the premises covered by TCT NO. S33221 of the Register of Deeds of the Province of Rizal.
>
> 2] Ordering the defendants to pay the plaintiffs for the use of the premises, from January 1994 up to the dates defendants vacates (sic) the premises, the amount of Two Thousand Six Hundred Sixty Two Pesos (₱2,662.00) per month plus 12% per annum with an increment of 10% every three (3) years beginning 1994.
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> 3] Payment of attorney's fees in the amount of Ten Thousand Pesos (₱10,000.00) and Three Thousand Pesos (₱3,000.00) per appearance.[6]

Essentially, the facts are:

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[3] Penned by Judge Florentino M. Alumbres. CA *rollo*, pp. 39-42.

[4] Penned by Judge Pio M. Pasia. *Id.* at 309-314.

[5] *Id.* at 196-200.

[6] *Id.* at 199.

On 5 October 1981, respondents, spouses Antero Soriano and Virginia Soriano, and petitioners, spouses Miguel Soriano, Jr. and Julieta Soriano, as lessors and lessees respectively, entered into a 20-year period *Contract of Lease*[7] over a 420 square meter parcel of land[8] situated at Pamplona, Las Piñas, Metro Manila. The leased property was intended as the site of a building still to be constructed at that time, "to be used exclusively by the LESSEE in that area."[9]

Part of the terms and conditions of said contract was a provision against the sublease or assignment by the lessees of the subject property to third persons absent the written consent of the lessors, *viz*:

> 6. The LESSEE shall not sublease or assign the leased area or any portion thereof, without first securing the written consent of the LESSOR;

Alleging violation of the aforequoted condition, on 24 February 1994, respondents filed a complaint for ejectment against petitioners before the MeTC, Branch 79, Las Piñas, docketed as Civil Case No. 3856. In the complaint, respondents averred that:

> 7] That sometime December 1993, the defendants (sic) spouses were surprised to learn that the lessees, under the guise of being the owner, were subleasing the same to third persons.
>
> 8] That plaintiffs secured a copy of the "Contract of Lease" entered into by the defendants and a certain Marilou P. Del Castillo x x x.
>
> 9] That upon further investigation, the plaintiffs were further surprised to learn that the premises were likewise being leased to a Beauty Parlor, Photography Shop, Auto Supply Dealer and a Money Changer.

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[7] *Id.* at 209-211.

[8] Covered by Transfer Certificate of Title No. S33221 issued by the Office of the Register of Deeds for the Province of Rizal. *Id*.

[9] No. 5 of the terms and conditions of the contract of lease. *Id*. at 210.

10] That the subleasing of the premises was made by the lessees sans the implied or express consent of the Lessors.

x x x x x x x x x

12] That on December 1993, plaintiffs sent to the defendants a "Notice to Vacate" x x x.

13] That up to the present time, the defendants has (sic) not yet vacated the premises.[10]

As proof of the above-quoted allegations, respondents offered in evidence the following: 1) a copy of a contract[11] of lease executed by and between Miguel Soriano, Jr. and Marilou P. Del Castillo on 3 July 1993; 2) the affidavit of Marilou P. Del Castillo essentially corroborating the averments in the complaint respecting the Contract of Lease between her and petitioners; 3) various affidavits of third parties with whom petitioners allegedly subleased various portions of the subject property; and 4) a Questioned Document Report by the National Bureau of Investigation (NBI) stating that the signature of Marilou P. Del Castillo on the Joint Venture Agreement presented by respondents was a forgery.

On the other hand, petitioners denied violating the subject contract of lease they signed with respondents and contradicted the existence of the alleged sublease agreement with one Marilou P. Del Castillo, as well as those with various other third persons. Petitioners, instead, maintain that what existed between them and the third parties, including Marilou P. Del Castillo, were *joint venture agreements*; and that the Contract of Lease between Marilou P. Del Castillo and petitioners was a falsified document considering that the signatures of petitioner Julieta Soriano, the witnesses and of the Notary Public were all claimed to be forgeries. Petitioners then presented the supposed Joint Venture Agreement[12] entered into by and between them and Marilou P. Del Castillo.

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[10] *Id*. at 198.

[11] *Id*. at 218-219.

[12] *Id*. at 251-252.

In the *interregnum*, before the complaint for ejectment could be resolved by the MeTC, petitioners filed a petition for consignation of rental fees for the period of January to June 1994 with the MeTC. The claim for consignation, docketed as Civil Case No. 94-0001, was grounded on the contention that respondents refused to encash the checks paid to them for the rent of the subject property.

The MeTC consolidated the two civil actions, they being closely related.

On 15 April 1996, the MeTC promulgated a Joint Decision on the consolidated cases. The trial court found in favor of respondents. The dispositive of the consolidated ruling reads:

> WHEREFORE, judgment is rendered in favor of the plaintiffs and against defendants ordering the latter and all persons claiming rights under them to vacate the premises in question and surrender possession thereof to the former; to pay plaintiff the sum of ₱2,662.00 a month from January, 1994 and monthly thereafter until the subject premises is actually vacated; to pay plaintiff ₱10,000.00 as reasonable attorney's fees and cost of suit.
>
> The consignation case is ordered dismissed together with the counterclaim without pronouncement as to costs.[13]

Based on the arguments and evidence presented by the parties, the MeTC found that the contract that existed between petitioners and Marilou P. Del Castillo was a sub-lease contract and not a joint venture agreement. Much weight was given by said trial court on the following documentary evidence: 1) affidavit of Marilou P. Del Castillo stating that the contract she entered into with Julieta Soriano was a sublease agreement, especially as said affidavit was corroborated by the affidavits of two other witnesses; and 2) the Questioned Document Report No. 843-1094 issued by the NBI stating that the signature of Marilou P. Del Castillo on the *Joint Venture Agreement* presented by petitioners was a forgery. It ratiocinated that:

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[13] *Id.* at 314.

It is this court (sic) considered view that the defendants failed to overcome the presumption of validity of contract. They having the one who put in issue the genuineness and due execution of the sub contract of lease have the burden of proof to prove otherwise. On the part of the plaintiffs, they have proven at the very least, that the Joint Venture Agreement has a semblance of forgery.

Defendant's negative assertion of facts cannot be given more weight than that of plaintiffs' positive stand. What the court has in mind in setting the clarificatory hearing is to illicit from Marilou del Castillo which contract did she enter into with Julieta Soriano, face to face with the defendants and plaintiffs. This way the Court would be in a position to observe the demeanor of all the parties concern (sic) as well as the intended witness herself. It was however unfortunate that it did not materialize.[14]

Anent the issue of consignation, the MeTC held that there was no valid tender of payment, *viz*:

In the consignation case, it appears from the evidence of defendants that it was sometime in the third week of December, 1993 that they tendered to the plaintiffs checks representing rentals from January to June, 1994. Clearly, when the defendants tender payment as a prerequisite of consignation, the rentals are not yet due. Valid tender of payment therefore is wanting.[15]

On appeal to the RTC, the assailed joint decision was affirmed *in toto* in a decision promulgated on 3 April 1997. In acknowledging that the contract of lease between petitioners and respondents was indeed violated, the RTC gave premium to the letter of one Ma. Lourdes R. Acebedo, Executive Vice-President of Acebedo Optical Co., Inc. dated 22 October 1993. According to the RTC, the letter-proposal[16] embodies the provisions of a lease agreement for a period of one month as well as the conformity of petitioner Julieta Soriano. The subject letter is hereunder quoted in full:

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[14] *Id*.

[15] *Id*.

[16] Records, p. 83.

October 22, 1993

Ms. JULIET[A] B. SORIANO
House of Abraham Bldg.
281 Real Street, Pamplona
Las Piñas, Metro Manila

Dear Ms. Soriano:

This is to formalize the discussion arranged by our Messrs. Ernesto Victa and Ramil Mendoza for us to use the front space of your establishment in connection with our Project: Oplan Silip Mata from October 23 to November 23, 1993. That upon your conforme of this proposal letter we are to pay the amount of three thousand five hundred (₱3,500.00) pesos Philippine Currency for the use of the space. Furthermore (sic) we will pay you the sum of twenty (₱20.00) pesos per day for electric consumption.

We hope you will find the foregoing proposal acceptable by signifying your conforme on the space provided below. We thank you for your accommodation for this project.

Very truly yours,

ACEBEDO OPTICAL CO., INC.

By: (Sgd.)
MA. LOURDES R. ACEBEDO
Executive Vice-President

Conforme:

(Sgd.)
JULIET[A] B. SORIANO

For the court, the existence of the letter bolsters the claim of respondents that portions of the subject property were indeed subleased to third parties without their concurrence, in definite violation of the provisions of the contract of lease.

On 7 April 1997, petitioners, through their counsel, the law firm Rico & Associates, received their copy of the decision of the RTC.

On 17 April 1997, or ten days later, petitioners moved for the reconsideration of the RTC decision.

On 6 May 1997, the RTC denied[17] petitioners' motion for reconsideration.

On 28 May 1997, petitioners received a copy of the aforesaid denial. On the other hand, petitioners' counsel received a copy of the same on 2 June 1997.

On 6 June 1997, from the adverse decision of the RTC, petitioners' counsel went on to file a motion for extension of time to file petition for review before the Court of Appeals. On 18 June 1997, petitioners filed the petition for review docketed as CA-G.R. SP No. 44365.

Meanwhile, on 20 June 1997, acting on respondents' Motion for Execution of Judgment dated 7 April 1997, the RTC rendered an Order,[18] the full text of which is quoted hereunder:

> It appears in the record that the defendants were served with a copy of the decision of this Court on April 7, 1997. The running of the period to appeal, however, was interrupted when the defendants filed their motion for reconsideration on April 17, 1997. So that from April 7, 1997 up to the filing of the motion for reconsideration on April 17, 1997, ten (10) days have already been consumed, and there are but five (5) days remaining within which to perfect appeal or [file] petition for review. The order dated May 6, 1997, denying defendant's (sic) motion for reconsideration, was received by the defendants, through their collaborating counsel, Atty. Miguel Soriano, on May 28, 1997. So that if the defendants received the order on the said date, they have but up to June 2, 1997 to interpose a petition. As no appeal or petition for review was perfected up to this date, as admitted by Atty. Soriano in open court on said date (in the afternoon), then the decision of this Court has already become final and executory.
>
> WHEREFORE, and in view of the foregoing, the motion for execution of judgment dated April 7, 1997, filed by the plaintiffs, is hereby granted.

By authority of the ruling in *Salientes vs. Intermediate Appellate Court* (246 SCRA 150) and other related cases already decided,

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[17] *Rollo*, pp. 101-102.

[18] *Id.* at 276-277.

whereby execution of decisions in ejectment cases falls within the jurisdiction of the inferior court, and not the appellate court, let the record of this case be remanded to the Metropolitan Trial Court, Branch 79, Las Piñas City, for execution of the judgment.

On 18 August 1997, the appellate court rendered a Decision denying the petition, the dispositive portion of which states that:

> WHEREFORE, foregoing considered, the petition for review is hereby DENIED for lack of merit and the appealed decision is hereby AFFIRMED *in toto*.
>
> The Motion for Extension of Time to Reply filed by petitioners and the *ex-parte* (sic) motion for deposit of monthly rental are hereby DENIED for being moot and academic.
>
> The injunction granted is hereby permanently lifted.
>
> Cost against petitioners.[19]

The Court of Appeals denied petitioners' recourse on two grounds: 1) for being filed out of time, that is:

> Petitioners did not file their petition for review within the reglementary period. Petitioners filed a motion for extension to file Petition for Review. But this said motion was filed only on June 6, 1997, when the 15-days reglementary period has expired (citation omitted).[20]

and 2) for lack of merit considering that:

> The existence of this contract of lease of petitioners with Marilou del Castillo is in clear violation of the contract of lease of petitioners and private respondents.[21]

The Issues

Hence, the present course of action, by which petitioners fundamentally seek to reverse the ruling of the Court of Appeals on the following grounds[22]:

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[19] *Id*. at 50.

[20] *Id*. at 45.

[21] *Id*. at 47.

[22] *Id*. at 19-20.

I.

THE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT THE PETITION WAS FILED OUT OF TIME AS PETITIONERS WERE BOUND BY THE SERVICE OF THE ORDER OF THE RTC DENYING PETITIONERS' MOTION FOR RECONSIDERATION UPON PETITIONER (ATTY. MIGUEL SORIANO), AND NOT UPON THE UNDERSIGNED LAW FIRM WHICH HAS FILED A FORMAL ENTRY OF APPEARANCE AS COUNSEL FOR PETITIONERS IN THE PROCEEDINGS *A QUO*;

II.

THE COURT OF APPEALS SERIOUSLY MISAPPRECIATTED AND IMPROPERLY GAVE CREDENCE TO THE "CONTRACT OF LEASE" DATED 3 JULY 1993 WHICH WAS INTRODUCED IN EVIDENCE, BUT SIGNIFICANTLY ADMITTED TO BE A FORGERY, BY PRIVATE RESPONDENTS; [and]

III.

THE COURT OF APPEALS TOTALLY IGNORED AND COMPLETELY DISREGARDED THE CLEAR AND CONVINCING EVIDENCE ON RECORD PROVING BEYOND PERADVENTURE THAT PETITIONERS DID NOT VIOLATE THEIR CONTRACT OF LEASE DATED 5 OCTOBER 1981 WITH PRIVATE RESPONDENTS, IN THAT, WHAT WAS ACTUALLY ENTERED INTO BETWEEN PETITIONERS AND MARILOU DEL CASTILLO WAS A JOINT VENTURE AGREEMENT.

The Court's Ruling

A cursory reading of the petition promptly discloses that at the core of the controversy are merely two issues. One involves a procedural matter, that is, whether or not the petition filed before the Court of Appeals was done in due time; and the other entails an issue of substance anent the existence of a contract of (sub)lease between petitioners and Marilou P. Del Castillo in violation of the contract of lease between petitioners and respondents.

Anent the first issue, the appellate court rationalized its finding that the petition filed before it was filed beyond the reglementary period within which to file a petition for review by stating thus:

Rico & Associates Law Office, counsel of petitioners, claimed that it received the copy of the order denying the motion for reconsideration only on June 2, 1997.

Records show however, that petitioner Atty. Miguel Soriano received a copy of the order of denial on May 28, 1997. x x x.

x x x x x x x x x

In this case, petitioner Atty. Miguel Soriano appeared as counsel for petitioners.

x x x x x x x x x

The five (5) days remaining period to appeal should therefore be counted from May 28, 1997, when petitioner Atty. Soriano received a copy of the Order of Denial and not on June 2, 1997, when Rico & Associated Law Office received its notice.[23]

Petitioners naturally dispute the foregoing findings. They counter that the above is "clearly based on a deliberate misapprehension of the true facts."[24] Petitioners argue that as early as November 1995, before the MeTC, the law firm Rico & Associates Law Office had already entered[25] its appearance as their counsel of record; that as stated therein, the address of said law firm is 4th Floor, Cattleya Condominium, 235 Salcedo St., Legaspi Village, Makati City; that petitioner Atty. Miguel Soriano "never filed a formal appearance as counsel"[26] for himself and his wife, Julieta Soriano, "much less used his residence address (No. 79 Sterling Avenue, Sterling Life Avenue, Pamplona, Las Piñas, Metro Manila) as his forwarding address for purposes of court notices"[27]; that, assuming for the sake of argument, even if petitioner Atty. Miguel Soriano did enter his provisional appearance as counsel for himself and his wife by appearing in some court proceedings and signing pleadings, still, he did so

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[23] *Id.* at 43-45.

[24] Petition, p. 14; *rollo,* p. 22.

[25] *Id.* at 104-107.

[26] *Id*. at 24.

[27] *Id*.

for Rico & Associates Law Office with office address at Rm. 407 Cattleya Condominium, 235 Salcedo St., Legaspi Village, Makati City; and that, "all court notices, except the order of denial of petitioners' Motion for Reconsideration, were never sent to petitioner Atty. Miguel Soriano at his residence address."[28] Thus, petitioners construe that, "it is therefore highly anomalous why the RTC sent its Order dated 6 May 1997 to petitioner Atty. Miguel Soriano at his residence address."[29]

Respondents insist, however, that the date of receipt of the RTC's order denying petitioners motion for reconsideration should be considered 28 May 1997, the date of receipt thereof by petitioner Atty. Miguel Soriano, because the latter has entered his appearance as collaborating counsel in the subject case and signed several pleadings filed before the MeTC. Respondents further contend that, "notice to him is effective notice to the attorney of record";[30] and, thus, petitioner Atty. Miguel Soriano "cannot escape his own representations to serve his insidious purposes."[31]

As to the procedural issue, we hold that the petition before the Court of Appeals was timely filed.

In practice, service means the delivery or communication of a pleading, notice or some other paper in a case, to the opposite party so as to charge him with receipt of it and subject him to its legal effect.[32] The purpose of the rules on service is to make sure that the party being served with the pleading, order or judgment is duly informed of the same so that he can take steps to protect his interests; *i.e.*, enable a party to file an appeal or apply for other appropriate reliefs before the decision becomes

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[28] *Id*.

[29] *Id*.

[30] *Id.* at 151.

[31] *Id*.

[32] VICENTE J. FRANCISCO, *THE REVISED RULES OF COURT IN THE PHILIPPINES*, p. 759 (1973), citing *Neff v. City of Indianapolis*, 198 N.E. 328.

final.[33] Pursuant to Section 2, Rule 13 of the 1997 Rules of Civil Procedure, as amended, service of court processes, *inter alia*, is made in the following manner, to wit:

> SEC. 2. *Filing and service, defined.* — Filing is the act of presenting the pleading or other paper to the clerk of court.
>
> Service is the act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court. Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side.

As mentioned above, the general rule is, where a party appears by attorney in an action or proceeding in a court of record, all notices required to be given therein must be given to the attorney of record; and service of the court's order upon any person other than the counsel of record is not legally effective and binding upon the party, nor may it start the corresponding reglementary period for the subsequent procedural steps that may be taken by the attorney.[34] Notice should be made upon the counsel of record at his exact given address,[35] to which notice of all kinds emanating from the court should be sent in the absence of a proper and adequate notice to the court of a change of address.[36]

Said differently, when a party is represented by counsel of record, service of orders and notices must be made upon said attorney; and notice to the client and to any other lawyer, not the counsel of record, is not notice in law.[37]

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[33] *Reyes v. Commission on Elections*, 324 Phil. 813, 823-824 (1996).

[34] *Gundayao v. Court of Appeals*, G.R. No. 77459, 21 May 1990, 185 SCRA 606, 611-612.

[35] *National Investment and Development Corporation-Philippine National Bank v. Court of Appeals*, 337 Phil. 217, 222 (1997).

[36] *Magno v. Court of Appeals*, G.R. No. 58781, 31 July 1987, 52 SCRA 555, 558.

[37] *De Leon v. Court of Appeals*, 432 Phil. 775, 788 (2002).

In the case at bar, the fact that petitioner Atty. Miguel Soriano, Jr. may have appeared as counsel for himself and his wife in the proceedings before the MeTC, or signed some pleadings filed before the court, is of no moment. Firstly, despite the allegation of respondents, nothing in the record shows that petitioner Atty. Miguel Soriano, Jr. formally entered his appearance as collaborating counsel for himself and co-petitioner Julieta Soriano. Secondly, though some pleadings filed for petitioners bear the signature of petitioner Atty. Miguel Soriano, Jr. as author thereof, still, such pleadings equally display that the authorship was in behalf of the law firm Rico & Associates Law Office and its address — 4th Floor, Cattleya Condominium, 235 Salcedo St., Legaspi Village, Makati City — as stated on record, the law firm which appears to be the formal counsel of petitioners. Further, it does not appear that there was any substitution of counsel, or that service upon petitioner Atty. Miguel Soriano, Jr. had been specifically ordered by the RTC. Interestingly, though, as professed by petitioners, the order of denial of the motion for reconsideration of the decision of the RTC was the ONLY court process sent to petitioner Atty. Miguel Soriano, Jr. This would show that it was petitioners' counsel of record, Rico & Associates Law Office, that, as a rule, received correspondence, notices and processes respecting the subject case. Accordingly, the counsel of record of petitioners, Rico & Associates Law Office, is presumed to be still and the only one authorized to receive court processes, *inter alia*. Notice of the denial of petitioners' motion for reconsideration of the RTC's decision, served upon the Rico & Associates Law Office, was the formal notice to petitioners. For all legal intents and purposes, the service of that notice was the trigger that started the running of the remaining five-day reglementary period within which to file the petition to the appellate court or, at the very least, a motion for extension of time to file said pleading.

Considering the prior disquisition, therefore, petitioners are deemed to have received a copy of the subject denial by the RTC of their motion for reconsideration on 2 June 1997 when their counsel of record, Rico & Associates Law Office, received the same. The remaining five-day period within which to file

the petition with the appellate court should have been counted from that date. The last day, therefore, was 7 June 1997. Clearly, the petition interposed before the Court of Appeals on 6 June 1997 was filed in due time. Otherwise, to consider the operative date of receipt of the RTC Order denying petitioners' motion for reconsideration to be 28 May 1997 — when said order was received by petitioner Atty. Miguel Soriano, Jr., who albeit appeared as a collaborating counsel as well — is to violate Section 2 of Rule 13 of the Rules of Court. As amended, that provision states that when party is represented by counsel, service of process must be made on counsel and not on the party.

Time and again, we have stressed that the rules of procedure are used only to help secure and not override substantial justice.[38] If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter.[39]

Apropos the substantial issue involved in the case at bar, petitioners contend that that the appellate court erred in holding that they subleased a portion of the subject property to Marilou P. Del Castillo in gross violation of the contract of lease executed between petitioners and respondents. They argue that the finding of the Court of Appeals that there exists a contract of (sub)lease between petitioners and Marilou P. Del Castillo is founded on a falsified contract of (sub)lease, as the signature of the witnesses and notary public therein were forgeries; thus, the contract of (sub)lease being a falsehood, the complaint of respondents is groundless. Moreover, petitioners maintain that what really exists between them and Marilou P. Del Castillo is a joint venture agreement which in no way violates the provision concerning subleasing.

Respondents argue against the above and stress that the signatures were, indeed, falsified, and that it was petitioner Julieta Soriano who was behind such deception.

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[38] *Somoso v. Court of Appeals*, G.R. No. 78050, 23 October 1989, 178 SCRA 654, 662-663.

[39] *Basco v. Court of Appeals*, 383 Phil. 671, 687 (2000).

In its assailed decision, the Court Appeals explained that:

> The signatures of the witnesses and the notary public in the contract of lease entered into by petitioners and Marilou Del Castillo are indeed false. But by offering this document with the false signatures of the witnesses and notary public, it cannot be concluded that private respondents resorted to falsehood.
>
> As explained by private respondents, the document was prepared by petitioners.
>
> Marilou del Castillo also explained that when petitioners delivered to her the contract of lease, the witnesses had already signed the same and after signing, petitioner Julieta Soriano signed the name of notary public Noberto Malit, Sr. and sealed the document with the notarial seal of Norberto Malit. Marilou del Castillo claimed that petitioner Julieta Soriano signs (sic) for Norberto Malit because the latter is a law partner of petitioner Atty. Miguel Soriano.
>
> We give credence to this testimony of Marilou del Castillo. It is a common knowledge and practice that it is the lessor who prepares the contract which would govern the lease of the lessee. The lessee usually signs.
>
> This is especially true in this case because petitioner Atty. Miguel Soriano, the lessor is a lawyer who knows the "know-hows" on the preparation of the contract of lease.
>
> Being the lessor of the leased premises (between petitioners and Marilou del Castillo) and being a lawyer at the same time, it would indeed be possible, basing it from usual experience, that petitioners were the ones who prepared their contract of lease with Marilou del Castillo.
>
> As such, private respondents cannot be said to have resorted to falsehood. Private respondents merely offered as evidence the document prepared by petitioners. The same could not be considered as fraud in the presentation of their cause.[40]

Further, the appellate court elucidated that, though containing false signatures, nevertheless, the state of affairs "will not warrant a ruling that there was no valid contract of lease between

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[40] *Rollo,* p. 48.

petitioners and Marilou Del Castillo,"[41] for the reason that said forgeries do "not affect the existence of a valid contract. The law requires only the consent of contracting parties x x x Consents (sic) of the witness or that of the notary public are (sic) not needed for the perfection of (a) contract."[42]

On the whole, the petition is devoid of merit.

At the outset, in imputing as error the appellate court's appreciation of the genuineness of two supposed contracts executed by petitioners and Marilou P. Del Castillo, *i.e.*, the Contract of (Sub)Lease *vis-à-vis* the Joint Venture Agreement, petitioners are plainly bringing into play questions of fact and the appreciation of evidence already made by no less than three courts of law below. In a manner of speaking, petitioners would have us review once again the factual determinations of the MeTC, as affirmed by not one court, but two higher courts already — the RTC and the Court of Appeals. It has been consistently held that under Section 1, Rule 45 of the Rules of Court, as amended, in an appeal to this Court by way of a petition for review on *certiorari*, only questions of law must be raised by the petitioner;[43] that is, our jurisdiction in a petition for review on *certiorari* is limited to reviewing and correcting only errors of law, not of fact, the only power of the Court being to determine if the legal conclusions drawn from the findings of fact are correct.[44] The Court is not expected or required to examine or refute the oral and documentary evidence submitted by the parties.[45]

Of course, this Court may be minded to review the factual findings of the Court of Appeals, but only in the presence of any of the following circumstances: (1) the conclusion is grounded on speculations, surmises or conjectures;[46] (2) the interference

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[41] *Id*. at 46.

[42] *Id*.

[43] *Dr. Batiquin v. Court of Appeals*, 327 Phil. 965, 974-975 (1996).

[44] *Pacific Airways Corporation v. Tonda*, 441 Phil. 156, 161-162 (2002).

[45] *Nazareno v. Court of Appeals*, 397 Phil. 707, 724-725 (2000).

[46] *Joaquin v. Navarro*, 93 Phil. 257, 270 (1953).

is manifestly mistaken, absurd or impossible;[47] (3) there is grave abuse of discretion;[48] (4) the judgment is based on a misapprehension of facts;[49] (5) the findings of fact are conflicting;[50] (6) there is no citation of specific evidence on which the factual findings are based;[51] (7) the findings of fact are contradicted by the presence of evidence on record;[52] (8) the findings of the Court of Appeals are contrary to those of the trial court;[53] (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion;[54] (10) the findings of the Court of Appeals are beyond the issues of the case;[55] and (11) such findings are contrary to the admissions of both parties.[56]

Alas, we find none of the exceptions to be present in the case at bar; therefore, we see no reason to depart from the general rule. The findings of fact of the three courts are fully substantiated by the evidence extant on record.

The foregoing discussion notwithstanding, we have reviewed the records of the case at bar and find no reversible error committed by the Court of Appeals concerning the merits of

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[47] *Luna v. Linatoc*, 74 Phil. 15 (1942).

[48] *Buyco v. People*, 95 Phil. 453, 461 (1954).

[49] *De la Cruz v. Sosing*, 94 Phil. 26, 28 (1953).

[50] *Casica v. Villaseca*, 101 Phil. 1205 (1957).

[51] *Larena v. Mapili*, 455 Phil. 944, 950 (2003).

[52] *Josefa v. Zhandong Trading Corp.*, 462 Phil. 751, 757 (2003).

[53] *Philippine National Bank v. Heirs of Estanislao Militar*, G.R. No. 164801, 30 June 2006, 494 SCRA 308, 320.

[54] *Philippine Charter Insurance Corporation v. Unknown Owner of the Vessel M/V "National Honor,"* G.R. No. 161833, 8 July 2005, 463 SCRA 202, 215.

[55] *Local Superior of the Servants of Charity (Guanellians), Inc. v. Jody King Construction and Development Corporation*, G.R. No. 141715, 12 October 2005, 472 SCRA 445, 451-452.

[56] *Cirelos v. Hernandez*, G.R. No.146523, 15 June 2006, 490 SCRA 625, 635.

the present petition. Without need to go into the fundamentals of the mendacity surrounding the signature of the witnesses and the notary public found on the subject contract of (sub)lease, the resolution of the present controversy is uncomplicated. It boils down to the consent of petitioner Julieta Soriano and Marilou P. Del Castillo as evidenced by the legitimate signatures thereon. It has been proved adequately to this Court that there exists a valid contract of (sub)lease between petitioners and Marilou P. Del Castillo. The concurrence of the fact that the latter acknowledges having signed the contract along with petitioner Julieta Soriano, and of the fact that the signatures of the witnesses and notary public are forgeries, do not negate the presence of a valid contract of (sub)lease. The signatures of the witnesses and the notary public are considered necessary simply to make the contract binding on third parties. It would have been a different matter had petitioners alleged and offered evidence to show that the signatures of petitioner Julieta Soriano and Marilou P. Del Castillo, parties to the contract of (sub)lease, were forgeries as well — which would mean that parties to the assailed contract did not give their consent. Absence of consent between the parties means that there was no contract of (sub)lease; hence, petitioners would not be deemed to have violated the prohibition on sublease, which was barred by the contract of lease between them and respondents.

In fine, as correctly held by no less than three courts, there exists a contract of (sub)lease between petitioners and a third party, which is in clear violation of the prohibition contained in the contract of lease entered into by petitioners and respondents.

WHEREFORE, premises considered, the instant petition is *DENIED*. The assailed 18 August 1997 *Decision* of the Court of Appeals in CA-G.R. SP No. 44365, is hereby *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 137548. September 3, 2007]

HEIRS OF THE LATE DOMINGO N. NICOLAS, *petitioners, vs.* **METROPOLITAN BANK & TRUST COMPANY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; WRIT OF POSSESSION; COMPULSORY HEIRS WHO WERE NOT IMPLEADED IN THE PETITION FOR THE ISSUANCE OF A WRIT OF POSSESSION OVER THE UNDIVIDED ESTATE OF THE DECEDENT SHOULD NOT BE DEPRIVED OF THEIR LEGITIME BY THE ENFORCEMENT OF THE DECREE.— Here, petitioners as children and, therefore, compulsory heirs of spouses Nicolas, acquired ownership of portions of the lots as their legitime upon the death of their father or prior to the foreclosure of mortgage and the filing by the respondent of its petition for the issuance of a writ of possession. Consequently, petitioners are strangers or third parties therein whose rights cannot be determined as they were not impleaded by respondent. Verily, they should not be deprived of their legitime by the enforcement of the writ of possession. Clearly, therefore, the writ of possession should not include parts of the two lots pertaining to petitioners.

2. ID.; ID.; ID.; ISSUANCE OF WRIT OF POSSESSION TO A PURCHASER IN AN EXTRA-JUDICIAL FORECLOSURE IS MERELY A MINISTERIAL FUNCTION AFTER THE CONSOLIDATION OF TITLE THERETO; CASE AT BAR.— Records indicate that **the estate of Domingo Nicolas has not been judicially or extra-judicially settled**. It is basic that after consolidation of title in the buyer's name for failure of the mortgagor to redeem, the writ of possession becomes a matter of right and its issuance to a purchaser in an extra-judicial foreclosure is merely a ministerial function. However, considering the circumstances obtaining in this case and following our ruling in ***Rivero de Ortega,*** earlier cited, we hold that such writ of possession should apply only to the share of Josefa as may be determined in Civil Case No.

Q-98-34312 or in any other proceeding that may be instituted by petitioners for the purpose of settling the undivided estate of Domingo Nicolas.

APPEARANCES OF COUNSEL

Alberto II Borbon Reyes and *Alenn Fernando A. Nidea* for petitioners.

Perez Calima Law Offices for respondent.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

For our resolution is the instant Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse the Decision[1] of the Court of Appeals (Sixteenth Division) dated January 14, 1999 in CA-G.R. SP No. 49926.

The facts of the case are not in dispute, thus:

Spouses Domingo and Josefa Nicolas are the registered owners of two (2) parcels of land located at Sanville Subdivision, Quezon City as evidenced by Transfer Certificates of Title (TCT) Nos. 156339 and 156341 of the Registry of Deeds, same city. On these lots is the residential house of spouses Nicolas and their two children, herein petitioners. These properties are conjugal.

On May 19, 1986, Domingo Nicolas passed away.

On June 11, 1988, a fire gutted the office of the Register of Deeds of Quezon City. Among the records destroyed were the original copies of TCTs Nos. 156339 and 156341.

Sometime in 1988, Josefa Nicolas, the surviving spouse of Domingo, filed with the Land Registration Administration (LRA) an application for reconstitution of the two (2) land titles.

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[1] *Rollo*, pp. 18-25. Per Associate Justice Ramon A. Barcelona (retired) and concurred in by Associate Justice Martin S. Villarama, Jr. and Associate Justice Demetrio G. Demetria (dismissed from the service).

In 1991, the LRA approved the application and ordered the reconstitution of the destroyed TCTs but only in the name of applicant Josefa Nicolas.

In 1998, petitioners learned that their mother mortgaged the lots with the Metropolitan Bank & Trust Co., herein respondent; that the mortgage had been foreclosed; that respondent had the land titles consolidated in its name; and that respondent filed with the Regional Trial Court (RTC), Branch 77, Quezon City a petition for the issuance of a writ of possession (LRC Case No. Q-8019[96]) which was granted on January 15, 1998.

Petitioners then filed with the RTC, Branch 22, Quezon City Civil Case No. Q-98-34312 for Annulment of Reconstituted Titles, Mortgage and Sale at Public Auction. This case is still pending trial.

Petitioners also filed with the RTC, Branch 77, Quezon City a motion to quash the writ of possession, but it was denied on September 10, 1998. Thereupon, they filed with the Court of Appeals a petition for *certiorari*, docketed as CA-G.R. SP No. 49926. However, the appellate court dismissed the petition. It held that the trial court, in issuing the writ of possession in favor of the respondent, did not commit grave abuse of discretion amounting to lack or excess of jurisdiction considering that the trial court has the ministerial task to issue such writ.

Petitioners seasonably filed a motion for reconsideration, but this was denied by the Court of Appeals in its Resolution of February 24, 1999.

Hence, the instant petition.

Petitioners contend that the Court of Appeals erred in dismissing their petition for *certiorari*, invoking our ruling in *Rivero de Ortega v. Natividad*[2] which reads:

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[2] 71 Phil. 340 (1941), citing *Ludlow v. Lansing*, Hopk. Ch. [N.Y.] 231; *Jones v. Hooper*, 50 Miss. 510, 514; *See* 2 Wiltsie on Mortgage Foreclosure, 1061-1062; 3 Jones on Mortgages, 301 and the cases cited therein; *Thompson v. Campbell*, 57 Ala. 183, 188; *Cooper v. Cloud*, 194 Ala., 449, 452; *Board of Home Missions v. Davis*, 70 N. J.E. 577, 62 Atl. 447, 448.

The general rule is that after a sale has been made under a decree in a foreclosure suit, the court has the power to give possession to the purchaser, and the latter will not be driven to an action in law to obtain possession. The power of the court to issue a process and place the purchaser in possession, is said to rest upon the ground that it has power to enforce its own decrees and thus avoid circuitous actions and vexatious litigation. **But where a party in possession was not a party to the foreclosure, and did not acquire his possession from a person who was bound by the decree, but who is a mere stranger and who entered into possession before the suit was begun, the court has no power to deprive him of possession by enforcing the decree.** Thus, it was held that only parties to the suit, persons who came in under them *pendente lite*, and trespassers or intruders without title, can be evicted by a writ of possession. The reason for this limitation is that the writ does not issue in case of doubt, nor will a question of legal title be tried or decided in proceedings looking to the exercise of the power of the court to put a purchaser in possession. A very serious question may arise upon full proofs as to where the legal title to the property rests, and should not be disposed of in a summary way. The petitioner, it is held, should be required to establish his title in a proceeding directed to that end.

Here, petitioners as children and, therefore, compulsory heirs of spouses Nicolas, acquired ownership of portions of the lots as their legitime upon the death of their father or prior to the foreclosure of mortgage and the filing by the respondent of its petition for the issuance of a writ of possession. Consequently, petitioners are strangers or third parties therein whose rights cannot be determined as they were not impleaded by respondent. Verily, they should not be deprived of their legitime by the enforcement of the writ of possession. Clearly, therefore, the writ of possession should not include parts of the two lots pertaining to petitioners.

Records indicate that **the estate of Domingo Nicolas has not been judicially or extra-judicially settled.**

It is basic that after consolidation of title in the buyer's name for failure of the mortgagor to redeem, the writ of possession

becomes a matter of right[3] and its issuance to a purchaser in an extra-judicial foreclosure is merely a ministerial function.[4] **However, considering the circumstances obtaining in this case and following our ruling in *Rivero de Ortega*, earlier cited, we hold that such writ of possession should apply only to the share of Josefa as may be determined in Civil Case No. Q-98-34312 or in any other proceeding that may be instituted by petitioners for the purpose of settling the undivided estate of Domingo Nicolas.**

WHEREFORE, we *GRANT* the petition. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 49926 is *MODIFIED in the sense* that the writ of possession issued by the RTC, Branch 77, Quezon City in LRC Case No. Q-8019(96) shall apply only to such portion of the lots pertaining to Josefa Nicolas as may be determined in Civil Case No. Q-98-34312 or in any other proper proceeding which petitioners may file.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Garcia, JJ.,* concur.

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[3] *Yulienco v. Court of Appeals*, G.R. No. 141365, November 27, 2002, 393 SCRA 143, 153, citing *Manalo v. Court of Appeals*, 366 SCRA 752 (2001).

[4] *Manalo v. Court of Appeals*, G.R. No. 141297, October 6, 2001, 366 SCRA 752, citing *A.G. Development Corporation v. Court of Appeals*, 281 SCRA 155 (1997).

FIRST DIVISION

[G.R. No. 148325. September 3, 2007]

REYNALDO P. FLOIRENDO, JR., *petitioner, vs.* **METROPOLITAN BANK AND TRUST COMPANY,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; PRINCIPLE OF MUTUALITY OF CONTRACTS; UNILATERAL INCREASES OF INTEREST RATES IS A VIOLATION THEREOF; THE VALIDITY OR COMPLIANCE OF A CONTRACT CANNOT BE LEFT TO THE WILL OF ONE OF THE PARTIES.— We hold that the increases of interest rate unilaterally imposed by respondent bank without petitioner's assent are violative of the principle of mutuality of contracts ordained in Article 1308 of the Civil Code which provides: Article 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them. The binding effect of any agreement between the parties to a contract is premised on two settled principles: (1) that obligations arising from contracts have the force of law between the contracting parties; and (2) that there must be mutuality between the parties based on their essential equality to which is repugnant to have one party bound by the contract leaving the other free therefrom. Any contract which appears to be heavily weighed in favor of one of the parties so as to lead to an unconscionable result is void. Any stipulation regarding the validity or compliance of the contract which is left solely to the will of one of the parties is likewise invalid. The provision in the promissory note authorizing respondent bank to increase, decrease or otherwise change from time to time the rate of interest and/or bank charges "without advance notice" to petitioner, "in the event of change in the interest rate prescribed by law or the Monetary Board of the Central Bank of the Philippines," does not give respondent bank unrestrained freedom to charge any rate other than that which was agreed upon. Here, the monthly upward/downward adjustment of interest rate is left to the will of respondent bank alone. It violates the essence of mutuality of the contract.

2. ID.; ID.; ID.; A STIPULATION WHICH GIVES ONE PARTY THE AUTHORITY TO INCREASE THE INTEREST RATE AT WILL DURING THE TERM OF THE LOAN IS A VIOLATION THEREOF.— In *New Sampaguita Builders Construction, Inc. (NSBCI) v. Philippine National Bank,* we ruled that while it is true that escalation clauses are valid in maintaining fiscal stability and retaining the value of money on long term contracts, however, giving respondent an unbridled right to adjust the interest independently and upwardly would completely take away from petitioner the right to assent to an important modification in their agreement, hence, would negate the element of mutuality in their contracts. Such escalation clause would make the fulfillment of the contracts dependent exclusively upon the uncontrolled will of respondent bank and is therefore void. In the present case, the promissory note gives respondent bank authority to increase the interest rate at will during the term of the loan. This stipulation violates the principle of mutuality between the parties. It would be converting the loan agreement into a contract of adhesion where the parties do not bargain on equal footing, the weaker party's (petitioner's) participation being reduced to the alternative "to take it or leave it. While the Usury Law ceiling on interest rate was lifted by Central Bank Circular No. 905, nothing therein could possibly be read as granting respondent bank *carte blanche* authority to raise interest rate to levels which would either enslave its borrower (petitioner herein) or lead to hemorrhaging of his assets.

3. ID.; ID.; COURTS HAVE AUTHORITY TO REDUCE/ INCREASE INTEREST RATES EQUITABLY; CASE AT BAR.— Under Article 1310 of the Civil Code, courts are granted authority to reduce/increase interest rates equitably, thus: Article 1310. The determination shall not be obligatory if it is evidently inequitable. In such case, the courts shall decide what is equitable under the circumstances. In the other *Philippine National Bank v. Court of Appeals* case, we disauthorized petitioner bank from unilaterally raising the interest rate on the loan of private respondent from 18% to 32%, 41% and 48%. In *Almeda v. Court of Appeals,* where the interest rate was increased from 21% to as high as 68% *per annum*, we declared arbitrary "the galloping increases in interest rate

imposed by respondent bank on petitioners' loan, over the latter's vehement protests." In *Medel v. Court of Appeals,* the stipulated interest of 5.5% per month or 66% *per annum* on a loan amounting to ₱500,000.00 was equitably reduced for being iniquitous, unconscionable and exorbitant. In *Solangon v. Salazar,* the stipulated interest rate of 6% per month or 72% *per annum* was found to be "definitely outrageous and inordinate" and was reduced to 12% *per annum* which we deemed fair and reasonable. In *Imperial v. Jaucian*, we ruled that the trial court was justified in reducing the stipulated interest rate from 16% to 1.167% or 14% *per annum* and the stipulated penalty charge from 5% to 1.167% per month or 14% *per annum*. In this case, respondent bank started to increase the agreed interest rate of 15.446% *per annum* to 24.5% on July 11, 1997 and every month thereafter; 27% on August 11, 1997; 26% on September 10, 1997; 33% on October 15, 1997; 26.5% on November 27, 1997; 27% on December 1997; 29% on January 13, 1998; 30.244% on February 7, 1998; 24.49% on March 9, 1998; 22.9% on April 18, 1998; and 18% on May 21, 1998. Obviously, the rate increases are excessive and arbitrary. It bears reiterating that respondent bank unilaterally increased the interest rate without petitioner's knowledge and consent.

4. ID.; ID.; REFORMATION OF THE INSTRUMENT; REQUISITES; PRESENT IN CASE AT BAR.— As mentioned earlier, petitioner negotiated for the renewal of his loan. As required by respondent bank, he paid the interests due. Respondent bank then could not claim that there was no attempt on his part to comply with his obligation. Yet, respondent bank hastily filed a petition to foreclose the mortgage to gain the upperhand in taking petitioner's four (4) parcels of land at bargain prices. Obviously, respondent bank acted in bad faith. In sum, we find that the requisites for reformation of the mortgage contract and promissory note are present in this case. There has been meeting of minds of the parties upon these documents. However, these documents do not express the parties' true agreement on interest rates. And the failure of these documents to express their agreement on interest rates was due to respondent bank's inequitable conduct.

APPEARANCES OF COUNSEL

Sabacajan Barbaso Sagrado Fortea Law Office for petitioner.
Del Castillo Quina Real & Roa for respondent.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

For our resolution is the instant Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision[1] dated February 22, 2001 and Order[2] dated May 2, 2001 rendered by the Regional Trial Court (RTC), Branch 39, Cagayan de Oro City in Civil Case No. 98-476, entitled, "*REYNALDO P. FLOIRENDO, JR., plaintiff, v. METROPOLITAN BANK AND TRUST COMPANY, ET AL., defendants.*"

Reynaldo P. Floirendo, Jr., petitioner, is the president and chairman of the Board of Directors of Reymill Realty Corporation, a domestic corporation engaged in real estate business. On March 20, 1996, he obtained a loan of ₱1,000,000.00 from the Metropolitan Bank and Trust Company, Cagayan de Oro City Branch, respondent, to infuse additional working capital for his company. As security for the loan, petitioner executed a real estate mortgage in favor of respondent bank over his four (4) parcels of land, all situated at Barangay Carmen, Cagayan de Oro City.

The loan was renewed for another year secured by the same real estate mortgage. Petitioner signed a promissory note dated March 14, 1997 fixing the rate of interest at "15.446% *per annum* for the first 30 days, subject to upward/downward adjustment every 30 days thereafter"; and a penalty charge of 18% *per annum* "based on any unpaid principal to be computed from date of default until payment of the obligation." The promissory note likewise provides that:

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[1] Annex "J" of the petition, *rollo*, pp. 86-95.

[2] Annex "O" of the petition, *id.*, p. 112.

The rate of interest and/or bank charges herein stipulated, during the term of this Promissory Note, its extension, renewals or other modifications, may be increased, decreased, or otherwise changed from time to time by the Bank without advance notice to me/us in the event of changes in the interest rate prescribed by law or the Monetary Board of the Central Bank of the Philippines, in the rediscount rate of member banks with the Central Bank of the Philippines, in the interest rates on savings and time deposits, in the interest rates on the bank's borrowings, in the reserve requirements, or in the overall costs of funding or money;

I/We hereby expressly consent to any extension and/or renewal hereof in whole or in part and/or partial payment on account which may be requested by and/or granted to anyone of us for the payment of this note upon payment of the corresponding renewal or extension fee.

On July 11, 1997, respondent bank started imposing higher interest rates on petitioner's loan which varied through the months, in fact, as high as 30.244% in October 1997. As a result, petitioner could no longer pay the high interest rates charged by respondent bank. Thus, he negotiated for the renewal of his loan. Respondent bank agreed provided petitioner would pay the arrears in interest amounting to the total sum of ₱163,138.33. Despite payment by petitioner, respondent bank, instead of renewing the loan, filed with the Office of the Clerk of Court and Provincial Sheriff, RTC, Cagayan de Oro City a petition for foreclosure of mortgage which was granted. On August 17, 1998, the auction sale was set.

Prior thereto or on August 11, 1998, petitioner filed with the RTC, Branch 39, same city, a complaint for reformation of real estate mortgage contract and promissory note, docketed as Civil Case No. 98-476. Referring to the real estate mortgage and the promissory note as "contracts of adhesion," petitioner alleged that the increased interest rates unilaterally imposed by respondent bank are scandalous, immoral, illegal and unconscionable. He also alleged that the terms and conditions of the real estate mortgage and the promissory note are such that they could be interpreted by respondent bank in whatever manner it wants, leaving petitioner at its mercy. Petitioner thus

prayed for reformation of these documents and the issuance of a temporary restraining order (TRO) and a writ of preliminary injunction to enjoin the foreclosure and sale at public auction of his four (4) parcels of land.

On August 14, 1998, the RTC issued a TRO and on September 3, 1998, a writ of preliminary injunction.

In its answer to the complaint, respondent bank asserted that the interest stipulated by the parties in the promissory note is not *per annum* but on a month to month basis. The 15.446% interest appearing therein was good only for the first 30 days of the loan, subject to upward and downward adjustment every 30 days thereafter. The terms of the real estate mortgage and promissory note voluntarily entered into by petitioner are clear and unequivocal. There is, therefore, no legal and factual basis for an action for reformation of instruments.

On February 22, 2001, the RTC rendered a Judgment (1) dismissing the complaint for reformation of instruments, (2) dissolving the writ of preliminary injunction and (3) directing the sale at public auction of petitioner's mortgaged properties. The RTC ruled:

> In order that an action for reformation of an instrument may prosper, the following requisites must occur:
>
> 1.) There must have been a meeting of the minds upon the contract;
>
> 2.) The instrument or document evidencing the contract does not express the true agreement between the parties; and
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> 3.) The failure of the instrument to express the agreement must be due to mistake, fraud, inequitable conduct or accident. (*National Irrigation Administration v. Gamit*, G.R. No. 85869, November 5, 1992)
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> x x x x x x x x x
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> A perusal further of the complaint and the evidences submitted by the parties convinced the court that there was certainly a meeting of the minds between the parties. Plaintiff and defendant bank entered into a contract of loan, the terms and conditions of which, especially

on the rates of interest, are clearly and unequivocally spelled out in the promissory note. The court believes that there was absolutely no mistake, fraud or anything that could have prevented a meeting of the minds between the parties.

The RTC upheld the validity of the escalation clause, thus:

> Escalation clauses are valid stipulations in commercial contract to maintain fiscal stability and to retain the value of money in loan term contracts, (*Llorin v. CA*, G.R. No. 103592, February 4, 1993).
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> x x x x x x x x x
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> x x x the Court has no other alternative to resolve Issue No. 1 that defendant bank is allowed to impose the interest rate questioned by plaintiff considering that Exhibits "B" and "B-1", which is Exhibits "1" and "1-A" of defendant bank is very clear that the rate of interest is 15.446% *per annum* for the first 30 days subject to upward/ downward adjustment every 30 days thereafter.

On the issue of the validity of the foreclosure of the real estate mortgage, the RTC ruled that:

> It is a settled rule that in a real estate mortgage when the obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold in view of applying the proceeds to the payment of the obligation (*Estate Investment House v. CA*, 215 SCRA 734).

On May 2, 2001, petitioner filed a motion for reconsideration but it was denied for lack of merit.

Hence, the instant petition.

The fundamental issue for our resolution is whether the mortgage contract and the promissory note express the true agreement between the parties herein.

Petitioner contends that the "escalation clause" in the promissory note imposing 15.446% interest on the loan "for the first 30 days **subject to upward/downward adjustment every 30 days thereafter**" is illegal, excessive and arbitrary. The determination to increase or decrease such interest rate is primarily left to the discretion of respondent bank.

We agree.

We hold that the increases of interest rate unilaterally imposed by respondent bank without petitioner's assent are violative of the principle of mutuality of contracts ordained in Article 1308 of the Civil Code[3] which provides:

> Article 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

The binding effect of any agreement between the parties to a contract is premised on two settled principles: (1) that obligations arising from contracts have the force of law between the contracting parties; and (2) that there must be mutuality between the parties based on their essential equality to which is repugnant to have one party bound by the contract leaving the other free therefrom.[4] Any contract which appears to be heavily weighed in favor of one of the parties so as to lead to an unconscionable result is void. Any stipulation regarding the validity or compliance of the contract which is left solely to the will of one of the parties is likewise invalid.[5]

The provision in the promissory note authorizing respondent bank to increase, decrease or otherwise change from time to time the rate of interest and/or bank charges "without advance notice" to petitioner, "in the event of change in the interest rate prescribed by law or the Monetary Board of the Central Bank of the Philippines," does not give respondent bank unrestrained freedom to charge any rate other than that which was agreed upon. Here, the monthly upward/downward adjustment of interest rate is left to the will of respondent bank alone. It violates the essence of mutuality of the contract.

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[3] *Spouses Florendo v. Court of Appeals*, G.R. No. 101771, December 17, 1996, 265 SCRA 678, citing *Philippine National Bank v. Court of Appeals*, 196 SCRA 536 (1991).

[4] *Garcia v. Rita Legarda, Inc.*, No. L-20175, October 30, 1967, 21 SCRA 555, citing 8 Manresa 556; *Almeda v. Court of Appeals*, G.R. No. 113412, April 17, 1996, 256 SCRA 292; *Philippine National Bank v. Court of Appeals*, G.R. No. 88880, April 30, 1991, 196 SCRA 536.

[5] *Almeda v. Court of Appeals, supra.*

In *Philippine National Bank v. Court of Appeals*,[6] and in later cases,[7] we held:

> In order that obligations arising from contracts may have the force of law between the parties, there must be *mutuality* between the parties based on their essential equality. A contract containing a condition which makes its fulfillment dependent exclusively upon the uncontrolled will of one of the contracting parties, is void (*Garcia v. Rita Legarda, Inc.*, 21 SCRA 555). Hence, even assuming that the ₱1.8 million loan agreement between the PNB and the private respondent gave the PNB a license (although in fact there was none) to increase the interest rate at will during the term of the loan, that license would have been null and void for being violative of the principle of mutuality essential in contracts. It would have invested the loan agreement with the character of a contract of adhesion, where the parties do not bargain on equal footing, the weaker party's (the debtor) participation being reduced to the alternative "to take it or leave it" (*Qua v. Law Union & Rock Insurance Co.*, 95 Phil. 85). Such a contract is a veritable trap for the weaker party whom the courts of justice must protect against abuse and imposition.

In *New Sampaguita Builders Construction, Inc. (NSBCI) v. Philippine National Bank*,[8] we ruled that while it is true that escalation clauses are valid in maintaining fiscal stability and retaining the value of money on long term contracts, however, giving respondent an unbridled right to adjust the interest independently and upwardly would completely take away from petitioner the right to assent to an important modification in their agreement, hence, would negate the element of mutuality in their contracts. Such escalation clause would make the

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[6] *Supra*, at footnote 4.

[7] *Philippine National Bank v. Court of Appeals*, G.R. No. 107569, November 8, 1994, 238 SCRA 20; *Philippine National Bank v. Court of Appeals*, G.R. No. 109563, July 9, 1996, 258 SCRA 549; *Spouses Florendo v. Court of Appeals, supra*¸ at footnote 3.

[8] G.R. No. 148753, July 20, 2004, 435 SCRA 565, citing *Polotan, Sr. v. Court of Appeals*, 296 SCRA 247 (1998); *Philippine National Bank v. Court of Appeals, supra*, at footnote 7; *Garcia v. Rita Legarda, Inc., supra*, at footnote 4; *Qua Chee Gan v. Law Union and Rock Insurance Co. Ltd.*, 98 Phil. 85 (1955); and *Imperial v. Jaucian, supra*, at footnote 10.

fulfillment of the contracts dependent exclusively upon the uncontrolled will of respondent bank and is therefore void. In the present case, the promissory note gives respondent bank authority to increase the interest rate at will during the term of the loan. This stipulation violates the principle of mutuality between the parties. It would be converting the loan agreement into a contract of adhesion where the parties do not bargain on equal footing, the weaker party's (petitioner's) participation being reduced to the alternative "to take it or leave it."[9] While the Usury Law ceiling on interest rate was lifted by Central Bank Circular No. 905, nothing therein could possibly be read as granting respondent bank *carte blanche* authority to raise interest rate to levels which would either enslave its borrower (petitioner herein) or lead to hemorrhaging of his assets.[10]

In *Philippine National Bank v. Court of Appeals*,[11] we declared void the escalation clause in the Credit Agreement between petitioner bank and private respondents whereby the "Bank reserves the right to increase the interest rate within the limit allowed by law at any time depending on whatever policy it may adopt in the future x x x." We held:

> It is basic that there can be no contract in the true sense in the absence of the element of agreement, or of mutual assent of the parties. If this assent is wanting on the part of one who contracts, his act has no more efficacy than if it had been done under duress or by a person of unsound mind.
>
> Similarly, contract changes must be made with the consent of the contracting parties. The minds of all the parties must meet as to the proposed modification, especially when it affects an important aspect of the agreement. In the case of loan contracts, it cannot be gainsaid that the rate of interest is always a vital component, for

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[9] *Ibid.*, citing *Philippine National Bank v. Court of Appeals, supra*, at footnote 4.

[10] *Ibid.*, citing *Imperial v. Jaucian*, 427 SCRA 517 (2004); *Spouses Solangon v. Salazar*, 360 SCRA 379 (2001) and *Almeda v. Court of Appeals, supra*, at footnote 4.

[11] *Supra*, at footnote 7.

it can make or break a capital venture. Thus, any change must be *mutually* agreed upon, otherwise, it is bereft of any binding effect.

We cannot countenance petitioner bank's posturing that that escalation clause at bench gives it unbridled right to *unilaterally* upwardly adjust the interest on private respondents' loan. That would *completely* take away from private respondents the right to assent to an important modification in their agreement, and would negate the element of mutuality in contracts.

Under Article 1310 of the Civil Code, courts are granted authority to reduce/increase interest rates equitably, thus:

Article 1310. The determination shall not be obligatory if it is evidently inequitable. In such case, the courts shall decide what is equitable under the circumstances.

In the other *Philippine National Bank v. Court of Appeals*[12] case, we disauthorized petitioner bank from unilaterally raising the interest rate on the loan of private respondent from 18% to 32%, 41% and 48%. In *Almeda v. Court of Appeals*,[13] where the interest rate was increased from 21% to as high as 68% *per annum*, we declared arbitrary "the galloping increases in interest rate imposed by respondent bank on petitioners' loan, over the latter's vehement protests." In *Medel v. Court of Appeals*,[14] the stipulated interest of 5.5% per month or 66% *per annum* on a loan amounting to ₱500,000.00 was equitably reduced for being iniquitous, unconscionable and exorbitant. In *Solangon v. Salazar*,[15] the stipulated interest rate of 6% per month or 72% *per annum* was found to be "definitely outrageous and inordinate" and was reduced to 12% *per annum* which we deemed fair and reasonable. In *Imperial v. Jaucian*,[16] we ruled that the trial court was justified in reducing the stipulated interest rate from 16% to 1.167% or 14% *per annum* and the stipulated penalty charge from 5% to 1.167% per month or 14% *per annum.*

[12] *Supra,* at footnote 4.

[13] *Supra,* at footnote 4.

[14] G.R. No. 131622, November 27, 1998, 299 SCRA 481.

[15] G.R. No. 125944, June 29, 2001, 360 SCRA 379.

[16] *Supra,* at footnote 10.

In this case, respondent bank started to increase the agreed interest rate of 15.446% *per annum* to 24.5% on July 11, 1997 and every month thereafter; 27% on August 11, 1997; 26% on September 10, 1997; 33% on October 15, 1997; 26.5% on November 27, 1997; 27% on December 1997; 29% on January 13, 1998; 30.244% on February 7, 1998; 24.49% on March 9, 1998; 22.9% on April 18, 1998; and 18% on May 21, 1998. Obviously, the rate increases are excessive and arbitrary. It bears reiterating that respondent bank unilaterally increased the interest rate without petitioner's knowledge and consent.

As mentioned earlier, petitioner negotiated for the renewal of his loan. As required by respondent bank, he paid the interests due. Respondent bank then could not claim that there was no attempt on his part to comply with his obligation. Yet, respondent bank hastily filed a petition to foreclose the mortgage to gain the upperhand in taking petitioner's four (4) parcels of land at bargain prices. Obviously, respondent bank acted in bad faith.

In sum, we find that the requisites for reformation of the mortgage contract and promissory note are present in this case. There has been meeting of minds of the parties upon these documents. However, these documents do not express the parties' true agreement on interest rates. And the failure of these documents to express their agreement on interest rates was due to respondent bank's inequitable conduct.

WHEREFORE, we *GRANT* the petition. The Judgment dated February 22, 2001 of the RTC of Cagayan de Oro City, Branch 39 in Civil Case No. 98-476 is *REVERSED*. The real estate mortgage contract and the promissory note agreed upon by the parties are reformed in the sense that any increase in the interest rate beyond 15.446% *per annum* should not be imposed by respondent bank without the consent of petitioner. The interest he paid in excess of 15.446% should be applied to the payment of the principal obligation.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Garcia, JJ.,* concur.

THIRD DIVISION

[G.R. No. 155731. September 3, 2007]

LOLITA LOPEZ, *petitioner, vs.* **BODEGA CITY (Video-Disco Kitchen of the Philippines) and/or ANDRES C. TORRES-YAP,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* TO TH E SUPREME COURT UNDER RULE 45; ONLY ERRORS OF LAW MAY BE REVIEWED THEREIN; CASE AT BAR AN EXCEPTION.— While it is a settled rule that only errors of law are generally reviewed by this Court in petitions for review on *certiorari* of CA decisions, there are well-recognized exceptions to this rule, as in this case, when the factual findings of the NLRC as affirmed by the CA contradict those of the Labor Arbiter. In that event, it is this Court's task, in the exercise of its equity jurisdiction, to re-evaluate and review the factual issues by looking into the records of the case and re-examining the questioned findings.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; EMPLOYER MUST PROVE THAT THE EMPLOYEE WAS DISMISSED FOR A VALID CAUSE; IN FILING A COMPLAINT FOR ILLEGAL DISMISSAL, THE EMPLOYEE MUST PROVE THE EMPLOYER-EMPLOYEE RELATIONSHIP BY SUBSTANTIAL EVIDENCE.— It is a basic rule of evidence that each party must prove his affirmative allegation. If he claims a right granted by law, he must prove his claim by competent evidence, relying on the strength of his own evidence and not upon the weakness of that of his opponent. The test for determining on whom the burden of proof lies is found in the result of an inquiry as to which party would be successful if no evidence of such matters were given. In an illegal dismissal case, the *onus probandi* rests on the employer to prove that its dismissal of an employee was for a valid cause. However, before a case for illegal dismissal can prosper, an employer-employee relationship must first be established. In filing a complaint before the Labor Arbiter for illegal dismissal based

on the premise that she was an employee of respondent, it is incumbent upon petitioner to prove the employee-employer relationship by substantial evidence.The NLRC and the CA found that petitioner failed to discharge this burden, and the Court finds no cogent reason to depart from their findings.

3. ID.; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST.— The Court applies the four-fold test expounded in *Abante v. Lamadrid Bearing and Parts Corp.*, to wit: To ascertain the existence of an employer-employee relationship, jurisprudence has invariably applied the four-fold test, namely: (1) the manner of selection and engagement; (2) the payment of wages; (3) the presence or absence of the power of dismissal; and (4) the presence or absence of the power of control. Of these four, the last one is the most important. The so-called "control test" is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end.

4. CIVIL LAW; CONTRACTS; ACCEPTANCE OF THE THING AND THE CAUSE, WHICH ARE TO CONSTITUTE A CONTRACT, MAY BE EXPRESS OR IMPLIED AS CAN BE INFERRED FROM THE CONTEMPORANEOUS AND SUBSEQUENT ACTS OF THE CONTRACTING PARTIES.— Settled is the rule that contracts are perfected by mere consent, upon the acceptance by the offeree of the offer made by the offeror. For a contract, to arise, the acceptance must be made known to the offeror. Moreover, the acceptance of the thing and the cause, which are to constitute a contract, may be express or implied as can be inferred from the contemporaneous and subsequent acts of the contracting parties. A contract will be upheld as long as there is proof of consent, subject matter and cause; it is generally obligatory in whatever form it may have been entered into. In the present case, the Court finds no cogent reason to disregard the findings of both the CA and the NLRC that while petitioner did not affix her signature to the document evidencing the subject concessionaire agreement, the fact that she performed the tasks indicated in the said agreement for a period of three years

without any complaint or question only goes to show that she has given her implied acceptance of or consent to the said agreement.

5. ID.; ESTOPPEL *IN PAIS*; PRINCIPLE APPLICABLE TO CASE AT BAR.— Petitioner is likewise estopped from denying the existence of the subject concessionaire agreement. She should not, after enjoying the benefits of the concessionaire agreement with respondents, be allowed to later disown the same through her allegation that she was an employee of the respondents when the said agreement was terminated by reason of her violation of the terms and conditions thereof. The principle of estoppel *in pais* applies wherein — by one's acts, representations or admissions, or silence when one ought to speak out — intentionally or through culpable negligence, induces another to believe certain facts to exist and to rightfully rely and act on such belief, so as to be prejudiced if the former is permitted to deny the existence of those facts.

6. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; EACH PARTY MUST PROVE HIS AFFIRMATIVE ALLEGATION.— Petitioner also claims that the concessionaire agreement was offered to her only in her 10th year of service, after she organized a union and filed a complaint against respondents. However, petitioner's claim remains to be an allegation which is not supported by any evidence. It is a basic rule in evidence that each party must prove his affirmative allegation, that mere allegation is not evidence.

7. LABOR AND SOCIAL LEGISLATION; EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENT OF CONTROL NOT PRESENT IN CASE AT BAR; CONTROL TEST, ELABORATED.— Moreover, petitioner was not subjected to definite hours or conditions of work. The fact that she was expected to maintain the cleanliness of respondent company's ladies' comfort room during Bodega City's operating hours does not indicate that her performance of her job was subject to the control of respondents as to make her an employee of the latter. Instead, the requirement that she had to render her services while Bodega City was open for business was dictated simply by the very nature of her undertaking, which was to give assistance to the users of the ladies' comfort room. In *Consulta v. Court of Appeals*, this Court held: It should, however, be obvious that not every form of control that the

hiring party reserves to himself over the conduct of the party hired in relation to the services rendered may be accorded the effect of establishing an employer-employee relationship between them in the legal or technical sense of the term. A line must be drawn somewhere, if the recognized distinction between an employee and an individual contractor is not to vanish altogether. Realistically, it would be a rare contract of service that gives untrammeled freedom to the party hired and eschews any intervention whatsoever in his performance of the engagement. Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee relationship unlike the second, which address both the result and the means used to achieve it.

APPEARANCES OF COUNSEL

*Jose C. Evangelist*a for petitioner.
Sandra P. Torresyap for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the July 18, 2002 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 66861, dismissing the petition for *certiorari* filed before it and affirming the Decision of the National Labor Relations Commission (NLRC) in NLRC-NCR Case No. 00-03-01729-95; and its Resolution dated October 16, 2002,[2] denying petitioner's Motion for

[1] Penned by Justice Cancio C. Garcia (now a member of this Court) and concurred in by Justices Marina L. Buzon and Eliezer R. de los Santos; *rollo*, p. 26.

[2] CA, *rollo*, p. 452.

Reconsideration. The NLRC Decision set aside the Decision of the Labor Arbiter finding that Lolita Lopez (petitioner) was illegally dismissed by Bodega City and/or Andres C. Torres-Yap (respondents).

Respondent Bodega City (Bodega City) is a corporation duly registered and existing under and by virtue of the laws of the Republic of the Philippines, while respondent Andres C. Torres-Yap (Yap) is its owner/manager. Petitioner was the "lady keeper" of Bodega City tasked with manning its ladies' comfort room.

In a letter signed by Yap dated February 10, 1995, petitioner was made to explain why the concessionaire agreement between her and respondents should not be terminated or suspended in view of an incident that happened on February 3, 1995, wherein petitioner was seen to have acted in a hostile manner against a lady customer of Bodega City who informed the management that she saw petitioner sleeping while on duty.

In a subsequent letter dated February 25, 1995, Yap informed petitioner that because of the incident that happened on February 3, 1995, respondents had decided to terminate the concessionaire agreement between them.

On March 1, 1995, petitioner filed with the Arbitration Branch of the NLRC, National Capital Region, Quezon City, a complaint for illegal dismissal against respondents contending that she was dismissed from her employment without cause and due process.

In their answer, respondents contended that no employer-employee relationship ever existed between them and petitioner; that the latter's services rendered within the premises of Bodega City was by virtue of a concessionaire agreement she entered into with respondents.

The complaint was dismissed by the Labor Arbiter for lack of merit. However, on appeal, the NLRC set aside the order of dismissal and remanded the case for further proceedings. Upon remand, the case was assigned to a different Labor Arbiter. Thereafter, hearings were conducted and the parties were required to submit memoranda and other supporting documents.

On December 28, 1999, the Labor Arbiter rendered judgment finding that petitioner was an employee of respondents and that the latter illegally dismissed her.[3]

Respondents filed an appeal with the NLRC. On March 22, 2001, the NLRC issued a Resolution, the dispositive portion of which reads as follows:

> WHEREFORE, premises duly considered, the Decision appealed from is hereby ordered SET ASIDE and VACATED, and in its stead, a new one entered DISMISSING the above-entitled case for lack of merit.[4]

Petitioner filed a motion for reconsideration of the above-quoted NLRC Resolution, but the NLRC denied the same.

Aggrieved, petitioner filed a Petition for *Certiorari* with the CA. On July 18, 2002, the CA promulgated the presently assailed Decision dismissing her special civil action for *certiorari*. Petitioner moved for reconsideration but her motion was denied.

Hence, herein petition based on the following grounds:

1. WITH DUE RESPECT, PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN RULING THAT THE NATIONAL LABOR RELATIONS COMMISSION DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN REVERSING THE DECISION OF THE LABOR ARBITER FINDING PETITIONER TO HAVE BEEN ILLEGALLY DISMISSED BY PRIVATE RESPONDENTS.
2. WITH DUE RESPECT, PUBLIC RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN RULING THAT PETITIONER WAS NOT AN EMPLOYEE OF PRIVATE RESPONDENTS.[5]

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[3] *Rollo*, p. 113.

[4] CA, *rollo*, p. 16.

[5] *Rollo*, p. 18.

Petitioner contends that it was wrong for the CA to conclude that even if she did not sign the document evidencing the concessionaire agreement, she impliedly accepted and thus bound herself to the terms and conditions contained in the said agreement when she continued to perform the task which was allegedly specified therein for a considerable length of time. Petitioner claims that the concessionaire agreement was only offered to her during her tenth year of service and after she organized a union and filed a complaint against respondents. Prior to all these, petitioner asserts that her job as a "lady keeper" was a task assigned to her as an employee of respondents.

Petitioner further argues that her receipt of a special allowance from respondents is a clear evidence that she was an employee of the latter, as the amount she received was equivalent to the minimum wage at that time.

Petitioner also contends that her identification card clearly shows that she was not a concessionaire but an employee of respondents; that if respondents really intended the ID card issued to her to be used simply for having access to the premises of Bodega City, then respondents could have clearly indicated such intent on the said ID card.

Moreover, petitioner submits that the fact that she was required to follow rules and regulations prescribing appropriate conduct while she was in the premises of Bodega City is clear evidence of the existence of an employer-employee relationship between her and petitioners.

On the other hand, respondents contend that the present petition was filed for the sole purpose of delaying the proceedings of the case; the grounds relied upon in the instant petition are matters that have been exhaustively discussed by the NLRC and the CA; the present petition raises questions of fact which are not proper in a petition for review on *certiorari* under Rule 45 of the Rules of Court; the respective decisions of the NLRC and the CA are based on evidence presented by both parties; petitioner's compliance with the terms and conditions

of the proposed concessionaire contract for a period of three years is evidence of her implied acceptance of such proposal; petitioner failed to present evidence to prove her allegation that the subject concessionaire agreement was only proposed to her in her 10th year of employment with respondent company and after she organized a union and filed a labor complaint against respondents; petitioner failed to present competent documentary and testimonial evidence to prove her contention that she was an employee of respondents since 1985.

The main issue to be resolved in the present case is whether or not petitioner is an employee of respondents.

The issue of whether or not an employer-employee relationship exists in a given case is essentially a question of fact.[6]

While it is a settled rule that only errors of law are generally reviewed by this Court in petitions for review on *certiorari* of CA decisions,[7] there are well-recognized exceptions to this rule, as in this case, when the factual findings of the NLRC as affirmed by the CA contradict those of the Labor Arbiter.[8] In that event, it is this Court's task, in the exercise of its equity jurisdiction, to re-evaluate and review the factual issues by looking into the records of the case and re-examining the questioned findings.[9]

It is a basic rule of evidence that each party must prove his affirmative allegation.[10] If he claims a right granted by law, he

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[6] *Manila Water Company, Inc. v. Peña*, G.R. No. 158255, July 8, 2004, 434 SCRA 53, 58.

[7] *Mitsubishi Motors Philippines Corporation v. Chrysler Philippines Labor Union*, G.R. No. 148738, June 29, 2004, 433 SCRA 206, 217.

[8] *Diamond Motors Corporation v. Court of Appeals*, 462 Phil. 452, 458 (2003).

[9] *Tiu v. Pasaol, Sr.*, 450 Phil. 370, 379 (2003); *Manila Water Company, Inc. v. Peña*, *supra* note 6, at 58-59.

[10] *Martinez v. National Labor Relations Commission*, 339 Phil. 176, 183 (1997).

must prove his claim by competent evidence, relying on the strength of his own evidence and not upon the weakness of that of his opponent.[11]

The test for determining on whom the burden of proof lies is found in the result of an inquiry as to which party would be successful if no evidence of such matters were given.[12]

In an illegal dismissal case, the *onus probandi* rests on the employer to prove that its dismissal of an employee was for a valid cause.[13] However, before a case for illegal dismissal can prosper, an employer-employee relationship must first be established.[14]

In filing a complaint before the Labor Arbiter for illegal dismissal based on the premise that she was an employee of respondent, it is incumbent upon petitioner to prove the employee-employer relationship by substantial evidence.[15]

The NLRC and the CA found that petitioner failed to discharge this burden, and the Court finds no cogent reason to depart from their findings.

The Court applies the four-fold test expounded in *Abante v. Lamadrid Bearing and Parts Corp.*,[16] to wit:

To ascertain the existence of an employer-employee relationship, jurisprudence has invariably applied the four-fold test, namely: (1)

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[11] *Rufina Patis Factory v. Alusitain*, G.R. No. 146202, July 14, 2004, 434 SCRA 418, 428.

[12] *Imperial Victory Shipping Agency v. National Labor Relations Commission*, G.R. No. 84672, August 5, 1991, 200 SCRA 178, 185.

[13] *R.P. Dinglasan Construction, Inc. v. Atienza*, G.R. No. 156104, June 29, 2004, 433 SCRA 263, 269.

[14] *Sy v. Court of Appeals*, 446 Phil. 404, 413 (2003).

[15] *Martinez v. National Labor Relations Commission, supra* note 10 at 183; RULES OF COURT, Rule 133, Section 5.

[16] G.R. No. 159890, May 28, 2004, 430 SCRA 368.

the manner of selection and engagement; (2) the payment of wages; (3) the presence or absence of the power of dismissal; and (4) the presence or absence of the power of control. Of these four, the last one is the most important. The so-called "control test" is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship. Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end.[17]

To prove the element of payment of wages, petitioner presented a petty cash voucher showing that she received an allowance for five (5) days.[18] The CA did not err when it held that a solitary petty cash voucher did not prove that petitioner had been receiving salary from respondents or that she had been respondents' employee for 10 years.

Indeed, if petitioner was really an employee of respondents for that length of time, she should have been able to present salary vouchers or pay slips and not just a single petty cash voucher. The Court agrees with respondents that petitioner could have easily shown other pieces of evidence such as a contract of employment, SSS or Medicare forms, or certificates of withholding tax on compensation income; or she could have presented witnesses to prove her contention that she was an employee of respondents. Petitioner failed to do so.

Anent the element of control, petitioner's contention that she was an employee of respondents because she was subject to their control does not hold water.

Petitioner failed to cite a single instance to prove that she was subject to the control of respondents insofar as the manner in which she should perform her job as a "lady keeper" was concerned.

It is true that petitioner was required to follow rules and regulations prescribing appropriate conduct while within the

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[17] *Id.* at 379.

[18] CA, *rollo,* p. 62.

premises of Bodega City. However, this was imposed upon petitioner as part of the terms and conditions in the concessionaire agreement embodied in a 1992 letter of Yap addressed to petitioner, to wit:

January 6, 1992

Dear Ms. Lolita Lopez,

The new owners of Bodega City, 1121 Food Service Corporation offers to your goodself the concessionaire/contract to provide independently, customer comfort services to assist users of the ladies comfort room of the Club to further enhance its business, under the following terms and conditions:

1. You will provide at your own expense, all toilet supplies, useful for the purpose, such as toilet papers, soap, hair pins, safety pins and other related items or things which in your opinion is beneficial to the services you will undertake;

2. For the entire duration of this concessionaire contract, and during the Club's operating hours, you shall maintain the cleanliness of the ladies comfort room. Provided, that general cleanliness, sanitation and physical maintenance of said comfort rooms shall be undertaken by the owners of Bodega City;

3. You shall at all times ensure satisfaction and good services in the discharge of your undertaking. More importantly, you shall always observe utmost courtesy in dealing with the persons/individuals using said comfort room and shall refrain from doing acts that may adversely affect the goodwill and business standing of Bodega City;

4. All remunerations, tips, donations given to you by individuals/ persons utilizing said comfort rooms and/or guests of Bodega City shall be waived by the latter to your benefit provided however, that if concessionaire receives tips or donations per day in an amount exceeding 200% the prevailing minimum wage, then, she shall remit fifty percent (50%) of said amount to Bodega City by way of royalty or concession fees;

5. This contract shall be for a period of one year and shall be automatically renewed on a yearly basis unless notice of termination is given thirty (30) days prior to expiration. Any violation of the terms and conditions of this contract shall be a ground for its immediate revocation and/or termination.

6. It is hereby understood that no employer-employee relationship exists between Bodega City and/or 1121 FoodService Corporation and your goodself, as you are an independent contractor who has represented to us that you possess the necessary qualification as such including manpower compliment, equipment, facilities, *etc*. and that any person you may engage or employ to work with or assist you in the discharge of your undertaking shall be solely your own employees and/or agents.

1121 FoodService Corporation
Bodega City

By:
(Sgd.) ANDRES C. TORRES-YAP

Conforme:

_____

LOLITA LOPEZ[19]

Petitioner does not dispute the existence of the letter; neither does she deny that respondents offered her the subject concessionaire agreement. However, she contends that she could not have entered into the said agreement with respondents because she did not sign the document evidencing the same.

Settled is the rule that contracts are perfected by mere consent, upon the acceptance by the offeree of the offer made by the offeror.[20] For a contract, to arise, the acceptance must be made known to the offeror.[21] Moreover, the acceptance of the thing and the cause, which are to constitute a contract, may be express or implied as can be inferred drom the contemporaneous and subsequent acts of the contracting parties.[22] A contract will be upheld as long as there is proof of consent, subject

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[19] CA, *rollo*, p. 176.

[20] *Jardine Davies Inc. v. Court of Appeals*, 389 Phil. 204, 212 (2000).

[21] *Id*.

[22] CIVIL CODE OF THE PHILIPPINES, Article 1320; *Jardine Davies Inc. v. CA*, *supra* note 20, at 214.

matter and cause; it is generally obligatory in whatever form it may have been entered into.[23]

In the present case, the Court finds no cogent reason to disregard the findings of both the CA and the NLRC that while petitioner did not affix her signature to the document evidencing the subject concessionaire agreement, the fact that she performed the tasks indicated in the said agreement for a period of three years without any complaint or question only goes to show that she has given her implied acceptance of or consent to the said agreement.

Petitioner is likewise estopped from denying the existence of the subject concessionaire agreement. She should not, after enjoying the benefits of the concessionaire agreement with respondents, be allowed to later disown the same through her allegation that she was an employee of the respondents when the said agreement was terminated by reason of her violation of the terms and conditions thereof.

The principle of estoppel *in pais* applies wherein — by one's acts, representations or admissions, or silence when one ought to speak out — intentionally or through culpable negligence, induces another to believe certain facts to exist and to rightfully rely and act on such belief, so as to be prejudiced if the former is permitted to deny the existence of those facts.[24]

Moreover, petitioner failed to dispute the contents of the affidavit[25] as well as the testimony[26] of Felimon Habitan (Habitan), the concessionaire of the men's comfort room of Bodega City, that he had personal knowledge of the fact that petitioner was the concessionaire of the ladies' comfort room of Bodega City.

Petitioner also claims that the concessionaire agreement was offered to her only in her 10th year of service, after she organized

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[23] *Cordial v. Miranda,* 401 Phil. 307, 319 (2000).

[24] *Spouses Hanopol v. Shoemart, Inc.,* 439 Phil. 266, 285 (2002).

[25] CA *rollo,* p. 207.

[26] *Id.* at 242-245.

a union and filed a complaint against respondents. However, petitioner's claim remains to be an allegation which is not supported by any evidence. It is a basic rule in evidence that each party must prove his affirmative allegation,[27] that mere allegation is not evidence.[28]

The Court is not persuaded by petitioner's contention that the Labor Arbiter was correct in concluding that there existed an employer-employee relationship between respondents and petitioner. A perusal of the Decision[29] of the Labor Arbiter shows that his only basis for arriving at such a conclusion are the bare assertions of petitioner and the fact that the latter did not sign the letter of Yap containing the proposed concessionaire agreement. However, as earlier discussed, this Court finds no error in the findings of the NLRC and the CA that petitioner is deemed as having given her consent to the said proposal when she continuously performed the tasks indicated therein for a considerable length of time. For all intents and purposes, the concessionaire agreement had been perfected.

Petitioner insists that her ID card is sufficient proof of her employment. In *Domasig v. National Labor Relations Commission*,[30] this Court held that the complainant's ID card and the cash vouchers covering his salaries for the months indicated therein were substantial evidence that he was an employee of respondents, especially in light of the fact that the latter failed to deny said evidence. This is not the situation in the present case. The only evidence presented by petitioner as proof of her alleged employment are her ID card and one petty cash voucher for a five-day allowance which were disputed by respondents.

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[27] *Aklan Electric Cooperative Inc. v. National Labor Relations Commission*, 380 Phil. 225, 245 (2000).

[28] *Martinez v. National Labor Relations Commission, supra* note 10, at 183; *Ramoran v. Jardine CMG Life Insurance Co., Inc.*, 383 Phil. 83, 100 (2000).

[29] *Rollo*, pp. 94-113.

[30] 330 Phil. 518, 524-525 (1996).

As to the ID card, it is true that the words "EMPLOYEE'S NAME" appear printed below petitioner's name.[31] However, she failed to dispute respondents' evidence consisting of Habitan's testimony,[32] that he and the other "contractors" of Bodega City such as the singers and band performers, were also issued the same ID cards for the purpose of enabling them to enter the premises of Bodega City.

The Court quotes, with approval, the ruling of the CA on this matter, to wit:

> Nor can petitioners (sic) identification card improve her cause any better. It is undisputed that non-employees, such as Felimon Habitan, an admitted concessionaire, musicians, singers and the like at Bodega City are also issued identification cards. Given this premise, it appears clear to Us that petitioner's I.D. Card is incompetent proof of an alleged employer-employee relationship between the herein parties. Viewed in the context of this case, the card is at best a "passport" from management assuring the holder thereof of his unmolested access to the premises of Bodega City.[33]

With respect to the petty cash voucher, petitioner failed to refute respondent's claim that it was not given to her for services rendered or on a regular basis, but simply granted as financial assistance to help her temporarily meet her family's needs.

Hence, going back to the element of control, the concessionaire agreement merely stated that petitioner shall maintain the cleanliness of the ladies' comfort room and observe courtesy guidelines that would help her obtain the results they wanted to achieve. There is nothing in the agreement which specifies the methods by which petitioner should achieve these results. Respondents did not indicate the manner in which she should go about in maintaining the cleanliness of the ladies' comfort room. Neither did respondents determine the means and methods by which petitioner could ensure the satisfaction of respondent

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[31] CA *rollo*, p. 61.

[32] *Id.* at 246-250.

[33] CA *rollo*, p. 428.

company's customers. In other words, petitioner was given a free hand as to how she would perform her job as a "lady keeper." In fact, the last paragraph of the concessionaire agreement even allowed petitioner to engage persons to work with or assist her in the discharge of her functions.[34]

Moreover, petitioner was not subjected to definite hours or conditions of work. The fact that she was expected to maintain the cleanliness of respondent company's ladies' comfort room during Bodega City's operating hours does not indicate that her performance of her job was subject to the control of respondents as to make her an employee of the latter. Instead, the requirement that she had to render her services while Bodega City was open for business was dictated simply by the very nature of her undertaking, which was to give assistance to the users of the ladies' comfort room.

In *Consulta v. Court of Appeals*,[35] this Court held:

> It should, however, be obvious that not every form of control that the hiring party reserves to himself over the conduct of the party hired in relation to the services rendered may be accorded the effect of establishing an employer-employee relationship between them in the legal or technical sense of the term. A line must be drawn somewhere, if the recognized distinction between an employee and an individual contractor is not to vanish altogether. Realistically, it would be a rare contract of service that gives untrammeled freedom to the party hired and eschews any intervention whatsoever in his performance of the engagement.
>
> Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means. The first, which aim only to promote the result, create no employer-employee

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[34] *Id.* at 176-177.

[35] G.R. No. 145443, March 18, 2005, 453 SCRA 732 citing *Insular Life Assurance Co., Ltd. v. National Labor Relations Commission*, G.R. No. 84484, November 15, 1989, 175 SCRA 459.

relationship unlike the second, which address both the result and the means used to achieve it.[36]

Lastly, the Court finds that the elements of selection and engagement as well as the power of dismissal are not present in the instant case.

It has been established that there has been no employer-employee relationship between respondents and petitioner. Their contractual relationship was governed by the concessionaire agreement embodied in the 1992 letter. Thus, petitioner was not dismissed by respondents. Instead, as shown by the letter of Yap to her dated February 15, 1995,[37] their contractual relationship was terminated by reason of respondents' termination of the subject concessionaire agreement, which was in accordance with the proivisions of the agreement in case of violation of its terms and conditions.

In fine, the CA did not err in dismissing the petition for *certiorari* filed before it by ptitioner.

WHEREFORE, the instant petition is *DENIED.* The assailed Decision and Resolution of the Court of Appeals are *AFFIRMED.* Costs against petitioner.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Reyes, JJ.*, concur.

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[36] *Consulta v. Court of Appeals, id.* at 740.

[37] CA *rollo,* p. 184.

THIRD DIVISION

[G.R. No. 156364. September 3, 2007]

JACOBUS BERNHARD HULST, *petitioner, vs.* **PR BUILDERS, INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; NATIONAL ECONOMY AND PATRIMONY; ALIENS, WHETHER INDIVIDUALS OR CORPORATIONS, ARE DISQUALIFIED FROM ACQUIRING BOTH PUBLIC AND PRIVATE LANDS.— The capacity to acquire private land is made dependent upon the capacity to acquire or hold lands of the public domain. Private land may be transferred or conveyed only to individuals or entities "qualified to acquire lands of the public domain." The 1987 Constitution reserved the right to participate in the disposition, exploitation, development and utilization of lands of the public domain for Filipino citizens or corporations at least 60 percent of the capital of which is owned by Filipinos. Aliens, whether individuals or corporations, have been disqualified from acquiring public lands; hence, they have also been disqualified from acquiring private lands.

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; THE CONTRACT TO SELL REAL PROPERTY ENTERED INTO BY INDIVIDUALS WHO ARE DISQUALIFIED FROM OWNING REAL PROPERTY IS VOID.— Since petitioner and his wife, being Dutch nationals, are proscribed under the Constitution from acquiring and owning real property, it is unequivocal that the Contract to Sell entered into by petitioner together with his wife and respondent is void. Under Article 1409 (1) and (7) of the Civil Code, all contracts whose cause, object or purpose is contrary to law or public policy and those expressly prohibited or declared void by law are inexistent and void from the beginning. Article 1410 of the same Code provides that the action or defense for the declaration of the inexistence of a contract does not prescribe. A void contract is equivalent to nothing; it produces no civil effect. It does not create, modify or extinguish a juridical relation.

3. ID.; ID.; ID.; ID.; PARTIES TO A VOID AGREEMENT CANNOT EXPECT THE AID OF THE LAW; *"IN PARI DELICTO"* DOCTRINE, EXPLAINED; EXCEPTIONS.— Generally, parties to a void agreement cannot expect the aid of the law; the courts leave them as they are, because they are deemed *in pari delicto* or "in equal fault." *In pari delicto* is "a universal doctrine which holds that no action arises, in equity or at law, from an illegal contract; no suit can be maintained for its specific performance, or to recover the property agreed to be sold or delivered, or the money agreed to be paid, or damages for its violation; and where the parties are *in pari delicto*, no affirmative relief of any kind will be given to one against the other." This rule, however, is subject to exceptions that permit the return of that which may have been given under a void contract to: (a) the innocent party (Arts. 1411-1412, Civil Code); (b) the debtor who pays usurious interest (Art. 1413, Civil Code); **(c) the party repudiating the void contract before the illegal purpose is accomplished or before damage is caused to a third person and if public interest is subserved by allowing recovery (Art. 1414, Civil Code);** (d) the incapacitated party if the interest of justice so demands (Art. 1415, Civil Code); (e) the party for whose protection the prohibition by law is intended if the agreement is not illegal *per se* but merely prohibited and if public policy would be enhanced by permitting recovery (Art. 1416, Civil Code); and (f) the party for whose benefit the law has been intended such as in price ceiling laws (Art. 1417, Civil Code) and labor laws (Arts. 1418-1419, Civil Code).

4. ID.; ID.; ID.; CONTRACT TO SELL DISTINGUISHED FROM CONTRACT OF SALE.— It is significant to note that the agreement executed by the parties in this case is a Contract to Sell and not a contract of sale. A distinction between the two is material in the determination of when ownership is deemed to have been transferred to the buyer or vendee and, ultimately, the resolution of the question on whether the constitutional proscription has been breached. In a contract of sale, the title passes to the buyer upon the delivery of the thing sold. The vendor has lost and cannot recover the ownership of the property until and unless the contract of sale is itself resolved and set aside. On the other hand, a contract to sell is akin to a conditional sale where the efficacy or obligatory force of the

vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event, so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed. In other words, in a contract to sell, the prospective seller agrees to transfer ownership of the property to the buyer upon the happening of an event, which normally is the full payment of the purchase price. But even upon the fulfillment of the suspensive condition, ownership does not automatically transfer to the buyer. The prospective seller still has to convey title to the prospective buyer by executing a contract of absolute sale.

5. ID.; ID.; ID.; CONTRACT TO SELL; ONE WHO REPUDIATES THE AGREEMENT AND DEMANDS HIS MONEY BEFORE THE ILLEGAL ACT HAS TAKEN PLACE IS ENTITLED TO RECOVER; NO DAMAGES MAY BE RECOVERED ON THE BASIS OF A VOID CONTRACT.— Since the contract involved here is a Contract to Sell, ownership has not yet transferred to the petitioner when he filed the suit for rescission. While the intent to circumvent the constitutional proscription on aliens owning real property was evident by virtue of the execution of the Contract to Sell, such violation of the law did not materialize because petitioner caused the rescission of the contract before the execution of the final deed transferring ownership. Thus, exception (c) finds application in this case. Under Article 1414, one who repudiates the agreement and demands his money before the illegal act has taken place is entitled to recover. Petitioner is therefore entitled to recover what he has paid, although the basis of his claim for rescission, which was granted by the HLURB, was not the fact that he is not allowed to acquire private land under the Philippine Constitution. But petitioner is entitled to the recovery only of the amount of ₱3,187,500.00, representing the purchase price paid to respondent. No damages may be recovered on the basis of a void contract; being nonexistent, the agreement produces no juridical tie between the parties involved. Further, petitioner is not entitled to actual as well as interests thereon, moral and exemplary damages and attorney's fees.

6. REMEDIAL LAW; JUDGMENTS; FINAL AND EXECUTORY; IMMUTABLE AND UNALTERABLE; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— The Court takes into

consideration the fact that the HLURB Decision dated April 22, 1997 has long been final and executory. Nothing is more settled in the law than that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it was made by the court that rendered it or by the highest court of the land. The only recognized exceptions to the general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. None of the exceptions is present in this case. The HLURB decision cannot be considered a void judgment, as it was rendered by a tribunal with jurisdiction over the subject matter of the complaint.

7. CIVIL LAW; HUMAN RELATIONS; UNJUST ENRICHMENT; A PARTY SHOULD NOT BE ALLOWED TO BENEFIT FROM HIS ACT OF ENTERING INTO A CONTRACT THAT IS VIOLATIVE OF THE CONSTITUTION.— Ineluctably, the HLURB Decision resulted in the unjust enrichment of petitioner at the expense of respondent. Petitioner received more than what he is entitled to recover under the circumstances. Article 22 of the Civil Code which embodies the maxim, *nemo ex alterius incommode debet lecupletari* (no man ought to be made rich out of another's injury), states: Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him. The above-quoted article is part of the chapter of the Civil Code on Human Relations, the provisions of which were formulated as basic principles to be observed for the rightful relationship between human beings and for the stability of the social order; designed to indicate certain norms that spring from the fountain of good conscience; guides for human conduct that should run as golden threads through society to the end that law may approach its supreme ideal which is the sway and dominance of justice. There is unjust enrichment when a person unjustly retains a benefit at the loss of another, or when a person retains money or property of another against the fundamental principles of

justice, equity and good conscience. A sense of justice and fairness demands that petitioner should not be allowed to benefit from his act of entering into a contract to sell that violates the constitutional proscription.

8. ID.; ID.; ID.; EQUITY JURISDICTION, EXPLAINED; PURPOSE OF THE EXERCISE OF EQUITY JURISDICTION; CASE AT BAR.— This is not a case of equity overruling or supplanting a positive provision of law or judicial rule. Rather, equity is exercised in this case "as the complement of legal jurisdiction [that] seeks to reach and to complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent to do so." The purpose of the exercise of equity jurisdiction in this case is to prevent unjust enrichment and to ensure restitution. Equity jurisdiction aims to do complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of the inflexibility of its statutory or legal jurisdiction. The sheriff delivered to petitioner the amount of ₱5,313,040.00 representing the net proceeds (bidded amount is ₱5,450,653.33) of the auction sale after deducting the legal fees in the amount of ₱137,613.33. Petitioner is only entitled to ₱3,187,500.00, the amount of the purchase price of the real property paid by petitioner to respondent under the Contract to Sell. Thus, the Court in the exercise of its equity jurisdiction may validly order petitioner to return the excess amount of ₱2,125,540.00.

9. REMEDIAL LAW; JUDGMENTS; EXECUTION OF JUDGMENTS FOR MONEY; STAGES.— If the judgment is for money, the sheriff or other authorized officer must execute the same pursuant to the provisions of Section 9, Rule 39 of the Revised Rules of Court, *viz*: Sec. 9. *Execution of judgments for money, how enforced*. — x x x. Thus, under Rule 39, in executing a money judgment against the property of the judgment debtor, the sheriff shall levy on all property belonging to the judgment debtor as is amply sufficient to satisfy the judgment and costs, and sell the same paying to the judgment creditor so much of the proceeds as will satisfy the amount of the judgment debt and costs. Any excess in the proceeds shall be delivered to the judgment debtor unless otherwise directed by the judgment or order of the court. Clearly, there are two

stages in the execution of money judgments. First, the levy and then the execution sale. Levy has been defined as the act or acts by which an officer sets apart or appropriates a part or the whole of a judgment debtor's property for the purpose of satisfying the command of the writ of execution. The object of a levy is to take property into the custody of the law, and thereby render it liable to the lien of the execution, and put it out of the power of the judgment debtor to divert it to any other use or purpose. On the other hand, an execution sale is a sale by a sheriff or other ministerial officer under the authority of a writ of execution of the levied property of the debtor.

10. ID.; ID.; ID.; ISSUANCE OF THE CERTIFICATES OF SALE TO THE WINNING BIDDER IS A PURELY MINISTERIAL ACT ON THE PART OF THE HLURB DIRECTOR WHEN ALL THE REQUIREMENTS OF THE AUCTION SALE UNDER THE RULES HAVE BEEN FULLY COMPLIED WITH.— In the present case, the HLURB Arbiter and Director gravely abused their discretion in setting aside the levy conducted by the Sheriff for the reason that the auction sale conducted by the sheriff rendered moot and academic the motion to quash the levy. The HLURB Arbiter lost jurisdiction to act on the motion to quash the levy by virtue of the consummation of the auction sale. Absent any order from the HLURB suspending the auction sale, the sheriff rightfully proceeded with the auction sale. The winning bidder had already paid the winning bid. The legal fees had already been remitted to the HLURB. The judgment award had already been turned over to the judgment creditor. What was left to be done was only the issuance of the corresponding certificates of sale to the winning bidder. In fact, only the signature of the HLURB Director for that purpose was needed — a purely ministerial act. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard for or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment. In the present case, all the requirements of auction sale under

the Rules have been fully complied with to warrant the issuance of the corresponding certificates of sale.

11. ID.; ID.; ID.; WHEN THERE IS A RIGHT TO REDEEM, INADEQUACY OF THE PRICE IS NOT MATERIAL; REASON; RULING ON BARROZO CASE (83 PHIL. 378) NOT APPLICABLE TO CASE AT BAR.— *Firstly*, the reliance of the HLURB Arbiter and Director, as well as the CA, on *Barrozo v. Macaraeg* and *Buan v. Court of Appeals* is misplaced. The HLURB and the CA misconstrued the Court's pronouncements in *Barrozo*. *Barrozo* involved a judgment debtor who wanted to repurchase properties sold at execution beyond the one-year redemption period. The statement of the Court in *Barrozo*, that "only where such inadequacy shocks the conscience the courts will intervene," is at best a mere *obiter dictum*. This declaration should be taken in the context of the other declarations of the Court in *Barrozo*, x x x. In other words, gross inadequacy of price does not nullify an execution sale. In an ordinary sale, for reason of equity, a transaction may be invalidated on the ground of inadequacy of price, or when such inadequacy shocks one's conscience as to justify the courts to interfere; such does not follow when the law gives the owner the right to redeem as when a sale is made at public auction, upon the theory that the lesser the price, the easier it is for the owner to effect redemption. When there is a right to redeem, inadequacy of price should not be material because the judgment debtor may re-acquire the property or else sell his right to redeem and thus recover any loss he claims to have suffered by reason of the price obtained at the execution sale. Thus, respondent stood to gain rather than be harmed by the low sale value of the auctioned properties because it possesses the right of redemption. More importantly, the subject matter in *Barrozo* is the auction sale, not the levy made by the Sheriff. The Court does not sanction the piecemeal interpretation of a decision. To get the true intent and meaning of a decision, no specific portion thereof should be isolated and resorted to, but the decision must be considered in its entirety.

12. ID.; ID.; ID.; RULING IN BUAN CASE (G.R. NO. 101614, AUGUST 17, 1994) NOT APPLICABLE TO CASE AT BAR.— As regards *Buan*, it is cast under an entirely different factual milieu. It involved the levy on two parcels of land owned

by the judgment debtor; and the sale at public auction of one was sufficient to fully satisfy the judgment, such that the levy and attempted execution of the second parcel of land was declared void for being in excess of and beyond the original judgment award granted in favor of the judgment creditor. In the present case, the Sheriff complied with the mandate of Section 9, Rule 39 of the Revised Rules of Court, to "sell only a sufficient portion" of the levied properties "as is sufficient to satisfy the judgment and the lawful fees." Each of the 15 levied properties was successively bidded upon and sold, one after the other until the judgment debt and the lawful fees were fully satisfied. Holly Properties Realty Corporation successively bidded upon and bought each of the levied properties for the total amount of ₱5,450,653.33 in full satisfaction of the judgment award and legal fees.

13. ID.; ID.; ID.; IN THE LEVY OF PROPERTY, THE SHERIFF DOES NOT DETERMINE THE EXACT VALUATION OF THE LEVIED PROPERTY; SATISFACTION BY LEVY, REQUISITES.— *Secondly,* the Rules of Court do not require that the value of the property levied be exactly the same as the judgment debt; it can be less or more than the amount of debt. This is the contingency addressed by Section 9, Rule 39 of the Rules of Court. In the levy of property, the Sheriff does not determine the exact valuation of the levied property. Under Section 9, Rule 39, in conjunction with Section 7, Rule 57 of the Rules of Court, the sheriff is required to do only two specific things to effect a levy upon a realty: (a) file with the register of deeds a copy of the order of execution, together with the description of the levied property and notice of execution; and (b) leave with the occupant of the property copy of the same order, description and notice. Records do not show that respondent alleged non-compliance by the Sheriff of said requisites.

14. ID.; ID.; ID.; THE FACT THAT THE SHERIFF LEVIES UPON A LITTLE MORE THAN IS NECESSARY TO SATISFY THE EXECUTION DOES NOT RENDER HIS ACTIONS IMPROPER.— *Thirdly*, in determining what amount of property is sufficient out of which to secure satisfaction of the execution, the Sheriff is left to his own judgment. He may exercise a reasonable discretion, and must exercise the care which a reasonably prudent person would exercise under like

conditions and circumstances, endeavoring on the one hand to obtain sufficient property to satisfy the purposes of the writ, and on the other hand not to make an unreasonable and unnecessary levy. Because it is impossible to know the precise quantity of land or other property necessary to satisfy an execution, the Sheriff should be allowed a reasonable margin between the value of the property levied upon and the amount of the execution; the fact that the Sheriff levies upon a little more than is necessary to satisfy the execution does not render his actions improper. Section 9, Rule 39, provides adequate safeguards against excessive levying. The Sheriff is mandated to sell so much only of such real property as is sufficient to satisfy the judgment and lawful fees.

15. ID.; ID.; ID.; THE SHERIFF HAS NO AUTHORITY, ON HIS OWN, TO SUSPEND THE CONDUCT OF THE AUCTION SALE.— In the absence of a restraining order, no error, much less abuse of discretion, can be imputed to the Sheriff in proceeding with the auction sale despite the pending motion to quash the levy filed by the respondents with the HLURB. It is elementary that sheriffs, as officers charged with the delicate task of the enforcement and/or implementation of judgments, must, in the absence of a restraining order, act with considerable dispatch so as not to unduly delay the administration of justice; otherwise, the decisions, orders, or other processes of the courts of justice and the like would be futile. It is not within the jurisdiction of the Sheriff to consider, much less resolve, respondent's objection to the continuation of the conduct of the auction sale. The Sheriff has no authority, on his own, to suspend the auction sale. His duty being ministerial, he has no discretion to postpone the conduct of the auction sale.

16. ID.; ID.; ID.; PRICE DEMANDED FOR THE PROPERTY UPON A PRIVATE SALE IS NOT THE STANDARD FOR DETERMINING THE EXCESSIVENESS OF THE LEVY; ONE WHO ATTACKS A LEVY ON THE GROUND OF EXCESSIVENESS CARRIES THE BURDEN OF SUSTAINING THAT CONTENTION.— *Finally,* one who attacks a levy on the ground of excessiveness carries the burden of sustaining that contention. In the determination of whether a levy of execution is excessive, it is proper to take into consideration encumbrances upon the property, as well as the fact that a forced sale usually results in a sacrifice; that is, the

price demanded for the property upon a private sale is not the standard for determining the excessiveness of the levy. Here, the HLURB Arbiter and Director had no sufficient factual basis to determine the value of the levied property. Respondent only submitted an Appraisal Report, based merely on surmises. The Report was based on the projected value of the townhouse project after it shall have been fully developed, that is, on the assumption that the residential units appraised had already been built. The Appraiser in fact made this qualification in its Appraisal Report: "[t]he property subject of this appraisal has not been constructed. The basis of the appraiser is on the existing model units." Since it is undisputed that the townhouse project did not push through, the projected value did not become a reality. Thus, the appraisal value cannot be equated with the fair market value. The Appraisal Report is not the best proof to accurately show the value of the levied properties as it is clearly self-serving. Therefore, the Order dated August 28, 2000 of HLURB Arbiter Aquino and Director Ceniza in HLRB Case No. IV6-071196-0618 which set aside the sheriff's levy on respondent's real properties, was clearly issued with grave abuse of discretion. The CA erred in affirming said Order.

APPEARANCES OF COUNSEL

De Borja Medialdea Bello Guevarra & Gerodias for petitioner.

Acosta Aguirre & Fernandez Associates Law Firm for respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court assailing the Decision[1] dated October 30, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 60981.

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[1] Penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Eliezer R. de Los Santos (now deceased) and Amelita G. Tolentino, CA *rollo*, p. 443.

The facts:

Jacobus Bernhard Hulst (petitioner) and his spouse Ida Johanna Hulst-Van Ijzeren (Ida), Dutch nationals, entered into a Contract to Sell with PR Builders, Inc. (respondent), for the purchase of a 210-sq. m. residential unit in respondent's townhouse project in *Barangay* Niyugan, Laurel, Batangas.

When respondent failed to comply with its verbal promise to complete the project by June 1995, the spouses Hulst filed before the Housing and Land Use Regulatory Board (HLURB) a complaint for rescission of contract with interest, damages and attorney's fees, docketed as HLRB Case No. IV6-071196-0618.

On April 22, 1997, HLURB Arbiter Ma. Perpetua Y. Aquino (HLURB Arbiter) rendered a Decision[2] in favor of spouses Hulst, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the complainant, rescinding the Contract to Sell and ordering respondent to:
>
> 1) Reimburse complainant the sum of ₱3,187,500.00, representing the purchase price paid by the complainants to P.R. Builders, plus interest thereon at the rate of twelve percent (12%) per annum from the time complaint was filed;
>
> 2) Pay complainant the sum of ₱297,000.00 as actual damages;
>
> 3) Pay complainant the sum of ₱100,000.00 by way of moral damages;
>
> 4) Pay complainant the sum of ₱150,000.00 as exemplary damages;
>
> 5) ₱50,000.00 as attorney's fees and for other litigation expenses; and
>
> 6) Cost of suit.
>
> SO ORDERED.[3]

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[2] *Id*. at 48.

[3] *Id*. at 50.

Meanwhile, spouses Hulst divorced. Ida assigned her rights over the purchased property to petitioner.[4] From then on, petitioner alone pursued the case.

On August 21, 1997, the HLURB Arbiter issued a Writ of Execution addressed to the *Ex-Officio* Sheriff of the Regional Trial Court of Tanauan, Batangas directing the latter to execute its judgment.[5]

On April 13, 1998, the *Ex-Officio* Sheriff proceeded to implement the Writ of Execution. However, upon complaint of respondent with the CA on a Petition for *Certiorari* and Prohibition, the levy made by the Sheriff was set aside, requiring the Sheriff to levy first on respondent's personal properties.[6] Sheriff Jaime B. Ozaeta (Sheriff) tried to implement the writ as directed but the writ was returned unsatisfied.[7]

On January 26, 1999, upon petitioner's motion, the HLURB Arbiter issued an Alias Writ of Execution.[8]

On March 23, 1999, the Sheriff levied on respondent's 15 parcels of land covered by 13 Transfer Certificates of Title (TCT)[9] in *Barangay* Niyugan, Laurel, Batangas.[10]

In a Notice of Sale dated March 27, 2000, the Sheriff set the public auction of the levied properties on April 28, 2000 at 10:00 a.m.[11]

Two days before the scheduled public auction or on April 26, 2000, respondent filed an Urgent Motion to Quash Writ of Levy with the HLURB on the ground that the Sheriff made an

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[4] *Id.* at 46.

[5] *Id.* at 51.

[6] *Id.* at 66.

[7] *Id.* at 75.

[8] *Id.* at 76.

[9] *Id.* at 78-129.

[10] *Id.* at 81, 85, 89, 93, 97, 101, 105, 109, 113, 117, 121, 125 and 129.

[11] *Id.* at 130.

overlevy since the aggregate appraised value of the levied properties at ₱6,500.00 per sq. m. is ₱83,616,000.00, based on the Appraisal Report[12] of Henry Hunter Bayne Co., Inc. dated December 11, 1996, which is over and above the judgment award.[13]

At 10:15 a.m. of the scheduled auction date of April 28, 2000, respondent's counsel objected to the conduct of the public auction on the ground that respondent's Urgent Motion to Quash Writ of Levy was pending resolution. Absent any restraining order from the HLURB, the Sheriff proceeded to sell the 15 parcels of land. Holly Properties Realty Corporation was the winning bidder for all 15 parcels of land for the total amount of ₱5,450,653.33. The sum of ₱5,313,040.00 was turned over to the petitioner in satisfaction of the judgment award after deducting the legal fees.[14]

At 4:15 p.m. of the same day, while the Sheriff was at the HLURB office to remit the legal fees relative to the auction sale and to submit the Certificates of Sale[15] for the signature of HLURB Director Belen G. Ceniza (HLURB Director), he received the Order dated April 28, 2000 issued by the HLURB Arbiter to suspend the proceedings on the matter.[16]

Four months later, or on August 28, 2000, the HLURB Arbiter and HLURB Director issued an Order setting aside the sheriff's levy on respondent's real properties,[17] reasoning as follows:

> While we are not making a ruling that the fair market value of the levied properties is PhP6,500.00 per square meter (or an aggregate value of PhP83,616,000.00) as indicated in the Hunter Baynes Appraisal Report, we definitely cannot agree with the position of the Complainants and the Sheriff that the aggregate value of the

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[12] *Id*. at 140 and 151.

[13] *Id*. at 136.

[14] *Id*. at 210.

[15] *Id*. at 191-207.

[16] *Supra* note 14.

[17] *Id*. at 38.

12,864.00-square meter levied properties is only around PhP6,000,000.00. The disparity between the two valuations are [sic] so egregious that the Sheriff should have looked into the matter first before proceeding with the execution sale of the said properties, especially when the auction sale proceedings was seasonably objected by Respondent's counsel, Atty. Noel Mingoa. However, instead of resolving first the objection timely posed by Atty. Mingoa, Sheriff Ozaete totally disregarded the objection raised and, posthaste, issued the corresponding Certificate of Sale even prior to the payment of the legal fees (pars. 7 & 8, Sheriff's Return).

While we agree with the Complainants that what is material in an execution sale proceeding is the amount for which the properties were bidded and sold during the public auction and that, mere inadequacy of the price is not a sufficient ground to annul the sale, the court is justified to intervene where the inadequacy of the price shocks the conscience (*Barrozo vs. Macaraeg*, 83 Phil. 378). The difference between PhP83,616,000.00 and Php6,000,000.00 is PhP77,616,000.00 and it definitely invites our attention to look into the proceedings had especially so when there was only one bidder, the HOLLY PROPERTIES REALTY CORPORATION represented by Ma. Chandra Cacho (par. 7, Sheriff's Return) and the auction sale proceedings was timely objected by Respondent's counsel (par. 6, Sheriff's Return) due to the pendency of the Urgent Motion to Quash the Writ of Levy which was filed prior to the execution sale.

Besides, what is at issue is not the value of the subject properties as determined during the auction sale, but the determination of the value of the properties levied upon by the Sheriff taking into consideration Section 9(b) of the 1997 Rules of Civil Procedure x x x.

x x x x x x x x x

It is very clear from the foregoing that, even during levy, the Sheriff has to consider the fair market value of the properties levied upon to determine whether they are sufficient to satisfy the judgment, and any levy in excess of the judgment award is void (*Buan v. Court of Appeals*, 235 SCRA 424).

x x x x x x x x x[18]

(Emphasis supplied).

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[18] *Id*. at 42-43.

The dispositive portion of the Order reads:

WHEREFORE, the levy on the subject properties made by the *Ex-Officio* Sheriff of the RTC of Tanauan, Batangas, is hereby SET ASIDE and the said Sheriff is hereby directed to levy instead Respondent's real properties that are reasonably sufficient to enforce its final and executory judgment, this time, taking into consideration not only the value of the properties as indicated in their respective tax declarations, but also all the other determinants at arriving at a fair market value, namely: the cost of acquisition, the current value of like properties, its actual or potential uses, and in the particular case of lands, their size, shape or location, and the tax declarations thereon.

SO ORDERED.[19]

A motion for reconsideration being a prohibited pleading under Section 1(h), Rule IV of the 1996 HLURB Rules and Procedure, petitioner filed a Petition for *Certiorari* and Prohibition with the CA on September 27, 2000.

On October 30, 2002, the CA rendered herein assailed Decision[20] dismissing the petition. The CA held that petitioner's insistence that *Barrozo v. Macaraeg*[21] does not apply since said case stated that "when there is a right to redeem inadequacy of price should not be material" holds no water as what is obtaining in this case is not "mere inadequacy," but an inadequacy that shocks the senses; that *Buan v. Court of Appeals*[22] properly applies since the questioned levy covered 15 parcels of land posited to have an aggregate value of ₱83,616,000.00 which shockingly exceeded the judgment debt of only around ₱6,000,000.00.

Without filing a motion for reconsideration,[23] petitioner took the present recourse on the sole ground that:

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[19] *Id*. at 44.

[20] *Supra* note 1.

[21] 83 Phil. 378 (1949).

[22] G.R. No. 101614, August 17, 1994, 235 SCRA 424.

[23] Applying by analogy the ruling in *Commissioner on Higher Education v. Mercado,* G.R. No. 157877, March 10, 2006, 484 SCRA 424, 432, a party

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE ARBITER'S ORDER SETTING ASIDE THE LEVY MADE BY THE SHERIFF ON THE SUBJECT PROPERTIES.[24]

Before resolving the question whether the CA erred in affirming the Order of the HLURB setting aside the levy made by the sheriff, it behooves this Court to address a matter of public and national importance which completely escaped the attention of the HLURB Arbiter and the CA: petitioner and his wife are foreign nationals who are disqualified under the Constitution from owning real property in their names.

Section 7 of Article XII of the 1987 Constitution provides:

> Sec. 7. Save in cases of hereditary succession, **no private lands shall be transferred or conveyed except to individuals**, corporations, or associations **qualified to acquire or hold lands of the public domain**. (Emphasis supplied).

The capacity to acquire private land is made dependent upon the capacity to acquire or hold lands of the public domain. Private land may be transferred or conveyed only to individuals or entities "qualified to acquire lands of the public domain." The 1987 Constitution reserved the right to participate in the disposition, exploitation, development and utilization of lands of the public domain for Filipino citizens[25] or corporations at

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may elevate a decision of the Court of Appeals before the Supreme Court by way of a petition for review under Rule 45 of the Rules of Court, without the benefit of a prior motion for reconsideration.

[24] *Rollo*, p. 19.

[25] CONSTITUTION, (1987), Article XII, Section 3.

> Sec. 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. **Citizens of the Philippines may** lease not more than five hundred hectares, or **acquire not more than twelve hectares thereof by purchase, homestead, or grant.**
>
> x x x (Emphasis supplied).

least 60 percent of the capital of which is owned by Filipinos.[26] Aliens, whether individuals or corporations, have been disqualified from acquiring public lands; hence, they have also been disqualified from acquiring private lands.[27]

Since petitioner and his wife, being Dutch nationals, are proscribed under the Constitution from acquiring and owning real property, it is unequivocal that the Contract to Sell entered into by petitioner together with his wife and respondent is void. Under Article 1409 (1) and (7) of the Civil Code, all contracts whose cause, object or purpose is contrary to law or public policy and those expressly prohibited or declared void by law are inexistent and void from the beginning. Article 1410 of the same Code provides that the action or defense for the declaration of the inexistence of a contract does not prescribe. A void contract is equivalent to nothing; it produces no civil effect.[28] It does not create, modify or extinguish a juridical relation.[29]

Generally, parties to a void agreement cannot expect the aid of the law; the courts leave them as they are, because they are deemed *in pari delicto* or "in equal fault."[30] *In pari delicto* is

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[26] *Id*. at Section 2.

Sec. 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with **Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens**. x x x (Emphasis supplied).

[27] *Muller v. Muller*, G.R. No. 149615, August 29, 2006, 500 SCRA 65, 71; *Frenzel v. Catito*, G.R. No. 143958, July 11, 2003, 406 SCRA 55, 69; *Ong Ching Po v. Court of Appeals*, G.R. Nos. 113472-73, December 20, 1994, 239 SCRA 341, 346.

[28] Tolentino, *Civil Code of the Philippines* (1991), Vol. IV, p. 629; *Tongoy v. Court of Appeals*, 208 Phil. 95, 113 (1983).

[29] *Id*. at 632; *Tongoy v. Court of Appeals*, *id*.

[30] Sodhi, *Latin Words and Phrases for Lawyers* (1980), p. 115.

"a universal doctrine which holds that no action arises, in equity or at law, from an illegal contract; no suit can be maintained for its specific performance, or to recover the property agreed to be sold or delivered, or the money agreed to be paid, or damages for its violation; and where the parties are *in pari delicto*, no affirmative relief of any kind will be given to one against the other."[31]

This rule, however, is subject to exceptions[32] that permit the return of that which may have been given under a void contract to: (a) the innocent party (Arts. 1411-1412, Civil Code);[33] (b) the debtor who pays usurious interest (Art. 1413, Civil Code);[34] **(c) the party repudiating the void contract before the illegal purpose is accomplished or before damage is caused to a**

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[31] Moreno, *Philippine Law Dictionary* (1988), p. 451, citing *Rellosa v. Gaw Chee Hun*, 93 Phil. 827, 831, (1953).

[32] Vitug, *Civil Law Annotated*, Vol. III (2003), pp. 159-160.

[33] Art. 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being *in pari delicto*, they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract.

This rule shall be applicable when only one of the parties is guilty; but the innocent one may claim what he has given, and shall not be bound to comply with his promise.

Art.1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rule shall be observed:

(1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;

(2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other who is not at fault, may demand the return of what he has given without any obligation to comply with his promise.

[34] Art. 1413. Interest paid in excess of the interest allowed by the usury laws may be recovered by the debtor, with interest thereon from the date of the payment.

third person and if public interest is subserved by allowing recovery (Art. 1414, Civil Code);[35] (d) the incapacitated party if the interest of justice so demands (Art. 1415, Civil Code);[36] (e) the party for whose protection the prohibition by law is intended if the agreement is not illegal *per se* but merely prohibited and if public policy would be enhanced by permitting recovery (Art. 1416, Civil Code);[37] and (f) the party for whose benefit the law has been intended such as in price ceiling laws (Art. 1417, Civil Code)[38] and labor laws (Arts. 1418-1419, Civil Code).[39]

It is significant to note that the agreement executed by the parties in this case is a Contract to Sell and not a contract of sale. A distinction between the two is material in the determination of when ownership is deemed to have been transferred to the buyer or vendee and, ultimately, the resolution of the question on whether the constitutional proscription has been breached.

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[35] Art. 1414. When money is paid or property delivered for an illegal purpose, the contract may be repudiated by one of the parties before the purpose has been accomplished, or before any damage has been caused to a third person. In such case, the courts may, if the public interest will thus be subserved, allow the party repudiating the contract to recover the money or property.

[36] Art. 1415. Where one of the parties to an illegal contract is incapable of giving consent, the courts may, if the interest of justice so demands, allow recovery of money or property delivered by the incapacitated person.

[37] Art. 1416. When the agreement is not illegal *per se* but is merely prohibited, and the prohibition by the law is designed for the protection of the plaintiff, he may, if public policy is thereby enhanced, recover what he has paid or delivered.

[38] Art. 1417. When the price of any article or commodity is determined by statute, or by authority of law, any person paying any amount in excess of the maximum price allowed may recover such excess.

[39] Art. 1418. When the law fixes, or authorizes the fixing of the maximum number of hours of labor, and a contract is entered into whereby a laborer undertakes to work longer than the maximum thus fixed, he may demand additional compensation for service rendered beyond the time limit.

Art. 1419. When the law sets, or authorizes the setting of a minimum wage for laborers, and a contract is agreed upon by which a laborer accepts a lower wage, he shall be entitled to recover the deficiency.

In a contract of sale, the title passes to the buyer upon the delivery of the thing sold. The vendor has lost and cannot recover the ownership of the property until and unless the contract of sale is itself resolved and set aside.[40] On the other hand, a contract to sell is akin to a conditional sale where the efficacy or obligatory force of the vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event, so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed.[41] In other words, in a contract to sell, the prospective seller agrees to transfer ownership of the property to the buyer upon the happening of an event, which normally is the full payment of the purchase price. But even upon the fulfillment of the suspensive condition, ownership does not automatically transfer to the buyer. The prospective seller still has to convey title to the prospective buyer by executing a contract of absolute sale.[42]

Since the contract involved here is a Contract to Sell, ownership has not yet transferred to the petitioner when he filed the suit for rescission. While the intent to circumvent the constitutional proscription on aliens owning real property was evident by virtue of the execution of the Contract to Sell, such violation of the law did not materialize because petitioner caused the rescission of the contract before the execution of the final deed transferring ownership.

Thus, exception (c) finds application in this case. Under Article 1414, one who repudiates the agreement and demands

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[40] *Ayala Life Assurance, Inc. v. Ray Burton Development Corporation*, G.R. No. 163075, January 23, 2006, 479 SCRA 462, 468-469; *Dijamco v. Court of Appeals*, G.R. No. 113665, October 7, 2004, 440 SCRA 190, 197.

[41] *Philippine National Bank v. Court of Appeals*, 330 Phil. 1048, 1067 (1996); *Rose Packing Co., Inc. v. Court of Appeals*, G.R. No. L-33084, November 14, 1988, 167 SCRA 309, 318; *Lim v. Court of Appeals*, G.R. No. 85733, February 23, 1990, 182 SCRA 564, 570.

[42] *Sacobia Hills Development Corporation v. Ty*, G.R. No. 165889, September 20, 2005, 470 SCRA 395, 404; *Coronel v. Court of Appeals*, 331 Phil. 294, 309 (1996).

his money before the illegal act has taken place is entitled to recover. Petitioner is therefore entitled to recover what he has paid, although the basis of his claim for rescission, which was granted by the HLURB, was not the fact that he is not allowed to acquire private land under the Philippine Constitution. But petitioner is entitled to the recovery only of the amount of ₱3,187,500.00, representing the purchase price paid to respondent. No damages may be recovered on the basis of a void contract; being nonexistent, the agreement produces no juridical tie between the parties involved.[43] Further, petitioner is not entitled to actual as well as interests thereon,[44] moral and exemplary damages and attorney's fees.

The Court takes into consideration the fact that the HLURB Decision dated April 22, 1997 has long been final and executory. Nothing is more settled in the law than that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it was made by the court that rendered it or by the highest court of the land.[45] The only recognized exceptions to the general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[46] None of the exceptions is present in this case. The HLURB

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[43] *Menchavez v. Teves, Jr.*, G.R. No. 153201, January 26, 2005, 449 SCRA 380, 393.

[44] *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95.

[45] *Peña v. Government Service Insurance System (GSIS)*, G.R No. 159520, September 19, 2006, 502 SCRA 383, 404; *Siy v. National Labor Relations Commission*, G.R. No. 158971, August 25, 2005, 468 SCRA 154, 161-162; *Sacdalan v. Court of Appeals*, G.R. No. 128967, May 20, 2004, 428 SCRA 586, 599.

[46] *Peña v. Government Service Insurance System (GSIS)*, *supra* note 45; *Siy v. National Labor Relations Commission*, *supra* note 45, at 162; *Sacdalan v. Court of Appeals*, *supra* note 45.

decision cannot be considered a void judgment, as it was rendered by a tribunal with jurisdiction over the subject matter of the complaint.[47]

Ineluctably, the HLURB Decision resulted in the unjust enrichment of petitioner at the expense of respondent. Petitioner received more than what he is entitled to recover under the circumstances.

Article 22 of the Civil Code which embodies the maxim, *nemo ex alterius incommode debet lecupletari* (no man ought to be made rich out of another's injury), states:

> Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

The above-quoted article is part of the chapter of the Civil Code on Human Relations, the provisions of which were formulated as basic principles to be observed for the rightful relationship between human beings and for the stability of the social order; designed to indicate certain norms that spring from the fountain of good conscience; guides for human conduct that should run as golden threads through society to the end that law may approach its supreme ideal which is the sway and dominance of justice.[48] There is unjust enrichment when a person unjustly retains a benefit at the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience.[49]

A sense of justice and fairness demands that petitioner should not be allowed to benefit from his act of entering into a contract to sell that violates the constitutional proscription.

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[47] *Pilapil v. Heirs of Maximino R. Briones*, G.R. No. 150175, February 5, 2007, citing *Gomez v. Concepcion*, 47 Phil. 717, 722-723 (1925).

[48] *Security Bank & Trust Company v. Court of Appeals*, 319 Phil. 312, 317 (1995).

[49] 66 Am Jur 2d Restitution and Implied Contracts § 3.

This is not a case of equity overruling or supplanting a positive provision of law or judicial rule. Rather, equity is exercised in this case "as the complement of legal jurisdiction [that] seeks to reach and to complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent to do so."[50]

The purpose of the exercise of equity jurisdiction in this case is to prevent unjust enrichment and to ensure restitution. Equity jurisdiction aims to do complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of the inflexibility of its statutory or legal jurisdiction.[51]

The sheriff delivered to petitioner the amount of ₱5,313,040.00 representing the net proceeds (bidded amount is ₱5,450,653.33) of the auction sale after deducting the legal fees in the amount of ₱137,613.33.[52] Petitioner is only entitled to ₱3,187,500.00, the amount of the purchase price of the real property paid by petitioner to respondent under the Contract to Sell. Thus, the Court in the exercise of its equity jurisdiction may validly order petitioner to return the excess amount of ₱2,125,540.00.

The Court shall now proceed to resolve the single issue raised in the present petition: whether the CA seriously erred in affirming the HLURB Order setting aside the levy made by the Sheriff on the subject properties.

Petitioner avers that the HLURB Arbiter and Director had no factual basis for pegging the fair market value of the levied properties at ₱6,500.00 per sq. m. or ₱83,616,000.00; that reliance on the appraisal report was misplaced since the appraisal

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[50] *Tamio v. Ticson*, G.R. No. 154895, November 18, 2004, 443 SCRA 44, 55.

[51] *Agcaoili v. Government Service Insurance System*, G.R. No. L-30056, August 30, 1988, 165 SCRA 1, 9; *Air Manila, Inc. v. Court of Industrial Relations*, G.R. No. L-39742, June 9, 1978, 83 SCRA 579, 589.

[52] Sheriff's Return dated May 3, 2000, CA *rollo*, pp. 208-210.

was based on the value of land in neighboring developed subdivisions and on the assumption that the residential unit appraised had already been built; that the Sheriff need not determine the fair market value of the subject properties before levying on the same since what is material is the amount for which the properties were bidded and sold during the public auction; that the pendency of any motion is not a valid ground for the Sheriff to suspend the execution proceedings and, by itself, does not have the effect of restraining the Sheriff from proceeding with the execution.

Respondent, on the other hand, contends that while it is true that the HLURB Arbiter and Director did not categorically state the exact value of the levied properties, said properties cannot just amount to ₱6,000,000.00; that the HLURB Arbiter and Director correctly held that the value indicated in the tax declaration is not the sole determinant of the value of the property.

The petition is impressed with merit.

If the judgment is for money, the sheriff or other authorized officer must execute the same pursuant to the provisions of Section 9, Rule 39 of the Revised Rules of Court, *viz*:

Sec. 9. *Execution of judgments for money, how enforced.*—

(a) *Immediate payment on demand.* — The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. x x x

(b) *Satisfaction by levy*. — If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee**, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution**, giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

When there is more property of the judgment obligor than is sufficient to satisfy the judgment and lawful fees, he must sell only so much of the personal or real property as is sufficient to satisfy the judgment and lawful fees.

Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, **may be levied upon in like manner and with like effect as under a writ of attachment** (Emphasis supplied).[53]

Thus, under Rule 39, in executing a money judgment against the property of the judgment debtor, the sheriff shall levy on

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[53] RULES OF COURT, Rule 57, Section 7:

Sec. 7. *Attachment of real and personal property; recording thereof.*— Real and personal property shall be attached by the sheriff executing the writ in the following manner:

(a) Real property, or growing crops thereon, standing upon the record of the registry of deeds of the province in the name of the party against whom attachment is issued, or not appearing at all upon such records, or belonging to the party against whom attachment is issued and held by any other person, or standing on the records of the registry of deeds in the name of any other person, by filing with the registry of deeds a copy of the order, together with a description of the property attached, and a notice that it is attached, or that such real property and any interest therein held by or standing in the name of such other person are attached, and by leaving a copy of such order, description, and notice with the occupant of the property, if any, or with such other person or his agent if found within the province. Where the property has been brought under the operation of either the Land Registration Act or the Property Registration Decree, the notice shall contain a reference to the number of the certificate of title, the volume and page in the registration book where the certificate is registered, and the registered owner or owners thereof.

The registrar must index attachments filed under this paragraph in the names both of the applicant, the adverse party, or the person by whom the property is held or in whose name it stands in the records. x x x.

x x x x x x x x x

all property belonging to the judgment debtor as is amply sufficient to satisfy the judgment and costs, and sell the same paying to the judgment creditor so much of the proceeds as will satisfy the amount of the judgment debt and costs. Any excess in the proceeds shall be delivered to the judgment debtor unless otherwise directed by the judgment or order of the court.[54]

Clearly, there are two stages in the execution of money judgments. First, the levy and then the execution sale.

Levy has been defined as the act or acts by which an officer sets apart or appropriates a part or the whole of a judgment debtor's property for the purpose of satisfying the command of the writ of execution.[55] The object of a levy is to take property into the custody of the law, and thereby render it liable to the lien of the execution, and put it out of the power of the judgment debtor to divert it to any other use or purpose.[56]

On the other hand, an execution sale is a sale by a sheriff or other ministerial officer under the authority of a writ of execution of the levied property of the debtor.[57]

In the present case, the HLURB Arbiter and Director gravely abused their discretion in setting aside the levy conducted by the Sheriff for the reason that the auction sale conducted by the sheriff rendered moot and academic the motion to quash the levy. The HLURB Arbiter lost jurisdiction to act on the motion to quash the levy by virtue of the consummation of the auction sale. Absent any order from the HLURB suspending

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[54] Moran, *Comments on the Rules of Court*, Vol. II, p. 297 (1980).

[55] *Caja v. Nanquil*, A.M. No. P-04-1885, September 13, 2004, 438 SCRA 174, 191*; Cagayan de Oro Coliseum, Inc. v. Court of Appeals*, 378 Phil. 498, 523 (1999); *Fiestan v. Court of Appeals*, G.R. No. 81552, May 28, 1990, 185 SCRA 751, 757; *Del Rosario v. Hon. Yatco*, 125 Phil. 396, 399 (1966); *Llenares v. Valdeavella*, 46 Phil. 358, 360 (1924).

[56] *Cagayan de Oro Coliseum, Inc. v. Court of Appeals, supra* note 55, at 523-524; Francisco, *The Revised Rules of Court in the Philippines*, Vol. II, p. 700 (1968), citing 33 C.J.S. 234; *Del Rosario v. Yatco*, *supra* note 55.

[57] *Caja v. Nanquil, supra* note 55.

the auction sale, the sheriff rightfully proceeded with the auction sale. The winning bidder had already paid the winning bid. The legal fees had already been remitted to the HLURB. The judgment award had already been turned over to the judgment creditor. What was left to be done was only the issuance of the corresponding certificates of sale to the winning bidder. In fact, only the signature of the HLURB Director for that purpose was needed[58] — a purely ministerial act.

A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard for or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment.[59] In the present case, all the requirements of auction sale under the Rules have been fully complied with to warrant the issuance of the corresponding certificates of sale.

And even if the Court should go into the merits of the assailed Order, the petition is meritorious on the following grounds:

Firstly, the reliance of the HLURB Arbiter and Director, as well as the CA, on *Barrozo v. Macaraeg* [60] and *Buan v. Court of Appeals* [61] is misplaced.

The HLURB and the CA misconstrued the Court's pronouncements in *Barrozo. Barrozo* involved a judgment debtor who wanted to repurchase properties sold at execution beyond the one-year redemption period. The statement of the Court in *Barrozo*, that "only where such inadequacy shocks the conscience

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[58] CA *rollo*, pp. 191-207.

[59] *Espiridion v. Court of Appeals*, G.R. No. 146933, June 8, 2006, 490 SCRA 273, 277; *Codilla, Sr. v. de Venecia*, 442 Phil. 139, 189 (2002).

[60] *Supra* note 21.

[61] *Supra* note 22.

the courts will intervene," is at best a mere *obiter dictum*. This declaration should be taken in the context of the other declarations of the Court in *Barrozo,* to wit:

> Another point raised by appellant is that the price paid at the auction sale was so inadequate as to shock the conscience of the court. Supposing that this issue is open even after the one-year period has expired and after the properties have passed into the hands of third persons who may have paid a price higher than the auction sale money, the first thing to consider is that the stipulation contains no statement of the reasonable value of the properties; and although defendant' (sic) answer avers that the assessed value was ₱3,960 it also avers that their real market value was ₱2,000 only. **Anyway, mere inadequacy of price — which was the complaint' (sic) allegation — is not sufficient ground to annul the sale. It is only where such inadequacy shocks the conscience that the courts will intervene.** x x x Another consideration is that the assessed value being ₱3,960 and the purchase price being in effect ₱1,864 (₱464 sale price plus ₱1,400 mortgage lien which had to be discharged) the conscience is not shocked upon examining the prices paid in the sales in *National Bank v. Gonzales*, 45 Phil., 693 and *Guerrero v. Guerrero*, 57 Phil., 445, sales which were left undisturbed by this Court.
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> Furthermore, **where there is the right to redeem** — as in this case – **inadequacy of price should not be material because the judgment debtor may re-acquire the property or else sell his right to redeem and thus recover any loss he claims to have suffered by reason of the price obtained at the execution sale**.
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> x x x x x x x x x
> (Emphasis supplied).[62]

In other words, gross inadequacy of price does not nullify an execution sale. In an ordinary sale, for reason of equity, a transaction may be invalidated on the ground of inadequacy of price, or when such inadequacy shocks one's conscience as to justify the courts to interfere; such does not follow when the law gives the owner the right to redeem as when a sale is made at public auction,[63] upon the theory that the lesser the price,

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[62] *Supra* note 21, at 380-381.

[63] REVISED RULES OF COURT, Rule 39, Section 28, provides:

the easier it is for the owner to effect redemption.[64] When there is a right to redeem, inadequacy of price should not be material because the judgment debtor may re-acquire the property or else sell his right to redeem and thus recover any loss he claims to have suffered by reason of the price obtained at the execution sale.[65] Thus, respondent stood to gain rather than be harmed by the low sale value of the auctioned properties because it possesses the right of redemption. More importantly, the subject matter in *Barrozo* is the auction sale, not the levy made by the Sheriff.

The Court does not sanction the piecemeal interpretation of a decision. To get the true intent and meaning of a decision, no specific portion thereof should be isolated and resorted to, but the decision must be considered in its entirety.[66]

SEC. 28. *Time and manner of, and amounts payable on, successive redemptions; notice to be given and filed.* — The judgment obligor, or redemptioner, may redeem the property from the purchaser, at any time **within one (1) year from the date of the registration of the certificate of sale**, by paying the purchaser the amount of his purchase, with one per centum per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last named amount of the same rate; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest.

x x x (Emphasis supplied).

[64] *Philippine National Bank v. Court of Appeals*, 367 Phil. 508, 522 (1999); *Sulit v. Court of Appeals*, 335 Phil. 914, 927 (1997); *The Abaca Corporation of the Philippines v. Garcia*, 338 Phil. 988, 993 (1997); *Tiongco v. Philippine Veterans Bank*, G.R. No. 82782, August 5, 1992, 212 SCRA 176, 189-190.

[65] *Suico Rattan & Buri Interiors, Inc. v. Court of Appeals*, G.R. No. 138145, June 15, 2006, 490 SCRA 560, 579, citing *Prudential Bank v. Martinez*, G.R. No. 51768, September 14, 1990, 189 SCRA 612, 617; *Development Bank of the Philippines v. Moll*, 150 Phil. 101, 107 (1972).

[66] *Telefunken Semiconductors Employees Union v. Court of Appeals*, 401 Phil. 776, 800 (2000); *Valderrama v. National Labor Relations Commission*, 326 Phil. 477, 484 (1996); *Policarpio v. Philippine Veterans Board and Associated Insurance & Surety Co., Inc.*, 106 Phil. 125, 131 (1959).

As regards *Buan*, it is cast under an entirely different factual milieu. It involved the levy on two parcels of land owned by the judgment debtor; and the sale at public auction of one was sufficient to fully satisfy the judgment, such that the levy and attempted execution of the second parcel of land was declared void for being in excess of and beyond the original judgment award granted in favor of the judgment creditor.

In the present case, the Sheriff complied with the mandate of Section 9, Rule 39 of the Revised Rules of Court, to "sell only a sufficient portion" of the levied properties "as is sufficient to satisfy the judgment and the lawful fees." Each of the 15 levied properties was successively bidded upon and sold, one after the other until the judgment debt and the lawful fees were fully satisfied. Holly Properties Realty Corporation successively bidded upon and bought each of the levied properties for the total amount of ₱5,450,653.33 in full satisfaction of the judgment award and legal fees.[67]

Secondly, the Rules of Court do not require that the value of the property levied be exactly the same as the judgment debt; it can be less or more than the amount of debt. This is the contingency addressed by Section 9, Rule 39 of the Rules of Court. In the levy of property, the Sheriff does not determine the exact valuation of the levied property. Under Section 9, Rule 39, in conjunction with Section 7, Rule 57 of the Rules of Court, the sheriff is required to do only two specific things to effect a levy upon a realty: (a) file with the register of deeds a copy of the order of execution, together with the description of the levied property and notice of execution; and (b) leave with the occupant of the property copy of the same order, description and notice.[68] Records do not show that respondent alleged non-compliance by the Sheriff of said requisites.

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[67] CA *rollo*, p. 210.

[68] *Cagayan de Oro Coliseum, Inc. v. Court of Appeals, supra* note 55, at 524; *Philippine Surety & Insurance Company, Inc. v. Zabal*, 128 Phil. 714, 718 (1967). See also Martin, *Civil Procedure*, Vol. I, p. 806 (1989).

Thirdly, in determining what amount of property is sufficient out of which to secure satisfaction of the execution, the Sheriff is left to his own judgment. He may exercise a reasonable discretion, and must exercise the care which a reasonably prudent person would exercise under like conditions and circumstances, endeavoring on the one hand to obtain sufficient property to satisfy the purposes of the writ, and on the other hand not to make an unreasonable and unnecessary levy.[69] Because it is impossible to know the precise quantity of land or other property necessary to satisfy an execution, the Sheriff should be allowed a reasonable margin between the value of the property levied upon and the amount of the execution; the fact that the Sheriff levies upon a little more than is necessary to satisfy the execution does not render his actions improper.[70] Section 9, Rule 39, provides adequate safeguards against excessive levying. The Sheriff is mandated to sell so much only of such real property as is sufficient to satisfy the judgment and lawful fees.

In the absence of a restraining order, no error, much less abuse of discretion, can be imputed to the Sheriff in proceeding with the auction sale despite the pending motion to quash the levy filed by the respondents with the HLURB. It is elementary that sheriffs, as officers charged with the delicate task of the enforcement and/or implementation of judgments, must, in the absence of a restraining order, act with considerable dispatch so as not to unduly delay the administration of justice; otherwise, the decisions, orders, or other processes of the courts of justice and the like would be futile.[71] It is not within the jurisdiction of the Sheriff to consider, much less resolve, respondent's objection to the continuation of the conduct of the auction sale. The Sheriff has no authority, on his own, to suspend the auction sale. His duty being ministerial, he has no discretion to postpone the conduct of the auction sale.

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[69] 30 Am Jr 2d Executions and Enforcement of Judgments § 122.

[70] *Id*.

[71] *Security Bank Corporation v. Gonzalbo*, A.M. No. P-06-2139, March 23, 2006, 485 SCRA 136, 145-146; *Zarate v. Untalan*, A.M. No. MTJ-05-1584, March 31, 2005, 454 SCRA 206, 216; *Mendoza v. Tuquero*, 412 Phil. 435, 442 (2001).

Finally, one who attacks a levy on the ground of excessiveness carries the burden of sustaining that contention.[72] In the determination of whether a levy of execution is excessive, it is proper to take into consideration encumbrances upon the property, as well as the fact that a forced sale usually results in a sacrifice; that is, the price demanded for the property upon a private sale is not the standard for determining the excessiveness of the levy.[73]

Here, the HLURB Arbiter and Director had no sufficient factual basis to determine the value of the levied property. Respondent only submitted an Appraisal Report, based merely on surmises. The Report was based on the projected value of the townhouse project after it shall have been fully developed, that is, on the assumption that the residential units appraised had already been built. The Appraiser in fact made this qualification in its Appraisal Report: "[t]he property subject of this appraisal has not been constructed. The basis of the appraiser is on the existing model units."[74] Since it is undisputed that the townhouse project did not push through, the projected value did not become a reality. Thus, the appraisal value cannot be equated with the fair market value. The Appraisal Report is not the best proof to accurately show the value of the levied properties as it is clearly self-serving.

Therefore, the Order dated August 28, 2000 of HLURB Arbiter Aquino and Director Ceniza in HLRB Case No. IV6-071196-0618 which set aside the sheriff's levy on respondent's real properties, was clearly issued with grave abuse of discretion. The CA erred in affirming said Order.

WHEREFORE, the instant petition is *GRANTED*. The Decision dated October 30, 2002 of the Court of Appeals in CA-G.R. SP No. 60981 is *REVERSED* and *SET ASIDE*. The Order dated August 28, 2000 of HLURB Arbiter Ma. Perpetua

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[72] 30 Am Jr 2d Executions and Enforcement of Judgments § 122.

[73] *Id.* at § 123, citing *French v. Snyder*, 30 Ill 339.

[74] CA *rollo*, p. 152.

Y. Aquino and Director Belen G. Ceniza in HLRB Case No. IV6-071196-0618 is declared *NULL* and *VOID*. HLURB Arbiter Aquino and Director Ceniza are directed to issue the corresponding certificates of sale in favor of the winning bidder, Holly Properties Realty Corporation. Petitioner is ordered to return to respondent the amount of ₱2,125,540.00, without interest, in excess of the proceeds of the auction sale delivered to petitioner. After the finality of herein judgment, the amount of ₱2,125,540.00 shall earn 6% interest until fully paid.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 165963. September 3, 2007]

SPOUSES NORBERTO OLIVEROS & ELVIRA OLIVEROS, herein represented by her husband, NORBERTO OLIVEROS & CABUYAO COMMERCIAL CENTER, INC., *petitioners, vs.* **THE HONORABLE PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 24, BIÑAN, LAGUNA and METROPOLITAN BANK & TRUST COMPANY, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; EXECUTION AND SATISFACTION OF JUDGMENT; WRIT OF POSSESSION; WHEN MAY BE ISSUED.— A writ of possession is an order whereby the sheriff is commanded to place a person in possession of a real or personal property. It may be issued under the following instances: (1) land registration proceedings under Section 17 of Act No. 496; (2) judicial foreclosure, provided the debtor is in possession of the mortgaged realty

and no third person, not a party to the foreclosure suit, had intervened; (3) pending redemption in an extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135 as amended by Act No. 4118; and (4) in execution sales under the last paragraph of Section 33, Rule 39 of the Rules of Court.

2. ID.; ID.; ID.; ID.; AFTER THE CONSOLIDATION OF TITLE IN THE PURCHASER'S NAME FOR FAILURE OF THE MORTGAGOR TO REDEEM THE PROPERTY, THE ISSUANCE OF THE WRIT OF POSSESSION IN FAVOR OF THE PURCHASER BECOMES A MINISTERIAL FUNCTION FOR WHICH THE COURT CANNOT EXERCISE ITS DISCRETION.— Section 6 of Act No. 3135, as amended, provides: Sec. 6. *Redemption*. — x x x. Under the said provision, the mortgagor or his successor-in-interest may redeem the foreclosed property within one year from the registration of the sale with the Register of Deeds. After the one-year redemption period, the mortgagor loses all interest over the foreclosed property. The purchaser, who has a right to possession that extends after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. In such a situation, the bond required under Section 7 of Act No. 3135, as amended, is no longer needed. The possession of land becomes an absolute right of the purchaser as confirmed owner. The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After the consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function. As such, the court cannot exercise its discretion.

3. ID.; ID.; ID.; ID.; ID.; DISCRETIONARY ACT DISTINGUISHED FROM A MINISTERIAL ACT.— It bears to stress that after the consolidation of title in the name of the purchaser of the foreclosed property, upon failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right. Its issuance to the purchaser is merely a ministerial function, for which the court exercises neither discretion nor judgment. A clear line demarcates a discretionary act from a ministerial one — The distinction between a ministerial and discretionary

act is well delineated. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.

4. ID.; ID.; ID.; ID.; NATURE OF THE PETITION.— As to the nature of a petition for a writ of possession, it is well to state that the proceeding in a petition for a writ of possession is *ex parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without notice by the court to any person adverse of interest. It is a proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard. By its very nature, an *ex parte* petition for issuance of a writ of possession is a non-litigious proceeding authorized under Act No. 3135 as amended. It is not strictly speaking a judicial process as contemplated in Article 433 of the Civil Code. It is a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale. It is not an ordinary suit filed in court, by which one party "sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong."

5. ID.; ID.; ID.; ID.; OFFER OF ANY DOCUMENTARY OR TESTIMONIAL EVIDENCE NOT REQUIRED FOR THE COURT TO GRANT THE PETITION; CASE AT BAR.— The law does not require that a petition for a writ of possession may be granted only after documentary and testimonial evidence shall have been offered to and admitted by the court. As long as a verified petition states the facts sufficient to entitle the petitioner to the relief requested, the court shall issue the writ prayed for. The petitioner need not offer any documentary or testimonial evidence for the court to grant the petition. In the present case, Metrobank purchased the properties at a public auction following the extrajudicial foreclosure of the subject properties. Certificates of sale over the properties were issued in favor of Metrobank and registered with the Registry of Deeds

of Calamba, Laguna, on 4 February 2000. Petitioners as mortgagors failed to redeem the properties within the one-year period of redemption from the registration of the Sheriff's Certificate of Sale thereof with the Registry of Deeds; hence, Metrobank consolidated its ownership over the subject properties. Metrobank having consolidated its title to the mortgaged properties, is even more entitled now to possession thereof and makes more unmistakable its right to file an *ex parte* motion for the issuance of a writ of possession. The issuance of the writ of possession becomes a mere ministerial duty on the part of the judge.

6. ID.; ID.; ID.; ID.; PURCHASER AT THE PUBLIC AUCTION IS ENTITLED TO A WRIT OF POSSESSION WITHOUT PREJUDICE TO THE OUTCOME OF THE ACTION FOR THE NULLIFICATION OF THE SALE OR THE REAL ESTATE MORTGAGE.— Regardless of whether or not there is a pending action for nullification of the sale at public auction, or of the foreclosure itself, or even for the nullification of the real estate mortgage, the purchaser at the public auction is entitled to a writ of possession without prejudice to the outcome of the action filed by the petitioners. Equally akin is *Samson v. Rivera*, in which it was ruled that: Under the provision cited above, the purchaser in a foreclosure sale may apply for a writ of possession during the redemption period by filing for that purpose an *ex parte* motion under oath, in the corresponding registration or cadastral proceeding in the case of a property with torrens title. Upon the filing of such motion and the approval of the corresponding bond, the court is expressly directed to issue the writ. This Court has consistently held that the duty of the trial court to grant a writ of possession is ministerial. Such writ issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the trial court. Any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ, it (sic) to be determined in a subsequent proceeding as outlined in Section 8 of Act 3135. Such question cannot be raised to oppose the issuance of the writ, since the proceeding is *ex parte*. The recourse is available even before the expiration of the redemption period provided by law and the Rules of Court. x x x.

APPEARANCES OF COUNSEL

Rommel A. Gecolea for Sps. Oliveros.
Perez Calima Law Offices for private respondent.

D E C I S I O N

CHICO-NAZARIO, *J.*:

This Petition for review on *Certiorari* under Rule 45[1] of the Rules of Court assails: (1) the 23 August 2004 Decision[2] of the Court of Appeals in CA-G.R. SP No. 80525 denying the petition for *Certiorari* under Rule 65 filed by the petitioners; and (2) the 5 November 2004 Resolution of the same court denying petitioners' Motion for Reconsideration.

Spouses Norberto and Elvira Oliveros; Benito, Florencia, Rene, and Danilo, all surnamed Nevalga; Cresencia N. Faylona and Felina Ong-Iko and Cabuyao Commercial Center, Inc. (hereinafter collectively referred to as the mortgagors) obtained two loans for the construction of the Cabuyao Commercial Complex in the total principal amount of ₱58,000,000.00 as evidenced by promissory notes[3] from Metropolitan Bank and Trust Company (Metrobank). To secure the loans, spouses Norberto and Elvira Oliveros and Florencia Nevalga executed a Deed of Real Estate Mortgage[4] dated 30 April 1997 in favor of Metrobank over

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[1] Public respondent was erroneously impleaded in the present Petition for Review on *Certiorari*. Rule 45, Section 4 of the Rules of Court provides:

> SEC. 4. *Contents of petition.* — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; x x x.

[2] Penned by Justice Jose L. Sabio, Jr. with Associate Justices Perlita J. Tria Tirona and Noel G. Tijam, concurring; *rollo,* pp. 45-51.

[3] Records, pp. 13-14.

[4] *Id*. at 15.

three parcels of land together with all the buildings and improvements existing thereon located at Provincial Road, Bo. Ditas, Sta. Rosa, Laguna, covered by Transfer Certificates of Title (TCTs) No. T-316615, No. T-316620 and No. T-316668, all registered in the name of Elvira B. Nevalga and issued by the Registry of Deeds of Calamba, Laguna (subject properties).

For failure of the mortgagors to pay their loan obligation under the terms and conditions of the promissory notes, Metrobank instituted extrajudicial foreclosure proceedings over their Real Estate Mortgage under Act No. 3135[5] and caused the subject properties to be sold at a public auction held on 14 January 2000 for the sum of ₱5,500,160.00. Metrobank emerged as the highest bidder at the auction sale. The corresponding Certificate of Sale was issued in favor of Metrobank and registered with the Registry of Deeds of Calamba, Laguna, on 4 February 2000. The mortgagors failed to redeem the subject properties from Metrobank within the one-year period from the date of the registration of the Certificate of Sale; thus Metrobank consolidated its title to the subject properties. TCTs No. T-316615, No. T-316620 and No. T-316668 were cancelled and, in lieu thereof, new titles, TCTs No. T-500473, No. T-500473 and No. T-500475, were issued and registered in the name of Metrobank.

Metrobank demanded[6] that the mortgagors turn over actual possession of the subject properties, but the mortgagors failed and refused to do so. This prompted Metrobank to file on 28 February 2003 an *Ex Parte* Petition for the issuance of a writ of possession before the Regional Trial Court (RTC) of Biñan, Laguna, Branch 24, docketed as LRC Case No. B-3220.[7]

The spouses Norberto and Elvira Oliveros and Cabuyao Commercial Center, petitioners in this case, filed with the RTC an Opposition to the Petition for issuance of writ of possession[8]

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[5] *Id*. at 162.

[6] *Id*. at 175.

[7] *Id*. at 2.

[8] *Id*. at 28.

filed by Metrobank. Petitioners claimed that on 19 February 2001, they filed before the RTC of Biñan, Laguna, Branch 24, a complaint against Metrobank for nullification of foreclosure proceedings with damages docketed as Civil Case No. B-5829.

Petitioners prayed that they be given the opportunity to be heard during the entire proceedings on the *Ex Parte* Petition of Metrobank and that the writ of possession be withheld or denied.

On 19 March 2003, the trial court issued a Notice of Hearing setting the hearing of the Petition on 28 April 2003. Being unavailable on said date, counsel for the petitioners filed a Motion to Cancel hearing and prayed that the same be reset to 26 May 2003.

On 1 April 2003, Metrobank filed its Reply to the Opposition. Petitioners filed a Rejoinder on 9 April 2003 to which, in turn, petitioner filed its Sur-Rejoinder dated 25 April 2003.

During the hearing on 28 April 2003, the trial court allowed Metrobank to present evidence to prove compliance with the jurisdictional requirements of the petition. But for lack of material time, the trial court issued an Order which set the reception of evidence *ex parte* on 20 June 2003.

The Order of the trial court dated 28 April 2003 reads:

> After counsel for the [Metrobank] marked documents to comply with the jurisdictional requirements and after the petition has been read aloud and nobody opposed it except the opposition filed by spouses Norberto Oliveros and Elvira Oliveros already attached on the record, let the presentation of [Metrobank's] evidence be set on June 20, 2003 at 2:00 p.m.[9]

On 17 June 2003, petitioners filed a Manifestation with *Ex Parte* Motion to Cancel Hearing and stated therein that the trial court should not have allowed Metrobank to present its evidence until the Opposition to the subject petition was resolved. They also prayed that the scheduled presentation of evidence *ex parte* be cancelled and reset to 18 July 2003 or on such other date

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[9] *Id*. at 68.

convenient to the trial court, considering that the setting of the same was unilaterally made by the trial court without the concurrence of petitioners' counsel.

Notwithstanding the preceding Manifestation, on 20 June 2003, counsel for the petitioners requested Atty. Ildebrando Cornista to appear for and in their behalf.

After hearing the oral arguments of the contending parties, the trial court denied petitioners' Opposition and allowed respondent Metrobank to proceed with its presentation of evidence *ex parte*.

The hearing for Metrobank's presentation of evidence *ex parte* was held as scheduled on 20 June 2003. Petitioners again filed a Motion for Reconsideration[10] of the RTC Order dated 28 April 2003 substantially reiterating their Opposition to the issuance of the writ of possession.

On 20 June 2003, the RTC issued another Order in which it held:

> It appears from the record that the petition filed by the petitioner for the Issuance of Writ of Possession was filed on February 20, 2003, and this was based on the result of the foreclosure proceeding where the Certificate of Sale was allegedly registered. It is clear in several Decisions of the Supreme Court that Issuance of Writ of Possession is not a judgment on the merits and the Issuance of Writ of Possession in Extra-Judicial Foreclosure is merely a ministerial function. That was decided in the case of AD Corporation *versus* Court of Appeals Vol. 28, SCRA, page 155. There is also a Decision by the Honorable Supreme Court in the case of Honorable Luis Reyes *versus* UCPB, 193 SCRA, Series 1956 that being *ex parte* there is no discretion left to the Court. It is stated in said case that upon filing of said motion and approval of the bond it simply directs the Court to issue the Order of Writ of Possession and no discretion is left to the Court. Any question regarding the validity and formality of the said subsequent resolution of the writ is left to be determined in the subsequent proceeding as outlined in Section 8 and since the spouses [Norberto and Elvira Oliveros] are just for opposing the

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[10] *Id.* at 181.

Issuance of the Writ of Possession, the opposition is hereby denied since under the rule, the petition is considered as an *ex-parte* proceeding. Consequently, the Motion for Reconsideration of the Order dated April 28, 2003, filed by said Spouses is likewise denied.[11]

Petitioners then filed a Petition for *Certiorari* under Rule 65 of the Rules of Court before the Court of Appeals, docketed as CA-G.R. SP No. 80525.

The Court of Appeals rendered a Decision dated 23 August 2004 denying due course to and dismissing petitioners' petition. The Court of Appeals concluded that the grant of the writ of possession is a ministerial function. Considering that Metrobank already acquired titles to the subject properties, its right to possess said properties as an owner became absolute. Until a court of competent jurisdiction annuls the foreclosure sale, petitioners are bereft of any valid title and right to prevent the issuance of a writ of possession.

Petitioners filed a Motion for Reconsideration of the foregoing Decision which the Court of Appeals likewise denied in a Resolution[12] dated 5 November 2004.

Petitioners are now before this Court *via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court based on the following grounds:

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THE HONORABLE COURT OF APPEALS HAS DECIDED THE CASE IN A WAY NOT IN ACCORD WITH LAW, PERTINENT PROVISIONS OF THE 1997 RULES OF CIVIL PROCEDURE AND APPLICABLE DECISIONS OF THIS HONORABLE SUPREME COURT CONSIDERING THAT:

A. THE COURT OF APPEALS SERIOUSLY ERRED IN SUSTAINING THE ASSAILED ORDERS BY THE PUBLIC RESPONDENT IN A PETITION FOR *CERTIORARI* AS HAVING BEEN ISSUED WITHOUT COMMITTING GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF

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[11] *Id*. at 195-196.

[12] *Rollo,* p. 52.

JURISDICTION NOTWITHSTANDING THE FACT THAT INCIDENTS WHICH ARE NOT YET FILED WERE ALREADY RESOLVED.

B. THE COURT OF APPEALS SERIOUSLY ERRED IN SUSTAINING THE ASSAILED ORDERS ISSUED BY THE PUBLIC RESPONDENT NOTWITHSTANDING THE FACT THAT THE SAME WERE IN PATENT VIOLATION OF THE CONSTITUTIONALLY GUARANTEED RIGHT OF THE PETITIONERS TO DUE PROCESS.[13]

The Petition is without merit.

A writ of possession is an order whereby the sheriff is commanded to place a person in possession of a real or personal property. It may be issued under the following instances: (1) land registration proceedings under Section 17 of Act No. 496; (2) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; (3) pending redemption in an extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135 as amended by Act No. 4118; and (4) in execution sales under the last paragraph of Section 33, Rule 39 of the Rules of Court.[14]

Section 6 of Act No. 3135, as amended, provides:

Sec. 6. *Redemption*. — In all cases in which an extrajudicial sale is made under the special power herein before referred to, the debtor, his successors-in-interest or any judicial creditor or judgment creditor of said debtor or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at anytime within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of section four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

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[13] *Rollo,* p. 17.

[14] *Autocorp. Group and Autographics, Inc. v. Court of Appeals,* G.R. No. 157553, 8 September 2004, 437 SCRA 678, 689, *Philippine National Bank v. Sanao Marketing, Inc.*, G.R. No. 153951, 29 July 2005, 465 SCRA 287, 301.

Under the said provision, the mortgagor or his successor-in-interest may redeem the foreclosed property within one year from the registration of the sale with the Register of Deeds.

After the one-year redemption period, the mortgagor loses all interest over the foreclosed property.[15] The purchaser, who has a right to possession that extends after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made.[16] In such a situation, the bond required under Section 7 of Act No. 3135, as amended, is no longer needed. The possession of land becomes an absolute right of the purchaser as confirmed owner.[17] The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After the consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function.[18] As such, the court cannot exercise its discretion.

It bears to stress that after the consolidation of title in the name of the purchaser of the foreclosed property, upon failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right. Its issuance to the purchaser is merely a ministerial function, for which the court exercises neither discretion nor judgment.

A clear line demarcates a discretionary act from a ministerial one —

The distinction between a ministerial and discretionary act is well delineated. A purely ministerial act or duty is one which an officer

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[15] *Yulienco v. Court of Appeals*, 441 Phil. 397, 406 (2002).

[16] *Samson v. Rivera*, G.R. No. 154355, 20 May 2004, 428 SCRA 759, 771.

[17] *Chailease Finance Corporation v. Ma*, G.R. No. 151941, 15 August 2003, 409 SCRA 250, 253.

[18] *De Vera v. Agloro*, G.R. No. 155673, 14 January 2005, 448 SCRA 203, 213-314.

or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.[19]

As to the nature of a petition for a writ of possession, it is well to state that the proceeding in a petition for a writ of possession is *ex parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without notice by the court to any person adverse of interest. It is a proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard.[20]

By its very nature, an *ex parte* petition for issuance of a writ of possession is a non-litigious proceeding authorized under Act No. 3135 as amended.[21]

It is not strictly speaking a judicial process as contemplated in Article 433 of the Civil Code.[22] It is a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale. It is not an ordinary suit filed in court, by which one party "sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong."[23]

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[19] *Espiridion v. Court of Appeals*, G.R. No. 146933, 8 June 2006, 490 SCRA 273, 277.

[20] *Santiago v. Merchants Rural Bank of Talavera, Inc.*, G.R. No. 147820, 18 March 2005, 453 SCRA 756, 763-764.

[21] *Penson v. Maranan*, G.R. No. 148630, 20 June 2006, 491 SCRA 396, 407.

[22] Art. 433. Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

[23] *De Vera v. Agloro, supra* note 18.

The law does not require that a petition for a writ of possession may be granted only after documentary and testimonial evidence shall have been offered to and admitted by the court. As long as a verified petition states the facts sufficient to entitle the petitioner to the relief requested, the court shall issue the writ prayed for. The petitioner need not offer any documentary or testimonial evidence for the court to grant the petition.[24]

In the present case, Metrobank purchased the properties at a public auction following the extrajudicial foreclosure of the subject properties. Certificates of sale over the properties were issued in favor of Metrobank and registered with the Registry of Deeds of Calamba, Laguna, on 4 February 2000. Petitioners as mortgagors failed to redeem the properties within the one-year period of redemption from the registration of the Sheriff's Certificate of Sale thereof with the Registry of Deeds; hence, Metrobank consolidated its ownership over the subject properties.

Metrobank having consolidated its title to the mortgaged properties, is even more entitled now to possession thereof and makes more unmistakable its right to file an *ex parte* motion for the issuance of a writ of possession. The issuance of the writ of possession becomes a mere ministerial duty on the part of the judge.

Corollary to this, we have extensively ruled in *Mamerto Maniquiz Foundation, Inc. v. Pizarro,*[25] thus:

> It is a settled rule that after the consolidation of title in the buyer's name for failure of the mortgagor to redeem, the writ of possession becomes a matter of right. In the case of *Vaca v. Court of Appeals* (G.R. No. 109672, 14 July 1994, 234 SCRA 146, 148), this Court held:
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> > "x x x The question raised in this case has already been settled in *Vda. de Jacob v. Court of Appeals* [184 SCRA 199], in which it was held that the pendency of a separate civil suit

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[24] *Santiago v. Merchants Rural Bank of Talavera, Inc., supra* note 20 at 765.

[25] A.M. No. RTJ-03-1750, 14 January 2005, 448 SCRA 140, 151-153.

> questioning the validity of the mortgage cannot bar the issuance of the writ of possession, because the same is a ministerial act of the trial court after title on the property has been consolidated in the mortgagee. The ruling was reiterated in *Navarra v. Court of Appeals* [204 SCRA 850], in which we held that as a rule any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of possession."

Indeed, the pendency of an action questioning the validity of a mortgage cannot bar the issuance of the writ of possession after title to the property has been consolidated in the mortgagee. Thus, it follows that at the expiration of the period of redemption, the mortgagee who acquires the property at the foreclosure sale can proceed to have the title consolidated in his name and a writ of possession issued in his favor. More to the point is the case of *Ong v. Court of Appeals* [G.R. No. 121494, 8 June 2000, 333 SCRA 189, 197-198], where this Court held:

> In several cases, the Court has ruled that the issuance of a writ of possession is a ministerial function. "The order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. The judge issuing the order following these express provisions of law cannot be charged with having acted without jurisdiction or with grave abuse of discretion." Therefore, the issuance of the writ of possession being ministerial in character, the implementation of such writ by the sheriff is likewise ministerial.

Regardless of whether or not there is a pending action for nullification of the sale at public auction, or of the foreclosure itself, or even for the nullification of the real estate mortgage, the purchaser at the public auction is entitled to a writ of possession without prejudice to the outcome of the action filed by the petitioners.[26]

Equally akin is *Samson v. Rivera,*[27] in which it was ruled that:

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[26] *Alarilla, Sr. v. Ocampo,* 463 Phil. 158, 166 (2003).

[27] G.R. No. 154355, 20 May 2004, 428 SCRA 759.

Under the provision cited above, the purchaser in a foreclosure sale may apply for a writ of possession during the redemption period by filing for that purpose an *ex parte* motion under oath, in the corresponding registration or cadastral proceeding in the case of a property with torrens title. Upon the filing of such motion and the approval of the corresponding bond, the court is expressly directed to issue the writ.

This Court has consistently held that the duty of the trial court to grant a writ of possession is ministerial. Such writ issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the trial court. Any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ, it (sic) to be determined in a subsequent proceeding as outlined in Section 8 of Act 3135. Such question cannot be raised to oppose the issuance of the writ, since the proceeding is *ex parte*. The recourse is available even before the expiration of the redemption period provided by law and the Rules of Court.

The purchaser, who has a right to possession that extends after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. Hence, at any time following the consolidation of ownership and the issuance of a new transfer certificate of title in the name of the purchaser, he or she is even more entitled to possession of the property. In such a case, the bond required under Section 7 of Act 3135 is no longer necessary, since possession becomes an absolute right of the purchaser as the confirmed owner.

In *Yu v. Philippine Commercial and International Bank*,[28] this Court underscored that:

[S]ince the one-year period to redeem the foreclosed properties lapsed on October 1, 1999, title to the foreclosed properties had already been consolidated under the name of the respondent. As the owner of the properties, respondent is entitled to its possession as a matter of right. The issuance of a writ of possession over the properties by the trial court is merely a ministerial function. As such, the trial court neither exercises its official discretion nor judgment. Any question regarding the validity of the mortgage or

[28] G.R. No. 147902, 17 March 2006, 485 SCRA 56, 72.

its foreclosure cannot be a legal ground for refusing the issuance of a writ of possession. Regardless of the pending suit for annulment of the certificate of sale, respondent is entitled to a writ of possession, without prejudice of course to the eventual outcome of said case.

WHEREFORE, premises considered, the instant petition is *DENIED* for lack of merit. The assailed Decision of the Court of Appeals dated 23 August 2004 and Resolution dated 5 November 2004 are *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 165971. September 3, 2007]

SPOUSES JEANETTE AND RUFINO MALIWAT, *petitioners, vs.* **METROPOLITAN BANK & TRUST COMPANY,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; REAL ESTATE MORTGAGE; FORECLOSURE; ACT NO. 3135, AS AMENDED; SECTION 7 THEREOF; THE ORDER FOR A WRIT OF POSSESSION ISSUES AS A MATTER OF COURSE UPON FILING OF THE PROPER MOTION AND THE APPROVAL OF THE CORRESPONDING BOND.— A writ of possession is a writ of execution commanding the sheriff to enter the land and give possession thereof to the person entitled under the judgment. It issues under the following circumstances: (1) land registration proceedings under Sec. 17 of Act No. 496; (2) judicial foreclosure provided the debtor is in possession of the mortgaged property and no third

person, not a party to the foreclosure suit, had intervened; and (3) extrajudicial foreclosure of a real estate mortgage under Sec. 7 of Act No. 3135, as amended. The case at bar falls under the second cited instance. In *De Gracia v. San Jose*, we held that under Section 7 of Act No. 3135, as amended, the order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the court. Any and all questions regarding the regularity and validity of the sale is left to be determined in a subsequent proceeding and such questions may not be raised as a justification for opposing the issuance of a writ of possession.

2. ID.; ID.; ID.; ID.; THE PURCHASER AT A FORECLOSURE SALE IS ENTITLED TO A WRIT OF POSSESSION DURING AND AFTER THE PERIOD OF REDEMPTION; TRIAL COURT CANNOT ENJOIN THE ISSUANCE OF THE WRIT OF POSSESSION BY A WRIT OF PRELIMINARY INJUNCTION.— In *Navarra v. Court of Appeals*, we ruled that the purchaser at an extrajudicial foreclosure sale has a right to the possession of the property even during the one-year period of redemption provided that he files an indemnity bond. After the lapse of said period with no redemption having been made, the right becomes absolute and may be demanded without the posting of a bond. Then in *Vaca v. Court of Appeals*, we reaffirmed our ruling in *Navarra*. It is thus clear that during and after the period of redemption, the purchaser at a foreclosure sale is entitled as of right to a writ of possession. Thus, in *Kho v. Court of Appeals*, we ruled that **an injunction to prohibit the issuance of a writ of possession is utterly out of place**. And once the writ of possession has been issued, the court has no alternative but to enforce the said writ without delay. Verily, we find that the Court of Appeals did not err in holding that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in enjoining the implementation of the writ of possession issued in respondent's favor.

APPEARANCES OF COUNSEL

People's Law Office for petitioners.
Perez Calima Law Offices for respondent.

R E S O L U T I O N

SANDOVAL-GUTIERREZ, *J.*:

For our resolution is the instant Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse the Decision[1] of the Court of Appeals (Fourteenth Division) dated March 22, 2004 in CA-G.R. SP No. 77344.

The facts of the case as found by the Court of Appeals are:

Spouses Rufino and Jeanette Maliwat, petitioners, obtained a loan from the Metropolitan Bank & Trust Company, respondent, in the amount of ₱23,850,000.00 as evidenced by a promissory note dated August 13, 1997.

To secure the loan, petitioners executed three (3) real estate mortgages over their land located in Malinta, Valenzuela City covered by Transfer Certificate of Title No. (T-226742) 9827.

Petitioners failed to pay their loan, prompting respondent to institute extra-judicial foreclosure proceedings. On October 14, 1999, the lot was sold at public auction. Respondent was the highest bidder. Eventually, a Certificate of Sale was issued in its favor.

Despite demand by respondent, petitioners refused to turn over to it the property. Thus, on July 20, 2000, respondent filed with the Regional Trial Court (RTC), Branch 75, Valenzuela City a petition for issuance of a writ of possession, docketed as AD Case No. 55-V-00. After the bank had presented its evidence, the trial court granted its petition and issued a writ of possession in its favor.

Meanwhile, on October 19, 2001, petitioners filed with the RTC, Branch 172, Valenzuela City, a complaint for annulment

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[1] *Rollo*, pp. 28-33. Penned by Associate Justice Sergio L. Pestaño with Associate Justice Marina L. Buzon and Associate Justice Aurora Santiago-Lagman concurring.

of mortgages, foreclosure proceedings and auction sale with prayer for a temporary restraining order and preliminary injunction against respondent, docketed as Civil Case No. 262-V-01. Upon their motion, this case was consolidated with AD Case No. 55-V-00 for issuance of a writ of possession pending before Branch 75.

On September 11, 2002, the RTC, Branch 75 issued an Order directing the issuance of a writ of preliminary injunction enjoining respondent and its representatives or any person acting for and its behalf from enforcing the writ of possession issued on September 6, 2001 against petitioners.

Respondent filed a motion for reconsideration but this was denied by the trial court in its Order of March 21, 2003. Hence, petitioners filed with the Court of Appeals a petition for *certiorari* alleging that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in enjoining the enforcement of the writ of possession.

On March 22, 2004, the Court of Appeals rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing the petition is GRANTED. The assailed Orders dated September 11, 2002 and March 21, 2003 of Branch 75, Regional Trial Court of Valenzuela City, in Civil Case No. 262-V-01, are ANNULLED and SET ASIDE for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. The writ of preliminary injunction is hereby lifted for lack of basis both in fact and in law.
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> SO ORDERED.

Petitioners filed a motion for reconsideration but it was denied by the appellate court.

Hence, this petition.

The core issue for our resolution is whether the issuance of a writ of possession by the trial court may be enjoined by a writ of preliminary injunction also issued by the same court.

Section 7 of Act No. 3135,[2] as amended by Act No. 4118, provides:

SEC. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law and in such cases the clerk of court shall, upon the filing of such petition, collect the fees specified in the paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

A writ of possession is a writ of execution commanding the sheriff to enter the land and give possession thereof to the person entitled under the judgment.[3] It issues under the following circumstances: (1) land registration proceedings under Sec. 17 of Act No. 496; (2) judicial foreclosure provided the debtor is in possession of the mortgaged property and no third person, not a party to the foreclosure suit, had intervened; and (3) extrajudicial foreclosure of a real estate mortgage under Sec. 7 of Act No. 3135, as amended. The case at bar falls under the second cited instance.

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[2] Entitled "An Act To Regulate The Sale Of Property Under Special Powers Inserted In or Annexed To Real Estate Mortgages."

[3] MORENO, *PHIL. LAW DICTIONARY* (3rd Ed. 1988) 1014.

In *De Gracia v. San Jose*,[4] we held that under Section 7 of Act No. 3135, as amended,[5] the order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the court. Any and all questions regarding the regularity and validity of the sale is left to be determined in a subsequent proceeding and such questions may not be raised as a justification for opposing the issuance of a writ of possession.

In *Navarra v. Court of Appeals*,[6] we ruled that the purchaser at an extrajudicial foreclosure sale has a right to the possession of the property even during the one-year period of redemption provided that he files an indemnity bond. After the lapse of said period with no redemption having been made, the right becomes absolute and may be demanded without the posting of a bond. Then in *Vaca v. Court of Appeals*,[7] we reaffirmed our ruling in *Navarra*.

It is thus clear that during and after the period of redemption, the purchaser at a foreclosure sale is entitled as of right to a writ of possession. Thus, in *Kho v. Court of Appeals*,[8] we ruled that **an injunction to prohibit the issuance of a writ of possession is utterly out of place.** And once the writ of possession has been issued, the court has no alternative but to enforce the said writ without delay.[9] Verily, we find that the Court of Appeals did not err in holding that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in enjoining the implementation of the writ of possession issued in respondent's favor.

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[4] 94 Phil. 623 (1954), cited in *Ong v. Court of Appeals*, 333 SCRA 189 (2000).

[5] *Supra*, footnote 2.

[6] G.R. No. 86237, December 17, 1991, 204 SCRA 850.

[7] G.R. No. 109672, July 14, 1994, 234 SCRA 146.

[8] G.R. No. 83498, October 22, 1991, 203 SCRA 160.

[9] *Philippine National Bank v. Adil*, G.R. No. 52823, November 2, 1982, 118 SCRA 110.

WHEREFORE, we *DENY* the petition. The Decision of the Court of Appeals (Fourteenth Division) dated March 22, 2004 in CA-G.R. SP No. 77344 is *AFFIRMED **in toto***. Costs against petitioners.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Azcuna, and *Garcia, JJ.,* concur.

SPECIAL THIRD DIVISION

[G.R. No. 172602. September 3, 2007]

HENRY T. GO, *petitioner, vs.* **THE FIFTH DIVISION, SANDIGANBAYAN and THE OFFICE OF THE SPECIAL PROSECUTOR, OFFICE OF THE OMBUDSMAN,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 3019, SECTION 3 (G) THEREOF; ELEMENTS; A PUBLIC OFFICER WHO, ON BEHALF OF THE GOVERNMENT, ENTER INTO CONTRACTS MANIFESTLY OR GROSSLY DISADVANTAGEOUS TO THE GOVERNMENT, IS LIABLE FOR VIOLATION THEREOF WHETHER OR NOT SAID PUBLIC OFFICER PROFITED OR WILL PROFIT THEREBY; RATIONALE. — Petitioner, a private individual, stands charged with violation of Section 3(g) of Republic Act No. 3019, the clear terms of which punishes ***public officers*** *who, on behalf of the government, enter into contracts or transactions manifestly and grossly disadvantageous to the government, whether or not the* ***public officer*** *profited or will profit thereby.* The first element of the crime is that the accused must be a public officer who enters into a contract on behalf of the government. The philosophy behind this is that the public officer is duty bound to see to it that the interest

of the government is duly protected. Thus, should the contract or transaction entered into by such public officer is manifestly or grossly disadvantageous to the government's interests, the public officer is held liable for violation of Section 3(g), **whether or not this public officer profited or will profit thereby**. In *Luciano v. Estrella*, Justice J.B.L. Reyes opines that the act treated in Section 3(g) partakes of the nature of *malum prohibitum;* it is the commission of that act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated. An act which is declared *malum prohibitum*, malice or criminal intent is completely immaterial. Section 3(g), however, applies restrictively only to public officers entering into a contract on behalf of the government manifestly or grossly disadvantageous to the government.

2. ID.; ID.; CAN ONLY BE COMMITTED BY PUBLIC OFFICERS. — From a cursory reading of the Information, it indubitably shows that all the elements enumerated for the violation of Section 3(g) **relate to the public officer**, not to the private individual, **for as have been emphasized, Section 3(g) is a crime that can only be committed by public officers.** This brings to the fore the overstated point that Section 3(g), by its clear terms, can only be committed by public officers, for if it were otherwise, then the law itself would have clearly provided for it. Notably, even certain paragraphs of Section 3 of Republic Act No. 3019 provide for its application to private individuals, but not Section 3(g), thus: SEC. 3. *Corrupt practices of public officers.* — x x x It is clear that sub-paragraph (g) is not included in the quoted portion of Section 3. There are indeed offenses punishable under the Revised Penal Code or other special laws where the mere allegation of conspiracy will suffice in order to validly charge the persons who connived in the commission of the offense. In Section 3(g), however, and other penal provisions, which can only be committed by a certain class of persons, an allegation of conspiracy to indict those which are clearly not within its purview, is deficient, as shown in *Luciano v. Estrella* where the public officers were convicted under Section 3(g) and yet the private parties therein were acquitted inspite of the allegation of conspiracy in the Information.

3. ID.; ID.; ONLY THE PUBLIC OFICER MAY BE CHARGED AND HELD LIABLE FOR VIOLATION THEREOF WHILE PRIVATE PERSONS WHO CONSPIRED WITH HIM CAN BE CHARGED FOR VIOLATION OF SECTION 4 (B) IN RELATION TO SECTION 3(G). — In voting to grant the motion for reconsideration, I am not saying that petitioner is innocent or that he can no longer be prosecuted if indeed he is liable for any crime relating to his acts that led to the signing of the ARCA. As emphasized in my *Dissenting Opinion* dated April 13, 2007, Section 4 of Republic Act No. 3019 provides for the prohibition on private individuals, thus: It is well-settled that penal statutes are strictly construed against the State and liberally for the accused, so much so that the scope of a penal statute cannot be extended by good intention or by implication. The Information lumping petitioner with a public official for conspiracy to violate Section 3(g), is totally infirm. Section 3(g) can only be violated by a public officer. The acts for which private persons can be charged together with the public officials are enumerated in the last paragraph of Section 3 and Section 4, paragraphs (a) and (b) of Republic Act No. 3019. If warranted, petitioner Go should be charged for violation of **Section 4(b) in relation to Section 3(g).**

4. ID.; DIRECT BRIBERY; ONLY THE PUBLIC OFFICER MAY BE CHARGED AND BE HELD LIABLE THEREFOR WHILE THE PERSON WHO CONSPIRED WITH THE PUBLIC OFFICER, WHO MADE THE PROMISE, OFFER OR GAVE THE GIFTS, MAY BE INDICTED FOR CORRUPTION OF PUBLIC OFFICIALS, REGARDLESS OF ANY ALLEGATION OF CONSPIRACY. — In my *Dissent* to the Decision dated April 13, 2007, reference was made to Articles 210 (*Direct Bribery)* and 212 (*Corruption of Public Officials)* of the Revised Penal Code. In Direct Bribery, the public officer agrees to perform an act either constituting or not constituting a crime, in consideration of any offer, promise, gift or present received by such officer. Only the public officer may be charged under and be held liable for Direct Bribery under Article 210, while the person who conspired with the public officer, who made the promise, offer or gave the gifts or presents, may be indicted only under Article 212 for Corruption of Public Officials, regardless of any allegation of conspiracy.

AZCUNA, *J., separate opinion:*

CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT, SECTION 3(G) THEREOF; A PRIVATE INDIVIDUAL CAN BE LIABLE THEREFOR ONLY IF HE ACTED IN CONSPIRACY WITH THE PUBLIC OFFICIAL; WHERE THE CONSPIRACY IS CONSTITUTIVE OF THE OFFENSE, IT SHOULD BE ALLEGED WITH MORE SPECIFICS.— There is, however, a need to distinguish the instance, as in this case, where the conspiracy is an element of the offense itself and not merely a circumstance that increases the penalty. For the only way a private individual can be liable under Sec. 3(g) is if he acted in conspiracy with the public official. Where the conspiracy is constitutive of the offense, it should be alleged with more specifics than where it merely increases the penalty to that of the most guilty. Otherwise, there would be a failure to accord the accused his constitutional right to be informed of the nature of the offense of which he stands charged. The allegation in this case against petitioner simply stated that he acted "in conspiracy with" the accused public official. I find this insufficient.

GARCIA, *J., separate opinion:*

1. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT, SECTION 3(G) THEREOF; ONLY A PUBLIC OFFICER CAN BE HELD GUILTY THEREFOR.— I vote to grant the subject motion for reconsideration as I join the earlier Dissenting Opinion of Madame Justice Consuelo Ynares-Santiago *contra* the majority opinion dated April 13, 2007 penned by Mr. Justice (now ret.) Romeo J. Callejo, Sr., Justice Santiago's dissent is correct or at least defensible. Section 3(g) of the Anti-Graft Law (RA 3019) which punishes the act of entering, on behalf of the government, into a contract or transaction grossly and manifestly disadvantageous to the government may, as the dissent stressed, be committed only by public officers. As may be gathered from settled jurisprudence, the first element of the crime of violating Sec. 3(g) of RA 3019 is that the accused is a public officer, irresistibly implying that **only** a public officer can be adjudged guilty for the offense, implying, in turn, that a private individual cannot be held liable under Sec. 3(g), applying the conspiracy

principle. There can be no denying that there are certain offenses which are limited to or can be committed only by a certain class of persons, meaning only they can be successfully prosecuted and punished for acts punishable as such offense. Section 3(g) of RA 3019, where only one authorized to sign and conclude government contracts may be proceeded against, as only he can enter into contract on behalf of the government, is such offense. Mention may also be made of felonies punishable under Articles 204 to 207 of the Revised Penal Code and failing under the category of "*Malfeasance and Misfeasance in Office*," which only judges, in the exercise of judicial functions, can be held liable of.

2. ID.; ID.; ID.; IT IS LEGALLY IMPOSSIBLE FOR A PRIVATE PERSON TO AGREE WITH A PUBLIC OFFICER TO ENTER INTO A CONTRACT MANIFESTLY UNFAVORABLE TO THE GOVERNMENT AND THEN DECIDE IN CONCERT WITH THE PUBLIC OFFICER, TO COMMIT THE UNLAWFUL ACT.— The notion of a private individual being held liable for violation of Sec. 3(g) under the conspiracy theory has practically nothing to commend itself. Sec. 3(g) presupposes that the offender is duly authorized to enter into a contract on behalf of the government, which means that he is a public officer since only a public officer can possess such an authority. Now, then, it is legally impossible for a private person to agree with one so authorized to enter into a contract manifestly unfavorable to the government and then decide, in concert with the public officer, to commit the unlawful act. Let it be stressed that conspiracy, as a criminal law concept, contemplates of two or more persons coming to an agreement concerning the commission of a crime and deciding to commit it. Theoretically, then, for conspiracy to exist, each malefactor must independently have the legal capability to commit the unlawful act. For, if one is incapable, how can he possibly agree and decide to commit it? Needless to state, petitioner Go, even if he wanted to, could not have entered into a binding transaction for and in behalf of the government, be it favorable or unfavorable to the latter.

3. ID.; ID.; A PRIVATE INDIVIDUAL, IF CHARGED IN CONSPIRACY WITH A PUBLIC OFFICER, CAN BE PROSECUTED AND CONVICTED UNDER SECTION 3 (E) OF REPUBLIC ACT 3019 BUT NOT UNDER SECTION 3

(G) THEREOF.— The conclusion negating the conspiracy scenario under Sec. 3(g) becomes all the more compelling if we consider Sec. 3(g) side by side with the preceding Sec. 3(e). Section 3(e) punishes the act of causing undue injury to any party or giving such party undue benefits thru evident bad faith, manifest partiality or gross inexcusable negligence. By case law, one of the elements to be proven in order to constitute a violation of Sec. 3(e) is that the accused is a public officer or a private person charged **in conspiracy** with the former. The conspiracy angle under Sec. 3(e) is not present in the enumeration of the essential elements of the crime penalized under Sec. 3(g). The absence must have some legal and logical basis. What comes immediately to mind is what is adverted to earlier, *i.e*., that a private person cannot plausibly agree with a public officer to enter into a contract manifestly disadvantageous to the government and then act on that agreement by concluding/signing one. Surely, the private person cannot, for want of authority, agree in the first place to execute/sign a government contract. If at all then, a private individual, if charged in conspiracy with a public officer, can be prosecuted and convicted under Sec. 3(e) of RA 3019. But such private individual cannot plausibly be charged either directly or in conspiracy with a public officer, and be convicted for violation of Sec. 3(g) of RA 3019.

AUSTRIA-MARTINEZ, *J., dissenting opinion:*

1. REMEDIAL LAW; JUDGMENTS; PIECEMEAL INTERPRETATION OF A DECISION TO ADVANCE ONE'S CASE IS NOT SANCTIONED BY THE COURT.— *The Court does not sanction the piecemeal interpretation of a decision to advance one's case. To get the true intent and meaning of a decision, no specific portion thereof should be isolated and resorted to, but the decision must be considered in its entirety.*

2. CRIMINAL LAW; REPUBLIC ACT NO. 3019; SECTION 3 (G) THEREOF; PRIVATE INDIVIDUALS, WHEN CONSPIRING WITH PUBLIC OFFICERS, MAY BE FOUND GUILTY OF VIOLATION THEREOF.—In addition to the foregoing cases are *Meneses v. People* and *Froilan v. Sandiganbayan.* In *Meneses,* the Court did not concede to the argument that private persons cannot be convicted of

violation of Section 3(e) and (j) of R.A. No. 3019, its application being limited only to public officers. The Court stated that Section 1 of the law makes clear the legislative intention to make the application of the statute extend both to public officers and private persons, thus: The policy of the Philippine government, in line with the principle that a public office is a public trust is to repress certain acts of public officers and private persons alike which constitute graft and corrupt practices or which may lead thereto. The Court held that "having conspired and confederated with the accused public officers, in the perpetration of acts designed towards the obtention of pecuniary benefits or advantage, in violation of law, they [referring to the private person] must be deemed to have consented to and adopted as their own, the offense of said public officers, in a conspiracy, the act of one is the act of all." x x x In all these cases, the Court had consistently held that private individuals, *when conspiring with public officers,* may be found guilty of offenses under Section 3, even though one of the elements of the offense is that the accused is a public officer.

3. ID.; CONSPIRACY; WHEN IT ARISES; HOW ALLEGED.— On the alleged inadequacy of the allegation of conspiracy in the Information, the Court in *Estrada v. Sandiganbayan* elucidated on how conspiracy as the mode of committing the offense should be alleged in the Information, applying *People v. Quitlong, viz:* Conspiracy arises when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy comes to life at the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith to actually pursue it. *Verily, the information must state that the accused have confederated to commit the crime or that there has been a community of design, a unity of purpose or an agreement to commit the felony among the accused. Such an allegation, in the absence of the usual usage of the words "conspired" or "confederated or the phrase "acting in conspiracy," must aptly appear in the information in the form of definitive acts constituting conspiracy*. In fine, the agreement to commit the crime, the unity of purpose or the community of design among the accused must be conveyed such as *either* by the use of the term "conspire" or its derivatives and synonyms *or* by allegations of basic facts constituting the conspiracy. *Conspiracy must be alleged, not just inferred, in the information on which*

> *basis an accused can aptly enter his plea, a matter that is not to be confused with or likened to the adequacy of evidence that may be required to prove it.* In establishing conspiracy when properly alleged, the evidence to support it need not necessarily be shown by direct proof but may be *inferred* from shown acts and conduct of the accused. x x x *It bears stressing that the allegation of conspiracy in the information must not be confused with the adequacy of evidence that may be required to prove it.* A conspiracy is proved by evidence of actual cooperation; of acts indicative of an agreement, a common purpose or design a concerted action or concurrence of sentiments to commit the felony and actually pursue it. A statement of this evidence is not necessary in the information.

APPEARANCES OF COUNSEL

Quasha Ancheta Peña & Nolasco for petitioner.

R E S O L U T I O N

YNARES-SANTIAGO, *J.*:

This resolves the *Motion for Reconsideration* filed by petitioner of the Decision dated April 13, 2007.

Petitioner, a private individual, stands charged with violation of Section 3(g) of Republic Act No. 3019, the clear terms of which punishes ***public officers*** *who, on behalf of the government, enter into contracts or transactions manifestly and grossly disadvantageous to the government, whether or not the* ***public officer*** *profited or will profit thereby.*

The first element of the crime is that the accused must be a public officer who enters into a contract on behalf of the government. The philosophy behind this is that the public officer is duty bound to see to it that the interest of the government is duly protected. Thus, should the contract or transaction entered into by such public officer is manifestly or grossly disadvantageous to the government's interests, the public officer is held liable for violation of Section 3(g), **whether or not this public officer profited or will profit thereby.**

In *Luciano v. Estrella*,[1] Justice J.B.L. Reyes opines that the act treated in Section 3(g) partakes of the nature of *malum prohibitum;* it is the commission of that act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated. An act which is declared *malum prohibitum*, malice or criminal intent is completely immaterial.[2] Section 3(g), however, applies restrictively only to public officers entering into a contract on behalf of the government manifestly or grossly disadvantageous to the government.

The pronouncement in *Luciano v. Estrella*[3] is instructive:

> Second, herein respondent municipal officials were charged with violation of Republic Act 3019 under its Section 3(g), or specifically, for having *entered*, on behalf of the government, into a *contract or transaction manifestly and grossly disadvantageous* to the government. It is not at all difficult to see that to determine the culpability of the accused under such provision, it need only be established that the accused is a public officer; that he entered into a contract or transaction on behalf of the government; and that such a contract is grossly and manifestly disadvantageous to that government. In other words, the act treated thereunder partakes of the nature of *malum prohibitum*; x x x

In *Luciano v. Estrella*, the private persons who were charged with "conspiring and confederating together" with the accused public officers to have unlawfully and feloniously, on behalf of the municipal government of Makati, Rizal, entered into a contract or transaction with the JEP Enterprises, were also charged with violation of Section 4(b) of Republic Act No. 3019, for knowingly inducing or causing the above-mentioned public officials and officers to enter into the aforementioned contract or transaction.

These private individuals were acquitted for insufficiency of evidence, which simply means that the criminal liability of the

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[1] G.R. No. L-31622, August 31, 1970, 34 SCRA 769.

[2] *People v. Quijada*, G.R. Nos. 115008-09, July 24, 1996, 259 SCRA 191, 228.

[3] *Supra* note 1 at 780.

public officers for violation of Section 3(g) is separate and distinct from the liability of private persons under Section 4(b) of Republic Act No. 3019. In other words, notwithstanding the allegation of conspiracy to violate Section 3(g), the liability of private individuals who participated in the transaction must be established under the appropriate provision which is Section 4(b), for knowingly inducing or causing the public officers to commit Section 3(g) **where criminal intent must necessarily be proved**. This is in clear recognition that Section 3(g), a *malum prohibitum*, specifically applies to public officers only.

The information in this case, reads:

The undersigned Graft Investigation and Prosecution Officer II, Office of the Deputy Ombudsman for Luzon, accuses VICENTE C. RIVERA, JR. and HENRY T. GO with violation of Sec. 3(g), R.A. No. 3019 committed as follows:

> On or about November 26, 1998, or sometime prior or subsequent thereto, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the accused VICENTE C. RIVERA, JR., Secretary of the Department of Transportation and Communications (DOTC), ***committing the offense in relation to his office and taking advantage of the same, in conspiracy with accused HENRY T. GO, Chairman and President of the Philippine International Air Terminals, Co., Inc. (PIATCO)***, did then and there willfully, unlawfully and feloniously ***enter into an Amended and Restated Concession Agreement (ARCA)***, after the project for the construction of the Ninoy Aquino International Passenger Terminal III (NAIA IPT III) was awarded to Paircargo Consortium/PIATCO, which ARCA substantially amended the draft Concession Agreement covering the construction of the NAIA IPT III under Republic Act 6957 as amended by Republic Act 7718 (BOT Law) providing that the government shall assume the liabilities of PIATCO in the event that the latter defaults specifically Article IV, Section 4.04 © in relation to Article I, Section 1.06 of the ARCA ***which term is more beneficial to PIATCO and in violation of the BOT law, and manifestly and grossly disadvantageous to the government of the Republic of the Philippines***.
>
> CONTRARY TO LAW.

From a cursory reading of the Information, it indubitably shows that all the elements enumerated for the violation of Section 3(g) **relate to the public officer**, not to the private individual, **for as have been emphasized, Section 3(g) is a crime that can only be committed by public officers**.

This brings to the fore the overstated point that Section 3(g), by its clear terms, can only be committed by public officers, for if it were otherwise, then the law itself would have clearly provided for it. Notably, even certain paragraphs of Section 3 of Republic Act No. 3019 provide for its application to private individuals, but not Section 3(g), thus:

SEC. 3. *Corrupt practices of public officers. — x x x*

x x x x x x x x x

The person giving the gift, present, share, percentage or benefit referred to in subparagraphs (b) and (c); or offering or giving to the public officer the employment mentioned in subparagraph (d); or urging the divulging or untimely release of the confidential information referred to in subparagraph (k) of this section shall, together with the offending public officer, be punished under Section nine of this Act and shall be permanently or temporarily disqualified, in the discretion of the Court, from transacting business in any form with the Government.

It is clear that sub-paragraph (g) is not included in the quoted portion of Section 3. There are indeed offenses punishable under the Revised Penal Code or other special laws where the mere allegation of conspiracy will suffice in order to validly charge the persons who connived in the commission of the offense. In Section 3(g), however, and other penal provisions, which can only be committed by a certain class of persons, an allegation of conspiracy to indict those which are clearly not within its purview, is deficient, as shown in *Luciano v. Estrella* where the public officers were convicted under Section 3(g) and yet the private parties therein were acquitted inspite of the allegation of conspiracy in the Information.

In voting to grant the motion for reconsideration, I am not saying that petitioner is innocent or that he can no longer be

prosecuted if indeed he is liable for any crime relating to his acts that led to the signing of the ARCA. As emphasized in my *Dissenting Opinion* dated April 13, 2007, Section 4 of Republic Act No. 3019 provides for the prohibition on private individuals, thus:

> SEC. 4. *Prohibition on private individuals.*— (a) It shall be unlawful for any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business, transaction, application, request or contract with the government, in which such public official has to intervene. Family relation shall include the spouse or relatives by consanguinity or affinity in the third civil degree. The word "close personal relation" shall include close personal relationship, social and fraternal connections, and professional employment all giving rise to intimacy which assures free access to such public officer.
>
> (b) It shall be unlawful for any person knowingly to induce or cause any public official to commit any of the offenses defined in Section 3 hereof.

It is well-settled that penal statutes are strictly construed against the State and liberally for the accused, so much so that the scope of a penal statute cannot be extended by good intention or by implication. The Information lumping petitioner with a public official for conspiracy to violate Section 3(g), is totally infirm. Section 3(g) can only be violated by a public officer. The acts for which private persons can be charged together with the public officials are enumerated in the last paragraph of Section 3 and Section 4, paragraphs (a) and (b) of Republic Act No. 3019. If warranted, petitioner Go should be charged for violation of **Section 4(b) in relation to Section 3(g)**.

In my *Dissent* to the Decision dated April 13, 2007, reference was made to Articles 210 (*Direct Bribery)* and 212 (*Corruption of Public Officials)* of the Revised Penal Code. In Direct Bribery, the public officer agrees to perform an act either constituting or not constituting a crime, in consideration of any

offer, promise, gift or present received by such officer. Only the public officer may be charged under and be held liable for Direct Bribery under Article 210, while the person who conspired with the public officer, who made the promise, offer or gave the gifts or presents, may be indicted only under Article 212 for Corruption of Public Officials, regardless of any allegation of conspiracy.

Another concrete example is *Campomanes v. People*.[4] Petitioner Campomanes, a private individual, was charged with conspiring with a public officer who failed to render account for public funds disbursed punishable under Article 218 of the Revised Penal Code, the elements of which are as follows: (1) the offender is a public officer; (2) he must be an accountable officer for public funds or property; (3) the offender is required by law to render accounts to the Commission on Audit; and (4) fails to render an account for a period of two months.

The Sandiganbayan acknowledged that Campomanes is not a public officer and applied Article 222 in relation to Article 218. Article 222 also involves failure to render an account not by a public officer, but by a private individual who has charge of any national, provincial or municipal funds, revenues or property. **Notwithstanding the charge of conspiracy**, petitioner Campomanes was made to answer **not** to Article 218, which pertains only to public officers, but to Article 222.

ACCORDINGLY, the *Motion for Reconsideration* is *GRANTED* and the Decision dated April 13, 2007 is *REVERSED* and *SET ASIDE*. The Resolutions of the Sandiganbayan in Criminal Case No. 28092 dated December 6, 2005 denying petitioner's *Motion to Quash* and its March 24, 2006 Resolution denying petitioner's *Motion for Reconsideration* are *REVERSED* and *SET ASIDE*. The Sandiganbayan is *DIRECTED* to *DISMISS* Criminal Case No. 28092 in so far as petitioner Henry T. Go is concerned.

SO ORDERED.

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[4] G.R. No. 161950, December 19, 2006.

Austria-Martinez, J., votes to deny the Motion for Reconsideration. Please see dissenting opinion.

Azcuna, J., concurs in separate opinion.

Chico-Nazario, J., joins the dissenting opinion.

Garcia, Jr., J., concurs with separate opinion.

SEPARATE OPINIONS

AZCUNA, *J., concurring:*

Petitioner moves for reconsideration of the Decision of this Court holding that he can be liable under Sec. 3 (g) of the Anti-Graft and Corrupt Practices Act on an allegation that he was in conspiracy with a public official.

The Decision relies on *Domingo v. Sandiganbayan*, G.R. No. 149175, October 25, 2005, 474 SCRA 203.

In that case, the First Division of the Court ruled that a private individual may be liable for conspiracy with a public official under Sec. 3 (h) of Republic Act 3019.

I agree that there is no difference between Sec. 3 (h) and Sec. 3 (g) in this respect. If a private individual can be charged for conspiracy with a public official in Sec. 3 (h) — directly or indirectly having a financial or pecuniary interest in any contract, business or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having an interest, so can a private individual be charged with conspiracy with a public official under Sec. 3 (g) for entering into a contract under terms and conditions manifestly and grossly disadvantageous to the government.

Petitioner, however, rightly claims that in the *Domingo* case, the information alleged sufficient specifics as to what constituted the conspiracy, namely, by acting as a dummy for the public official and allowing his business to be used by him.

Normally, an allegation of conspiracy is sufficient, leaving the details to be established by the evidence at the trial.

There is, however, a need to distinguish the instance, as in this case, where the conspiracy is an element of the offense itself and not merely a circumstance that increases the penalty. For the only way a private individual can be liable under Sec. 3 (g) is if he acted in conspiracy with the public official. Where the conspiracy is constitutive of the offense, it should be alleged with more specifics than where it merely increases the penalty to that of the most guilty. Otherwise, there would be a failure to accord the accused his constitutional right to be informed of the nature of the offense of which he stands charged.

The allegation in this case against petitioner simply stated that he acted "in conspiracy with" the accused public official. I find this insufficient.

Finally, all reasonable doubts should be resolved in favor of the accused.

In light of the foregoing, I am of the view that the motion for reconsideration should be granted.

GARCIA, *J., concurring:*

I vote to grant the subject motion for reconsideration as I join the earlier Dissenting Opinion of Madame Justice Consuelo Ynares-Santiago *contra* the majority opinion dated April 13, 2007 penned by Mr. Justice (now ret.) Romeo J. Callejo, Sr.

Justice Santiago's dissent is correct or at least defensible. Section 3 (g) of the Anti-Graft Law (RA 3019) which punishes the act of entering, on behalf of the government, into a contract or transaction grossly and manifestly disadvantageous to the government may, as the dissent stressed, be committed only by public officers. As may be gathered from settled jurisprudence,[1]

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[1] *Ingco v. Sandiganbayan*, G.R. No. 112584, May 23, 1997, 272 SCRA 563; *Morales v. People*, G.R. No. 144047, July 26, 2002, 385 SCRA 259;

the first element of the crime of violating Sec. 3 (g) of RA 3019 is that the accused is a public officer, irresistibly implying that **only** a public officer can be adjudged guilty for the offense, implying, in turn, that a private individual cannot be held liable under Sec. 3 (g), applying the conspiracy principle. There can be no denying that there are certain offenses which are limited to or can be committed only by a certain class of persons, meaning only they can be successfully prosecuted and punished for acts punishable as such offense. Section 3 (g) of RA 3019, where only one authorized to sign and conclude government contracts may be proceeded against, as only he can enter into contract on behalf of the government, is such offense. Mention may also be made of felonies punishable under Articles 204 to 207 of the Revised Penal Code and falling under the category of "*Malfeasance and Misfeasance in Office*," which only judges, in the exercise of judicial functions, can be held liable of.

The notion of a private individual being held liable for violation of Sec. 3 (g) under the conspiracy theory has practically nothing to commend itself. Sec. 3 (g) presupposes that the offender is duly authorized to enter into a contract on behalf of the government, which means that he is a public officer since only a public officer can possess such an authority. Now, then, it is legally impossible for a private person to agree with one so authorized to enter into a contract manifestly unfavorable to the government and then decide, in concert with the public officer, to commit the unlawful act. Let it be stressed that conspiracy, as a criminal law concept, contemplates of two or more persons coming to an agreement concerning the commission of a crime and deciding to commit it. Theoretically, then, for conspiracy to exist, each malefactor must independently have the legal capability to commit the unlawful act. For, if one is incapable, how can he possibly agree and decide to commit it? Needless to state, petitioner Go, even if he wanted to, could not have entered into a binding transaction for and in behalf of the government, be it favorable or unfavorable to the latter.

Duterte v. Sandiganbayan, G.R. No. 130191, April 27, 1998, 289 SCRA 721 and *Marcos v. Sandiganbayan*, G.R. No. 126995, October 6, 1998, 297 SCRA 95.

The conclusion negating the conspiracy scenario under Sec. 3 (g) becomes all the more compelling if we consider Sec. 3 (g) side by side with the preceding Sec. 3 (e). Section 3 (e) punishes the act of causing undue injury to any party or giving such party undue benefits thru evident bad faith, manifest partiality or gross inexcusable negligence. By case law, one of the elements to be proven in order to constitute a violation of Sec. 3 (e) is that the accused is a public officer or a private person charged **in conspiracy** with the former.[2] The conspiracy angle under Sec. 3 (e) is not present in the enumeration of the essential elements of the crime penalized under Sec. 3 (g).[3] The absence must have some legal and logical basis. What comes immediately to mind is what is adverted to earlier, *i.e.*, that a private person cannot plausibly agree with a public officer to enter into a contract manifestly disadvantageous to the government and then act on that agreement by concluding/signing one. Surely, the private person cannot, for want of authority, agree in the first place to execute/sign a government contract.

If at all then, a private individual, if charged in conspiracy with a public officer, can be prosecuted and convicted under Sec. 3 (e) of RA 3019. But such private individual cannot plausibly be charged either directly or in conspiracy with a public officer, and be convicted for violation of Sec. 3 (g) of RA 3019.

There is no dispute in this case that petitioner/movant Henry T. Go is not a public officer. As such, he cannot be lumped with then DOTC Secretary Vicente Rivera in the information for violation of Sec. 3 (g). The remedy of the government prosecutors against petitioner lies elsewhere, that is, to charge him, if warranted, under the proper provision/s of the Anti-Graft Law or the Revised Penal Code, which is precisely Justice Santiago's belabored point.

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[2] *Sistoza v. Desierto*, G.R. No. 144784, September 3, 2002, 388 SCRA 307; *General Bank & Trust Co. v. Ombudsman*, 324 SCRA 113; *Garcia v. Ombudsman*, 325 SCRA 667; *Medina v. Sandiganbayan*, 218 745.

[3] *Ingco v. Sandiganbayan* and other cases listed in *supra* note 1.

Hence, my vote to **GRANT** petitioner's motion for reconsideration.

Respectfully submitted.

DISSENTING OPINION

AUSTRIA-MARTINEZ, *J., dissenting:*

This refers to the Motion for Reconsideration filed by petitioners.

On April 13, 2007, the Court rendered its Decision in this case dismissing the Petition for *Certiorari* and affirming *in toto* the Resolution dated December 6, 2005 of the Sandiganbayan in Criminal Case No. 28092, entitled People of the *Philippines v. Vicente C. Rivera, Jr. and Henry T. Go,* which denied petitioner Go's Motion to Quash and the Sandiganbayan Resolution dated March 24, 2006 which denied petitioner Go's Motion for Reconsideration.[1]

Petitioner Go contends that the Court misconstrued the pronouncements in *Luciano v. Estrella*,[2] *Singian, Jr. v. Sandiganbayan*,[3] *Domingo v. Sandiganbayan*,[4] and *Marcos v. Sandiganbayan*.[5] He also contends that a mere allegation of conspiracy is not enough to hold him, a private person, equally liable with the public officer for violation of Section 3 (g) since the actual recital of facts constituting the conspiracy must be made explicit in the Information in order to meet the fundamental right of an accused to be fully informed of the charge against him.

Go's contentions are without merit.

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[1] *Rollo,* p. 403.

[2] 145 Phil. 454 (1970).

[3] G.R. Nos. 160577-94, December 16, 2005, 478 SCRA 348.

[4] G.R. No. 149175, October 25, 2005, 474 SCRA 203.

[5] 357 Phil. 762 (1998).

The cases of *Luciano, Singian, Jr., Domingo* and *Marcos* were properly applied by the Court.

In *Luciano*, certain municipal public officers and private individuals were charged with violation of Sections 3 (g) and 4 (b) of the Republic Act (R.A.) No. 3019 in connection with a contract involving traffic deflectors. The Court held therein that "[t]he act treated thereunder (referring to Section 3 (g) of R.A. No. 3019) partakes the nature of *malum prohibitum*; it is the commission of that act as defined by law, not the character or effect thereof, that determines whether or not the provision has been violated. And this construction would be in consonance with the announced purpose for which R.A. No. 3019 was enacted, which is the repression of certain acts of **public officers and private persons** constituting graft or corrupt practices act or which may lead thereto."

In *Singian*, certain officers of the Philippine National Bank (PNB) and Singian, a private individual, were charged with violation of Section 3 (e) and (g) of R.A. No. 3019 in connection with alleged behest loan accommodations extended by PNB to Integrated Shoe, Inc. Even though one of the elements of the offense under Section 3 (g) is that the accused is a public officer, this case illustrates that private persons, **when conspiring with public officers,** may be indicted and, if found guilty, held liable for violation of Section 3 (g).

In *Domingo*, Jaime Domingo, the Municipal Mayor of San Manuel, Isabela, and Diosdado Garcia, a private individual, were charged with Section 3 (h) of R.A. No. 3019 as it appears that the latter was used as a dummy to cover up the business transaction of the Mayor with the municipality. While one of the elements of the offense under Section 3 (h) is that the accused is a public officer, like Section 3 (g), Garcia, a private individual was held equally liable with the Municipal Mayor, pursuant to Section 9(a) of R.A. No. 3019.

In *Marcos*, then First Lady Imelda R. Marcos, as Chairman of the Philippine General Hospital Foundation, Inc. (PGHFI) and Jose P. Dans, Vice-Chairman of the Light Rail Transport

Authority (LRTA), were charged with violation of Section 3 (g) of R.A. No. 3019 in connection with a lease agreement entered into by LRTA with PGHFI. When Dans was acquitted, Marcos filed a Motion for Reconsideration. The Court granted her motion, finding that since she signed the lease agreement as a private person, not as a public officer, she cannot be convicted under Section 3 (g). It is this particular statement that petitioner is hanging on to for the reconsideration of the Court's Decision in the present petition. However, in its subsequent declaration in *Marcos*, the Court ruled:

> Neither can petitioner be considered as in conspiracy with Jose P. Dans, Jr., who has been found without any criminal liability for signing the same Lease Agreement. Absent any conspiracy of petitioner with Dans, the act of the latter cannot be viewed as an act of the former. Petitioner is only answerable for her own individual act. Consequently, petitioner not having signed Exhibit "B" as a public officer, there is neither legal nor factual basis for her conviction under Section 3(g) of Rep. Act 3019.[6]

The aforesaid declaration of the Court — that Marcos's acquittal was based on the finding that she signed the lease agreement as a private person, not a public officer — should be taken in the context of the above-quoted paragraph.

In other words, considering that Dans was acquitted, there could not be conspiracy between him and Marcos; and in the absence of conspiracy, Marcos could not be convicted for her individual act of signing the Lease Agreement as a private person.

The Court does not sanction the piecemeal interpretation of a decision to advance one's case. To get the true intent and meaning of a decision, no specific portion thereof should be isolated and resorted to, but the decision must be considered in its entirety.[7]

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[6] *Id.* at 789.

[7] *Telefunken Semiconductors Employees Union-FFW v. Court of Appeals*, 401 Phil. 776, 800 (2000); *Valderrama v. National Labor Relations Commission*, 326 Phil. 477, 484 (1996); *Policarpio v. Philippine Veterans Board and Associated Insurance & Surety Co., Inc.*, 106 Phil. 125, 131 (1959).

In addition to the foregoing cases are *Meneses v. People*[8] and *Froilan v. Sandiganbayan*.[9] In *Meneses*, the Court did not concede to the argument that private persons cannot be convicted of violation of Section 3 (e) and (j) of R.A. No. 3019, its application being limited only to public officers. The Court stated that Section 1 of the law makes clear the legislative intention to make the application of the statute extend both to public officers and private persons, thus:

> The policy of the Philippine government, in line with the principle that a public office is a public trust is to repress certain acts of public officers and private persons alike which constitute graft and corrupt practices or which may lead thereto.[10]

The Court held that "having conspired and confederated with the accused public officers, in the perpetration of acts designed towards the obtention of pecuniary benefits or advantage, in violation of law, they [referring to the private person] must be deemed to have consented to and adopted as their own, the offense of said public officers, in a conspiracy, the act of one is the act of all."[11]

In *Froilan*, petitioner Froilan, a private individual, was charged with three public officers in connection with the procurement of laboratory chemicals for the Bohol Agricultural College, a government educational institution. While one of the issues raised was whether a private individual can be held liable under Section 3 (g) of R.A. No. 3019, the Court never delved on the issue and, instead, it acquitted the accused in the absence of another element of the offense — that the contract or transaction is grossly and manifestly disadvantageous to the government. Indubitably, it shows that even a private individual may be charged and held accountable under Section 3 (g), when he is charged in conspiracy with public officers or employees.

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[8] G.R. Nos. 71651 and 71728, August 27, 1987, 153 SCRA 303.

[9] 385 Phil. 32 (2000).

[10] *Meneses v. People, supra* note 8, at 315.

[11] *Id.* at 316.

In all these cases, the Court had consistently held that private individuals, **when conspiring with public officers**, may be found guilty of offenses under Section 3, even though one of the elements of the offense is that the accused is a public officer.

On the alleged inadequacy of the allegation of conspiracy in the Information, the Court in *Estrada v. Sandiganbayan*[12] elucidated on how conspiracy as the mode of committing the offense should be alleged in the Information, applying *People v. Quitlong*,[13] *viz*:

> Conspiracy arises when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy comes to life at the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith to actually pursue it. **Verily, the information must state that the accused have confederated to commit the crime or that there has been a community of design, a unity of purpose or an agreement to commit the felony among the accused. Such an allegation, in the absence of the usual usage of the words "conspired" or "confederated" or the phrase "acting in conspiracy," must aptly appear in the information in the form of definitive acts constituting conspiracy. In fine, the agreement to commit the crime, the unity of purpose or the community of design among the accused must be conveyed such as *either* by the use of the term "conspire" *or* its derivatives and synonyms or by allegations of basic facts constituting the conspiracy. Conspiracy must be alleged, not just inferred, in the information on which basis an accused can aptly enter his plea, a matter that is not to be confused with or likened to the adequacy of evidence that may be required to prove it.** In establishing conspiracy when properly alleged, the evidence to support it need not necessarily be shown by direct proof but may be *inferred* from shown acts and conduct of the accused.[14] (Emphasis supplied)

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[12] 427 Phil. 820 (2002).

[13] 354 Phil. 372 (1998).

[14] *Id.* at 390.

The Information in this case sufficiently states the facts which petitioner Go is charged with, thus:

> [T]he accused VICENTE C. RIVERA, JR., x x x **in conspiracy with accused HENRY T. GO**, x x x did then and there, willfully, unlawfully and feloniously entered into an Amended and Restated Concession Agreement (ARCA), after the project for the construction of the Ninoy Aquino International Airport International Passenger Terminal III (NAIA IPT III) was awarded to Paircargo Consortium/ PIATCO, **which ARCA substantially amended the draft Concession Agreement covering the construction of the NAIA IPT III under Republic Act 6957, as amended by Republic Act 7718 (BOT Law) providing that the government shall assume the liabilities of PIATCO in the event of the latter's default specifically Article IV, Section 4.04 (c) in relation to Article I, Section 1.06 of the ARCA which terms are more beneficial to PIATCO and in violation of the BOT Law and manifestly and grossly disadvantageous to the government of the Republic of the Philippines.** (Emphasis supplied).

It bears stressing that the allegation of conspiracy in the information must not be confused with the adequacy of evidence that may be required to prove it. A conspiracy is proved by evidence of actual cooperation; of acts indicative of an agreement, a common purpose or design, a concerted action or concurrence of sentiments to commit the felony and actually pursue it.[15] A statement of this evidence is not necessary in the information.[16]

In view of the foregoing, I vote to deny the Motion for Reconsideration of petitioner and maintain the Decision dated April 13, 2007.

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[15] *Estrada v. Sandiganbayan, supra* note 11, at 862, citing *People v. Paguntalan*, G.R. No. 116272, March 27, 1995, 242 SCRA 753, 780; *People v. Reyes*, 316 Phil. 1 (1995); *People v. Nacional*, G.R. Nos. 111294-95, September 7, 1995, 248 SCRA 122, 130.

[16] *Estrada v. Sandiganbayan, id.*

THIRD DIVISION

[G.R. No. 175783. September 3, 2007]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BERNARDO TUAZON *Y* NICOLAS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT ARE ACCORDED HIGHEST DEGREE OF RESPECT ON APPEAL UNLESS ATTENDED WITH ARBITRARINESS OR PLAIN DISREGARD OF PERTINENT FACTS OR CIRCUMSTANCES.— In insisting that the trial court should not have given credence to the testimony of PO3 Bueno, appellant is basically making an issue about a witness's credibility. In this regard, we reiterate the rule that appellate courts will generally not disturb factual findings of the trial court since the latter has the unique opportunity to weigh conflicting testimonies, having heard the witnesses themselves and observed their deportment and manner of testifying. Thus, unless attended with arbitrariness or plain disregard of pertinent facts or circumstances, the factual findings are accorded the highest degree of respect on appeal. Our careful review of the records of this case reveals that the trial court did not err in relying on the testimony of PO3 Bueno.

2. ID.; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; ABSENT CLEAR AND CONVINCING PROOF TO THE CONTRARY OR THAT THEY WERE MOVED BY ILL-WILL, POLICE OFFICERS ARE PRESUMED TO HAVE ACTED REGULARLY IN THE PERFORMANCE OF THEIR OFFICIAL FUNCTIONS.— We agree with the Court of Appeals that the foregoing testimony of PO3 Bueno establishes beyond reasonable doubt appellant's culpability. His testimony regarding the circumstances that occurred in the early hours of 7 March 1999 — from the moment their office received a confidential tip from their informer up to the time they accosted appellant — deserved to be given significance as it came from the mouth of a law enforcement officer who enjoys the presumption of regularity in the performance of his duty. Police officers are presumed to have acted regularly in the performance

of their official functions in the absence of clear and convincing proof to the contrary or that they were moved by ill-will.

3. ID.; ID.; DEFENSE OF DENIAL; AN INHERENTLY WEAK DEFENSE WHICH MUST BE SUPPORTED BY STRONG EVIDENCE OF NON-CULPABILITY TO MERIT CREDIBILITY.— Appellant's bare-faced defense of denial cannot surmount the positive and affirmative testimony offered by the prosecution. It is well-settled that positive declarations of a prosecution witness prevail over the bare denials of an accused. A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters. Denial is an inherently weak defense which must be supported by strong evidence of non-culpability to merit credibility.

4. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST WARRANTLESS SEARCH AND SEIZURES; RULE; EXCEPTIONS.— No less than our Constitution recognizes the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures. This right is encapsulated in Article III, Section 2 of the Constitution which states: xxx. Complementing this provision is the so-called exclusionary rule embodied in Section 3(2) of the same article – (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding. It is recognized, however, that these constitutional provisions against warrantless searches and seizures admit of certain exceptions, as follows: (1) warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence; (2) seizure of evidence in plain view; (3) search of a moving vehicle; (4) consented warrantless search; (5) customs search; (6) stop and frisk; and (7) exigent and emergency circumstances.

5. ID.; ID.; ID.; ID.; ID.; SEARCH OF A MOVING VEHICLE; RATIONALE FOR THE EXEMPTION.— In the case of *People v. Lo Ho Wing*, this Court had the occasion to elucidate on the rationale for the exemption of searches of moving vehicles from the requirement of search warrant, thus: [T]he

rules governing search and seizure have over the years been steadily liberalized whenever a moving vehicle is the object of the search on the basis of practicality. This is so considering that before a warrant could be obtained, the place, things and persons to be searched must be described to the satisfaction of the issuing judge — a requirement which borders on the impossible in the case of smuggling effected by the use of a moving vehicle that can transport contraband from one place to another with impunity. We might add that a warrantless search of a moving vehicle is justified on the ground that "it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought."

6. ID.; ID.; ID.; ID.; ID.; ID.; EXISTENCE OF PROBABLE CAUSE IS REQUIRED IN ORDER TO JUSTIFY WARRANTLESS SEARCH OF A VEHICLE.— Nevertheless, the exception from securing a search warrant when it comes to moving vehicles does not give the police authorities unbridled discretion to conduct a warrantless search of an automobile. To do so would render the aforementioned constitutional stipulations inutile and expose the citizenry to indiscriminate police distrust which could amount to outright harassment. Surely, the policy consideration behind the exemption of search of moving vehicles does not encompass such arbitrariness on the part of the police authorities. In recognition of the possible abuse, jurisprudence dictates that at all times, it is required that probable cause exist in order to justify the warrantless search of a vehicle.

7. ID.; ID.; ID.; ID.; ID.; ID.; TERM "PROBABLE CAUSE," EXPLAINED; CASE AT BAR.— In *Caballes v. Court of Appeals*, the term "probable cause" was explained to mean — [A] reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged; or the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched. The required probable cause that will justify a warrantless search and seizure is not determined by a fixed formula but is resolved according to the facts of

the case. When a vehicle is flagged down and subjected to an extensive search, such a warrantless search has been held to be valid as long as the officers conducting the search have reasonable or probable cause to believe prior to the search that they would find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched. In this case, we hold that the police had probable cause to effect the warrantless search of the Gemini car driven by appellant.

8. ID.; ID.; ID.; ID.; FAILURE TO TIMELY OBJECT AMOUNTS TO A WAIVER OF THE OBJECTION ON THE LEGALITY OF THE SEARCH AND ADMISSIBILITY OF THE EVIDENCE OBTAINED.— In any case, appellant failed to timely object to the admissibility of the evidence against him on the ground that the same was obtained through a warrantless search. His failure amounts to a waiver of the objection on the legality of the search and the admissibility of the evidence obtained by the police. It was only proper for the trial court to admit said evidence.

9. ID.; ID.; JUDICIAL DEPARTMENT; DECISION; CONSTITUTIONAL REQUIREMENT; COMPLIED WITH IN CASE AT BAR.— Appellant also faults the trial court for its failure to abide by the Constitutional requirement that "(n)o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." Again, we disagree. Faithful adherence to the aforementioned constitutional provision is a vital component of due process and fair play. The rule takes an even more important significance for the losing party who is entitled to know why he lost so that he may appeal to a higher court, if permitted, should he believe that the decision needs to be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is especially prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal. In this case, we find that the assailed decision of the trial court substantially complied with the requirements of the Constitution. The decision contained a summary of the facts of the case as presented by the prosecution and by the defense. It likewise contained an explanation as to why it found appellant guilty as charged. Admittedly, the decision is brief but to our mind, it

sufficiently informed appellant as regards the bases for his conviction. It readily informs appellant that the trial court disregarded his defense of bare denial in favor of the presumption of regularity in the performance of duties enjoyed by police officers.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CHICO-NAZARIO, *J.*:

For Review is the Decision[1] of the Court of Appeals promulgated on 31 July 2006 in CA-G.R. CR-HC No. 01799 entitled, "*People of the Philippines v. Bernardo Tuazon y Nicolas*," affirming the Decision[2] dated 14 October 2002 of the Regional Trial Court (RTC), Antipolo City, Branch 71, in Criminal Case No. 99-16114, finding accused-appellant guilty beyond reasonable doubt of violation of Section 16, Article III of Republic Act No. 6425,[3] as amended.

The Information filed against appellant alleged:

The undersigned State Prosecutor accuses BERNARDO TUAZON *y* NICOLAS of the crime of Violation of Section 16, Article III, R.A. 6425, as amended, committed as follows:

That, on or about the 7th day of March, 1999, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any regulated drug, did then and there willfully, unlawfully and feloniously have in his possession, custody and control seven (7) heat-sealed transparent plastic bags each containing 97.92 grams, 95.46 grams,

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[1] Penned by Associate Justice Jose C. Mendoza with Associate Justices Elvi John S. Asuncion and Arturo G. Tayag, concurring; *rollo*, pp. 3-12.

[2] Penned by Presiding Judge Felix S. Caballes. Records, pp. 84-89.

[3] Also known as "The Dangerous Drugs Act of 1972."

40.47 grams, 5.36 grams, 5.41 grams, 2.95 grams and 3.17 grams for a total weight of 250.74 grams of white crystalline substance, which after the corresponding laboratory examination conducted gave positive result to the test for methylamphetamine hydrochloride also known as "*shabu*" a regulated drug, in violation of the above-cited law.[4]

Upon arraignment, appellant, duly assisted by counsel *de oficio*, pleaded not guilty.[5]

The prosecution's version of the case relied heavily on the testimony of PO3 Glenon Bueno (PO3 Bueno) who testified that in the morning of 7 March 1999, the Antipolo City Police Station received through telephone, a confidential information that a Gemini car bearing plate number PFC 411[6] would deliver an unspecified amount of *shabu* in Marville Subdivision, Antipolo City. Acting on said tip, Antipolo City Chief of Police Major Rene Quintana dispatched a team of policemen to the area to conduct a surveillance. When the team arrived in Marville Subdivision, they saw the said Gemini car and immediately flagged it down. The driver of the car pulled to a stop and opened a window of said vehicle giving the policemen the opportunity to identify themselves as members of the Antipolo City Police Station. It was then that PO1 Manuel Padlan (PO1 Padlan) saw a gun tucked on appellant's waist. PO1 Padlan inquired about the gun and appellant allegedly replied it did not belong to him nor could he produce any pertinent document relating to said firearm. This prompted PO3 Bueno to order appellant to get down from the car. As soon as appellant stepped down from the vehicle, PO3 Bueno saw five plastic sachets on the driver's seat, the contents of which appellant allegedly admitted to be *shabu*. Appellant was thereafter immediately brought to the police station.

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[4] Records, p. 1.

[5] *Id*. at 13.

[6] In the Joint Affidavit of PO3 Glenon Bueno and PO1 Manuel Padlan as well as the picture of the Gemini car marked as Exhibits "B", "B-1", and "B-2", the plate number of the car was identified as PMZ 411; *id*.

In the Joint Affidavit executed by PO3 Bueno and PO1 Padlan, it was stated that when they frisked appellant, they discovered "2 big plastic bag (sic) and 5 medium size plastic (sic) and a 9 mm. pistol marked Parabellum bearing serial number C-9890 with one loaded magazine with eleven ammunition."[7]

The white crystalline substance confiscated from appellant was then forwarded to the Philippine National Police Crime Laboratory in Camp Crame, Quezon City for examination. The test conducted on the specimen turned over to the crime laboratory yielded the following:

FINDINGS:

Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the test for Methylamphetamine Hydrochloride, a regulated drug. x x x.

CONCLUSION:

Specimens A-1 through A-7 contains Methylamphetamine Hydrochloride, a regulated drug. x x x.[8]

Expectedly, appellant presented a vastly different account of the events that led to his indictment. According to him, he used to work as a caretaker of "Curacha," a beer house/videoke bar located along Circumferential Road, Marville II Subdivision and owned by a certain Bong Reyes. On 6 March 1999, he reported for work at six o'clock in the evening. Later that night, unidentified men walked up to him. One of these men asked him regarding the ownership of the car parked outside the bar. He allegedly accompanied the men outside so he could confirm the identity of the owner of the car that the men were inquiring about. Thereupon, the men pointed to him a green colored Isuzu Gemini car which according to him was driven by his employer, Reyes. After revealing this information to the unidentified men, the latter purportedly pointed guns at him and ordered him to board an owner-type jeepney. The men

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[7] *Id*.

[8] Folder of Exhibits, p. 3.

allegedly asked him regarding the whereabouts of Reyes and threatened to include him in whatever trouble Reyes was in. A few hours passed and he was then brought to the police headquarters where he was asked regarding his address and the name of his employer. After two days, he was allegedly forced to admit that he was in fact the owner of the Gemini car as well as of the *shabu* and the gun recovered from said vehicle. He learned later on that he was charged with violations of Republic Act No. 6425 for illegal possession of *shabu* and Presidential Decree No. 1866 for illegal possession of firearm. The latter case was eventually dismissed. At the end of his direct examination, appellant reiterated that he should not have been the one charged with illegal possession of *shabu*, but Reyes who was driving the Gemini car.

The trial court found the evidence presented by the prosecution sufficient to support a guilty verdict and imposed upon appellant the penalty of *reclusion perpetua* and to pay a fine of ₱500,000.00.[9]

On 17 September 2003, we resolved to accept the appeal interposed by appellant, the records of the case having been forwarded to this Court by the RTC, Antipolo City, Branch 71. We also required the parties to file their respective briefs.[10]

In addition to the required brief, appellant filed a supplementary pleading in which he questioned the validity of his arrest and the admissibility of the evidence presented against him. He contends that at the time of his warrantless arrest, he was merely driving within Marville Subdivision. He had not committed, was not committing, and was not about to commit any crime which could have justified his apprehension. He goes on to argue that even if he had waived the issue regarding the validity of his arrest by his failure to raise the matter before entering his plea, such waiver did not affect the unlawfulness of the search and seizure conducted by the police. Appellant claims that as the confidential informant had been cooperating with

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[9] Records, p. 89.

[10] CA *rollo*, p. 22.

the police for three weeks prior to his arrest, the authorities were already informed of his identity and his alleged illegal activities. They should have conducted a prior surveillance and then sought a search warrant from the court. Absent said warrant, the *shabu* seized from him should be excluded from evidence.[11]

On 23 February 2005, we ordered the transfer of this case to the Court of Appeals conformably with our decision in *People v. Mateo*, which modified the pertinent provisions of the Rules of Court with respect to direct appeals from the RTCs to this Court of cases where the penalty imposed is death, *reclusion perpetua*, or life imprisonment.[12]

The Court of Appeals affirmed the findings and conclusion of the court *a quo*. The dispositive portion of the Court of Appeals' Decision states:

> WHEREFORE, the October 14, 2002 Decision of the Regional Trial Court, Branch 71, Antipolo City, in Criminal Case No. 99-16114, is hereby AFFIRMED.[13]

In sustaining the trial court, the Court of Appeals found PO3 Bueno's testimony to be "clear and unequivocal"[14] and should therefore prevail over appellant's defense of denial.[15] The Court of Appeals likewise brushed aside appellant's contention that he was a victim of frame-up as this defense has been viewed with disfavor and has become a standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act.[16] It also took note of appellant's failure to give any credible reason why the police singled him out considering that they were strangers to one another prior to the date of the incident.[17]

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[11] *Id*. at 88-104.

[12] *Id*. at 105.

[13] *Rollo*, p. 11.

[14] *Id*. at 7.

[15] *Id*. at 9.

[16] *Id*.

[17] *Id*. at 8.

Appellant is again before this Court pleading his innocence by making a lone assignment of error —

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR VIOLATION OF SECTION 16, ARTICLE III, REPUBLIC ACT 6425, AS AMENDED.[18]

Appellant contends that the trial court's reliance on the prosecution's evidence was erroneous considering that he, as a mere grade school graduate, could not have concocted his narration of the events that led to his arrest.[19] He also maintains that he was an easy target of police operatives, since he was a new employee in the videoke bar and was therefore unfamiliar with the people who frequented said establishment. In addition, he insists that the prosecution failed to meet the exacting test of moral certainty required for conviction and that the trial court should not have applied the presumption of regularity in the performance of duties on the part of the police officers.[20]

Appellant likewise points out the trial court's supposed failure to substantiate the factual and legal bases for his conviction. He notes that the court *a quo*'s evaluation of the facts and evidence was contained in only two paragraphs and was utterly lacking in substantial discussion, in contravention of this Court's edict that the decisions must distinctly and clearly express their factual and legal bases.[21]

On 19 February 2007, we required the parties to file their respective supplemental briefs, if they so desired. On 17 April 2007, appellant filed a Manifestation stating that he would no longer file a supplemental brief as all relevant matters for his defense were already discussed in his previous pleadings.[22] The

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[18] CA *rollo*, p. 32.

[19] *Id.* at 36-37.

[20] *Id.*

[21] *Id.* at 38-39.

[22] *Rollo*, pp. 14-15.

Office of the Solicitor General likewise manifested that it would no longer file a supplemental brief.[23]

The appeal must fail.

In insisting that the trial court should not have given credence to the testimony of PO3 Bueno, appellant is basically making an issue about a witness's credibility. In this regard, we reiterate the rule that appellate courts will generally not disturb factual findings of the trial court since the latter has the unique opportunity to weigh conflicting testimonies, having heard the witnesses themselves and observed their deportment and manner of testifying.[24] Thus, unless attended with arbitrariness or plain disregard of pertinent facts or circumstances, the factual findings are accorded the highest degree of respect on appeal.[25] Our careful review of the records of this case reveals that the trial court did not err in relying on the testimony of PO3 Bueno. In open court, PO3 Bueno recounted their encounter with appellant as follows:

PROS. LUNA:

Thank you, your honor.

Q: Mr. Witness, where were you assigned as police officer sometime in the month of March 1999?

WITNESS:

A: At the Antipolo Police Station, sir.

Q: Mr. Witness, do you know accused Bernardo Tuazon?

A: Yes, sir.

Q: How did you come to know him?

A: Because we arrested Bernardo Tuazon.

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[23] *Id.* at 17-18.

[24] *People v. Baygar*, 376 Phil. 466, 473 (1999).

[25] *People v. Matito*, 468 Phil. 14, 24 (2004).

Q: If the accused in this case is present before this Court, will you please point him out?

A: He is that person wearing yellow T-shirt.

LEGAL RESEARCHER ACTING AS INTERPRETER:

The witness is pointing to a male person inside the courtroom when confronted give his name as Bernardo Tuazon.

PROS. LUNA:

Q: Do you recall where were you at about 12:10 in the morning of March 7, 1999?

WITNESS:

A: At the Antipolo Police Station, sir.

Q: What were you doing then at that time?

A: We were doing our duty as police investigator, sir.

Q: Who were your companions at that time?

A: PO1 Manuel Padlan, and CA Ronald Naval, sir.

Q: While performing your functions, do you remember any unusual incident at that time?

A: One of our confidential agents gave an information thru telephone, sir.

Q: About what?

A: About delivery of *shabu* of undetermined amount in the area of Marville Subdivision, Antipolo City, sir.

Q: Do you know that person involved or who is the person supposed to deliver an undetermined amount of "*shabu*"?

A: The asset did not say who will deliver the *shabu* but he only said on the telephone that the car is a Gemini bearing plate number PFC 411 who will deliver at said place.

Q: Upon receipt of said information what did you do next?

A: We informed our Chief of Police Major Rene Quintana, sir.

Q: What was the reaction of Major Quintana?

A: Our Chief of Police told us to do surveillance in the area.

Q: What did you do next?

A: We immediately recorded the dispatch and we boarded a marked vehicle and proceeded to the area in Marville Subdivision, sir.

Q: Where is this located?

A: In Barangay San Roque fronting along the highway in Antipolo City.

Q: Upon reaching that place what happened?

A: When we arrived in the subdivision we saw a Gemini car with plate number PFC 411, sir.

Q: If a picture of that car would be shown to you would you be able to identify it?

A: Yes, sir.

Q: I am showing to you a picture already marked as Exhibit B, B-1 and B-2. What relation has this to the one you mentioned?

A: This is the car where the accused was then on board, sir.

Q: Upon seeing the car what did you do?

A: We immediately conduct a check point, sir.

Q: Specifically, what did you do?

A: We flagged down the vehicle, sir.

Q: What happened after flagging down the car?

A: When we flagged down the vehicle, we identified ourselves as police officers, sir.

Q: What was the reaction of the driver of the vehicle?

A: The driver opened the window and we identified ourselves as members of the Antipolo City Police Station, sir.

Q: What was the reaction of the driver?

A: When he opened the window, PO1 Padlan saw a gun tucked on his waist.

Q: What did you do next? In your case what did you do?

A: We identified ourselves as policem[e]n.

COURT:

Q: Did you know what Padlan did?

WITNESS:

A: Yes, sir.

Q: What did he do?

A: He questioned his gun and it turned out that there is no pertinent document for his gun.

Q: What do you mean "he was asked"? Who was asked?

A: The driver, Bernardo Tuazon, sir.

PROS. LUNA:

Q: What was the reaction of Bernardo Tuazon?

WITNESS:

A: He said that the gun is not his.

Q: Upon hearing that the gun was not owned by Bernardo Tuazon what did you do as police officer?

A: I ordered him to get down from the car.

COURT:

Q: After he got down from the car, what happened?

WITNESS:

A: I saw five (5) plastic bags on the driver's seat.

Q: Upon seeing that plastic bag what did you do?

A: I asked him the contents of that plastic and he replied that it contained *shabu*, sir.

Q: What did you do upon hearing the answer of the accused?

A: We immediately brought him to the headquarters together with the evidence, sir.

Q: What did you do with the "*shabu*"?

A: We brought it to the PNP Crime Laboratory for examination, sir.

Q: What was the result of the examination, if you know?

A: It gave positive result to the tests for methylamphetamine hydrochloride sir.[26]

We agree with the Court of Appeals that the foregoing testimony of PO3 Bueno establishes beyond reasonable doubt appellant's culpability. His testimony regarding the circumstances that occurred in the early hours of 7 March 1999 — from the moment their office received a confidential tip from their informer up to the time they accosted appellant — deserved to be given significance as it came from the mouth of a law enforcement officer who enjoys the presumption of regularity in the performance of his duty. Police officers are presumed to have acted regularly in the performance of their official functions in the absence of clear and convincing proof to the contrary or that they were moved by ill-will.[27]

Appellant's bare-faced defense of denial cannot surmount the positive and affirmative testimony offered by the prosecution. It is well-settled that positive declarations of a prosecution witness prevail over the bare denials of an accused.[28] A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on

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[26] TSN, 14 February 2000, pp. 3-7.

[27] *People v. Huang Zhen Hua*, G.R. No. 139301, 29 September 2004, 439 SCRA 350, 381, cited in *People v. Torres*, G.R. No. 170837, 12 September 2006, 501 SCRA 591, 609.

[28] *People v. Vargas*, 327 Phil. 387, 397 (1996).

affirmative matters.[29] Denial is an inherently weak defense which must be supported by strong evidence of non-culpability to merit credibility.[30]

We shall now resolve the issue raised by appellant regarding the admissibility of the physical evidence presented against him. No less than our Constitution recognizes the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures. This right is encapsulated in Article III, Section 2 of the Constitution which states:

> SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Complementing this provision is the so-called exclusionary rule embodied in Section 3(2) of the same article —

> (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

It is recognized, however, that these constitutional provisions against warrantless searches and seizures admit of certain exceptions, as follows: (1) warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence; (2) seizure of evidence in plain view; (3) search of a moving vehicle; (4) consented warrantless search; (5) customs search; (6) stop and frisk; and (7) exigent and emergency circumstances.[31]

In the case of *People v. Lo Ho Wing*,[32] this Court had the occasion to elucidate on the rationale for the exemption of searches

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[29] *People v. Gonzales*, 417 Phil. 342, 353 (2001).

[30] *People v. Hivela*, 373 Phil. 600, 605 (1999).

[31] *People v. Gonzales*, *supra* note 29 at 357.

[32] G.R. No. 88017, 21 January 1991, 193 SCRA 122, 128-129.

of moving vehicles from the requirement of search warrant, thus:

> [T]he rules governing search and seizure have over the years been steadily liberalized whenever a moving vehicle is the object of the search on the basis of practicality. This is so considering that before a warrant could be obtained, the place, things and persons to be searched must be described to the satisfaction of the issuing judge — a requirement which borders on the impossible in the case of smuggling effected by the use of a moving vehicle that can transport contraband from one place to another with impunity. We might add that a warrantless search of a moving vehicle is justified on the ground that "it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought."

Nevertheless, the exception from securing a search warrant when it comes to moving vehicles does not give the police authorities unbridled discretion to conduct a warrantless search of an automobile. To do so would render the aforementioned constitutional stipulations inutile and expose the citizenry to indiscriminate police distrust which could amount to outright harassment. Surely, the policy consideration behind the exemption of search of moving vehicles does not encompass such arbitrariness on the part of the police authorities. In recognition of the possible abuse, jurisprudence dictates that at all times, it is required that probable cause exist in order to justify the warrantless search of a vehicle.[33]

In *Caballes v. Court of Appeals*,[34] the term "probable cause" was explained to mean —

> [A] reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged; or the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the items, articles or objects

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[33] *Caballes v. Court of Appeals*, 424 Phil. 263, 279 (2002).

[34] *Id*.

sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched. The required probable cause that will justify a warrantless search and seizure is not determined by a fixed formula but is resolved according to the facts of the case.

When a vehicle is flagged down and subjected to an extensive search, such a warrantless search has been held to be valid as long as the officers conducting the search have reasonable or probable cause to believe prior to the search that they would find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched.[35]

In this case, we hold that the police had probable cause to effect the warrantless search of the Gemini car driven by appellant. A confidential informer tipped them off that said car was going to deliver *shabu* at Marville Subdivision. Pursuing said lead, the Antipolo City police sent a team to Marville Subdivision to monitor said vehicle. The information provided by the informer turned out to be correct as, indeed, the Gemini car was spotted in the place where it was said to be bringing *shabu*. When they stopped the car, they saw a gun tucked in appellant's waist. Appellant did not have any document to support his possession of said firearm which all the more strengthened the police's suspicion. After he was told to step out of the car, they found on the driver's seat plastic sachets containing white powdery substance. These circumstances, taken together, are sufficient to establish probable cause for the warrantless search of the Gemini car and the eventual admission into evidence of the plastic packets against appellant.

In any case, appellant failed to timely object to the admissibility of the evidence against him on the ground that the same was obtained through a warrantless search. His failure amounts to a waiver of the objection on the legality of the search and the admissibility of the evidence obtained by the police. It was only proper for the trial court to admit said evidence.[36]

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[35] *People v. Bagista*, G.R. No. 86218, 18 September 1992, 214 SCRA 63, 69.

[36] *Id*.

Appellant also faults the trial court for its failure to abide by the Constitutional requirement that "(n)o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based."[37] Again, we disagree.

Faithful adherence to the aforementioned constitutional provision is a vital component of due process and fair play.[38] The rule takes an even more important significance for the losing party who is entitled to know why he lost so that he may appeal to a higher court, if permitted, should he believe that the decision needs to be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is especially prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal.[39]

In this case, we find that the assailed decision of the trial court substantially complied with the requirements of the Constitution. The decision contained a summary of the facts of the case as presented by the prosecution and by the defense. It likewise contained an explanation as to why it found appellant guilty as charged. Admittedly, the decision is brief but to our mind, it sufficiently informed appellant as regards the bases for his conviction. It readily informs appellant that the trial court disregarded his defense of bare denial in favor of the presumption of regularity in the performance of duties enjoyed by police officers.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 01799 dated 31 July 2006, finding appellant Bernardo Tuazon *y* Nicolas guilty beyond reasonable doubt of violation of Section 16, Article III of Republic Act No. 6425, as amended, is *AFFIRMED*. No costs.

SO ORDERED.

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[37] 1987 Constitution, Article VIII, Section 14.

[38] *Yao v. Court of Appeals*, 398 Phil. 86, 105 (2000).

[39] *Nicos Industrial Corporation v. Court of Appeals*, G.R. No. 88709, 11 February 1992, 206 SCRA 127, 132.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 175936. September 3, 2007]

CHAN CUAN and CHIEN-YIN SHAO *a.k.a.* HENRY SHAO, *petitioners, vs.* **CHIANG KAI SHEK COLLEGE, INC. and SANTIAGO CUA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; PLEA FOR INJUNCTIVE RELIEF SHALL BE REJECTED WHERE THE APPLICANTS FAILED TO JUSTIFY THEIR PLEA; CASE AT BAR.— In *Philippine Ports Authority v. Pier 8 Arrastre & Stevedoring Services, Inc.* and *Levi Strauss & Co. v. Clinton Apparelle, Inc.*, the Court conceded that it is not enough, in granting the writ of injunction, to simply say that it appeared after hearing that plaintiff is entitled to the relief prayed for, and nothing else. We reechoed the ruling with greater clarity in *University of the Philippines (U.P.) v. Catungal:* The court must state its own findings of fact and cite the particular law to justify the grant of preliminary injunction. Utmost care in this regard is demanded, and it has been truly said: There is no power the exercise of which is more delicate which requires greater caution, deliberation, and sound discretion, or (which is) more dangerous in a doubtful case than the issuing of an injunction; it is the strong arm of equity that never ought to be extended unless to cases of great injury, where courts law cannot afford an adequate or commensurate remedy in damages. An examination of the parties' inherently conflicting claims, exacerbated by the ambivalent, subjective tenor of the appellate court's decision — which in effect ill-accomplished any by way of enlightening the parties on their respective rights and

obligations under the law — gives us the impression that the right claimed by the respondents as basis for seeking injunctive relief is far from clear. While it is true that respondents' claimed right is not required to be categorically established at this stage, yet it is nevertheless necessary to show, at least incipiently, that such right exists and is not countermanded by the petitioners' own evidence which appears to present a veritable challenge to the respondents' cause. In our view, the respondents have failed to justify their plea for injunctive relief, and the trial court correctly rejected their plea therefor.

2. ID.; ID.; ID.; WHEN MAY BE GRANTED; ISSUANCE OF PRELIMINARY INJUNCTIVE WRIT UNWARRANTED IN CASE AT BAR.— It appears from the evidence preliminarily made available, however, that Shao became a regular member of Chiang Kai Shek College, Inc. in 1994 when he was nominated and unanimously voted as one. Respondent Cua, during that meeting at which Shao was elected as a regular member of the corporation, was then present and did not object to the same; the documentary evidence is clear on this, as the minutes taken of said meeting betrays his (Cua's) presence and the unanimity of corporate action. Being so, a preliminary injunctive writ may not issue. The Rules of Civil Procedure provides that a preliminary injunction may be granted when it is established: (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual. Having failed to object to Shao's election to regular membership, respondent Cua may not now question the same. Since injunction is the strong arm of equity, he who applies for it must come with clean hands. For, among the maxims of equity are that (1) he who seeks equity must do equity, and (2) he who comes into equity must come with clean hands. For purposes of the injunction proceedings, Cua has not shown

the requisite injustice he may suffer as a result of Shao's election to regular membership. He even acceded to it.

3. ID.; ID.; ID.; PRIMARY PURPOSE; INJUNCTION IS NOT A REMEDY THAT WILL DISPOSE OF THE MAIN CASE WITHOUT TRIAL ON THE MERITS.— A preliminary injunction is a provisional remedy, an adjunct to the main case subject to the latter's outcome. Its sole objective is to preserve the *status quo* until the trial court hears fully the merits of the case. Its primary purpose is not to correct a wrong already consummated, or to redress an injury already sustained, or to punish wrongful acts already committed, but to preserve and protect the rights of the litigants during the pendency of the case. From the record, it may be seen that if respondent Cua suffered any perceived injury or wrong at all, the same had already been consummated. In the first place, Cua, in the lower court, prayed, *inter alia,* in his complaint in Civil Case No. 115404, that petitioner Chan Cuan be compelled by mandatory injunction to hold a meeting for the sole purpose of electing a new set of board of trustees, which Chan Cuan did, as ordered by the trial court. As a result of that meeting, Shao was elected to the board of trustees. And yet now, before us, Cua wants to annul the elections which he himself sought in the first instance. This, we cannot allow. Taking cue from his failure to object to Shao's entry into the corporation as a regular member in 2004, Cua may not be allowed the injunctive remedy he now seeks. Any perceived injury he suffered was brought by him upon himself. Injunction is not a remedy that will dispose of the main case without trial on the merits. If Shao were to be enjoined from sitting as elected member and trustee, then we would be assuming the proposition which the respondents themselves are inceptively bound to prove, whereas the preliminary evidence shows otherwise. The claim that the by-laws of the corporation provide that the admission to membership of Shao should have been taken up in a regular annual meeting and not in a joint special meeting, may not deprive Shao of the privilege of membership, in the wake of the trial court's appreciation of the initial evidence which shows that by practice and tradition, the by-laws of the corporation prescribing the annual regular meeting of the members and trustees have not been followed for the last sixty years; instead, the corporation has been holding its meetings at least six times each year.

4. ID.; ID.; ID.; ISSUANCE THEREOF IS ADDRESSED TO THE SOUND DISCRETION OF THE TRIAL COURT, THE EXERCISE OF WHICH IS GENERALLY NOT INTERFERED WITH SAVE IN CASES OF MANIFEST ABUSE.— Time and again, this Court has ruled that the matter of the issuance of a writ of preliminary injunction is addressed to the sound discretion of the trial court; the exercise of such discretion by the trial court is generally not interfered with save in cases of manifest abuse. The general rule, therefore, and indeed one of the fundamental principles of appellate procedure is that decisions of a trial court which "lie in discretion" will not be reviewed on appeal, whether the case be civil or criminal, at law or in equity. Injunction is accepted as the strong arm of equity or a transcendent remedy to be used cautiously and sparingly as it affects the respective rights of the parties, and only upon full conviction on the part of the court of its extreme necessity should it issue. We do not see that necessity at this point.

5. ID.; APPEALS; FINDINGS OF FACT MADE BY THE TRIAL COURT COMMAND GREAT RESPECT.— Lacking in a thorough determination of the preliminary facts, the appellate court's decision cannot be sustained. Instead, we must look to what has been established by the trial court's own determination as embodied in its assailed Order of July 27, 2006. This Court, being not one of facts, must rely on the findings of fact made by the trial court, which as well commend great respect in even injunction cases.

APPEARANCES OF COUNSEL

Ang & Associates for petitioners.

Benjamin C. Santos & Ray Montri C. Santos Law Offices for respondents.

D E C I S I O N

GARCIA, *J.*:

Via this petition for review on *certiorari*, herein petitioners Chan Cuan and Chien-Yin Shao, *a.k.a.* Henry Shao, seek to

set aside the Decision[1] dated October 10, 2006 of the Court of Appeals (CA) in *CA-G.R. SP No. 95467,* entitled "*Chiang Kai Shek College, Inc. and Santiago Cua v. Hon. Aida E. Layug, et al.,*" and its Resolution[2] of December 21, 2006, denying the petitioners' motion for reconsideration. The assailed decision nullified the Order dated July 27, 2006 of the Regional Trial Court (RTC) of Manila, Branch 46 (Commercial Court), which denied the herein respondents application for the issuance of a writ of preliminary injunction in its Civil Case No. 115404, a derivative suit thereat instituted by the herein respondents against the petitioners. In short, petitioners presently urge the Court to uphold the adverted RTC Order of July 27, 2006.

As found by the appellate court in the decision under review, the facts are:

> On July 3, 2006 x x x Chiang Kai Shek College, Inc. (corporation), a non-stock, non-profit educational institution, and Santiago Cua, in his official capacity as honorary chairman of the board of trustees of the corporation, longest active member of the board of trustees, and incumbent member of the corporation, instituted a derivative suit by filing before public respondent judge a complaint against x x x Chan Cuan in his capacity as chairman of the board of trustees of the corporation and Chien-Yin Shao, *a.k.a.* Henry Shao, in his personal capacity as he is allegedly not a member of the corporation, nor a member of the board of trustees, nor does he hold any office or position in the corporation, alleging that Chan Cuan and Chien-Yin Shao conspired to violate the provisions of the by-laws of the corporation, in flagrant violation of the rights and interests of the corporation of and to the extreme damage and prejudice of the other trustees, members and the entire community of Chiang Kai Shek College. In particular, [respondents] alleged that Chan Cuan and Chien-Yin Shao are doing, threatening, procuring and suffering to be done the conduct of an election of the officers of the corporation's board of trustees on July 7, 2006 without having first complied with the prerequisites under the corporation's by-laws, more specifically on

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[1] Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Martin S. Villarama, Jr. and Lucas P. Bersamin, concurring; *rollo*, pp. 44-56.

[2] *Id.* at 58-61.

Chien-Yin Shao's prior admission as member of the corporation. [Respondents] prayed that public respondent judge, through a writ of preliminary injunction, compel Chan Cuan to comply with the aforesaid prerequisite and accordingly hold, at a meeting scheduled on July 7, 2006, a meeting of the general membership of the corporation for the sole purpose of electing the new members of the board of trustees pursuant to the corporation's by-laws, and thereafter to conduct the first regular meeting of the newly elected members of the board to in turn elect the officers of the corporation. On July 4, 2006, the Office of the Executive Judge issued an Order to the effect that a 72-hour temporary restraining order is issued "*enjoining respondent Chan Cuan and/or the board (i) from postponing and deferring the scheduled meeting of the general membership of the corporation, scheduled on July 7, 2006, only for the purpose, and no other, to elect new members of the board of trustees from members of the corporation who have been duly admitted as such in accordance with the by-laws of the corporation, and (ii) from conducting the meeting for any other purpose than to duly elect new members of the board of trustees*." The 72-hour temporary restraining order was further extended to a twenty (20)-day TRO in public respondent's Order dated 6 July 2006. On July 7, 2006, Chan Cuan convened the scheduled meeting pursuant to the aforesaid Order, informing the body that the court had ordered the meeting to be held without any postponement, to elect the board of trustees and only for the duly admitted members of the corporation to vote. The listing of the twenty-one supposedly admitted members of the corporation distributed by Chan Cuan and to serve as official ballot for the election of members of the board included the name of Chien-Yin Shao. Santiago Cua and some other members and trustees protested Chien-Yin Shao's inclusion in the list but Chan Cuan brushed the protests aside. The election proceeded despite the protestations and objections from Santiago Cua, and Chien-Yin Shao voted and was voted for. Chan Cuan also scheduled the election of the chairman and other officers of the corporation by the new board of trustees on July 14, 2006.

In view of these supervening events, [respondents] filed their Supplemental Complaint, praying, among other things, that Chien-Yin Shao be enjoined and prohibited from participating, voting or be voted for in the election of the officers of the board of trustees until his status as member of the corporation is clarified and resolved, and that the elections held on July 7, 2006 be nullified as contrary to the conditions of the temporary restraining order. On July 12,

2006, public respondent, acting on [respondents'] Supplemental Complaint, issued and Order, to wit:

> "Wherefore, the court rules to give substance to the spirit of the TRO and to prevent confusion respondent [now petitioner] Chan Cuan is ordered to withhold any action in the matter of the election until the status of Henry Shao as a member of the corporation has been clarified and the issue thereon is finally resolved. Further the election scheduled on July 14, 2006 be suspended until further order from the court."

Public respondent (judge) thereafter conducted hearings in relation to the prayer for the issuance of a writ of preliminary mandatory injunction and on the main issue of the status of Chien-Yin Shao as member of the corporation. [Respondents'] contention was that Chien-Yin Shao was not duly admitted as member of the corporation as he was not recommended for admission by the Board of Trustees and was not endorsed for approval at the members' regular annual meeting as required by the corporation's by-laws. Santiago Cua denied having seconded Chien-Yin Shao's nomination as member of the corporation. Chan Cuan and Chien-Yin Shao insisted that Chien-Yin Shao was a duly admitted member of the corporation, presenting evidence to the effect that on the joint special meeting of the board of trustees and members of the corporation held on April 19, 2004, Pedro Tan Tiong Sian nominated Henry Shao as member of the corporation, Santiago Cua seconded the nomination, the nomination was discussed by all present, and Chien-Yin Shao was unanimously voted for as member of the corporation.

On **July 27, 2006**, public respondent issued the assailed **Order**, declaring that [respondents] failed to convince the court that they are entitled to the issuance of preliminary mandatory injunction, and hence the application was denied. Public respondent ruled that based on the appreciation and evaluation of evidence, [respondents] are estopped to question the status of Chien-Yin Shao as a member of the corporation, noting that it was even Santiago Cua who had seconded the nomination/invitation for Chien-Yin Shao's admission as member of the corporation and through Santiago Cua's acquiescence of Chien-Yin Shao's membership without raising such issue for almost two years, Santiago Cua is estopped to question the same. Giving weight to Chan Cuan's testimony that it is considered as socially improper for Chien-Yin Shao, being a prominent and distinguished member of the Chinese community, to apply by himself for

membership in the corporation, public respondent held that the corporation's conduct of its affairs, including admission of new members to the corporation, is not run solely by its by-laws but also by tradition which is germane in a conservative association like Chiang Kai Shek where culture, habits, beliefs and customs are elements that must be given consideration. Public respondent finally ruled that [respondents] failed to prove existence of irreparable injury or that continuance of the act complained of — that is, membership of Chien-Yin Shao in the corporation — during the litigation would probably work injustice to [respondents].[3] (Words in brackets supplied)

From the aforementioned July 27, 2006 Order of the trial court, herein respondents filed with the CA on July 31, 2006 a petition for *certiorari*, thereat docketed as *CA-G.R. SP No. 95467*, questioning the aforesaid July 27, 2006 Order of the trial court. This was followed by their supplemental petition on August 1, 2006. On August 4, 2006, the appellate court issued a temporary restraining order enjoining the parties to maintain and preserve the *status quo ante* pending resolution of the main case (Civil Case No. 115404) before the trial court.

Eventually, on October 10, 2006, the appellate court came out with the herein decision[4] granting the respondents' aforementioned petition for *certiorari* and annulling and setting aside the adverted July 27, 2006 Order of the trial court, thus:

WHEREFORE, the petition is **GRANTED**. The assailed Order of public respondent dated 27 July 2006 in Civil Case No. 115404 is **NULLIFIED** and **SET ASIDE.** Upon approval of the injunction bond in the amount of Two Hundred Thousand Pesos (₱200,000.00) which petitioners (i.e. Chiang Kai Shek College, Inc. and Santiago Cua) are hereby **DIRECTED** to file to answer for all damages which private respondents may sustain by reason of the injunction if the trial court should finally decide that petitioners are not entitled thereto, let a Writ of Preliminary Injunction ISSUE enjoining and prohibiting the participation of Chien-Yin Shao as member and officer of the board of trustees of Chiang Kai Shek College, Inc. pending

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[3] *Id*. at 45-49.

[4] *Supra* note 1.

final resolution of the derivative suit filed by petitioners, Chiang Kai Shek College, Inc. and Santiago Cua, against private respondents, Chan Cuan and Chien-Yin Shao, *a.k.a.* Henry Shao, in Civil Case No. 115404 by and which public respondent is DIRECTED to proceed with.

SO ORDERED.

With their motion for reconsideration having been denied by the appellate court in its equally challenged Resolution of December 21, 2006, petitioners are now with this Court *via* the present recourse, claiming that the CA —

I

XXX ERRED IN TOTALLY IGNORING PETITIONERS' ARGUMENTS THAT SANTIAGO CUA ERRED IN FILING A DERIVATIVE SUIT AS THE NATURE OF THE CASE IS ONE OF *QUO WARRANTO*.

II

XXX ERRONEOUSLY DISREGARDED THE FINDINGS OF THE LOWER COURT THAT CHIEN-YIN SHAO IS A LEGITIMATE MEMBER/TRUSTEE OF CHIANG KAI SHEK COLLEGE, INC. AND THERE IS NO LEGAL OR FACTUAL BASIS TO DISQUALIFY HIM AND THAT SANTIAGO CUA IS IN ESTOPPEL.

III

XXX ERRED IN THE ISSUANCE OF THE WRIT OF PRELIMINARY INJUNCTION AS SANTIAGO CUA FAILED TO PRESENT EVIDENCE THAT HE OR CHIANG KAI SHEK COLLEGE, INC. WILL SUFFER IRREPARABLE OR SERIOUS DAMAGE OR INJURY, AND WITHOUT PROOF OF DAMAGE, THERE IS NO LEGAL BASIS TO ISSUE THE WRIT.

IV

XXX ERRED IN GRANTING RESPONDENTS' PETITION FOR *CERTIORARI*, PROHIBITION AND *MANDAMUS* AND ISSUING A WRIT OF PRELIMINARY INJUNCTION WHEN THE ACTS SOUGHT TO BE ENJOINED HAVE ALREADY BECOME *FAIT ACCOMPLI* OR AN ACCOMPLISHED OR CONSUMMATED ACTS.[5]

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[5] *Id*. at 14-15.

Acting on the petition, the Court, in its resolution[6] of January 22, 2007, required the respondents to comment thereon. In the same resolution, the Court enjoined the implementation of the assailed CA decision and issued a *status quo* order directing the parties to maintain the *status quo* existing after the issuance of the trial court's Order dated July 27, 2006 and before the filing of the petition in *CA-G.R. SP No. 95467*, "until further orders from the Court."

On February 16, 2007, respondents filed the required comment,[7] followed by petitioners' reply[8] to comment.

In a subsequent resolution[9] of March 26, 2007, the Court resolved to give due course to the petition and to decide the same on the basis of the pleadings already on record.

The day after — March 27, 2007 — respondents filed a *Very Urgent Motion to Immediately Lift Status Quo Order*,[10] therein praying the Court to immediately lift its *status quo* order "to allow the trial court to proceed with, or resume the proceedings in the derivative suit, in order that the issue on petitioner Shao's membership in the corporation be resolved soonest before the case becomes moot and academic or a decision therein becomes ineffectual."

And now, to the merits of the instant petition.

By way of a preliminary statement, the Court cannot help but note that the appellate court's decision does not contain a clear delineation of what it believes to be the facts upon which it based its ruling. What was merely stated in its decision was a chronology of the case and events and the parties' respective submissions. For sure, it did not embark upon a determination of its own understanding of what transpired for purposes of

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[6] *Id*. at 220.

[7] *Id*. at 232-284.

[8] *Id*. at 289-302.

[9] *Id*. at 320-321.

[10] *Id*. at 322-331.

disposing of the respondents' petition before it. Worse, the decision does not contain a detailed discussion and resolution of the issues raised by the parties. Thus, in disposing of the respondents' petition in *CA-G.R. SP No. 95467,* the appellate court ***plainly*** made the following enunciation, couched in general terms:

> Reviewing the records, we are convinced of the necessity and propriety of the issuance of injunctive relief. We ***deem that it would have been more prudent*** of public respondent to have granted petitioners' [now respondents'] application for preliminary injunction, enjoining the participation of Chien-Yin Shao as member of the corporation, much more as trustee and officer of the board, pending resolution of the complaint instituted by petitioners against Chan Cuan and Chien-Yin Shao. It is indubitably clear that issue of Chien-Yin Shao's due admission as member of the corporation constitutes the very core of the controversy as raised in the complaint filed before public respondent. ***Denial of the injunctive relief*** sought, in effect allowing Chien-Yin Shao to participate as member of the corporation and as the newly-elected chairman of the corporation's board of trustees, ***renders the derivative suit***, the most foremost purpose of which, among other reliefs sought, is to assail Chien-Yin Shao's alleged qualification as member of the corporation, ***moot and academic and ineffectual***.
>
> We have placed in scrutiny the assailed Order and to Us, it did not write *finis* to the derivative suit. While the Order mentions of Santiago Cua being in estoppel to question the status of Chien-Yin Shao as a duly admitted member of the corporation, a reading of the same leaves us with the ***strong impression*** that the suit remains pending, with issues such as whether Chien-Yin Shao is a member of the corporation or not, still up for final determination. ***Thus, the urgent need for injunctive relief pending such final determination***.
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> x x x x x x x x x
>
> Public respondent underscored petitioners' failure to prove existence of irreparable injury or that continuance of the act complained, Chien-Yin Shao's participation in the corporation as member and chairman of the board of trustees pending final determination of the validity of his admission to the corporation would probably work injustice to petitioners. We do not agree. We are convinced that the applicants, Santiago Cua and Chiang Kai Shek College, Inc., ***have sufficiently shown existence of the requisites***,

under the rules and jurisprudence, for the issuance of a writ of preliminary injunction. ***Prudence dictates that public respondent grant the injunctive relief prayed for***.[11] (Emphasis and italics supplied).

In *Philippine Ports Authority v. Pier 8 Arrastre & Stevedoring Services, Inc.*[12] and *Levi Strauss & Co. v. Clinton Apparelle, Inc.*,[13] the Court conceded that it is not enough, in granting the writ of injunction, to simply say that it appeared after hearing that plaintiff is entitled to the relief prayed for, and nothing else. We reechoed the ruling with greater clarity in *University of the Philippines (U.P.) v. Catungal:*[14]

> The court must state its own findings of fact and cite the particular law to justify the grant of preliminary injunction. Utmost care in this regard is demanded, and it has been truly said:
>
> > There is no power the exercise of which is more delicate which requires greater caution, deliberation, and sound discretion, or (which is) more dangerous in a doubtful case than the issuing of an injunction; it is the strong arm of equity that never ought to be extended unless to cases of great injury, where courts law cannot afford an adequate or commensurate remedy in damages.

An examination of the parties' inherently conflicting claims, exacerbated by the ambivalent, subjective tenor of the appellate court's decision — which in effect ill-accomplished any by way of enlightening the parties on their respective rights and obligations under the law — gives us the impression that the right claimed by the respondents as basis for seeking injunctive relief is far from clear. While it is true that respondents' claimed right is not required to be categorically established at this stage, yet it is nevertheless necessary to show, at least incipiently, that such right exists and is not countermanded by the petitioners' own

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[11] *Id.* at 52-55.

[12] G.R. No. 147861, November 18, 2005, 475 SCRA 426.

[13] G.R. No. 138900, September 20, 2005, 470 SCRA 236.

[14] G.R. No. 121863, May 5, 1997, 272 SCRA 221.

evidence which appears to present a veritable challenge to the respondents' cause. In our view, the respondents have failed to justify their plea for injunctive relief, and the trial court correctly rejected their plea therefor.

Lacking in a thorough determination of the preliminary facts, the appellate court's decision cannot be sustained. Instead, we must look to what has been established by the trial court's own determination as embodied in its assailed Order of July 27, 2006. This Court, being not one of facts, must rely on the findings of fact made by the trial court, which as well commend great respect in even injunction cases.[15]

Thus far, the evidence presented shows that petitioner Chien-Yin Shao was a faculty member of Chiang Kai Shek College sometime in 1954-1956. He became its President in 1989 up to 1994. The Chiang Kai Shek Alumni Association, Inc. appointed him as member of the Board of Advisers, and later an honorary member in 1990. These facts are not denied by the respondents.[16] The corporate by-laws, specifically Article II, Section 1 (Membership), of Chiang Kai Shek College, Inc. states:

> Any member or an honorary member of Chiang Kai Shek College Alumni Association, Inc. who is of good moral character and reputation in the community; who supports and believes in the principles of democracy and liberty; who subscribes to the purposes of the Corporation; and who agrees to comply with and be bound by these By-Laws, is eligible for membership. An applicant shall first be recommended for admission by the Board of Trustees and then endorsed for approval at the members' regular annual meeting. Such recommendation for admission requires a 2/3 majority vote of the entire membership of the Board of Trustees and shall be further approved by a 2/3 majority vote of the entire membership of the Corporation. The Board of Trustees may prescribe additional qualifications for membership as the purposes for which the Corporation is organized may require.

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[15] *Bustamante v. Court of Appeals*, G.R. No. 126371, April 17, 2002, 381 SCRA 171.

[16] *Rollo*, pp. 267, 328.

The record likewise reveals that it has been the tradition of the corporation, which tradition has been observed for the last sixty (60) years to the present, to hold regular meetings six (6) times a year, although its by-laws provide for just one.

In addition, the record discloses that in a joint special meeting of the board of trustees and members of the corporation held on April 19, 2004, there being a quorum and respondent Santiago Cua was present, Shao was nominated, ***unanimously*** voted for and approved to become a regular member of the corporation. Cua even seconded Shao's nomination. Another regular member, Chuang Tzi Shun, was demoted to honorary member. No one then present, Cua included, objected to these two specific corporate acts.[17] Other witnesses for the petitioners attest to the truth of the foregoing facts.[18]

In respondents' Comment to this petition, they conceded that "respondent Santiago Cua filed the derivative suit as a nominal party in behalf of respondent Chiang Kai Shek College, Inc. to redress wrongs committed by herein petitioners, consisting of violations of the corporation's by-laws in connection with the election of trustees by allowing petitioner Chien-Yin Shao to be elected as a trustee despite his lack of qualification for not being a member of said x x x corporation."[19] This is the

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[17] *Id.* at 64-66, 98-100, 104-107.

[18] *Id.* at 206-209.

[19] *Id.* at 256. Respondents' complaint filed with the trial court states as its main cause of action:

> x x x x x x x x x
>
> 3. Plaintiff Santiago Cua instituted the present action in his capacity as honorary chairman, incumbent trustee and member of the plaintiff corporation, in order to redress wrongs committed by the defendants, who have conspired to violate the provisions of the by-laws of the plaintiff corporation, for their sole interests and benefits, in flagrant violation of the rights and interests, and to the extreme damage and prejudice, of the other trustees and members of the corporation, and of the entire community of the plaintiff corporation, as an educational institution, founded on the principles of democracy and rule of law, and dedicated to a commitment to follow the duly promulgated by-laws in

main thesis of respondents' suit against the petitioners, and, therefore, the resolution of the present petition is understandably circumscribed by the foregoing cause of action of the respondents.

It appears from the evidence preliminarily made available, however, that Shao became a regular member of Chiang Kai Shek College, Inc. in 1994 when he was nominated and unanimously voted as one. Respondent Cua, during that meeting at which Shao was elected as a regular member of the corporation, was then present and did not object to the same; the documentary evidence is clear on this, as the minutes taken of said meeting betrays his (Cua's) presence and the unanimity of corporate action. Being so, a preliminary injunctive writ may not issue. The Rules of Civil Procedure provides that a preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights

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the governance of the plaintiff corporation as an educational institution with its aspirations for excellence;

x x x x x x x x x

5. The cause of action in respect of the derivative suit actually devolves on the plaintiff corporation, the wrongdoings and illegal acts of the defendants having been or are being caused to the plaintiff corporation, and not to plaintiff Santiago Cua, as an honorary chairman, trustee and member of the plaintiff corporation, since he does not seek any remedy or relief for his personal or individual interests, but is demanding, in behalf of the plaintiff corporation, especially, and in particular, in the matter of the election of the members of the board of trustees and of the officers of the plaintiff corporation, for the 20th term from February 2006 to February 2008, which has not been held and effected as of now, and is therefore long overdue.

> of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.[20]

Having failed to object to Shao's election to regular membership, respondent Cua may not now question the same. Since injunction is the strong arm of equity, he who applies for it must come with clean hands. For, among the maxims of equity are that (1) he who seeks equity must do equity, and (2) he who comes into equity must come with clean hands.[21] For purposes of the injunction proceedings, Cua has not shown the requisite injustice he may suffer as a result of Shao's election to regular membership. He even acceded to it.

A preliminary injunction is a provisional remedy, an adjunct to the main case subject to the latter's outcome. Its sole objective is to preserve the *status quo* until the trial court hears fully the merits of the case. Its primary purpose is not to correct a wrong already consummated, or to redress an injury already sustained, or to punish wrongful acts already committed, but to preserve and protect the rights of the litigants during the pendency of the case.[22] From the record, it may be seen that if respondent Cua suffered any perceived injury or wrong at all, the same had already been consummated. In the first place, Cua, in the lower court, prayed, *inter alia*, in his complaint in Civil Case No. 115404, that petitioner Chan Cuan be compelled by mandatory injunction to hold a meeting for the sole purpose of electing a new set of board of trustees, which Chan Cuan did, as ordered by the trial court. As a result of that meeting, Shao was elected to the board of trustees. And yet now, before us, Cua wants to annul the elections which he himself sought in the first instance. This, we cannot allow. Taking cue from his failure to object to Shao's entry into the corporation as a regular member in 2004, Cua may not be allowed the injunctive remedy he now seeks. Any perceived injury he suffered was brought by him upon himself. Injunction is not a remedy that will dispose of the

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[20] Rule 58, Sec. 3.

[21] *Supra* note 12.

[22] *Supra* note 13.

main case without trial on the merits.[23] If Shao were to be enjoined from sitting as elected member and trustee, then we would be assuming the proposition which the respondents themselves are inceptively bound to prove, whereas the preliminary evidence shows otherwise. The claim that the by-laws of the corporation provide that the admission to membership of Shao should have been taken up in a regular annual meeting and not in a joint special meeting, may not deprive Shao of the privilege of membership, in the wake of the trial court's appreciation of the initial evidence which shows that by practice and tradition, the by-laws of the corporation prescribing the annual regular meeting of the members and trustees have not been followed for the last sixty years; instead, the corporation has been holding its meetings at least six times each year.

Time and again, this Court has ruled that the matter of the issuance of a writ of preliminary injunction is addressed to the sound discretion of the trial court; the exercise of such discretion by the trial court is generally not interfered with save in cases of manifest abuse.[24] The general rule, therefore, and indeed one of the fundamental principles of appellate procedure is that decisions of a trial court which "lie in discretion" will not be reviewed on appeal, whether the case be civil or criminal, at law or in equity.[25]

Injunction is accepted as the strong arm of equity or a transcendent remedy to be used cautiously and sparingly as it

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[23] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 119322, June 4, 1996, 257 SCRA 200.

[24] *Philippine Ports Authority v. Pier 8 Arrastre & Stevedoring Services, Inc.*, G.R. No. 147861, November 18, 2005, 475 SCRA 426; *Levi Strauss & Co. v. Clinton Apparelle, Inc.*, G.R. No. 138900, September 20, 2005, 470 SCRA 236; *Rualo v. Pitargue*, G.R. No. 140284, January 21, 2005, 449 SCRA 121; *Almeida v. Court of Appeals*, G.R. No. 159124, January 17, 2005, 448 SCRA 681; *Tayag v. Lacson*, G.R. No. 134971, March 25, 2004, 426 SCRA 282; *Manila International Airport Authority v. Court of Appeals*, G.R. No. 118249, 14 February 2003, 397 SCRA 348; *Olalia v. Hizon*, G.R. No. 87913 , May 6, 1991, 196 SCRA 665; *Government Service Insurance System v. Florendo*, G.R. No. L-48603, 29 September 1989, 178 SCRA 76.

[25] *Luna v. Arcenas*, 34 Phil. 80 (1916).

affects the respective rights of the parties, and only upon full conviction on the part of the court of its extreme necessity should it issue.[26] We do not see that necessity at this point.

The respondents' claim that both petitioners have committed other acts, if any, prejudicial to the interests of the corporation, the school and the academic community of Chiang Kai Shek College in general, is still has to be proved at the trial on the merits of the main case or subjected, initially, to the tests of sufficiency and the various rigors of the Rules. These are matters appropriately litigated in a derivative suit.[27]

IN VIEW WHEREOF, the assailed decision of the CA dated October 10, 2006 in *CA-G.R. SP No. 95467*, as reiterated in its Resolution of December 21, 2006, is *REVERSED* and *SET ASIDE*. The Order dated July 27, 2006 of the trial court is *AFFIRMED in toto*. All injunctive writs and restraining orders are *LIFTED*.

No pronouncement as to costs.

SO ORDERED.

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

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[26] *Cagayan de Oro City Landless Residents Association, Inc. (COCLAI) v. Court of Appeals*, G.R. No. 106043, March 4, 1996, 254 SCRA 220.

[27] *Gochan, et al. v. Young, et al.,* G.R. No. 131889, March 12, 2001, 354 SCRA 207; *Bitong v. Court of Appeals*, G.R. No. 123553, July 13, 1998, 292 SCRA 503; *Commart (Phils.), Inc. v. Securities and Exchange Commission*, G.R. No. 85318, June 3, 1991, 198 SCRA 73.

FIRST DIVISION

[G.R. No. 176267. September 3, 2007]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RANDY ALABADO *y* DAVID,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NO ILL-MOTIVE ON THE PART OF THE PRINCIPAL PROSECUTION WITNESSES TO FALSELY IMPUTE UPON THE APPELLANT THE COMMISSION OF A SERIOUS OFFENSE IN CASE AT BAR.— We do not subscribe to appellant's arguments. Instead, we find, like the two courts below, that the prosecution's evidence is worthy of belief and the testimonies of its witnesses credible, which brings us a similar conclusion that appellant has been positively identified as the perpetrator of the crimes charged against him. For one, we have carefully scrutinized the records and found nothing therein the existence of any ill-motive on the part of the principal prosecution witnesses to falsely impute upon appellant the commission of such a serious offense as murder and frustrated murder. Quite the contrary, the evidence on hand even convinces us that these witnesses spoke for no other reason but to unfold the truth.

2. ID.; ID.; ID.; THE FACT THAT THE WITNESS WAS WELL ACQUAINTED WITH THE ACCUSED IN A MANNER THAT IS NOT ONLY FAMILIAR, BUT LIKEWISE INTIMATE AND FAMILIAL, RENDERS CREDIBLE HER POSITIVE IDENTIFICATION OF THE ACCUSED AS THE PERPETRATOR OF THE OFFENSE.— To begin with, appellant himself claims to be very close to Evelyn who was already engaged to be married to his brother Alexander. Moreover, appellant had been the Ampayas' boarder for six years already. Evelyn, no doubt, was well acquainted with appellant in a manner that is not only familiar, but likewise intimate and familial. As we held in *People v. Hilario*, the fact that the witness had known the accused for five years, and was his neighbor in the community, makes them well acquainted with each other as to render credible the positive identification by the witness of the accused as the perpetrator of the offense.

Given the element of acquaintance, the court believes that Evelyn had more than sufficiently recognized appellant from the conditions inside her room.

3. ID.; ID.; ID.; DUE TO THE UNUSUAL ACTS OF VIOLENCE COMMITTED RIGHT BEFORE THEIR EYES, WITNESSES DO REMEMBER WITH A HIGH DEGREE OF RELIABILITY THE IDENTITIES OF CRIMINALS, AND THE TIME AND MANNER THEY COMMITTED THE CRIMES.— Experience dictates that precisely because of the unusual acts of violence committed right before their eyes, witnesses do remember with a high degree of reliability the identities of criminals, and the time and manner they committed the crimes. Evelyn was not merely physically attacked. An attempt upon her honor was made as well, and not merely by a stranger but by the boarder of her fiancé no less. As such, an unwavering and categorical identification of her assailant was to be doubly expected. Experience shows that oftentimes a startling occurrence creates an incredible impression in the mind that can be recalled vividly.

4. ID.; ID.; ID.; FAMILY MEMBERS WHO HAVE WITNESSED THE KILLING OF THEIR LOVED ONES USUALLY STRIVE TO REMEMBER THE FACES OF THE ASSAILANTS.— We likewise accord credibility to Evelyn when she identified appellant to be her father's assailant. Be it remembered that at the time appellant attacked her father, Evelyn had already positively identified him as the knife wielder in her bedroom and her attacker in the living room. From the steady stream of events that unfolded interminably from the time she was roused from her sleep up to the time appellant began attacking her father, Evelyn was the object of appellant's ire, so much so that when the father saw his hapless daughter in the grip of a knife-wielding intruder, the father exclaimed: "*Randy, bakit mo ginaganyan ang anak ko.*" And as appellant charged upon the father, it was but in accord with human nature for daughter Evelyn to try to remain conscious to be able to come to the aid of her father in any manner she could, even just to identify his attacker. Indeed, Evelyn's identification of appellant draws strength from the rule that family members who have witnessed the killing of their loved ones usually strive, at the very least, to remember the faces of the assailants. A relative will naturally be interested in identifying the

malefactors to secure their conviction to obtain justice for the death of a beloved.

5. ID.; ID.; ID.; MINOR INCONSISTENCIES BETWEEN THE TESTIMONIES OF THE WITNESSES SHOULD BE IGNORED WHERE APPELLANT HAS BEEN POSITIVELY IDENTIFIED BY THE WITNESSES AS THE MALEFACTOR. — Appellant takes issue as well with the testimony of witness Joy Ampaya, a sister of Evelyn, who testified that she saw how appellant returned to stab Evelyn after his knifing rampage with her their father, Ricardo. Appellant claims inconsistency in the sisters' testimonies since, according to him, Evelyn never testified that he went back to stab her once more after the violent episode with her father. We do not see, however, how this seeming inconsistency could affect the case against appellant. Joy's testimony is merely corroborating, and is not the sole determinant of appellant's guilt or innocence under the premises. Besides, minor inconsistencies between the testimonies of Evelyn and Joy should be ignored, appellant having been positively identified by both as the malefactor. It does not matter in this case that appellant, in his stabbing rampage, turned from one victim to another, and then back again.

6. ID.; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, ITS CALIBRATION OF THE TESTIMONIES OF THE WITNESSES AND ITS ASSESSMENT OF THEIR POSITIVE PROBATIVE WEIGHT, ARE GIVEN HIGH RESPECT IF NOT CONCLUSIVE EFFECT. — Appellant's effort to discredit Edgar cannot be sustained in the light of the latter's categorical testimony that he came upon appellant while the latter was in the act of stabbing Ricardo and that, upon seeing this, he grabbed appellant and afterwards wrested with him, with the help of other guests, for the possession of the knife. Edgar would have not risked his life against an armed assailant were not his father truly attacked by appellant. The Court joins the trial court's assessment of the credibility and candor of Edgar's testimony. The legal aphorism is that factual findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of their probative weight are given high respect if not conclusive effect, unless it ignored, misconstrued, misunderstood or misinterpreted cogent facts and circumstances of substance, which, if considered, will alter the outcome of the case. We find none in this case. The trial

court is in the best position to ascertain and measure the sincerity and spontaneity of witnesses through its actual observation of the witnesses' manner of testifying, demeanor and behavior in the witness box.

7. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; ERRORLESS TESTIMONIES CAN HARDLY BE EXPECTED ESPECIALLY WHEN A WITNESS IS RECOUNTING DETAILS OF A HARROWING EXPERIENCE. — Inconsistencies in the prosecution's witness' accounts of what had transpired, if any, were only minor and do not necessarily impair the essential integrity of the People's evidence as a whole. Errorless testimonies can hardly be expected especially when a witness is recording details of a harrowing experience. As long as the mass of testimony jibes on material points, the slight clashing statements dilute neither the witnesses' credibility nor the veracity of their testimonies. For sure, such inconsistencies on minor details would even enhance credibility as these discrepancies indicate that the responses are honest and unrehearsed.

8. CRIMINAL LAW; MURDER; THE WOUNDS SUSTAINED BY THE VICTIMS ELOQUENTLY SPEAK FOR THEMSELVES. — As to the testimonies of other witnesses, specifically those of Jam Rolando Tendencia and Aurelio Torres, Jr., neighbors of the victims, we find no reason to deviate from the trial court's findings as well. On the contrary, their testimonies, together with those of Evelyn as well as those of the other witnesses, tend to show appellant's possession of the single-bladed knife used — and which was later found to match the nature and character of the wounds inflicted upon victims. The wounds sustained eloquently speak for themselves.

9. REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL AND ALIBI; IF UNSUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, ARE NEGATIVE AND SELF-SERVING WHICH DESERVE NO WEIGHT IN LAW AND CANNOT BE GIVEN GREATER EVIDENTIARY WEIGHT OVER TESTIMONIES OF CREDIBLE WITNESSES WHO TESTIFIED ON AFFIRMATIVE MATTERS. — The hard reality is that appellant's physical presence at the *locus criminis* is undisputed; hence, his defense of alibi crumbles like a deck of cards. Accounts by credible and honest witnesses all point to him as the assailant of both Evelyn and Ricardo. He was

found in possession of the knife that caused both victims' wounds and the ultimate death of Ricardo. In fact, that knife even had to be forcefully wrested from his very own hands. Positive testimony prevails over the defense of alibi. Denials and alibis, unsubstantiated by clear and convincing evidence, are negative and self-serving which deserve no weight in law and cannot be given greater evidentiary weight over testimonies of credible witnesses who testified on affirmative matters. Between the positive declaration of the prosecution witnesses and the negative uncorroborated assertions of appellant, the former deserves more credence. The appellate court was thus correct in saying that it was for the trial judge to determine whom to believe among the testifying witnesses. Having found no reason to deviate from the trial court's findings of fact, we grant those findings the respect they deserve.

10. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; WHEN PRESENT; ATTACK ON THE VICTIM WHO WAS JUST AWAKENED OR ROUSED FROM SLEEP IS ONE ATTENDED BY TREACHERY. — Time and again, we have held that the attack on the victim who was just awakened or roused from sleep is one attended by treachery. There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. There is treachery if the victim, when killed, was sleeping or had just awakened, because in such situation, the victim was in no position to put up any form of defense. These must have explained the multiple stab wounds found on the body of Ricardo and the person of Evelyn. It has been established in this case that when the successive attacks were made, the victims (Evelyn and Ricardo) have just been roused from sleep as a result of the appellant's incursion. They were caught in a position where they could not repel any attack upon their very persons. Appellant's mere unexpected and unauthorized intrusion into the room of Evelyn while the latter was asleep already constituted treachery.

11. ID.; MITIGATING CIRCUMSTANCES; INTOXICATION; WHEN MITIGATING. — As a final consideration, intoxication, as correctly held by the appellate court, is not mitigating in the present case. Appellant has not proved it to be so, and is antithetical to his defense of denial/alibi. Since he has claimed

to be unconscious when the brutal incidents happened, he could not properly claim intoxication as a mitigating circumstance. For sure, appellant never claimed to have become unconscious because of intoxication. Intoxication or drunkenness is mitigating if not habitual nor intentional, and it must be indubitably proved. Accused-appellant is not entitled to the mitigating circumstance of intoxication merely on the declaration of the prosecution witness that appellant was drunk. Accused-appellant must prove that such intoxication is not habitual nor intentional. This he failed to do, for the reason that the accused-appellant's defense was that of alibi.

12. ID.; MURDER; IMPOSABLE PENALTY. — The penalty for murder is *reclusion perpetua* to death under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, which act took effect on December 31, 1993. Since there are no aggravating or mitigating circumstances, appellant should first suffer the lesser penalty of *reclusion perpetua* for the murder of Ricardo Ampaya.

13. ID.; FRUSTRATED MURDER; IMPOSABLE PENALTY. — For the crime committed against Evelyn Ampaya, which we affirm to be frustrated murder under Art. 250 of the Revised Penal Code, as amended, the same is punishable by the penalty one degree lower than that prescribed for the crime of consummated murder, which is *reclusion temporal*, with a range of from 12 years and 1 day to 20 years. The maximum of the indeterminate penalty should be taken from *reclusion temporal*, which is the penalty for the crime taking into account any modifying circumstance in the commission of the crime. The minimum of the indeterminate penalty shall be taken from the full range of *prision mayor* which is one degree lower than *reclusion temporal*. Since there is no modifying circumstance in the commission of frustrated murder, the sentence imposed by the trial court, as affirmed by the appellate court, which is nine (9) years of *prision mayor* as minimum, to fifteen (15) years of *reclusion temporal* as maximum, is within the foregoing range.

14. ID.; MURDER AND FRUSTRATED MURDER; CIVIL LIABILITY OF THE ACCUSED-APPELLANT. — We likewise affirm the appellate court's findings with respect to the appellant's civil liability in the two cases. The grant of ₱25,000.00 as temperate damages to Evelyn Ampaya is in accord

with our ruling in *People v. Abrazaldo* as amplified and modified in *People v. Villanueva*, that when the actual damages proven by receipts during the trial amount to less than ₱25,000, as in this case, the award of temperate damages for ₱25,000 is justified in lieu of actual damages of a lesser amount. Conversely, if the amount of actual damages proven exceeds ₱25,000, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

GARCIA, *J.*:

On May 16, 2000, in the Regional Trial Court of Mandaluyong City, two separate Informations — one for Murder and the other for Frustrated Murder — were filed against herein appellant Randy Alabado *y* David. Respectively docketed in the said court as Criminal Cases No. MC-00-2508-H and No. MC-00-2509, both of which were raffled to Branch 24 thereof, the corresponding information alleges as follows:

In Criminal Case No. MC-00-2508-H:

That on or about the 10th day of May, 2000, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a stainless kitchen knife, with intent to kill, evident premeditation and treachery, did, then and there willfully, unlawfully and feloniously stab with the said knife one RICARDO AMPAYA *Y* MATEO *alias* "Totoy" on the (sic) different parts of his body, thereby inflicting upon the latter mortal wounds which directly caused his death.

CONTRARY TO LAW.[1]

[1] *Rollo*, p. 13.

In Criminal Case No. MC-00-2509:

That on or about the 10th day of May, 2000, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, armed with a stainless kitchen knife, with intent to kill, evident premeditation and treachery, did, then and there willfully, unlawfully and feloniously attack, assault and stab with the said knife one EVELYN AMPAYA *Y* DIZON on the (sic) different parts of her body, thereby inflicting upon the latter injuries which would ordinarily cause his (sic) death, thus performing all the acts of execution which should have produced the crime of murder as a consequence , but nevertheless did not produce it by reason of cause or causes, independent of the will of the accused, that is, due to the timely and able medical attendance rendered to said EVELYN AMPAYA *Y* DIZON which prevented his (sic) death.

CONTRARY TO LAW.[2]

When arraigned with assistance of counsel, accused-appellant entered a common plea of "Not Guilty" in both cases. Thereafter a joint trial ensued.

On August 4, 2003, the trial court rendered its Joint Decision[3] in the two cases, the dispositive portion of which reads:

WHEREFORE, finding the accused guilty beyond reasonable doubt he is hereby sentenced as follows:

(a) In Criminal Case No. MC-00-2508-H, accused shall suffer the penalty of *RECLUSION PERPETUA*, to pay the heirs of Ricardo Ampaya the amount of ₱25,000.00 as actual damages, ₱50,000.00 as death indemnity, ₱50,000.00 as moral damages and ₱20,000.00 as exemplary damages; and,

(b) In Criminal Case No. MC-00-2509, accused shall suffer the penalty of NINE (9) YEARS of *prision mayor* as minimum to FIFTEEN (15) YEARS of *reclusion temporal* medium as maximum and to pay the amount of ₱13,560.55 as actual damages.

SO ORDERED.

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[2] *Id*. at 15.

[3] *Id*. at 34-46.

On appeal to the Court of Appeals (CA), whereat the recourse was docketed as *CA-G.R. CR No. 00457*, the appellate court, in its decision[4] of April 17, 2006, affirmed the trial court's judgment of conviction with modifications, disposing as follows:

> 1. In Criminal Case No. MC-00-2508-H, accused-appellant Randy Alabado *y* David is found **GUILTY** beyond reasonable doubt of murder under Article 248 of the Revised Penal Code, qualified by treachery, and is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay the heirs of the victim Ricardo Ampaya, the amounts of ₱25,000.00 as actual damages, ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages; and
>
> 2. In Criminal Case No. MC-00-2509, accused-appellant Randy Alabado *y* David is found **GUILTY** beyond reasonable doubt of frustrated murder under Article 248 in relation to Article 6, first paragraph of the Revised Penal Code and is hereby sentenced to suffer an indeterminate penalty of nine (9) years of *prision mayor*, as minimum, to fifteen (15) years of *reclusion temporal*, as maximum. Accused-appellant is further ordered to pay the victim Evelyn Ampaya the amount of ₱40,000.00 as moral damages and ₱25,000.00 as temperate damages.
>
> SO ORDERED.

Before us now in this petition for review, appellant questions the appellate court's decision, assigning the following errors in his quest for a reversal:

> I
>
> THE TRIAL COURT ERRED IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.
>
> II
>
> THE TRIAL COURT ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY AND IN FAILING TO CONSIDER INTOXICATION AS A MITIGATING CIRCUMSTANCE.

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[4] Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Edgardo P. Cruz and Sesinando E. Villon, concurring; *id*. at 168-169.

As the Court sees it, the main issue raised in this recourse is: Was appellant sufficiently and positively identified by the prosecution witnesses as the perpetrator of the gruesome crimes?

It has been said that the identity of the accused is the first duty of the prosecution.[5] At the outset, we state that the prosecution had discharged the burden of identification.

As synthesized in the challenged decision of the appellate court, the prosecution's evidence tends to establish the following:

> x x x May 10, 2000 was the birthday of Aries Ampaya and the entire Ampaya family was very busy the whole day preparing the foods and attending to their guests. The celebration continued until evening wherein Aries Ampaya held a drinking session with his relatives, friends, co-workers and their boarders at the terrace of their boarding house which is just beside the house where their family lives at 1025 Barangay Barangka Itaas, Mandaluyong City. Randy Alabado, one of the boarders of the Ampaya, was also present. In fact[,] he did errands for the group like preparing and getting their "*pulutan*." x x x About past 11:00 o'clock in the evening, Randy Alabado left the group unnoticed x x x. Few minutes later, the sound of music coming from the stereo system in the main house x x x suddenly went off and after a while it went on again. This thing happened for sometime until Arnel, the brother-in-law of Aries Ampaya, came out of the main house terrified and shouting. Immediately, those who were drinking left their places and went inside the house of the Ampayas. Aurelio Torres, Jr. and Jam Rolando Tendencia, were among those who went in and when they reached the second floor, they saw Randy Alabado holding a knife while Edgar Ampaya was wrestling with him for the possession of the same. They helped Edgar and succeeded in taking the knife from Randy.
>
> Unknown to them and even before Arnel went out, a terrible thing had already happened inside the house. According to Evelyn Ampaya[,] she was then already asleep when she suddenly woke up and noticed a man with his head bowed down seating (sic) on the headboard of the bed which she shared with her younger sister Joy x x x. Since the room was only being illuminated by the light from the living room and from the aquarium beside her window[,] she could not

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[5] *People v. Delmendo*, G.R. No. L-32146, November 23, 1981, 109 SCRA 350.

readily identify the person. Evelyn then stood up from her bed and went closer to the person and looked [at] him intently, and it was only then that she recognized him as Randy Alabado. She became terrified because he was holding a knife. Instinctively, she immediately got up from bed and ran to the living room but Randy chased her (sic) and caught up with her outside her room where he suddenly embraced and kissed her in the nape. She called the help of her father Ricardo Ampaya who was already asleep in his room but accused did not mind her x x x. Evelyn repeated her plea for help from her father and this prompted the accused to stab her several times hitting her on the chin, eyebrow, back, stomach, thigh and arms as she was parrying his stab blows. It was at this juncture that [Ricardo] came out from his room and rushed towards her x x x. She recalled her father shouting, "Randy, *bakit mo ginaganyan ang anak ko*." But Randy turned towards Ricardo and met him with a fatal stab blow on the chest rendering the victim immobilized which he followed up with several more stab blows (TSN, pp. 5-10, October 5, 2000).

Edgar Ampaya who was also sleeping at that time was awakened by a loud thud coming from the hallway x x x. He went out of his room xxx and he saw Randy Ampaya stabbing his father who was already slumped on the floor with his face down. Since he was behind Randy who was then on a bending downward forward position towards the fallen body of his father, Edgar immediately rushed to him, pulled him away from his father and wrestled with him for the possession of the knife. It was then when their neighbors and visitors arrived and helped them in pinning down the accused (TSN, pp. 3-7, May 22, 2001).

Immediately, Ricardo Ampaya and Evelyn Ampaya were rushed to the Mandaluyong Medical Center x x x. On the other hand, Randay (sic) Alabado was being held by Jam Rolando Tendencia and the barangay tanods. Ricardo Ampaya x x x died upon reaching the hospital while Evelyn Ampaya was attended by Dr. Jesus Quitillan.[6]

The rest of the prosecution's evidence are summed up in the Joint Decision of the trial court, thus:

Dr. Felimon Porciuncula, Jr., a medico-legal officer of the PNP Crime Laboratory x x x, made his own autopsy of Ricardo's remains on May 11, 2000. He executed Medico-Legal Report

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[6] *Rollo*, pp. 106-109.

No. M-310-00 (Exh. B) x x x He concluded that the cause of the victim's death was hemorrhagic shock as [the] x x x result of multiple stab wounds on the trunk. x x x He opined that these wounds were caused by a single bladed knife (TSN, pp. 2-18, August 24, 2000).

In the medical certificate (Exh. U) issued by Dr. Jesus Quitillan[,] he stated that he treated Evelyn Ampaya who was confined at the Mandaluyong Medical Center from May 11, 2000 to June 14, 2000. She sustained 13 stabbed (sic) wounds and 2 lacerated wounds x x x and these wounds would heal in 60 days barring complications. Since Dr. Quitillan x x x is now abroad the prosecution called Dr. Guillermo Amigo, Jr., x x x. He opined that the stabbed (sic) wounds were caused by a pointed bladed instrument and taking into account the extent and nature of the wounds which were fatal the victim would die. x x x (TSN, pp. 3-18, August 7, 2002).

Dr. Norlito Sibug, an eye-specialist and ophthalmologist of the Mandaluyong Medical Center[,] also treated the injuries sustained by the victim on her right eye-brow and right eye. Based on his examination and ultrasound the victim lost her vision on her right eye because of a scar on the back of the same caused by severe bleeding due to injury (TSN, pp. 2-15, August 7, 2002).

Virginia Ampaya, wife of the deceased, was saddened by the untimely death of her husband. She incurred expenses amounting to ₱35,000.00 for the 7 day-wake and burial but she had only a receipt for ₱25,000.00 (Exh. O-1). She is asking for a ₱500,000.00 moral damages.

Evelyn Ampaya estimated her expenses including her damages in the amount of ₱150,160.00 (Exh. V). However, she was able to present only a receipt for ₱13,560.55 (Exhs. V-1 to V-73).

SPO Rafael Ranot, a police investigator of the Mandaluyong Police Station x x x undertook an investigation on the stabbing to death of Ricardo Ampaya and the wounding of Evelyn Ampaya. He went to the hospital immediately when he received the incident report x x x. He took the statement of Edgar Ampaya, Jam Rolando Tendencia, Aurelio Torres, Jr., and Evelyn Ampaya at her hospital bed. x x x. (TSN, pp. 2-10, July 3, 2001).[7]

For its part, the defense adduced in evidence the lone testimony of appellant himself.

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[7] *Id.* at 109-111.

Appellant testified that on May 10, 2000, he was at the house that he and his siblings were, for the past six years, renting from the Ampayas located just beside the Ampayas' home at 1025 MRT Track, Barangka Itaas, Mandaluyong City.[8] He claimed that around 6:30 p.m. of that fateful day, Aries Ampaya invited him to his (Aries') birthday party at the Ampayas' home where the guests were having a drinking session. At the kitchen of the Ampaya home, he helped out in the preparation of the *pulutan* (appetizer), in the course of which - so appellant claimed — he suddenly felt groggy and a change of body temperature. He began pacing back and forth. He recalled going to the sala where he sat for a while. It was during that time, so appellant continued, that he felt being hit on the head, whereupon he no longer had any recollection of succeeding events.[9] When he regained consciousness, he was already at the Criminal Investigation Division of the Mandaluyong Police Station. He admitted to having had too much to drink that night, albeit he was no longer into heavy drinking since 1998.[10]

In amplification of his first assigned error, appellant contends, in relation to his defense of denial, that the prosecution has not proved with moral certainty that it was he who committed the gruesome acts. He makes capital of the alleged conditions prevailing at the time that the crimes were committed, theorizing that, from Evelyn's own testimony that the main lights in her room (at around 11:45 p.m.) were out at the time and the only sources of illumination were those that came from the lighted aquarium beside the room window and some light filtering into the room from the sala, it would have been very difficult for Evelyn to have identified him as the "male seated at the headboard of the bed beside the bed occupied by her and her sister at the time,"[11] as the one who chased and attacked her moments later. Appellant thus argues:

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[8] TSN, December 11, 2002.

[9] *Id.*

[10] *Id.*; Accused-Appellant's Brief, pp. 6-7; *rollo*, pp. 69-70.

[11] TSN, October 5, 2000, p. 4.

> Even during the time that she (Evelyn) allegedly ran out of the sala, her back was still towards her attacker so that when this person allegedly caught up with her, she testified to having been kissed on the nape, hence, her pursuer must have held her from behind. It was entirely probable that Evelyn, in her frantic state, never really had a good look at her supposed attacker, so as to inspire positive identification.[12]

Furthermore, appellant tags Evelyn's own account of how the culprit allegedly attacked her father as "sketchy," since the events testified to by her occurred when she was close to passing out, having already sustained stab wounds and lacerations on critical areas of her body. And as has been testified to earlier by Evelyn, her right eye had already been hit badly at the time, rendering debatable her vivid account of how the culprit attacked her father.

We do not subscribe to appellant's arguments. Instead, we find, like the two courts below, that the prosecution's evidence is worthy of belief and the testimonies of its witnesses credible, which brings us a similar conclusion that appellant has been positively identified as the perpetrator of the crimes charged against him.

For one, we have carefully scrutinized the records and found nothing therein the existence of any ill-motive on the part of the principal prosecution witnesses to falsely impute upon appellant the commission of such a serious offense as murder and frustrated murder. Quite the contrary, the evidence on hand even convinces us that these witnesses spoke for no other reason but to unfold the truth.

To begin with, appellant himself claims to be very close to Evelyn who was already engaged to be married to his brother Alexander.[13] Moreover, appellant had been the Ampayas' boarder for six years already.[14] Evelyn, no doubt, was well acquainted

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[12] Accused-Appellant's Brief in the Supreme Court, p. 8; *rollo*, p. 71.

[13] TSN, December 11, 2002.

[14] *Supra* note 5.

with appellant in a manner that is not only familiar, but likewise intimate and familial. As we held in *People v. Hilario*,[15] the fact that the witness had known the accused for five years, and was his neighbor in the community, makes them well acquainted with each other as to render credible the positive identification by the witness of the accused as the perpetrator of the offense.

Given the element of acquaintance, the Court believes that Evelyn had more than sufficiently recognized appellant from the conditions inside her room. We recall the evidence that when she was roused from sleep, Evelyn saw a "male seated at the headboard of the bed beside the bed occupied" by her and her sister. Light from the sala was filtering inside their room. It was but natural that Evelyn's curiosity was piqued at that moment because the circumstances she woke up to were far from usual: several alcohol drinking guests were in their home; she saw a male individual with head bowed down and seated at the headboard of the bed beside hers; and, being male, his intrusion into their privacy was just as well put into question. It was to be expected that Evelyn would strain to recognize who that person was, there being something unusual about his actions.

So it is that as testified to by Evelyn, she inched closer to see who it was sitting at the bed with head bowed down, and there saw appellant who was then holding a knife. Terrified, she ran out of the room only to be chased, embraced and stabbed by appellant. In her direct testimony, Evelyn declared:

Q. What did you do when you recognized him as Randy Alabado?
A. I feel very afraid because I saw him he was holding a knife. What I did was I got up from my bed and I run to the sala but he chased me and then he started kissing my nape. Then I shouted "*Tay tulungan mo ako*."

Q. What happened when he started kissing your nape?
A. He embraced me behind and poked the knife at the side of my neck, sir.

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[15] G.R. No. 114268, May 31, 1995, 244 SCRA 633.

Q. And then?
A. When I shouted for help to my father what he did was he stabbed me, sir.

Q. How did you shout and asked help from your father?
A. I shouted *"Tay tulungan mo ako!"*

Q. How many times?
A. 2 times, sir.

Q. And then what did he do when you shouted for help?
A. He stabbed me here, sir.

[Witness is pointing to her left chin and upper right portion of her eyebrow].

Q. Where else?
A. "*Sa likod, sa tiyan, sa hita. Eto pong kamay ko tinadtad niya ng saksak kasi po ginanyan ko sa dibdib ko kung di po patay na rin ako ngayon*."
[Witness is pointing to her back, stomach and right thigh. Witness is also demonstrating how she placed her hand and arm in her chest.][16]

Experience dictates that precisely because of the unusual acts of violence committed right before their eyes, witnesses do remember with a high degree of reliability the identities of criminals, and the time and manner they committed the crimes.[17] Evelyn was not merely physically attacked. An attempt upon her honor was made as well, and not merely by a stranger but by the brother of her fiancé no less. As such, an unwavering and categorical identification of her assailant was to be doubly expected. Experience shows that oftentimes a startling occurrence creates an indelible impression in the mind that can be recalled vividly.[18]

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[16] TSN, October 5, 2000.

[17] *People v. Caabay*, G.R. Nos. 129961-62, August 25, 2003, 409 SCRA 486.

[18] *People v. Umadhay*, G.R. No. 119544, August 3, 1998, 293 SCRA 545.

If Evelyn saw the appellant wielding a knife with the conditions then obtaining in her room, she might as well have identified him as the man holding the same. Surely, appellant was significantly more conspicuous and outstanding than the smaller knife in his hands. Even then, assuming Evelyn was unable to specifically identify him as the man sitting on the bed, appellant was certainly identified as her attacker in the *sala*. There could have been no other attacker, as the evidence shows there was but one assailant.

We likewise accord credibility to Evelyn when she identified appellant to be her father's assailant. Be it remembered that at the time appellant attacked the father, Evelyn had already positively identified him as the knife wielder in her bedroom and her attacker in the living room. From the steady stream of events that unfolded interminably from the time she was roused from her sleep up to the time appellant began attacking her father, Evelyn was the object of appellant's ire, so much so that when the father saw his hapless daughter in the grip of a knife-wielding intruder, the father exclaimed: "*Randy, bakit mo ginaganyan ang anak ko*." And as appellant charged upon the father, it was but in accord with human nature for daughter Evelyn to try to remain conscious to be able to come to the aid of her father in any manner she could, even just to identify his attacker. Indeed, Evelyn's identification of appellant draws strength from the rule that family members who have witnessed the killing of their loved ones usually strive, at the very least, to remember the faces of the assailants.[19] A relative will naturally be interested in identifying the malefactors to secure their conviction to obtain justice for the death of a beloved.[20]

Appellant takes issue as well with the testimony of witness Joy Ampaya, a sister of Evelyn, who testified that she saw how appellant returned to stab Evelyn after his knifing rampage with

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[19] *People v. Baltazar*, G.R. No. 143126, July 31, 2003, 407 SCRA 542 citing *People v. Peralta*, G.R. No. 131637, March 1, 2001, 353 SCRA 329; *People v. Lovedorial*, G.R. No. 139340, January 17, 2001, 349 SCRA 402.

[20] *People v. Aquinde*, G.R. No. 133733, August 29, 2003, 410 SCRA 162.

their father, Ricardo.[21] Appellant claims inconsistency in the sisters' testimonies since, according to him, Evelyn never testified that he went back to stab her once more after the violent episode with the father. We do not see, however, how this seeming inconsistency could affect the case against appellant. Joy's testimony is merely corroborating, and is not the sole determinant of appellant's guilt or innocence under the premises. Besides, minor inconsistencies between the testimonies of Evelyn and Joy should be ignored, appellant having been positively identified by both as the malefactor. It does not matter in this case that appellant, in his stabbing rampage, turned from one victim to another, and then back again.

Moreover, daughters and father, all three of them, named appellant as the violent intruder on that fateful night. They could never have been mistaken in identifying him, what with the reality that appellant had been a boarder of the Ampayas for the past six years immediately prior to that violent episode and a brother no less of Evelyn's fiancé.

In his bid to downplay the testimony of Edgar Ampaya, another sibling of Evelyn, appellant alleged that Edgar never witnessed the attack on his father, Ricardo.

We are not convinced. Appellant's effort to discredit Edgar cannot be sustained in the light of the latter's categorical testimony that he came upon appellant while the latter was in the act of stabbing Ricardo and that, upon seeing this, he grabbed appellant and afterwards wrested with him, with the help of other guests, for the possession of the knife.[22] Edgar would have not risked his life against an armed assailant were not his father truly attacked by appellant.

The Court joins the trial court's assessment of the credibility and candor of Edgar's testimony. The legal aphorism is that factual findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of their probative weight

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[21] TSN, July 10, 2001.

[22] TSN, May 22, 2001.

are given high respect if not conclusive effect, unless it ignored, misconstrued, misunderstood or misinterpreted cogent facts and circumstances of substance, which, if considered, will alter the outcome of the case.[23] We find none in this case. The trial court is in the best position to ascertain and measure the sincerity and spontaneity of witnesses through its actual observation of the witnesses' manner of testifying, demeanor and behavior while in the witness box.[24]

As to the testimonies of other witnesses, specifically those of Jam Rolando Tendencia and Aurelio Torres, Jr., neighbors of the victims, we find no reason to deviate from the trial court's findings as well. On the contrary, their testimonies, together with those of Evelyn as well as those of the other witnesses, tend to show appellant's possession of the single-bladed knife[25] used — and which was later found to match the nature and character of the wounds inflicted upon the victims.[26] The wounds sustained eloquently speak for themselves.[27]

All told, we are sufficiently convinced that the testimonies of the principal prosecution witnesses sufficiently establish appellant's guilt beyond moral certainty of doubt. We find the absence of ill motive on their part to testify falsely against him. Indeed, appellant's own declaration that Evelyn was engaged to his brother Alexander makes the Ampaya siblings' testimonies all the more credible. Naturally, they would not wish to drive a wedge between their sister and the Alabados. Neither would it be valid to say that Evelyn would wish a dreadful fate for her fiancé's brother by indulging in falsehood. We simply see no reason for the Ampayas to fabricate a serious charge against

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[23] *People v. Cajurao*, G.R. No. 122767, January 20, 2004, 420 SCRA 207.

[24] *People v. Simon*, G.R. No. 130531, May 27, 2004, 429 SCRA 330.

[25] Exhibit "I".

[26] Exhibits "B", "C", "D", "E", "P", "Q", and "R"; TSN, August 24, 2000 and April 24, 2002.

[27] *People v. Gutierrez*, G.R. No. 142905, March 18, 2002, 379 SCRA 395.

appellant. For sure, given the reality that appellant is their boarder for the past six years and the brother of the fiancé of Evelyn, we cannot devine any explanation other than the considerations of truth why they should point their accusing fingers on appellant.

Inconsistencies in the prosecution's witness' accounts of what had transpired, if any, were only minor and do not necessarily impair the essential integrity of the People's evidence as a whole.[28] Errorless testimonies can hardly be expected especially when a witness is recounting details of a harrowing experience. As long as the mass of testimony jibes on material points, the slight clashing statements dilute neither the witnesses' credibility nor the veracity of their testimonies. For sure, such inconsistencies on minor details would even enhance credibility as these discrepancies indicate that the responses are honest and unrehearsed.[29]

Appellant's evidence is predicated upon pure denial/alibi, as opposed to that of the prosecution's which is based on categorical eyewitness' accounts. Insisting to have been hit on the head, appellant would claim he had remained unconscious as the violent incident unfolded, regained consciousness only at the Mandaluyong City police station after the bloody incidents occurred. He further acknowledged having, on that fateful night, one drink too many.

Appellant's gratuitous assertion of being unconscious has very little to commend itself. His position places him on much too convenient ground to ward off any and all accusations against him without so much of an explanation; it is plain denial, pure and simple. We cannot accept this stance.

In *People v. Gaspar,*[30] we rejected the convenient excuse of "losing consciousness" as a defense. Therein, we held:

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[28] See *People v. Villablanca,* G.R. No. 89662, October 1, 1999, 316 SCRA 13.

[29] *Antonio v. Court of Appeals,* G.R. No. 100513, June 13, 1997, 273 SCRA 328.

[30] G.R. No. 131479, November 19, 1999, 318 SCRA 649.

RODRIGO postulates that he was unconscious, hence unaware of the circumstances that led to Jimmy's demise. In effect, he denies his presence at the scene of the crime and his participation thereof. His evidentiary bases include the attestations of (1) three defense witnesses who claimed to have seen Jimmy struck RODRIGO with a bolo from behind and (2) six other defense witnesses who like the first three witnesses beheld RODRIGO lying on the ground face down. The trial court however, did not believe that RODRIGO was unconscious. So do we. But the trial court failed to categorically make a factual finding that Jimmy hacked RODRIGO, and yet paradoxically, referred to said episode as a mitigating circumstance of immediate vindication of a grave offense. This Court however, oppugns the veracity of this version of the defense.

The unassailed expert testimony of Dr. Valdez on the nature and extent of RODRIGO's wounds revealed that: RODRIGO's wounds were but superficial, slight, and insignificant which required no special medical attention or hospitalization and hence, they could not have caused RODRIGO to lose consciousness x x x[31]

Here, appellant, instead of explaining and clarifying his defense, made much of his alleged unconsciousness. Unfortunately, other than his own self-serving claim, appellant did not present other convincing evidence to prove that indeed a hard blow on his head rendered him unconscious. If ever a blow on his head was delivered, it must have been dealt on him after his stabbing rampage against Evelyn and Ricardo and while wrestling with Edgar for the possession of the fatal knife, at which juncture some of the quests joined the affray to disarm him.

The hard reality is that appellant's physical presence at the *locus criminis* is undisputed; hence, his defense of alibi crumbles like a deck of cards. Accounts by credible and honest witnesses all point to him as the assailant of both Evelyn and Ricardo. He was found in possession of the knife that caused both victims' wounds and the ultimate death of Ricardo. In fact, that knife even had to be forcefully wrested from his very own hands.[32]

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[31] *Id*. at 664.

[32] TSN, May 22, 2001.

Positive testimony prevails over the defense of alibi. Denials and alibis, unsubstantiated by clear and convincing evidence, are negative and self-serving which deserve no weight in law and cannot be given greater evidentiary weight over testimonies of credible witnesses who testified on affirmative matters. Between the positive declaration of the prosecution witnesses and the negative uncorroborated assertions of appellant, the former deserves more credence.[33] The appellate court was thus correct in saying that it was for the trial judge to determine whom to believe among the testifying witnesses. Having found no reason to deviate from the trial court's findings of fact, we grant those findings the respect they deserve.

On the treachery angle, appellant would have the Court disregard as unrealiable Evelyn's testimony on the matter. As appellant argues, at the time the alleged treacherous attack against Ricardo occurred, Evelyn was already seriously injured, with an injury to her right eye to boot, and unable to observe what had actually occurred to Ricardo. Appellant adds that since Ricardo was even able to call out his (appellant's) attention to what was transpiring before he was attacked, the evidence would negate the existence of treachery.

Time and again, we have held that the attack on the victim who has just awakened or roused from sleep is one attended by treachery.[34] There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. There is treachery if the victim, when killed, was sleeping or had just awakened, because in such situation, the victim was in no position to put up any form of defense.[35] These must have explained the multiple

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[33] *People v. Parcia*, G.R. No. 141136, January 28, 2002, 374 SCRA 714.

[34] *People v. Abolidor*, G.R. No. 147231, February 18, 2004, 423 SCRA 260; *People v. Delmindo*, G.R. No. 146810, May 27, 2004, 429 SCRA 546; *People v. Fernandez*, G.R. No. 134762, July 23, 2002, 385 SCRA 38.

[35] See *People v. Abolidor, supra*.

stab wounds found on the body of Ricardo and the person of Evelyn.

It has been established in this case that when the successive attacks were made, the victims (Evelyn and Ricardo) have just been roused from sleep as a result of the appellant's incursion. They were caught in a position where they could not repel any attack upon their very persons. As aptly observed by the appellate court:

> Records of this case show that both of accused-appellant's victims were in their respective bedrooms sleeping prior to the attack. Ricardo and her daughter, Evelyn, were thus not given the option to defend themselves against the sudden and unexpected aggression of accused-appellant, whom they have known and trusted for years prior to the incident. They had no idea and could not have foreseen the deadly assault upon their persons.[36]

Appellant's mere unexpected and unauthorized intrusion into the room of Evelyn while the latter was asleep already constituted treachery.[37]

Lest it be overlooked, Evelyn was brutally attacked from behind, as she was shouting for help and attempting to flee from the lustful and violent appellant. And the attack on the newly-awaken Ricardo was made when the latter came out from his room to check on the commotion. Given the prevailing circumstances at the time, Ricardo could not have readily prepared himself against the sudden and unexpected onslaught by his boarder for six years and whose brother was betrothed to his own daughter.

As a final consideration, intoxication, as correctly held by the appellate court, is not mitigating in the present case. Appellant has not proved it to be so, and is antithetical to his defense of denial/alibi. Since he has claimed to be unconscious when the brutal incidents happened, he could not properly claim intoxication as a mitigating circumstance. For sure, appellant never claimed to have become unconscious because of intoxication.

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[36] *Rollo*, pp. 163-164.

[37] See *People v. Gaspar*, *supra* at 672.

Intoxication or drunkenness is mitigating if not habitual nor intentional, and it must be indubitably proved (Art. 15, Revised Penal Code; *People v. Camano*, 115 SCRA 688 [1982]). Accused-appellant is not entitled to the mitigating circumstance of intoxication merely on the declaration of the prosecution witness that appellant was drunk (Exh. D, Original Record, page 151). Accused-appellant must prove that such intoxication is not habitual nor intentional. This he failed to do, for the reason that the accused-appellant's defense was that of alibi.[38]

The penalty for murder is *reclusion perpetua* to death under Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, which act took effect on December 31, 1993.[39] Since there are no aggravating or mitigating circumstances, appellant should suffer the lesser penalty of *reclusion perpetua* for the murder of Ricardo Ampaya.

For the crime committed against Evelyn Ampaya, which we affirm to be frustrated murder under Art. 250 of the Revised Penal Code, as amended, the same is punishable by the penalty one degree lower than that prescribed for the crime of consummated murder, which is *reclusion temporal*, with a range of from 12 years and 1 day to 20 years. The maximum of the indeterminate penalty should be taken from *reclusion temporal*, which is the penalty for the crime taking into account any modifying circumstance in the commission of the crime. The minimum of the indeterminate penalty shall be taken from the full range of *prision mayor* which is one degree lower than *reclusion temporal*. Since there is no modifying circumstance in the commission of frustrated murder, the sentence imposed by the trial court, as affirmed by the appellate court, which is nine (9) years of *prision mayor* as minimum, to fifteen (15) years of *reclusion temporal* as maximum, is within the foregoing range.

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[38] *People v. Ventura*, G.R. No. 90015, April 10, 1992, 208 SCRA 55.

[39] *Echegaray v. Secretary of Justice*, G.R. No. 132601, October 12, 1998, 297 SCRA 754.

We likewise affirm the appellate court's findings with respect to the appellant's civil liability in the two cases. The grant of ₱25,000.00 as temperate damages to Evelyn Ampaya is in accord with our ruling in *People v. Abrazaldo*[40] as amplified and modified in *People v. Villanueva*,[41] that when the actual damages proven by receipts during the trial amount to less than ₱25,000, as in this case, the award of temperate damages for ₱25,000 is justified in lieu of actual damages of a lesser amount. Conversely, if the amount of actual damages proven exceeds ₱25,000, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted.

WHEREFORE, the assailed decision of the CA in *CA-G.R. CR No. 00457* is *AFFIRMED* in all respects.

Costs against the accused-appellant.

SO ORDERED.

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

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[40] G.R. No. 124392, February 7, 2003, 397 SCRA 137.

[41] G.R. No. 139177, August 11, 2003, 408 SCRA 571.

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— The remaining five-day period within which to file the petition shall be counted from the date the parties' counsel of record has received the copy of the trial court's denial of their motion for reconsideration. (Soriano, Jr. *vs.* Soriano, G. R. No. 130348, Sept. 03, 2007) p. 627

— The Supreme Court is limited thereunder to reviewing only errors of law, not of fact, unless the factual findings complained of are devoid of support by the evidence on record or the assailed judgment is based on a misapprehension of facts. (Fangonil-Herrera *vs.* Fangonil, G.R. No. 169356, Aug. 28, 2007) p. 235

— This Court has ruled in several instances that, where the Court of Appeals is impleaded as respondent in the Petition for Review, and the petition clearly invokes Rule 45, the Court of Appeals is merely omitted from the title of the case pursuant to Sec. 4(a) of Rule 45 of the Revised Rules of Court. (*Id*.)

— Time and again, we have stressed that the remedy of appeal by certiorari under Rule 45 of the Rules of Court should involve only questions of law, not questions of fact. (Belgica *vs.* Legarde Belgica, G.R. No. 149738, Aug. 20, 2007) p. 67

— Under Rule 45 of the Revised Rules of Court, decisions, final orders or resolutions of the Court of Appeals, regardless of the nature of the action or proceedings involved, may be appealed to the Supreme Court by filing a petition for review, which would be but a continuation of the appellate process over the original case. (Fangonil-Herrera *vs.* Fangonil, G.R. No. 169356, Aug. 28, 2007) p. 235

Questions of fact — A question of fact is involved when the doubt or difference arises as to the truth or falsehood of alleged facts or when the query necessarily invites calibration of the whole evidence, considering mainly the credibility of witnesses, existence and relevance of specific surrounding circumstances, their relation to each other

ARREST

Legality of — An accused is estopped from assailing the legality of his arrest if he failed to move to quash the information against him before his arraignment. (People of the Phils. *vs.* Jose Divina, G.R. No. 174067, Aug. 29, 2007) p. 390

— Any objection involving the arrest or the procedure in the acquisition by the court of jurisdiction over the person must be made before he enters his plea, otherwise, the objection is deemed waived. (*Id*.)

Person illegally detained —The subsequent filing of the charges and the issuance of the corresponding warrant of arrest against a person illegally detained will cure the defect of that detention. (People of the Phils. *vs.* Jose Divina, G.R. No. 174067, Aug. 29, 2007) p. 390

Warrantless arrest — Even in instances not allowed by law, a warrantless arrest is not a jurisdictional defect, and objection thereto is waived when a person arrested submits to arraignment without objection. (People of the Phils. *vs.* Jose Divina, G.R. No. 174067, Aug. 29, 2007) p. 390

ATTORNEYS

Administrative complaints against lawyers — Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the Court's determination of the imposable penalty. (Rayos *vs.* Atty. Hernandez, G.R. No. 169079, Aug. 20, 2007) p. 228

— In several administrative cases, the Court has refrained from imposing the actual penalties in the presence of mitigating factors. (*Id*.)

Code of Professional Responsibility — Under Canon 16 thereof, a lawyer must hold in trust all moneys and properties of his client that he may come to possess; this commandment entails certain specific acts to be done by a lawyer such

— When a contract contains a clause for the submission of a future controversy to arbitration, it is not necessary for the parties to enter into a submission agreement before the claimant may invoke the jurisdiction of the CIAC. (*Id*.)

Original and exclusive jurisdiction — The CIAC has original and exclusive jurisdiction over disputes arising from or connected with construction contracts entered into by parties that have agreed to submit their dispute to voluntary arbitration. (Limcomcen Inc. *vs*. Foundation Specialists, Inc., G.R. No. 167022, Aug. 31, 2007) p. 465

CONTEMPT

Contempt of Court — A defiance of the authority, justice or dignity of the court, such conduct as tends to bring the authority and administration of the law into disrespect. (Tan *vs.* Atty. Balon, Jr., A.C. No. 6483, Aug. 31, 2007) p. 403

— A person adjudged guilty of indirect contempt may be punished by a fine not exceeding ₱30,000.00 or imprisonment not exceeding six months, or both. (*Id*.)

— It signifies not only a willful disregard or disobedience of the court's order but such conduct as tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice. (*Id*.)

CONTRACTS

Consent — Acceptance of the thing and the cause, which are to constitute a contract, may be express or implied as can be inferred from the contemporaneous and subsequent acts of the contracting parties. (Lopez *vs.* Bodega City (Video-Disco Kitchen of the Philippines) and/or Andres C. Torres-Yap, G.R. No. 155731, Sept. 03, 2007) p. 666

— The party's performance of the task indicated in the concessionaire agreement for a period of three years without any complaint or question deemed an implied acceptance or consent to the said agreement. (*Id*.)

CORPORATIONS

Doctrine of piercing the veil of corporate fiction — On equitable considerations, the veil can be disregarded when it is utilized as a shield to commit fraud, illegality or inequity; defeat public convenience; confuse legitimate issues; or serve as a mere alter ego or business conduit of a person or an instrumentality, agency or adjunct of another corporation. (Carlos *vs*. CA, G.R. No. 168096, Aug. 20, 2007) p. 209

— The legal fiction of a separate corporate personality in those cited instances, for reasons of public policy and in the interest of justice, will be justifiably set aside. ((*Id*.)

— The statutorily granted privilege of a corporate veil may be used only for legitimate purposes. (*Id*.)

— The wrongdoing must clearly and convincingly be established; it cannot be presumed. (*Id*.)

— Under the doctrine of piercing the veil of corporate existence, the corporation's separate personality may be disregarded when the separate identity is used to protect a dishonest or fraudulent act, justify a wrong, or defend a crime. (Marcelo *vs*. Sandiganbayan, G.R. No. 156605, Aug. 28, 2007) p. 126

Liability of officers — Absent malice or bad faith, the officer or shareholder cannot be made personally liable for corporate obligations and cannot be held liable to third persons who have claims against the corporation. (Marcelo *vs*. Sandiganbayan, G.R. No. 156605, Aug. 28, 2007) p. 126

Personality — Basic in corporation law is the principle that a corporation has a separate personality distinct from its stockholders and from other corporations to which it may be connected; this feature flows from the legal theory that a corporate entity is separate and distinct from its stockholders. (Carlos *vs.* CA, G.R. No. 168096, Aug. 20, 2007) p. 209

— In illegal dismissal cases like the present one, the *onus* of proving that the employee was not dismissed or if dismissed, that the dismissal was not illegal, rests on the employer and failure to discharge the same would mean that the dismissal is not justified and therefore illegal. (Carlos *vs.* CA, G.R. No. 168096, Aug. 20, 2007) p. 209

— The filing of the complaint for illegal dismissal is inconsistent with resignation. (*Id.*)

— The grant of back wages allows the unjustly and illegally dismissed employee to recover from the employer that which the former lost by way of wages as a result of his dismissal from employment. (*Id.*)

Resignation — Resignation is the voluntary act of employees who are compelled by personal reasons to dissociate themselves from their employment; it must be done with the intention of relinquishing an office, accompanied by the act of abandonment. (Carlos *vs.* CA, G.R. No. 168096, Aug. 20, 2007) p. 209

Unjust dismissal — An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to full back wages, inclusive of allowances, and to other benefits or their monetary equivalents computed from the time compensation was withheld up to the time of actual reinstatement. (Carlos *vs.* CA, G.R. No. 168096, Aug. 20, 2007) p. 209

EQUITY JURISDICTION

Principle — Explained; applied. (Hulst *vs.* PR Builders, Inc., G.R. No. 156364, Sept. 03, 2007) p. 683

ESTAFA

Elements — The elements of *estafa* are as follows: a) That money, goods or other personal property is received by the offender in trust or on commission, or for administration or under any other obligation involving the duty to make delivery of or to return the same; b) That there be

HABEAS CORPUS

Writ of — A writ of *habeas corpus* extends to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled to it. (In the Matter of the Petition for a Writ of Habeas Corpus of the person of Army Major Jason Laureano Aquino *vs.* Lt. Gen. Esperon, G.R. No. 174994, Aug.. 31, 2007) p. 548

— As a general rule, the writ of *habeas corpus* will not issue where the person alleged to be restrained of his liberty is in the custody of an officer under a process issued by the court which has jurisdiction to do so. (*Id*.)

— *Habeas corpus* is not the proper mode to question conditions of confinement; the writ of *habeas corpus* will only lie if what is challenged is the fact or duration of confinement. (*Id*.)

— Its essential object and purpose is to inquire into all manner of involuntary restraint and to relieve a person from it if such restraint is illegal. (*Id*.)

— Its object is to inquire into the legality of one's detention, and if found illegal, to order the release of the detainee; it is not a means for the redress of grievances or to seek injunctive relief or damages. (*Id*.)

— The high prerogative writ of *habeas corpus* was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint. (*Id*.)

INDETERMINATE SENTENCE LAW

Provision — The Indeterminate Sentence Law provides that the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense. (Lopez Manlangit *vs.* Sandiganbayan, G.R. No. 158014, Aug. 28, 2007) p. 166

— It is a cardinal rule that, in seeking the meaning of the law, the first concern of the judge should be to discover in its provisions the intent of the lawmaker; the law should never be interpreted in such a way as to cause injustice as this is never within the legislative intent. (*Id*.)

Repealing of laws — A law may be repealed expressly, by a categorical declaration that the law is revoked and abrogated by another, or impliedly, when the provisions of a more recent law cannot be reasonably reconciled with the previous one. (Commissioner of Internal Revenue *vs.* Primetown Property Group, Inc., G.R. No. 162155, Aug. 20, 2007) p. 182

— Implied repeals are not favored; an implied repeal must have been clearly and unmistakably intended by the legislature; the test is whether the subsequent law encompasses entirely the subject matter of the former law and they cannot be logically or reasonably reconciled. (*Id.*)

LEASE

Contract of sublease — The fact that the signatures of the witnesses and notary public are forgeries do not negate the presence of a valid contract of sublease where the parties thereto acknowledges having signed the contract; contract of sub-lease entered into by the lessee, a violation of the Contract of Lease. (Soriano, Jr. *vs.* Soriano, G.R. No. 130348, Sept. 03, 2007) p. 627

Duty of lessee — He must return the keys and leave no sub-lessees or other persons in the property; otherwise he shall continue to be liable for rents. (Remington Industrial Sales Corp. *vs.* Chinese Young Men's Christian Asso. of the Phil. Islands, G.R. No. 171858, Aug. 31, 2007) p. 510

— In order to return the thing leased to the lessor, it is not enough that the lessee vacates it.; it is necessary that he places the thing at the disposal of the lessor, so that the latter can receive it without any obstacle. (*Id*.)

LEGISLATIVE DEPARTMENT

Function — In enacting a statute, the legislature is presumed to have deliberated with full knowledge of all existing laws and jurisprudence on the subject; thus in passing a statute which places an agency under the Office of the President, it was in accordance with existing laws and jurisprudence on the President's power to reorganize. (Anak Mindanao Party-List Group *vs.* Exec. Sec., G.R. No. 166052, Aug. 29, 2007) p. 338

— In establishing an executive department, bureau or office, the legislature necessarily ordains an executive agency's position in the scheme of administrative structure; such determination is primary, but subject to the President's continuing authority to reorganize the administrative structure. (*Id*.)

Legislative power — Legislative power is the authority, under the Constitution, to make laws, and to alter and repeal them; the Constitution, as the will of the people in their original, sovereign and unlimited capacity, has vested this power in the Congress of the Philippines. (Anak Mindanao Party-List Group *vs.* Exec. Sec., G.R. No. 166052, Aug. 29, 2007) p. 338

LOANS

Award of interest — With regard particularly to an award of interest in the concept of actual and compensatory damages, when an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. (Sps. Suico *vs.* PNB, G.R. No. 170215, Aug. 28, 2007) p. 265

— With regard particularly to an award of interest in the concept of actual and compensatory damages, when an obligation, not constituting a loan or forbearance of money, is breached, no interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. (*Id.*)

— With regard particularly to an award of interest in the concept of actual and compensatory damages, when the obligation is breached, and it consists in the payment of a sum of money, the interest due should be that which may have been stipulated in writing. (*Id*.)

LOCUS STANDI

Concept — The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions. (Anak Mindanao Party-List Group *vs*. Exec. Sec., G.R. No. 166052, Aug. 29, 2007) p. 338

Definition — Locus standi or legal standing has been defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. (Anak Mindanao Party-List Group *vs*. Exec. Sec., G.R. No. 166052, Aug. 29, 2007) p. 338

LOSS OF EARNING CAPACITY

Evidence necessary — By way of exception, testimonial evidence would suffice: (1) if the victim was self-employed, earning less than the minimum wage under current labor laws and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) if the victim was employed as a daily wage worker earning less than the minimum wage under current labor laws. (People of the Phils. *vs.* Barlaan, G.R. No. 177746, Aug. 31, 2007) p. 599

— To be entitled to such an award, documentary evidence is necessary. (*Id*.)

MARRIAGE

Marriage license —The issuance thereof in a city or municipality, not the residence of either of the contracting parties, and issuance of a marriage license despite the absence of

MORAL DAMAGES

Award of — Mandatory in cases of murder and homicide, without need of allegation and proof other than the death of the victim. (People of the Phils. *vs*. Rodas, Sr., G.R. No. 175881, Aug. 28, 2007) p. 305

— Moral damages on the other hand are awarded in a criminal offense resulting in physical injuries, including death. (People of the Phils. *vs.* Barlaan, G.R. No. 177746, Aug. 31, 2007) p. 599

— Victim's mother is also entitled to an award of ₱50,000 moral damages for the mental anguish and distress she suffered for the death of her son. (People *vs.* Abesamis, G.R. No. 140985, Aug. 28, 2007) p. 35

MORTGAGES

Disposition of proceeds of sale in foreclosure — (a) first, pay the costs; (b) secondly, pay off the mortgage debt; (c) thirdly, pay the junior encumbrancers, if any in the order of priority; and (d) fourthly, give the balance to the mortgagor, his agent or the person entitled to it. (Sps. Suico *vs*. PNB, G.R. No. 170215, Aug. 28, 2007) p. 265

Mortgage foreclosure sale — Statutory provisions governing publication of notice of mortgage foreclosure sales must be strictly complied with, and that even slight deviations therefrom will invalidate the notice and render the sale at least voidable. (Sps. Suico *vs*. PNB, G.R. No. 170215, Aug. 28, 2007) p. 265

Mortgagee who exercises the power of sale — A mortgagee who exercises the power of sale contained in a mortgage is considered a custodian of the fund and, being bound to apply it properly, is liable to the persons entitled thereto if he fails to do so. (Sps. Suico *vs*. PNB, G.R. No. 170215, Aug. 28, 2007) p. 265

Notice of Sheriff's Sale — A Notice of Sheriff's Sale which did not state the correct number of the transfer certificates of title of the property to be sold was an oversight considered

OWNERSHIP, MODES OF ACQUISITION

Prescription — A rule, prescription does not run in favor of a co-heir or co-owner as long as he expressly or impliedly recognizes the co-ownership; and he cannot acquire by prescription the share of the other co-owners, absent a clear repudiation of the co-ownership. (Fangonil-Herrera *vs.* Fangonil, G.R. No. 169356, Aug. 28, 2007) p. 235

— Prescription applies to adverse, open, continuous, and exclusive possession. (*Id*.)

PARDON

Application — The practice of processing applications for pardon or parole despite pending appeals is in clear violation of the law; final judgment is required before parole or pardon would be extended. (People of the Phils. *vs.* Rocha, G.R. No. 173797, Aug. 31, 2007) p. 521

Effect of — The acceptance of the pardon shall not operate as an abandonment or waiver of the appeal, and the release of an accused by virtue of a pardon, commutation of sentence, or parole before the withdrawal of an appeal shall render those responsible therefor administratively liable; those in custody of the accused must not solely rely on the pardon as a basis for the release of the accused from confinement. (People of the Phils. *vs.* Rocha, G.R. No. 173797, Aug. 31, 2007) p. 521

PAROLE

Coverage — Parole is extended only to those convicted of divisible penalties. (People of the Phils. *vs.* Rocha, G.R. No. 173797, Aug. 31, 2007) p. 521

Nature — Parole refers to the conditional release of an offender from a correctional institution after he serves the minimum term of his prison sentence; the grant of parole does not extinguish the criminal liability of the offender. (People *vs.* Abesamis, G.R. No. 140985, Aug. 28, 2007) p. 35

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT

Power of the PCGG to sequester property — By the clear terms of the law, the power of the PCGG to *sequester property* claimed to be "ill-gotten" means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property and records pertaining thereto may be found, including "business enterprises and entities,"— for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving, the same-until it can be determined, through appropriate judicial proceedings, whether the property was in truth "ill-gotten," *i.e.*, acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. (Pacific Basin Securities Co., Inc. *vs.* Oriental Petroleum, G.R. Nos. 143972, 144056, 144631, Aug. 31, 2007) p. 425

Sequestered property — The PCGG, as a mere conservator, does not automatically become the owner of a sequestered property in behalf of the government; there must be a final determination by the courts if the property is in fact "ill-gotten" and was acquired by using government funds. (Pacific Basin Securities Co., Inc. *vs.* Oriental Petroleum, G.R. Nos. 143972, 144056, 144631, Aug. 31, 2007) p. 425

Sequestration — A sequestration order being similar to the provisional remedy of Receivership under Rule 59 of the Rules of Court, the PCGG may thus exercise only powers of administration over the property or business sequestered or provisionally taken over so as to bring and defend actions in its own name; receive rents; collect debts due; pay outstanding debts; and generally do such other acts and things as may be necessary to fulfill its mission as

— Upon filing of the joint criminal and civil actions, the offended party shall pay in full the filing fees based on the amount of the check involved, which shall be considered as the actual damages claimed. (*Id*.)

REAL ESTATE TAX

Real estate tax receipts — Real estate tax receipts indicating payment of realty tax and possession of the parcels are *indicia* of ownership; such are not conclusive proof of ownership, in the presence of other circumstance's and evidence showing otherwise. (Fangonil-Herrera *vs.* Fangonil, G.R. No. 169356, Aug. 28, 2007) p. 235

RECEIVERSHIP

Petition for — By receivership, property, real or personal, which is subject of litigation, is placed in the possession and control of a receiver appointed by the Court, who shall conserve it pending final determination of the title or right of possession over it. (Pacific Basin Securities Co., Inc. *vs.* Oriental Petroleum, G.R. Nos. 143972, 144056, 144631, Aug. 31, 2007) p. 425

RULES OF PROCEDURE

Application — Used only to help secure and not override substantial justice. (Soriano, Jr. *vs.* Soriano, G. R. No. 130348, Sept. 03, 2007) p. 627

SALARY STANDARDIZATION LAW (R.A. NO. 6758)

Directors of water districts — Even the Local Water Utilities Administration (LWUA), in Resolution No. 313, s. 1995, entitled "Policy Guidelines on Compensation and Other Benefits to Water Districts Board of Directors," on which petitioners rely for authority to grant themselves additional benefits, acknowledges that directors of water districts are not organic personnel and, as such, are deemed excluded from the coverage of the Salary Standardization Law. (Magno *vs*. COA, G. R. No. 149941, Aug. 20, 2007) p. 76

— R.A. No. 6758, also known as the Salary Standardization Law, does not apply to petitioners because directors of

— Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed. (Lopez Manlangit *vs.* Sandiganbayan, G.R. No. 158014, Aug. 28, 2007) p. 166

Revision of laws — Statutory construction tells us that in the revision or codification of laws, all parts and provisions of the old laws that are omitted in the revised statute or code are deemed repealed, unless the statute or code provides otherwise. (Lopez Manlangit *vs.* Sandiganbayan, G.R. No. 158014, Aug. 28, 2007) p. 166

STATUTORY CONSTRUCTION

Rule — It is a well-established rule of statutory construction that where great inconvenience will result from a particular construction, or great public interests would be endangered or sacrificed, or great mischief done, such construction is to be avoided, or the court ought to presume that such construction was not intended by the makers of the law, unless required by clear and unequivocal words. (People of the Phils. *vs.* Pringas, G.R. No. 175928, Aug. 31, 2007) p. 579

SUMMARY JUDGMENT

Affidavits or depositions — The affidavits or depositions shall show that there is no defense to the cause of action or the cause of action has no merits, as the case may be. (Marcelo *vs*. Sandiganbayan, G.R. No. 156605, Aug. 28, 2007) p. 126

Application —When the moving party is a defending party, his pleadings, depositions or affidavits must show that his defenses or denials are sufficient to defeat the claimant's claim. (Marcelo *vs*. Sandiganbayan, G.R. No. 156605, Aug. 28, 2007) p. 126

Burden of proof — In proceedings for summary judgment, the burden of proof is upon the plaintiff to prove the cause of action and to show that the defense is interposed solely for the purpose of delay; after the plaintiff discharges its burden, the defendant has the burden to show facts

TEMPERATE DAMAGES

Award of — In arriving at a reasonable level of temperate damages to be awarded, courts are guided by the ruling that there are cases where from the nature of the case, definite proof of pecuniary loss cannot be offered, although the court is convinced that there has been such loss. (Pacific Basin Securities Co., Inc. *vs.* Oriental Petroleum, G.R. Nos. 143972, 144056, 144631, Aug. 31, 2007) p. 425

— The award of ₱25,000.00 in temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court. (People of the Phils. *vs.* Rodas, Sr., G.R. No. 175881, Aug. 28, 2007) p. 305

— Under Article 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved. ((*Id*.)

Grant of — Current jurisprudence allows the grant of ₱25,000 as temperate damages when it appears that the heirs of the victim suffered pecuniary loss but the award thereof cannot be established with certainty. (People *vs.* Abesamis, G.R. No. 140985, Aug. 28, 2007) p. 35

TORRENS SYSTEM

Purpose — It has been invariably stated that the real purpose of the Torrens System is to quiet title to land and to stop forever any question as to its legality. (Ingusan *vs.* Heirs of Aureliano I. Reyes, G.R. No. 142938, Aug. 28, 2007) p. 50

— The Torrens System was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized. (*Id.*)

Rationale — The rationale behind the Torrens System is that the public should be able to rely on a registered title. (Ingusan *vs.* Heirs of Aureliano I. Reyes, G.R. No. 142938, Aug. 28, 2007) p. 50

TREACHERY

are accorded respect when no glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions can be gathered from such findings; the reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. (People of the Phils. *vs.* Pringas, G.R. No. 175928, Aug. 31, 2007) p. 579

— It is axiomatic that truth is established not by the number of witnesses but by the quality of their testimonies. (Ceniza-Manantan *vs*. People of the Phils., G.R. No. 156248, Aug. 28, 2007) p.104

— Minor inconsistencies between the testimonies of the witnesses should be ignored where appellant has been positively identified by both as the malefactor. (People *vs.* Alabado, G.R. No. 176267, Sept. 03, 2007) p. 796

— No ill-motive on the part of the principal prosecution witnesses to falsely impute upon the appellant the commission of a serious offense. (*Id*.)

— The fact that the witness was well acquainted with the accused in a manner that is not only familiar, but likewise intimate and familial, renders credible her positive identification of the accused as the perpetrator of the offense. (*Id*.)

— The rule is that the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded high respect if not conclusive effect. (Ceniza-Manantan *vs*. People of the Phils., G.R. No. 156248, Aug. 28, 2007) p.104

— The testimony of a lone witness, if found positive and credible by the trial court, is sufficient to support a conviction especially when the testimony bears the earmarks of truth and sincerity. (*Id*.)

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